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How to Live: Aristocratic Values, the Liberal University Law School and the Modern Lawyer

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He [Montaigne] wanted to know how to live a good life – meaning a correct or honourable life, but also a fully human, satisfying, flourishing one. (Bakewell, 2010, p 4)

Summary

Both the main political parties in the United Kingdom see the role of universities as largely being related to servicing the economy. This is one manifestation of the neo-liberal politics that dominate current political discourse. However, at the same time, it is part of a debate about the nature of the good life that goes back to the Industrial Revolution. Purely commercial values have long been opposed by those who have espoused an aristocratic or professional stance. In the past university law schools and those in the practising professions have both been part of this opposition to commercial values. Whether this is still the case is open to question. Many practising lawyers now have an overtly commercial approach to their work. This raises questions about what the appropriate attitude of university law schools should be towards those who adopt values that law schools have rejected.

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Introduction

In 2009 the then Labour Government's Department for Business, Innovation and Skills published a paper on higher education entitled "Higher Ambitions: The future of universities in a knowledge economy". The paper contained genuflections to "[t]he process of knowledge generation and stewardship...[as] a public good" and to the idea that "[r]esearch and learning in universities have intrinsic values aside from any economic consideration" (Higher Ambitions, p 41). However the main thrust of the paper lay in another direction. It stated that "[t]he creation of BIS [the Department for Business, Innovation and Skills] signals the central role that the Government envisages for higher education in contributing to our economic strength and competitive potential" (Higher Ambitions, 41). It went on to argue variously for the "need to harvest every possible economic and social benefit from research [in universities]", "involve businesses in course design in universities" and require universities "to demonstrate how they prepare their students for employment" (Higher Ambitions, p 57, p 51 and p 42). The basic argument in the paper was that universities should become more closely attuned to business, both in relation to research and to student learning.

In several senses "Higher Ambitions" was not a contentious document. When Lord Mandelson, the Secretary of State for the Department for Business, Innovation and Skills, introduced the paper in the House of Lords, Lord de Mauley, the Shadow Secretary, welcomed "the main themes" of the paper (Hansard, House of Lords, 3rd November 2009 para 126). Much of the paper contained little, if anything, that was new. The argument that there needs to be a realignment in the relationship between the universities and business goes back at least as far as 1985. In that year the then Conservative Government published a Green Paper, "The Development of Higher Education into the 1990s", in which it argued that the universities should be "concerned with attitudes to the world outside higher education, and in particular to industry and commerce, and to be aware of 'anti-business' snobbery" and, further, that the universities should "foster positive attitudes to work" and "go out to develop their links with industry and commerce" (The Development of Higher Education, 1985 para 1.6). Like "Higher Ambitions", "The Development of Higher Education into the 1990s" was broadly supported by the then Opposition. Only three MPs spoke out against its basic tenets. Enoch Powell described it as "barbarism to attempt to evaluate the contents of higher education in terms of economic performance or to set a value upon the consequences of higher education in terms of a monetary cost-benefit analysis" (Hansard, House of Commons, (1984-85), vol 79 col 861), Gordon Wilson described the Minister of Education, Sir Keith Joseph's, attitude in presenting the paper as "philistine" and expressed surprise at Sir Keith Joseph's office given that "he does not even believe in education" (Hansard, House

of Commons, (1984-85), vol 79 col 864) and Eric Heffer told Sir Keith Joseph that, as a Fellow of All Souls, he should know that “man does not live by bread alone” (Hansard, House of Commons, (1984-85), vol 79 col 865). “Higher Ambitions”, with its view of higher education as a hand-maiden to the economy, is thus merely a further iteration of something that has been part of the largely uncontested higher education policy of the two main political parties in the United Kingdom for several decades.

Cownie’s study of legal academics showed that those academics who were working in English academic law schools saw themselves as providing a liberal education (Cownie, 2004, p 76). There is no reason to think that academics working in law schools in other parts of the United Kingdom differ significantly in what they see as the focus of their work. Academics move regularly between law schools in the different parts of the United Kingdom, write in and read the same journals, attend the same conferences and belong to the same professional associations. It is a matter of conjecture as to what precisely legal academics understand a liberal education to be. The complex nature of a liberal education in law has been the subject of extensive analysis (Bradney, 2003). However a number of writers have noted the aversion that legal academics have to thinking about educational theory (see, for example, Cownie, 1999, 44-45). Nevertheless it seems clear that, because they believe in the value of a liberal education and because they thus see education as not being tied directly to concerns about employment, most legal academics would regard both “Higher Ambitions” and the broader policy background from which it emanated with a mixture of distaste and hostility. Looked at in this way, “Higher Ambitions” is simply an illustration of the uncomfortable position that United Kingdom university law schools currently find themselves in, given the present political position espoused by the two main parties. However, in this article I will argue that it is wrong to see either “Higher Ambitions” or the broader policy that lies behind it as being merely a manifestation of the contemporary fascination with neo-liberal politics; a pre-occupation that, when acted upon, brings with it, amongst other things, a “commercialisation of as many aspects of life as possible” and “a maximum emphasis on rapid, short-term decision-making without respect to long-term commitments” (Crouch, 1997, p 356). Whilst I acknowledge that there are clear connections between the neo-liberal position and the arguments in “Higher Education” I want, instead, to engage in a broader analysis of contending cultural values that have arisen in British society. Consideration of this will suggest that the relationship between British universities and business, both as it is and as it is argued it should be, is part of a more general story about reactions to the industrial revolution and social changes that it brought. In turn this means that questions about the relationship between business and universities in general, and what university law schools should do in particular, are in fact, in Montaigne’s sense, questions about how we “should live and die” (Screech, 2004, p viii). In this article I am concerned specifically with the position of United Kingdom university law schools. Comparisons between different systems of legal education are difficult to make (Bradney, 2007). I would not expect the arguments that I marshal in this essay to apply in a straightforward fashion to any other system of legal education.

The United Kingdom and the Industrial Spirit

In 1981 Weiner first published “English Culture and the Decline of the Industrial Spirit, 1850-1980”, a book that argued that, in the United Kingdom, in the late nineteenth and early twentieth centuries

[n]ational identity became associated not, as it appeared by the mid-nineteenth century that it might be, with industrialism, technology, capitalism, and city life, but with values rooted in slow-changing 'country' ways of life. (Weiner, 2004, p xvi)

Even for his critics, of whom there have been many, this is an "important book", partly because it "summarized and systematically brought together, with extensive historical evidence, what is by now an old viewpoint, with a pedigree of at least a generation and a half of enunciation" (Rubenstein, 1990, p 61). Whether Weiner's central contention, that there was in the late nineteenth and early twentieth centuries a revolt against the industrial spirit that *caused* the United Kingdom's industrial decline, is accurate is not germane to this essay. (For critiques of Weiner's position see Clarke and Trebilock, 1997, Collins and Robbins, 1990, Rubenstein, 1990 and Thompson, 2001). What is important is what this rejection of the industrial spirit involved and how it came about.

Weiner himself is clear, both as to what the source for the reaction was and what it entailed.

This reaction [against the industrial spirit] was nurtured by institutions like the public schools and Oxbridge and by the opportunities available to adopt quasi-aristocratic lifestyles. As a result, the rise of 'industrial values' was contained, and the status of industrial and technological careers remained decidedly inferior to that of careers in government or the professions. (Weiner, 2004, p xvi)

Weiner elaborates on the nature of the reaction by quoting from a number of sources including Trollope's novel "Doctor Thorne".

England is a commercial country! Yes: as Venice was. She may excel other nations in commerce, but yet it is not that in which she most prides herself, in which she most excels. Merchants as such are not the first men among us; though it perhaps be open, barely open, to a merchant to become one of them. Buying and selling is good and necessary; it is very necessary, and may, possibly, be very good; but it cannot be the noblest work of man; and let us hope that it may not in our time be esteemed the noblest work of an Englishman. (Weiner, 2004, p 31)

The passage that Weiner cites comes at the beginning of Trollope's novel when he is setting out the scene within which the novel will be played out (Trollope, 1947, pp 30-31). It is thus not merely a passing remark. Its significance in delineating the kind of attitude that Weiner is concerned with has been noted separately by other commentators (see, for example, Michie, 2001, pp 82-83). Raven has argued that Weiner underestimates the significance of positive artistic responses to industrial development at this time (Raven, 1989, pp 183-184). Equally Trollope's own personal view of the industrial revolution is unclear. In his autobiography he writes "we know that the more a man earns the more useful he is to his fellow-men" (Trollope, 1965, p 106). However the examples he gives of those who earn large sums are artists, professionals and writers not industrialists and, as Weiner notes, Trollope's novel "The Way We Live Now" satirizes commercial values (Weiner op cit p 31). However, notwithstanding these points, the fact that "Doctor Thorne" shows one type of artistic reaction is sufficient both for Weiner and for the purposes of this article.

Weiner argues that from the middle of the nineteenth century onwards the rejection of the argument that increasing production is in itself a good becomes an important feature of the work of a range of social critics and authors including figures such as John Ruskin, Charles

Dickens, John Stuart Mill and Matthew Arnold (Weiner, 2004, chp 3). Citing what is largely a different range of writers, including Hardy, Gissing, Jefferies and William Morris, Weiner then argues that a “Southern metaphor” took hold in which values which were thought to be associated with traditional rural life were rated more highly than those that were seen as being related to the largely new phenomenon of urban life (Weiner, 2004, chp 4). What those rural values exactly were Weiner is less clear about. Indeed he writes that “[t]here were variants of ruralism to suit all political inclinations” (Weiner, 2004, p 50). However one common version of ruralism was nostalgia for an image of a “preindustrial England of landed gentlemen and sturdy peasants”; “[m]ost commonly, it was the life of rural England’s upper-class inhabitants that received most attention” (Weiner, 2004, p 106 and p 50). For many, what was perceived of as a former aristocratic mode of living was something that should be emulated. In fact many in the aristocracy had invested heavily in the new businesses that arose in the industrial revolution (Larson, 1977, p 82; Perkin, 1989, p 119). Nevertheless there was a perception that an aristocratic way of life was in contradiction to the mores of the industrial revolution.

The aristocratic way of life attracted people for a number of different reasons. For some the appeal lay in the aristocracy’s reputation for a hedonistic lifestyle, giving a priority to leisure rather than to production. Rubenstein, for example, writes of “the move away from business life toward the leisured, parasitical lifestyle of the English ‘gentleman’”, although he regards the descriptions of the degree of this move as being “exaggerated” (Rubenstein, 1993, p 121). Thus some “[g]entrified industrialists became psychological, if not actual, rentiers” (Weiner, 2004, p 145). However, as Thompson observes, there was “more than one type of aristocrat, more than one way of conceptualizing the landlord class” (Thompson, 2001, p 25). Aristocratic lifestyles offered more than the pursuit of what Veblen was later to term “conspicuous consumption” or “conspicuous leisure” as an alternative to the industrial spirit (Veblen, 1934, p 75 and chp III).

In his book “The Origins of Modern English Society” Perkin writes that “[t]he aristocratic ideal never quite died [in the nineteenth century]...an etiolated sense of responsibility for the lower orders managed to survive amongst the aristocracy” (Perkin, 2002, p 237).

It was not merely that the rich ought to be charitable towards the poor out of prudence and benevolence. Protection and maintenance were the right of the poor and a duty of the rich implicit in the privilege of property. (Perkin, 2002, p 243)

This aristocratic ideal, sometimes taking the form of “Tory paternalism”, encompassed the lives of far more than those who might strictly be called aristocrats. Thus, for example, the central figure in Ford Madox Ford’s tetralogy “Parade’s End”, Christopher Tietjens, the “youngest son of a Yorkshire country gentleman”, was a man who had “no politics that did not disappear in the eighteenth century” (Madox Ford, 1963a, p 13; Madox Ford, 1963b, p 247). “He [Tietjens] is the seventeenth century man homeless in the twentieth century” (Barr Snitow, 1984, p 208). Although in social terms not an aristocrat Tietjens is the epitome of one expression of the aristocratic ideal described above. “‘Parade’s End’ is feudalism’s elegy...” (Saunders, 1996, p 206). Tietjens is the “embodiment of a lost social ideal” (Moore, 1982, p 52). Madox Ford himself wrote that “[t]he ‘subject’ [of the tetralogy] was the world as it culminated in the [First World] war” (Madox Ford, 1934, p 195). “Parade’s End” “is, amongst other things, a massive exploration of the nature of virtue” (Saunders, 1996, p 223). Roberts has argued that Tory paternalism was largely unsuccessful in terms of any practical political outcome (Roberts, 1958). Political failure, however, says nothing in itself about the

degree of attachment that people have to a particular set of values. It is the existence of the phenomenon not its impact that is important for this essay.

Ford's characterisation of Tietjens details some aspects of the aristocratic temperament. Tietjens will never do "a dishonourable action" but says he is indifferent to being ruined socially (Madox Ford, 1963a, p 216, Madox Ford, 1963a, p 218). He is always "still Tietjens of Groby; no man could give him anything, no man could take anything from him" but, at the same time, "[o]f course he would never fight any treatment of himself!" (Madox Ford, 1963c, p 327; Madox Ford, 1963b, p 232). When working as a statistician in the Civil Service he does not want to provide figures that he believes not to be actuarially sound (Madox Ford, 1963a, pp 80-82). Whilst an army officer he finds that "[i]t was detestable to him to be in control of another human being – as detestable as it would have been to be himself a prisoner...that thing that he dreaded most in the world (Madox Ford, 1963c, p 403). He refuses to take money from his father's estate, even though he is in financial need, because he believes his father treated him unjustly (Madox Ford, 1963a, pp 270-271). He hates anything competitive (Madox Ford, 1963a, p 86). He prefers to be Second rather than Senior Wrangler because to be Senior Wrangler would be to have "a beastly placard...hung round his neck" (Madox Ford, 1963a, p 65). For Madox Ford, Tietjens was "the incarnation of Toryism", a "Tory altruist, who rather than asserting his will and his 'rights', effaces himself in his 'responsibilities'" (Saunders, 1996, p 204; Saunders, 1996, p 205). "He [Tietjens] looks with disfavour on the changes wrought in English life by industrial capitalism and the empire" (Meixner, 1962, p 203). It is thus not surprising that in the part of North Yorkshire where Tietjens comes from, "[t]he feuds between the Cleveland landowners and the Cleveland plutocrats are very bitter" (Madox Ford, 1963a, p 85). Tietjens "is the impractical man who lives for gallantry, for the ideal" (Barr Snitow, 1984, p 208). Self-assertion, the pursuit of material goods, the notion of a career and a desire to control and manage others are not part of that ideal. For him things are done because they should be done not because they will generate personal benefit. Tietjens' code is not necessarily the actual gentlemanly ideal that prevailed in the nineteenth century (on the latter see Perkin, 2002, pp 273-276). Instead his code is both an aspiration and an idealisation. It also reflects what was, at one time, Ford's own attitude to life. In his memoir "It Was the Nightingale" Ford observes of himself during the First World War. "[i]f you has asked me...what I thought of freedom or of the rights of man I should probably have replied that I never gave freedom a thought and that men had no rights – only duties" (Ford, 1934, p 84).

Whilst Tietjens is not an aristocrat he is still a gentleman. However, in the nineteenth century, a rejection of the ethos of the industrial revolution went beyond the upper social classes. Hinton, describing parts of the working class in the nineteenth century, notes that

the craftsman's attitude towards his work was not merely an instrumental one: despite capitalism, and in defiance of the arid logic of the cash nexus, work continued to have its spiritual rewards... (Hinton, 1973, p 93)

Many commentators have written about "the aristocracy of labour", a term that first began to be used in the early part of the nineteenth century (Hobsbawm, 1984, p 217). The aristocracy of labour was never a separate class (Pelling, 1968, p 61). However, like Tietjens, those who comprised the aristocracy of labour had their own notions of what was to be valued and why things were to be valued which existed quite separately from and in conflict with the values inherent in the industrial spirit that had come out of the industrial revolution. As with the aristocratic ideal, these values were in part inherited from the pre-industrial era (Gray, 1867,

p 91). Crossick writes that it was “the strong pride in their craft and its culture that so characterised these labour aristocrats” and that “[i]ndependance of the will and the dictates of others was equally important” (Crossick, 1978, p 135; Crossick, 1978, p 136).

For many working-class institutions earlier in the century, independence involved some rejection of existing society. Political groups, friendly societies and self-education institutions turned in on themselves within the structure of an artisan culture that asserted its own worth and built up a self-enclosed security in an unstable world. (Crossick, 1978, p 144)

They too would have decried just “buying and selling” as Trollope had in “Doctor Thorne”. Again like Tietjens they value things for their own sake and see themselves as autonomous beings. The potential for a clash between the aristocratic temperament, whatever social class it was to be found in, and the market values that arose with the industrial spirit is obvious.

Those in the professional classes seemed, at first sight, to have more in keeping with the industrial spirit than those that evinced an aristocratic temperament. Many writers have described the interaction between business and the professional classes (see, for example, Reader, 1966, 162-163 and Sugarman, 1993, pp 270-279). The professional class expanded greatly in the nineteenth century. Between 1841 and 1881 there was a 103 per cent rise in the number of professionals, excluding teachers, in England; between 1881 and 1911 there was a further rise of 50 per cent (Reader, 1966, p 201). The industrial revolution meant that a “new and more complex civilization” generated a greater need for professional groups to service it (Perkin, 1996, p 5; see also, Reader, 1966, p 2 and Carr-Saunders and Wilson, 1933, p 297). Taking up employment as a professional during the nineteenth century could therefore be seen as being “a rational response to realistic perceptions of areas of growth in the economy” (Rubenstein, 1993, p 122). Nevertheless, notwithstanding the very real intertwining of professional and commercial life in the nineteenth century, professional life also offered its own challenges to the industrial spirit.

The values inherent in the industrial revolution were relatively simple. Increasing production was a good in itself and the market would determine what constituted success. Thus Weber writes of “the ideal of the *credit-worthy* man of honor and, above all, the idea of the *duty* of the individual to increase his wealth, which is assumed to be a self-defined interest in itself” (emphasis in the original) (Weber, 2002, p 16). There are also other associated notions such as the idea of a career and the alienation of labour which arise at around this time (Williams, 1988, p 53; Marx, 1959). Professional values in the nineteenth century were more complicated. Perkin describes the professional classes as being the “non-capitalist” middle-class in the nineteenth century (Perkin, 2002, p 252). To argue that the professional classes were “non-capitalist” is not to suggest that they had no interest in the market. Indeed one of the principal functions of a profession may be to ensure that their members have a secure market for their services (see, for example, Larson, 1977). However, the relationship that the professional classes had with the market was, and is, more complex and more ambivalent than that found in the commercial and industrial sectors of society. “Non-capitalism” evinced itself in a number of different ways. First, the nature of the professional’s work, be they lawyers, doctors, clergy or whatever other form of professional, meant that they were not directly engaged in Trollope’s “buying and selling”. As Abbott notes, “[w]ith the exception of accounting, they [the professions] stood outside the new commercial and industrial heart of society” (Abbott, 1988, p 3). More than that, there was a suspicion of money that was associated with professional life.

Stability and money were very important ingredients of professional life...But money was a tainted thing: too close a connection with it – too much actual handling of the sordid stuff, that is – and you might find yourself classed with trade. (Reader, 1966, p 151)

Individually professionals might in fact be acquisitive and even avaricious, but to be seen, collectively or individually, as being acquisitive and avaricious in their professional lives would be to put their standing at risk in a way that would not be true for those in commerce and industry. “Wealth, which some of these [eighteenth century] professional men amassed, was not only a sign of professional excellence, but also a stepping stone toward social standing” (Larson, 1977, p 88). Reader argues for a division between higher and lower professions depending on how closely connected with money they were (Reader op cit pp 148-153). Burrage suggests that the main focus of professional associations for lawyers in England was, until the 1980s, on improving the status of their members not improving their material well-being (Burrage, 1996). Making money was one thing; to be seen to be interested in making money, to be seen to be interested in one’s market value, was another.

“The attitude of the professional man to his client or his employer is painstaking and is characterized by an admirable sense of responsibility; it is one of pride in service rather than of interest in opportunity for personal profit” (Carr-Saunders and Wilson, 1933, p 471).

What, however, most separated professional life from the capitalist middle-class was the claim that professional work was, by its very nature, altruistic, it being done for the common good.

The notion that professional work is done for the common good is both something that is central to a lot of the literature on professionalism and also something that is regarded with extreme scepticism in other commentaries. Thus, for example, Millerson describes it as one of the traits for a profession and notes that “altruistic service” is an element of the definition of a profession in eight other definitions (Millerson, 1964, p 4 and p 5). Parsons, by comparison, regards the distinction between the egoistic industrialist and the altruistic professional as being simplistic (Parsons, 1954). Equally it has been suggested that trait theories of the profession rely too much on “the professionals’ own definition of themselves” (Johnson, 1972, p 25). However what is significant for this essay is not whether or not professional work in fact is or was done for the public good. Instead what is important is the fact that the contention was and is made. The service ideal is central to the claims that professions often make for themselves.

[T]he professional ethos imposed an orderly viewpoint upon an unruly world and gave its protagonists confidence in their own position. They were able to present themselves in lofty terms as purveyors of specialist knowledge in disinterested service to the community. (Corfield, 1995, p 201).

In turn this claim of public service is “an expression of noblesse oblige associated with a feudal past and pretensions to aristocratic lineage” (Abel, 2003, p 493); “[a] new *savoir oblige* was superadded to the old *noblesse oblige*” (Corfield, 1995, p 202).

In nineteenth-century England the ideal of professional commitment inherits a large part of the moral prestige of the ideal of the gentleman. Such figures as the engineer Daniel Doyce of *Little Dorrit* or Dr Lydgate of *Middlemarch* represent the developing belief that a man's moral life is bound up with his loyalty to the discipline of his calling. The concern with the profession was an aspect of the ethical concept which was prepotent in the spiritual life of England in the nineteenth century, the idea of duty. (Trilling, 1955, p 215)

Altruism and the service ideal brought with it a general claim to autonomy for and in professional life. If public service was the ideal neither client nor employer could justly claim the unthinking obedience of the professional; autonomy was thus a "derivative trait" of the ideal of service (Goode, 1969, p 291). "Intellectual independence and moral responsibility" were central to the professional ethos (Ben-David, 1963, p 249). The professional had "to balance the public good against the needs and demands of immediate clients or employers" (Freidson, 2001, p 222). In doing so only the professional's colleagues, not outsiders, could properly judge whether or not the professional had upheld the professional ethos (Goode, 1969, p 291). Thus "[p]rofessionalism represents occupational rather than consumer or managerial control" (Freidson, 201, p 180).

The service ideal inherent in the nineteenth century notion of professional life, like its close kin the aristocratic ideal, suggested a different way of life to that promoted by the industrial spirit. Both stressed the value of some things for their own sake and the importance and priority of individual autonomy and responsibility. In contrast the industrial spirit gave priority to market values, ever-increasing production and an ever-increasing division of labour to achieve this end, this latter fact in turn meaning that people had to work in ever-bigger groups. For some comparison of the two indicated that professional life was not simply a different way of life but was in fact a superior way of life to commerce and industry; in Montaigne's terms "a [more] fully human, satisfying, flourishing one" (Bakewell, 2010, p 4). Perkin argues that nineteenth century public school teachers and university dons, who regarded industry as "money-grabbing", "held up the ideal of selfless public service in the professions..." (Perkin, 1989, p 119). A public school education was not an education for the professions. It was instead a liberal education "concerned with developing what would now be called transferable skills" (Thompson, 2001, p 128). Nevertheless inherent in that education was a moral ideal and central to that moral ideal was the notion of service (Thompson, 2001, p 125).

That Britain underwent an industrial revolution is clear; however it is evident from the above that it never wholly succumbed to it. In many parts of society there was a fundamental rejection of the mores of industrial society. This continues to be the case. Tory gentlemen like Tietjens no longer exist and the notion of the aristocracy of labour does not have a place in the description of contemporary class positions but the attitudes that both represent continue to resonate. Thus, for example, Sennett has written about the continuing value of craftsmanship where work is done for its own sake rather than for material gain (Sennett, 2006, pp 194-197; Sennett, 2008). Equally, through the twentieth century professionals flourished, leading many to argue, from a variety of theoretical positions, that a new professional class was dominant in society (see, for example, Gouldner, 1978; Bell, 1976 and Perkin, 1996). There is also a countervailing thesis about the proletarianization of the professional arguing that "professionals are increasingly subject to the power and control of others" (Derber, 1982, p 4). This thesis sees professionals as being increasingly judged according to industrial and commercial values. However, even if this is taken to describe an

achieved end rather than simply a pressure on professional life, the thesis in itself acknowledges the possibility of a non-proletarianized professional and thus an alternative way of life to the industrial spirit. In any event it is difficult and perhaps impossible to maintain the thesis that the proletarianization of the professional has completely occurred in the United Kingdom. The proletarianization of the professional requires salaried professionals to yield control of their work to their employers (Derber, 1982, p 7). Plainly this is not something that has happened to all professionals within the United Kingdom. The debate is thus about the extent to which proletarianization has taken place.

In a variety of ways, the aristocratic attitudes that rejected the values of the industrial revolution in the nineteenth century continue to exist into the twenty-first century. In this context the arguments in “Higher Ambitions” and “Higher Education into the 1990s” take on a deeper significance. Instead of merely being arguments about what would improve the economic well being of the United Kingdom they are, instead, arguments about what form of values should prevail in society, about how we should live. The question for university law schools then becomes what place do they have in these arguments.

The University Law School and Aristocratic Values

As I noted above most academics in United Kingdom law schools see themselves as providing a liberal education. The term “liberal education” has historically been applied to many different types of education. In this article I will use the term in the fashion developed “Conversations, Chances and Choices: The Liberal Law School in the Twenty-First Century” (Bradney, 2003). Used in this sense, except at the margins, a law school that sees itself as providing a liberal education does not make judgements about the values that its students should choose nor, indeed, the values that its academics adhere to; to do so would be to contradict its own basic tenets. Nevertheless, as a number of writers have observed, a liberal education must be an education about values and seeks, amongst other things, to inculcate in students an awareness of the inevitability of making value choices for which one is personally responsible (see, for example, Cownie, 2004, pp 161-164). It is not, however, an education in values, where one value choice is promoted above others (Bradney, 2003, pp 54-56). It might therefore appear that a liberal university law school would be neutral in the debate about values described above. In fact, however, a liberal law school finds itself inescapably drawn into taking sides in this debate.

Two aspects of a liberal education are significant in relation to the debate about the industrial spirit. First a liberal education both treats knowledge as an end in itself and regards its pursuit as having a priority over material matters. Thus, for example, Hirst argues that

the achievement of knowledge is not only the attainment of the good of the mind itself, but also the chief means whereby the good life as a whole is to be found. Man is more than pure mind, yet mind is his essential distinguishing characteristic, and it is in terms of knowledge that his whole life is rightly directed. (Hirst, 1974, p 30)

In a similar fashion Newman, in his classic examination of the nature of a liberal education, observes that

he [Cicero] considers Knowledge, the very first object to which we are attracted, after the supply of our physical wants. After the calls and duties of our animal existence, as they may be termed, as regards ourselves, our family and our neighbours, follows, he tells us, ‘the search after truth. Accordingly, as soon as we escape from the

pressure of necessary cares, forthwith we desire to see, to hear, and to learn; and consider the knowledge of what is hidden or is wonderful a condition of our happiness'. (Newman, 1960, p 79)

In doing this a liberal education rejects the argument that adherence to market values can be justified as an end in itself. There are strict limitations on how far we should concern ourselves with "the calls and duties of our animal existence". This is not to say that a liberal education results in a rejection of the material world. However the calls of that world have to be measured carefully against the more important needs of the pursuit of knowledge. "We have to think not only how we will earn enough to live, but also about why we live, and what makes life worth living" (Nussbaum, 1997, p 172). Secondly, inherent in a liberal education is a stress on personal autonomy and responsibility. It is we, individually, who have to decide why we live and what makes life worth living. And then try to live that life. Thus, for example, Nussbaum suggests that a student who has successfully inculcated the precepts of a liberal education should

have looked into themselves and developed the ability to separate mere habit and convention from what they can defend by argument. [Thus] [t]hey have ownership of *their own* thought and speech..." (emphasis added) (Nussbaum, 1997, p 293)

Whilst this stress on the importance of personal autonomy does not in itself contradict the industrial spirit it does fit closely with the aristocratic and professional service ideals that are described above. The division of labour that is the driver of the industrial revolution sits less easily with the notion of personal autonomy.

By opting to pursue a liberal education British university law schools stand not just in opposition to the current stance that both the major political parties have taken with regard to the purpose of university education but, more deeply, in opposition to the mores and values that came as a result of the industrial revolution. In doing so they side with the aristocratic and professional ideals described above. In many ways this is unsurprising. Through the twentieth century universities have come to have a dominant role in professional education. For this reason Perkin describes academics as the "key profession" because of their role in the development of the professions (Perkin, 1969). Although academics in university law schools do not see their educational role as being to train students to be lawyers it is nevertheless the case that obtaining a law degree is the most common first step in becoming a lawyer (Cownie, 2004, p 77; Trends, 2009, p 28). There thus appears to be a synergy between the education that law schools provide and what many, although perhaps not the majority, of its graduates will do in their employment.¹ However, whether this synergy will continue, given some developments in contemporary professional practice in law, is open to debate.

Commercialised Professionalism

It is self-evident that the nature of professional practice in law has radically changed in recent years in some parts of the legal professions. One obvious area where this is true is the

¹ There are no precise figures for what employment law graduates eventually find. Comparison of figures for those graduating and those obtaining pupillage or becoming trainee solicitors suggest that considerably less than a half of all law graduates become lawyers (for barristers see <http://www.barcouncil.org.uk/CareersHome/TheStatistics>, for solicitors see Trends, 2009, p 31 and p 38). However some law graduates will enter into other forms of professional employment, most obviously accountancy.

emergence of very large law firms in England. Up until 1967, when the limitation was abolished by s 120(1)(a) and s 121(1)(a) of the Companies Act 1967, the maximum number of partners that there could be in a firm of solicitors was set by statute at 20. In 2009 there were 60 firms with 81 or more partners (trends, 2009, p 24). Although these firms comprise only 0.6 per cent of the total number of firms they employ 25.1 per cent of all solicitors (Trends, 2009, p 25). These firms are plainly an important part of the contemporary solicitors' profession; equally plainly the way in which they work is very different to the traditional image of the solicitors' firm.

There has been comparatively little research into very large law firms in England. However several features of these firms are clear. First they are largely commercial firms with largely commercial clients (Hanlon, 1997, pp 806-808). Their websites set out their practice areas, each being very similar to other firms of the same size (see, for example, the website of Clifford Chance (http://www.cliffordchance.com/about_us/about_the_firm/) and that of Allen & Overy (<http://www.allenoverly.com/AOWeb/Home/AllenOveryHome.aspx?prefLangID=410>). To return to *Doctor Thorne*, such firms are unambiguously in the business of "buying and selling". The nature of their work and the nature of their clients puts into question the degree to which they can be said to adhere to any service ideal. It is hard to marry the idea of altruism in practice and, for example, Clifford Chance's revenue of 1,262 million pounds in 2009 ("Clifford Chance: Annual Review 2009" (<http://www.cliffordchance.com/reports09/ar/other/financial-information.html>)). Many and perhaps all of these firms engage in pro bono work and, indeed, have a broader corporate responsibility programme (see, for example, http://www.cliffordchance.com/about_us/corporate_responsibility/?LangID=UK&). However, even if one accepts they do this because of a sense of social responsibility, this puts them in no different a position to industrial firms that have a corporate responsibility programme (on the significance of pro bono work see Mcleay, 2008). Their altruism, their demonstration of adherence to a service ideal, is not something that is seen in their day-to-day working lives where "large law firms will define professionalism as a commitment to commercially focused expertise" (Greenwood, 2007, p 94). Hanlon, when describing the culture of large law firms, writes of "commercialisation [which] involves a downgrading of values such as public service...in favour of market values..." (Hanlon, 1997, p 802). Boon describes "[a] culture constituted by work pressure, pressure to bill, fuelled by cynical commercialism and organisational conformity..." (Boon, 2005, 231). Equally significant is the way those in such firms describe their work. The firms present themselves as being more concerned with the fact that they are businesses rather than the fact that they are concerned with law. Thus, for example, the comment of Michael Bray, then the Chief Executive Officer of Clifford Chance, that

[t]he City is driven by transactions. It is a very, very transactional driven practice; it is deals, deals, deals. People become partners at the age of 32, they are doing deals; at the age of 40, they are a partner, they are doing deals; at the age of 50, they will still be doing deals... (Bray, 2005, p 74)

is significant both because he positions large law firms as being part of "the City" and because of his emphasis on commercial behaviour as being the essence of what a lawyer in a large law firm does. Indeed the use of the title "Chief Executive Officer" to describe Bray's then position at Clifford Chance is also significant. "The title 'chief executive' is sometimes

used in firms seeking to distance themselves from an overtly traditional, professional, partnership style” (Mayson, 2007, p 324).

The very language used in these [large law] firms has changed: law is a *business* and has to be explicitly *managed*, ‘practice development’ is ‘marketing’, ‘professional development’ is ‘training’, and so on (Greenwood, 2007, p 190).

In a study of the most elite “magic circle” firms Galanter and Roberts date the change to business-like structures of governance to the second half of the 1980s (Galanter and Roberts, 2008, p 162). Such firms appear belatedly to have experienced the industrial revolution. Work practices in such firms reflect this fact. Thus, for example, Lee notes the high degree of specialisation amongst solicitors who work in such firms, something that might otherwise be characterised as an increased degree of division of labour (Lee, 2000, p 185). Given this is the case they might be expected to take a very different view on the merits of different value systems that arose after the industrial revolution to that taken by university law schools.

Conclusion

Not all lawyers in the United Kingdom are solicitors and not all solicitors work in very large law firms. One significant feature of the twenty-first century may well be the increasingly diverse nature of professional (or non-professional) life amongst lawyers in the United Kingdom. However comments about the increasing commercialisation of legal practice are not limited to analyses of very large law firms (see, for example, Sommerlad, 1995, Paterson, 1996, Wall and Johnstone, 1997 and Moorhead, 2004). It thus seems that the educational aims and the moral values of those in university law schools are increasingly at odds with the employment practices of many lawyers.

Traditionally law schools have facilitated students’ entry into legal practice by the provision of various extra-curricular matters including specialist career advice and competitions such as mootings and client counselling. In doing so, they have tacitly endorsed the value of a career in legal practice. Historically the law school could justify doing so on the ground that what legal practice entailed was not dissimilar in terms of professional practice to what the law school was itself engaged in; this idea reaching its highpoint in Holdsworth’s claim that, by virtue of being legal academics, those working in university law schools were the third branch of the legal profession (Holdsworth, 1925, p 1). This, however, is no longer the case. University law schools are very different places to the sites of much legal practice. Some would argue universities and their law schools are subject to very similar pressures to those experienced by practising lawyers and that “within the new marketised world...university education is being transformed into an industry preoccupied with economic rationalism, efficiency and the generation of income” (Collier, 2002, p 16; see more generally Dearlove, 1997). However even adherents of this thesis would not want to argue that the conditions in university law schools are the same as those in the industrialised forms of legal practice described above. In this new context law schools may need to reassess the messages they convey to students.

Any or all of the industrialised forms of legal practice may offer viable career options for some law graduates. Professional, still more aristocratic, values may not be to everyone’s taste or other benefits may outweigh an inability to follow such a way of life. Only a minority of respondents in Boon, Duff and Shiner’s study of early career solicitors were dissatisfied with their choice of career (Boon, Duff and Shiner, 2001, p 588). However that minority does exist. Writing about being a trainee solicitor one observer has commented that

[t]he reality of life for most A-grade first-or-upper-second-class-honours-graduates at large law firms is a regular diet of proofreading, bundling of documents for corporate transactions and photocopying and other mindless tasks (Smith, 2006, p 153).

In the contemporary era, given the gap between the way in which law schools think people ought to live and the quotidian reality of many lawyers' lives, it may well be that law schools will need to do more to forewarn students of what legal practice actually can entail. More to the point law schools may need to emphasise that the values that they espouse, what they take to be "a correct or honourable life...[and] also a fully human, satisfying, flourishing one" (Bakewell, 2010, p 4) is not what is to be found in many areas of legal practice.

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