

## **Collegiality and Change in Legal Education - A Case of Herding Cats?**

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### **Contents**

Introduction

'The Times They are a-Changin' : Cultures of Change in Higher and Legal Education  
Law Schools and Legal Education

A Tale of Two Universities

Legal Education and the 'Conditioning Structures' of Ideologies and Cultures

Conclusion

References

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### **Introduction**

Legal education, in common with higher education generally, has in recent years borne witness to a significant, possibly unparalleled period of sustained change (Tribe 2002), in relation to what we do, and how and in what environment we do it. This paper is the first 'staging post' in ongoing research exploring how some aspects of the processes of change that in recent years have permeated higher legal education have been viewed within the sector and, where appropriate, translated into action in several selected 'real life' environments.

A particular focus of this article will be the nature and impact of 'change' in the context of prevailing organisational cultures within the University sector, in particular the operation of the culture of collegiality. This article seeks to make the following points: first, that in analysing this area, existing scholarship does not always reflect a complex reality; second, that there is a danger of an undue focus upon 'top down' managerialist approaches that do not necessarily fully consider the operation and effects of change at the 'coal face'; and third, that the semi-formal and informal networks and that are the hallmark of collegiate approaches in many university law departments (as in other disciplines) rather than being utilised, as is traditionally often thought, to 'get things done' or effect 'workable' solutions to seemingly intractable problems in fact have a more nuanced role, having in some contexts success as the agent for the blocking of change.

## *'The Times They are a-Changin'*<sup>i</sup>: Cultures of Change in Higher and Legal Education

It is axiomatic that higher education has been the subject of a sustained period of expansion and development particularly since the end of the Second World War. Whilst the inter-war period had given rise to a very small number of Royal Charters for new universities (the University of Reading, established in 1926, but already in existence as a University College after being established as an Oxford University extension College, and the University of Hull, established a year later), the twenty five years after the end of the Second World War saw the creation of twenty-seven universities in the United Kingdom, some as a consequence of the Robbins Report into the future of higher education that proposed new University places leading to the so-called 'Robbins' (initially 'new'<sup>ii</sup> or 'plateglass' (Beloff 1969)) Universities, but also many newly-established institutions unconnected with the report, the result variously of the consolidation of existing provision and of a range of local initiatives and a desire for Universities that pre-dated the expansion envisaged by Lord Robbins.<sup>iii</sup> The Further and Higher Education Act 1992 made it possible for the then Polytechnics and Colleges and Institutes of Higher Education to apply for University status heralded another significant period of expansion, leading to the establishment of a further sixty-two Universities in the United Kingdom between 1992 and 2008.

Coupled with this, there has been an increased focus in the intervening period upon the reasons *for* Universities. Established notions of a 'liberal education', that is the advancement of a particular disposition towards life (Newman; Bradney 2003), involving the acquisition both of knowledge but also a 'particular 'habit of mind' (Bradney 2003:40), increasingly have both been complemented and supplanted in various measures by influences external to the University sector, not least an increased intervention from government.

The Robbins Report of 1964 identified the goals of University education as encompassing instruction on the skills necessary for employment and to develop the United Kingdom economically; advancing learning and the development of knowledge; developing the 'powers of the mind'; and the transmission of a 'common culture and common standards of citizenship' (Robbins 1964) in order to ensure societal development. By 1984, however, government had developed, as Bradney (2002:8) has observed, 'a clear and long-standing view about what kind of teaching should be going on at Universities.' According to the Department of Education and Science's 1985 Report into the 'Development of Higher Education in the 1990s', University level teaching should be to promote and develop 'positive attitudes' to work, for the training of students in working individually and in groups, to 'show leadership and respond to it' (Department of Education and Science 1985, para 1), and to contribute to 'the improvement of the performance of the economy' – equipping students for employment.

These redefined goals further were developed by Lord Dearing's 1997 Report, appointed to "make recommendations on how the purposes, shape, structure, size and funding of higher education, including support for students, should develop to meet the needs of the United Kingdom over the next 20 years." (Dearing 1997, Preface), and which further argued :

"That the future will require higher education in the UK to:

- encourage and enable all students – whether they demonstrate the highest intellectual potential or whether they have struggled to reach the threshold of higher education – to achieve beyond their expectations;
- safeguard the rigour of its awards, ensuring that UK qualifications meet the needs of UK students and have standing throughout the world;

- be at the leading edge of world practice in effective learning and teaching;
- undertake research that matches the best in the world, and make its benefits available to the nation;
- ensure that its support for regional and local communities is at least comparable to that provided by higher education in competitor nations;
- sustain a culture which demands disciplined thinking, encourages curiosity, challenges existing ideas and generates new ones;
- be part of the conscience of a democratic society, founded on respect for the rights of the individual and the responsibilities of the individual to society as a whole;
- be explicit and clear in how it goes about its business, be accountable to students and to society, and seek continuously to improve its own performance.” (Dearing 1997, para 5)

and that:

“There is growing interdependence between students, institutions, the economy, employers and the state. We believe that this bond needs to be more clearly recognised by each party, as a compact which makes clear what each contributes and what each gains.” (Dearing 1997, para 9.)

It is worth noting that these policy statements did not remain theoretical goals, but were rapidly followed a series of academic ‘carrots’ and ‘sticks’, the ‘sticks’ including reduced funding for those University departments that, it was believed, did not fulfil the criteria of making a student ‘fit for purpose’ in the workplace, and the ‘carrots’ being strategic funding (Trowler 1998: 14.)

A development, apparently consequent upon the almost continual series of changes in the last twenty years that already have been highlighted, has been a perceived change in the mindset of higher education leaders and academics. This is that ‘change’, rather than being resisted – by Universities and groups of and individual academics – has been the subject, at least to some degree, of an attitudinal shift, and has come to be regarded almost as inevitable (Farmer 1990.) As such, it has been argued that the question asked by Universities is *what* changes must be made, rather than questioning the notion of organisational change or an exposition of why change was not necessary (Trowler 1998.)

So, if it is accepted that Universities are subject to processes of change, and that change increasingly has been viewed virtually as inevitable, discussion therefore is desirable of the different processes of change that can be applied to the sector and actually are at work in individual institutions.

Much of the work initially carried out in this sphere of the management of change was in the so-called ‘planned change’ tradition, such as the work of Lewin and Kantor with reliance for example upon the work of the classical school of change management and its focus upon directing and planning initiatives. Lockett (2004) derived from the work of Thurley and Wirdenius (1973) recognises five broad strategies to bring about change. He argues that these are ‘educative strategies’; essentially an approach based upon persuading academics to be open to and support the proposed changes by explaining their perceived advantages; participative strategies, which although to varying degrees led by the managers/ leaders of the University’s change processes, involves input from all affected individuals; negotiation and bargaining with the affected academic colleagues to achieve a satisfactory outcome for all; and where necessary drawing on ‘expert’ change management assistance in addition to the

‘directive’ strategy (a focus upon being managed/ imposed by those ‘at the top’ of the organisation.)

Some significant problems have, however, been advanced regarding the appropriateness of such approaches. Lockett (2004) suggests that such directive strategies, whilst having the potential to bring about swift change, suffer from the disadvantage that they do not give sufficient weight to the views of the individuals directly affected by such changes.

Consequently, more recent literature on change in higher education does, to a lesser or greater degree, seek to incorporate strategies that attempt to change academic’s beliefs and their value structures, and/ or ensure various degrees of involvement in the proposed changes. For example, Polding 2006 places an emphasis on keeping staff engaged, and ensuring that they feel confident, supported, and motivated in times of change. However, Outram (2005) highlights that in higher education, approaches based upon the assumption that change is led from the top against obstructive staff at a lower level is an ‘unspoken assumption’ (Outram 2005:3)

Furthermore, Ball (1994) suggests that policy is interpreted and decoded in ‘complex social and cultural contexts’, a view supported by Trowler (2002), who argues that an approach that suggests policy or changes (‘the vision’ - Trowler 2002: 2) is formulated by those in ‘formal positions of power’ and then implemented in a way consistent with the original intention by others in the organisation ‘fails to capture adequately the messiness of [higher education] policy-making and its implementation’ (Trowler 2002: 2.) Further, he highlights Cohen and March’s argument that :

‘[in Universities] anything that requires the co-ordinated effort of the organization to start is unlikely to be started. Anything that requires a co-ordinated effort of the organization in order to be stopped is unlikely to be stopped’ (Cohen and March 1974: 206, in Trowler 2002: 4)

An additional factor potentially that militates against an organised, ‘planned change’ approach to changes in higher education are the ‘conditioning structures’ (Trowler 1998: 65) of a given higher education institution. Trowler advances beyond the arguments regarding the impact of distinct approaches derived from the academic’s subject discipline being translated into other aspects of academic behaviour (Becher 1995), and highlights the potential impact of other ‘conditioning factors’ upon academics, including prevailing educational ideologies and organisational cultures in given Universities.

## Law Schools and Legal Education

The gestation of law in Universities appears to differ significantly in its early stages from the development of other academic disciplines. Often historically regarded as a non-academic discipline, as Bradney observes, instances where a University actually did have a separate law school (as distinct from law taught in another department, or at all), it would be regarded as ‘[a] small isolated outpost that existed on the outskirts of the academic empire’ (Bradney 2003:2) However, despite these origins, law has come to be regarded as a significant part of the life of the University.

Consequently, the university law school, especially in recent years, has been subject to many of the same pressures for change as other disciplines in the sector, together with some of its own, resulting in what has been argued is a ‘faster and more overwhelming [change in legal education] during the second half of the twentieth century than at any time previously’ (Tribe 2002:1.) Areas of such commonality with the sector as a whole have included the move to modular structures, continued debates as to law as a ‘liberal’ education , or a professional

training, or a variety of combinations of both, the need to teach larger numbers of students without necessarily a corresponding rise in resources, ‘traditional’ versus ‘progressive’ teaching, and (at least in part connected with the previous point) an in some cases ongoing disciplinary debate regarding ‘black letter law’, ‘law in context’ approaches and the increasing impact of postmodern theory upon the discipline.

Some of these themes will now be explored in more depth in the context of the introduction of modular changes in relation to one module (the same subject) at two separate ‘new’ Universities – University A and University B. This section of the article seeks to explore via a practical illustration, the impact in the context of introducing change in higher education, of an array of local factors, including that of a more collegiate structure.

## A Tale of Two Universities

University A and University B are Universities of similar size, with similar positions in league table terms at institutional level (with a slight discrepancy at discipline level), and popular Law departments with records of successful student recruitment.

The background to the module proposal at University A was a re-validation of the undergraduate Law provision, following a University-wide strategic rethink – including discussion of assessment strategies - and reorganisation of undergraduate portfolios. The module proposal itself concerned a subject not before taught at University A, and contained (what were for the time) relatively innovative assessment strategies – no examination, assessed seminars, assignment work leading to formative feedback and assessed group work. There was some examination from members of staff of the aims of the module, especially relating to the validity and value of the assessment package, but the proposals gained both qualified and enthusiastic acceptance from the relevant Department prior to being subject to the formal University processes. A subsequent change saw this module itself replaced for a second time as part of a programme revalidation by another module with further innovative assessment strategies, including electronic-based reflective elements. This later change was in the context of a significant number of other undergraduate law modules incorporating differing, innovating assessment strategies with significant success in (i) assisting with student retention and engagement with subject matter; (ii) improving student academic performances; and (iii) resulting in more positive student feedback.

The introduction of a similar assessment regime for a module with similar content was proposed for University B. This faced significant initial internal departmental debate due to a number of different concerns expressed singly or collectively by groups of staff, with debates revolving around (i) the value placed collectively upon ‘traditional’ examinations; (ii) the perceptions of ‘quality’ and maintenance of standards associated with traditional assessment regimes; (iii) a belief that the University assessment mechanisms would not permit innovative assessment; (iv) a fear of the opprobrium of the professional bodies and (v) a belief that it has not ‘been done this way before.’ As Outram (2005) suggests, such points can be relatively common, and feature in his typology of reasons advanced within higher education to not change. In addition, several of them – for example, that the regulations of the University would not allow innovation, or that the professional bodies would not support such measures (at least, insofar as law is concerned - so long as they did not affect certain modules) – do not stand up to scrutiny. However, what needs further exploration is the reasons behind some of the reluctance to innovate.

## Legal Education and the ‘Conditioning Structures’ of Ideologies and Cultures

Trowler’s theory, discussed above, regarding the conditioning factors of a University working environment over and above disciplinary ‘tribal loyalty’ might provide an explanation in this context. Trowler argues that a range of factors come into play when considering a complex University environment, including those of educational ideologies and the prevailing university culture.

The prevailing educational ideology at the time of the proposed change in University B could be most accurately characterised as largely ‘traditional’, in other words focused upon the ‘cultural and disciplinary heritage’ (Trowler 1998: 67), with a significant (but certainly not universal) ‘black letter law’ approach and an accompanying rigorous ongoing debate about the place of transferable skills in an academic subject. Conversely, University A’s prevailing departmental educational ideology had been for some time one that could be characterised as predominantly progressive, having many years before embraced a ‘law in context’ approach to legal education, and having been relatively open to new ideas and assessment strategies.

Similarly, despite superficial similarities (in terms of university size, status and student base), the two law departments in University A and University B exhibited several significant differences in terms of their organisational cultures, again a factor highlighted (as described above) by Trowler as being an important conditioning factor upon academics and their responses to change. University A was an organisation that historically had experienced much more management intervention from its highest levels, with more - and more frequent - change emanating from the higher levels of the institution, and thus, it could be argued that it was at least in part more conditioned at the *initial* stage of change (bearing in mind that later changes had proved successful, thus would be factored into decision-making processes) to be receptive to a ‘directive strategy’, though the impact of its progressive view of law teaching would also be an important factor. University B’s law department on the other hand, was one located in a University that had for many years adopted an approach where power was largely in practice ‘devolved’ to individual departments. In addition, the Department had experienced stable management, with proposals for change being reviewed by a range of committees as well as by the staff body as a whole via an array of informal consultative processes, with an emphasis being placed upon the importance of collegiate, ‘consensual’ approaches which placed an emphasis upon colleagues’ views, and concern at proposals and ideas that caused unhappiness amongst other colleagues. However, University B’s staff, when subjected to strategies involving education about new teaching developments and – importantly – fully participative strategies where they could express their pre-existing views and fears, began more willingly to consider and evaluate a range of different assessment and other strategies.

An additional factor that potentially may provide another explanation for the different attitudes at play could also be derived from the work of Becher & Trowler (2001) concerning the social construction of disciplines (Trowler 2002: 62) discussed previously; that is, that research does suggest that the professional lives of academics in different subject areas can be organised differently – *if* the case could be made that there were sufficient differences began the (predominantly) socio-legal scholars of University A, compared with the more ‘traditional’ lawyers of University B, or the high proportion of legal practitioners in University B when compared to the very limited ‘practitioner’ base in University A’s department. It is debateable whether such a view is sufficiently nuanced or complex to draw any conclusions.

## Conclusion

As has been discussed, change in higher education, rather than resulting straightforward and predictable processes, can for all sorts of reasons provoke a range of unexpected reactions and outcomes, even when similar changes are attempted in relatively similar environments. These outcomes appear to be dependent upon the complex interplay between a range of factors, some obvious, some far less obvious, at many different stages of organisation within a university. While at least superficially, it could be argued that a prevailing culture which initially is more receptive to change might be preferable from the point of view of those introducing change, as the change is more likely quickly to be 'bedded in', and prove its worth or otherwise, more research needs to be carried out in the context of this work to explore whether other factors, such as the relatively slow but thorough exploration and testing of ideas in the collegiate and consensual structure of University B in the example employed, coupled with a necessary sustained drive for such changes, might actually result in a more 'embedded', valid and ultimately more successful process of change.

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<sup>i</sup> Bob Dylan, 1964

<sup>ii</sup> This term later became common currency for the former Colleges/ Institutes of Higher Education and Polytechnics that attained University status post 1992.

<sup>iii</sup> Examples include the University of Essex, that was established in 1964 as a result of pressure initially from Essex County Council for regional higher education provision, and the University of Sussex, finally receiving a Royal Charter in 1961 after a campaign for a University for Brighton dating back to the early twentieth century;