

NAVIGATING TROUBLED SEAS: THE FUTURE OF THE LAW SCHOOL IN THE UNITED KINGDOM AND THE UNITED STATES

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Abstract: Legal education in both the United Kingdom and the United States has faced troubled waters in recent years. With a decrease in employment opportunities for lawyers, rising expenses in legal education and unceasing critiques from the practicing bar, law schools in both countries have worked to revamp their curriculum to meet these new challenges. This article outlines some of the legal education reforms implemented in these two countries. In some areas, the reforms match in goals and methods, but in others, they diverge. Ultimately, these changes add insight into the nature and identity of the legal professional itself. This article ends with comparative observations about the direction of legal education in both countries.

Keywords: *legal education; Legal Education and Training Review; Solicitors Qualification Examination; transnational education*

I. Qualifications to Become a Lawyer in the United Kingdom and the United States of America

The legal education model in the United States has remained constant for over a century.¹ Beginning in the 19th century, US legal education moved from a clerkship/mentoring system of educating lawyers to a three-year graduate school model in a university setting, culminating in a degree in law, the Juris Doctor (JD). The traditional law curriculum is based on the Langdellian appellate case method, under which students carefully analyse previous judicial opinions that further principles or doctrines of law. Core courses, such as property, torts, contracts, civil procedure and criminal law, are closely tied to preparing students for the bar exam that is to be taken after graduation. With the exception of one school (notably Northeastern University School of Law), this graduate professional school model requires no work or apprenticeship experience for graduation. The reality, however, is that most US law students would have some limited work experience prior to

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1 Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1987) p.35.

graduation, whether through summer clerk positions, or participating in law clinics or internships during the school year.

After graduation, the law student must take a qualifying bar exam for 1 of the 50 states.² While the American Bar Association (ABA) oversees the accreditation of American law schools, the state bars proscribe licensure and practice requirements. Since each state regulates its own bar, a lawyer must pass the bar examination for every state in which they would practice in. Some states would allow reciprocity by waiving in qualifying lawyers from other states. Students with foreign law degrees are eligible to take the bar in many states if they acquire an LLM from an ABA accredited law school.

In the United Kingdom, legal training is a little more complicated. Lawyers in the United Kingdom must obtain a Qualifying Law Degree (QLD).³ In order for a law degree to be classified as a QLD, the degree studies must be completed in an absolute maximum of six years (although this is usually three) and must include the following seven subject areas: Public law, European Union (EU) law, Criminal law, Tort, Contract, Property law and Equity and Trusts. After graduation, the law graduate could follow either the solicitor⁴ or the barrister⁵ route to professional qualification.

To be a solicitor, the law graduate must take a Graduate Diploma in Law (GDL) course, then the Legal Practice Course (LPC) and a period of recognised training. The LPC is a one-year, full-time (or two-year, part-time) course designed to provide a bridge between academic study and training in a law firm.⁶ It is both knowledge and skills based. After completing the academic and vocational stages of training, the new solicitor must obtain a training contract. This lasts for two years and ensures that the law graduate works as a trainee solicitor under proper supervision. The trainee can then apply to be registered with the SRA and for their first practising certificate, as a member of the law society.⁷

2 All but four states (California, Virginia, Washington and Vermont) require an aspiring lawyer to have a law degree prior to taking the bar exam.

3 QLD is defined as “an approved qualification, which contains training in the seven foundations of legal knowledge. The degree is one of the requirements needed to practise law”. If you studied a non-law degree but wish to become a lawyer, you could take a conversion course known as the Graduate Diploma in Law (GDL). The GDL is a one-year, full-time course designed to provide non-law graduates with a diploma equivalent to a law degree. It forms the common basis for non-law graduate entry to both the solicitors’ and the barristers’ professions.

4 The Solicitors Regulation Authority (SRA) is the regulatory body for solicitors in England and Wales and sets the regulations and standards for the solicitors’ profession, including entry and training requirements. The SRA is currently undertaking a major review of entry and training into the legal profession, which will be discussed later.

5 The Bar Standards Board (BSB) is the regulatory body for barristers and their professional practice and specialised legal services businesses in England and Wales. They set the regulations and standards for the barristers’ profession, including entry and training requirements.

6 The LPC is practical in nature, and the focus is firmly on mastering relevant skills. The emphasis is on workshops, continuous assessment, independent research and group discussions. It also allows you a certain amount of specialisation through a range of optional subjects.

7 Apprenticeships represent an alternative to the traditional graduate route to qualification, and it is now possible to qualify as a solicitor this way. The standards expected of apprentice solicitors are the same as those expected of all solicitors, with rigorous assessments before they are admitted to the profession.

To become a barrister, the law graduate needs a minimum of a 2.2 (50 per cent average) but ideally a 2:1 (60 per cent) in their degree.⁸ The law graduate must then pass the Bar Professional Training Course (BPTC), a one-year full-time course during which the law graduate will focus on the following core skills: criminal advocacy, civil advocacy, drafting, opinion writing, alternative dispute resolution, and conferencing. In addition, the student must pass knowledge assessments which are nationally set and marked by the regulator (the Bar Standards Board (BSB)) in Criminal Litigation, Evidence and Sentencing; Civil Litigation, Evidence and Remedies; and Professional Ethics. A barrister must also be a member of one of the four Inns of Court.⁹ The Inns have the sole right to call qualified students to the bar. Each Inn is able to offer students support through the vocational stage of their training.¹⁰

II. Legal Education Reforms in the United States of America and the United Kingdom

In both the United States and the United Kingdom, legal education has faced a myriad of problems that include rising tuition fees, greater criticism of higher education as a whole and law schools in particular, difficulties in job prospects for law graduates and a worldwide “existential crises for law firms”.¹¹

We live in an era of higher tuition and loans and increased competition for legal traineeships and pupillage. While a large number of law students progress to careers in a range of other sectors, the legal profession remains the largest single destination and it is the one to which most students, at the point of embarking on a law degree at least, aspire to.¹² In the face of rising tuition fee and a declining job market, however, the question as to the worth of a law degree has come to the fore. Gone are the days when higher education is seen as a collective good, which benefits society as a whole. Rather there is a move to see university as a “private good that will enhance the economic return of an individual”.¹³

There has been substantial media criticism of law schools in the United Kingdom¹⁴ with graduates now assuming the burden of funding higher education and the business/university nexus occupying a “central place within mainstream

8 Or a degree in any other subject followed by the GDL.

9 Middle Temple, Lincoln’s Inn, Gray’s Inn and Inner Temple.

10 This usually includes access to a library, mooted societies, educational support and the opportunity to network with other barristers. Only around 20 per cent of students secure a pupillage before embarking on the BPTC and many graduate without securing this stage of their training.

11 Canadian Bar Association, “The Future of the Legal profession: Report on the State of Research” (CBA Legal, Future Initiative, January 2013), available at www.cba.org/CBAMediaLibrary/cba_na/PDFs/Future-of-the-profession-eng.pdf (visited 10 April 2018).

12 Andrew Francis, “Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience” (2015) 42(2) *Journal of Law and Society* 173, 194.

13 Judith Welch Wegner, “The Value of Legal Education” (2015) 25 *Nottingham LJ* 112.

14 Heavy criticism of both the BPTC and LPC can be found on blogs such as Legal Cheek.

political discourse".¹⁵ A further driver for change in the United Kingdom has been the crisis in the global legal services market post-2007 and the emergence of new ways to deliver legal services through outsourcing and automating of transactions which impact on future demand for lawyers. In the United Kingdom, there has been a decline in the number of pupillages and training contracts, and consequently applications to study the LPC and BPTC have fallen,¹⁶ with many institutions relying on overseas students to ensure the viability of their programmes.¹⁷

In the United States, similarly, the reduction in jobs for law graduates has also led to a period of reduced enrolment to law schools.¹⁸ More significantly, the declining job market has dictated US legal education reforms. Where in the past, law firms served as places of postgraduate practice training, downsized law firms now expect more practice ready law graduates. Without the period of practice that is required in the United Kingdom, US law graduates generally begin their legal practice with less skills and work experience, often no more than the two summers of legal apprenticeship, with the expectation that law firm training would later compensate for this deficiency. With downsized law firms declining the task of training new graduates, the call is now for more experiential and practice-oriented courses in law schools such that law students would be practice-ready upon graduation.

In addition to more experiential courses, the concern for more practice-ready lawyers upon graduation has also translated into a demand for more outcome assessments to measure the skills provided by law schools. The focus on outcome assessments has mirrored similar discussions undertaken at the undergraduate education level since the 1980s. To date, new accreditation standards require every law school to devise assessment plans, both formative and evaluative, for every course as well as for the curriculum as a whole.

The second major concern driving US legal education reforms is the increasing high cost of legal education itself. The high cost of education has led to a greater divide between the wealthy and those less wealthy. Where in the past, a law degree and entry to the profession can be a pathway from one economic class to another, the rising cost of legal education has instead preserved existing socioeconomic inequality where those in the lower economic class can no longer afford the cost of a legal education.¹⁹ This is compounded by poor job market figures for law graduates

15 See Francis, "Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience" (n.12).

16 The total number of LPC applications has fallen by about 37 per cent since 2008: see LawCareers.Net, "The Number of LPC Students Continues to Decline" (16 December 2013), available at www.lawcareers.net/Information/News/The-number-of-LPC-students-continues-to-decline-16122013 (visited 10 April 2018).

17 Although the number of undergraduate law students has remained constant.

18 American Bar Association, "Statistics" (Section of Legal Education and Admissions to the Bar, last updated 2017), available at www.americanbar.org/groups/legal_education/resources/statistics.html (visited 10 April 2018).

19 Peter Lattman, "Obama Says Law School Should Be Two, Not Three, Years" *The New York Times* (23 August 2013), available at <https://dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/> (visited 10 April 2018).

who saddled with greater debt, can no longer count on a lucrative position after graduation to repay the debt.

The concern for the high cost of legal education has led to such proposals as that suggested by then President Barack Obama to reduce the three-year curriculum to two years. Simultaneously, some reformers urge more practice-oriented courses as a means to ensure a proper return on this high investment. Others, meanwhile, argued that the focus on outcome assessments and more experiential education has in turn further driven up the cost of legal education.

In sum, the recent drop in law school applications, combined with poor student employment rates after graduation despite high debts, has created a sense of urgency among many law school administrations to take actions dictated by budget constraints and bar passage targets.²⁰ Public critique of the current law school model has included a call to make law school two years,²¹ and class action suits have attacked law schools for misleading employment data after graduation.²² The role of the faculty tenure system, combined with critique of the current state of legal scholarship as being obscure and unrelated to practice, further added to the crisis narrative.²³ The careful balance between these concerns is what consumes American legal education today. Like in Great Britain, then, the United States is also facing a sort of “existential” crisis in legal education, with an increased emphasis on the degree as a form of economic investment rather than as a public good. So, what has been done so far?

III. Bridging the Gap: US Legal Education Reforms

In the United States, legal education is directed by the ABA, the professional bar organisation that both monitors entry to the profession and provides accreditation to American law schools. To date, there are about 205 law ABA accredited law schools nationwide. Where the evidence indicates a deficiency in the training, or a gap between the curriculum and professional practice, it is the ABA’s Section on Legal Education and Admission to the Bar that has stepped in to require adjustments. Thus, in 1992, the ABA released its *Report of the Task Force on Law*

20 Frank K Upham, “The Internationalization of Legal Education: National Report for the United States of America” (2014) 62 A J Comp L 97, 101.

21 See Lattman, “Obama Says Law School Should Be Two, Not Three, Years” (n.19).

22 See, for example, Sarah Randozzo, “Jobless Graduates Who Sued Law Schools Find Little Success in Court” *The Wall Street Journal* (15 October 2015), available at www.wsj.com/articles/jobless-graduates-who-sued-law-schools-find-little-success-in-court-1444936032 (visited 10 April 2018); Maura Dolan, “Class Action: Law School Grads Claim Misleading Reports of Success” *Los Angeles Times* (2 April 2013), available at <http://articles.latimes.com/2013/apr/02/local/la-me-ln-class-action-law-school-grads-claim-misleading-reports-of-success-20130402> (visited 10 April 2018).

23 See Upham, “The Internationalization of Legal Education: National Report for the United States of America” (n.20).

*Schools and the Profession: Narrowing the Gap*²⁴ (more commonly known as the MacCrate Report) to address complaints lodged by practicing lawyers that students are not prepared to practice law.

This is in spite of the reality that some of the most significant developments in legal education in the post-World War II era have been the growth of the skills training curriculum. Until the 1960's, the typical skills training component of a law school curriculum had consisted of a first-year moot court and perhaps a trial advocacy course. Beginning in the late 1960's, the Ford Foundation as part of its anti-poverty initiative provided seed grants to law schools to establish legal clinics for the poor. Within a few short years, this effort succeeded in introducing clinical legal education (CLE) to a majority of American law schools.²⁵

Nevertheless, the 1992 MacCrate Report urged the enhancement of experiential courses or experiential components to courses, in addition to law clinics, to further focus on skills and values of the profession. The MacCrate Report identified 10 "Fundamental Lawyer Skills": problem-solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and alternative dispute resolution, organisation and management of legal work and recognizing and resolving ethical dilemmas.²⁶ The Report was also highly critical of the ABA accreditation standards as bearing little relationship to those legal skills and values identified by the Report. Ultimately, the MacCrate Report called upon law schools to provide sufficient "opportunity for students to perform lawyering tasks with appropriate feedback and self-evaluation [and] reflective evaluation of the students' performance by a qualified assessor".²⁷ While widely discussed, few of the report's recommendations were ultimately adopted by the ABA's accreditation standards.

The MacCrate report was then followed by the influential *Educating Lawyers: Preparation for the Profession of Law* (more commonly known as the Carnegie Report). The Carnegie Report was again highly critical of the imbalance "between the cognitive and the practical apprenticeships of legal education".²⁸ The Carnegie Report observed that law faculties paid scant attention to curricular issues and the impact of curriculum on the preparation of lawyers to engage in the responsible practice of law.

Spurred by the findings of these reports, law schools responded by including even more experiential and practice-focused content into the curriculum. But it was

24 ABA Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum* (Report of the Task Force on Law Schools and the Profession: *Narrowing the Gap*) (The MacCrate Report) (Chicago: American Bar Association, 1992).

25 Stephen Wizner, "The Law School Clinic: Legal Education in the Interest of Justice" (2002) 70 *Fordham Law Review* 1929.

26 The MacCrate Report (n.24) pp.138–140.

27 William M Sullivan *et al*, *Educating Lawyers: Preparation for the Profession of Law* (The Carnegie Foundation for the Advancement of Teaching, 2007).

28 *Ibid.*, p.89.

not until 2007 that the ABA finally considered amending the accreditation standards and commissioned a special taskforce named the Special Committee on Output Measures. The special committee was charged with determining whether and how output measures other than bar passage and job placement might be used in the law school accreditation process. The ABA Section of Legal Education and Admission to the Bar's Standards Review Committee (the Standards Review Committee), which is charged with recommending accreditation standards, reviewed the special committee's report and in turn, appointed the Student Learning Outcomes Subcommittee. This drafting committee worked from 2008-2011 on the revision of law school accreditation standards. And in 2014, the ABA adopted amended Standards and Rules of Procedure for Approval of Law Schools relating to learning outcomes and assessment programmes, to be implemented in time for accreditation visits occurring in 2016–2017.²⁹

In these amended standards, the ABA adopted a number of changes including a mandate that students complete a (small) number of experiential learning and competency base courses (six credit hours), in addition to the “traditional” doctrinal courses. The same standard also requires law schools to provide students with substantial opportunities for clinics, field placements and at least 50 hours of pro bono service.³⁰ Additional changes ranged from allowing externship students to receive both academic credit and pay,³¹ and the adoption of the Uniform Bar Examination, a national licencing test that has now been adopted in 28 states.³² It is also currently considering allowing more widespread use of non-full-time faculty outside the first

29 American Bar Association, “American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2016–2017” (August 2016), available at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure_authcheckdam.pdf (visited 10 April 2018).

30 Section 303(a) of the ABA's Standards and Rules of Procedure for Approval of Law Schools, 2016–2017, requires law schools to require their students to take:

- (1) at least two credit hours of professional responsibility;
- (2) one writing experience in the first year and another in a subsequent year, both of which are faculty-supervised; and
- (3) at least six credit hours of experiential courses, which can be a simulation course, a clinic or a field placement. The courses must be primarily experiential in nature and must comply with four listed goals. Although clinical courses clearly fit within the term “experiential,” the scope of that term is unclear.

Section 303(b) of the Standards also requires law schools to provide students with substantial opportunities for clinics, field placements and participation in *pro bono* legal services. Law schools are encouraged to provide opportunities for students to have at least 50 hours of *pro bono* service.

31 American Bar Association, “Report to the House of Delegates: Resolution” (ABA, August 2016), available at www.americanbar.org/content/dam/aba/images/abanews/2016%20Annual%20Resolutions/100.pdf (visited 10 April 2018), eliminating Interpretation 305-2, that had prohibited concurrent award of credit and pay, and moving regulation of field placements to Standard 304.

32 The ABA House of Delegates adopted a resolution encouraging states to adopt the Uniform Bar Exam. See American Bar Association, “Resolution” (Ref 117, ABA, 8 February 2016), available at www.americanbar.org/content/dam/aba/administrative/crsj/committee/feb-16-uniform-bar-exam_authcheckdam.pdf (visited 19 February 2018).

year of law school,³³ as well as the possibility that law schools could use admissions tests other than the Law School Admission Test (LSAT).³⁴ But no change is more wide ranging than the outcome assessment requirements. Where historically, American law schools used the bar exam as the principal method of testing whether students were graduating with the knowledge they needed to practice law, these revised accreditation standards now require law schools to develop programmatic student learning outcomes as well as methods to assess those outcomes.

To start, amended ABA Standard 301(a) clarified that qualifying “graduates for admission to the bar” means to qualify graduates “for effective, ethical, and responsible participation as members of the legal profession”. As such, the new language affirmed that education in lawyering skills and professional values is central to the mission of law schools and recognises the current stature of skills and values instructions. The requirement that law schools teach skills and values in addition to knowledge, as articulated by the ABA,³⁵ raises the important question of which professional skills should be taught. But in its guidance memo, the ABA explained that these standards were “designed to assure that the outcome measures and assessment methodologies that schools develop will improve their legal education programs and better serve the needs of students during their legal educations and in their professional careers”.³⁶

Reluctant to specify what constitutes “practice-ready,” these standards recommend that law schools identify the skills and values necessary for responsible

33 Pamela Lysght, “Memorandum Re Standards Review Committee Recommendations” (ABA, Meeting of Council, 24 February 2017), available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/March2017CouncilOpenSessionMaterials/2017_march_src_memo_to_council.authcheckdam.pdf (visited 10 April 2018), Standards Review Committee report recommended modification of Standard 403(a) to require only that the first third of a student’s legal education be substantially provided by full-time faculty; Gregory Murphy and Barry Currier, “ABA Standards for Approval of Law School Matters for Notice and Comment” (American Bar Association, 25 March 2016), available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20170324_notice_and_comment_memo.authcheckdam.pdf (visited 10 April 2018).

34 Barry Currier, “Memorandum Re Standards 501 and 503” (ABA, Meeting of Council, 7 October 2016), available at https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/October2016CouncilMaterials/2016_c1a_501_503_cover_memo.authcheckdam.pdf (visited 10 April 2018); see Lysght, “Memorandum Re Standards Review Committee Recommendations”, *Ibid.* See Elizabeth Olson, “More Law Schools Begin Accepting GRE Test Results” *New York Times* (11 August 2017) B4 (reporting on announcements by University of Arizona, Harvard, Northwestern and Georgetown). See comments submitted to the ABA Council: ABA, “Notice and Comment” (American Bar Association), available at www.americanbar.org/groups/legal_education/resources/notice_and_comment.html (visited 10 April 2018).

35 American Bar Association Section of Legal Education and Admissions to the Bar, “Managing Director’s Guidance Memo, Standards 301, 302, 314 and 315” (ABA, June 2015) pp.1–2, available at www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf (visited 10 April 2018) (Guidance Memo).

36 *Ibid.*, p.1. Standard 314 addresses Assessment of Student Learning, while Standard 315 addresses Evaluation of Program of Legal Education, Learning Outcomes and Assessment Methods.

participation in the bar and then provide students with sufficient exposure and proficiency in these skills so that they are equipped to continue their professional development after law school. On a school-wide level, this standard extends to require law schools to identify learning goals for the programme as a whole and conduct regular institutional assessments. On an individual student level, ABA standard 314 also directs law schools to employ both “formative as well as summative assessments” of student performance in their instructional programmes.³⁷

While “*summative* assessments” typically are evaluative and used to award grades at the end of a course, “*formative* assessments” are more periodic feedback throughout the semester to help build “scaffolds” for subsequent learning. Experiential courses tend to utilize “*formative* assessments,” while traditional doctrinal courses historically evaluated law students by a single final exam at the end of the semester. Today’s outcome assessment requirements now require each faculty to identify learning goals for his class and the multiple methods, formative and summative, by which the achievement of such learning goals are measured.

The new focus on assessments in the ABA’s accreditation requirements stem from a broader movement in higher education to shift from a traditional, input-based (such as budgets, facilities, academic metrics of incoming students and the number of faculty), prescriptive system of accreditation to an outcome-based system of accreditation. It is also indicative of a movement by the ABA away from historic output measurements, such as bar passage or job placement, to a focus on student learning outcomes and the assessments of such student learning outcomes. Law schools faced with these new standards must quickly familiarise themselves with best practices in designing student learning outcomes and assessments. Ideally, law faculty and law schools will use this opportunity to modify and improve their courses and programmes.

Since the enactment of these standards, law schools have struggled with developing systematic methods of implementing consistent and thorough outcome assessments of students learning and programmatic performance as a whole. Opponents to the new standards fear that moving to outcomes assessment would divert resources from traditional doctrinal faculty and diminish their influence, while others see this as an opportunity to expand the influence and role of clinical and practice oriented faculty. Overall, law schools have responded and strive to develop a relatively simple and low-cost model to measure institutional learning outcomes that do not require disruptions to an individual faculty member’s pedagogical and assessment methods.

The second major concern facing American law schools is the high cost of legal education. The US Bureau of Labour Statistics estimates about 22,000 lawyer

³⁷ ABA Standard 314 A law school shall utilise both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students. See American Bar Association, “2016–17 ABA Standards” (n.29).

job openings annually through 2020, but law schools turn out twice that many (40,000) law graduates yearly. This bleak job market coexists with rising law school tuition. While average tuition at private law schools in 2001 was \$22,961, just a decade later, in 2011, it had reached \$39,184. Today, law school tuition ranged from \$46,822 to \$62,700.³⁸

Given the sluggish job market, the investment has not always brought a return. In 2013, a full 12.8 per cent of members of the class of 2012 were still unemployed in February 2013. Only 64.4 per cent got jobs that actually required passing the bar. The median starting salary —\$61,245 — was about 15 per cent below the 2009 median. At law firms, starting salaries were down 30.8 per cent.³⁹ Less than 20 per cent of US News-ranked law school graduates in 2016 had median private sector salaries that exceeded \$100,000. This has led some critics to question the value of a law school education and bluntly to conclude that “law school is not a secure path to financial security”.⁴⁰

Indeed, the above ABA accreditation standards change to focus on “outcome assessment” may have been driven in part by a desire to protect law students as consumers in ensuring that the students get what they paid for.⁴¹ The ABA’s Guidance on Standard 302 states that learning outcomes must be clear and concise:

“...of *knowledge* that students are expected to acquire, *skills* students are expected to develop, and *values* that they are expected to understand and integrate into their professional lives. The outcomes should identify the desired knowledge, skills and values that a school believes that its students should master.”⁴²

Whether it was the dismal job market or the high tuition, law school applications fell 13.4 per cent and first-year attendance in 2011 (the most recent year for which

38 Internet Research Group, “Law School Ranking by Tuition” (Public Legal), available at www.ilrg.com/rankings/law/tuition (visited 10 April 2018).

39 Dylan Matthews, “Ignore the Haters, Law School Is Totally Worth It” *The Washington Post* (18 July 2013), available at www.washingtonpost.com/news/wonk/wp/2013/07/18/ignore-the-haters-law-school-is-totally-worth-the-cash/?utm_term=.8d4c5cfbfaae (visited 10 April 2018).

40 Brian Tanaka, *Failing Law Schools* (Chicago: Series in Law and Society, 2012).

41 Stephen Bahl, “Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education” (2018) *Journal of Legal Education* (in press).

42 “Guidance Memo” (n.35) p.4 (emphasis added). To further elucidate the essential aspects of a learning outcome, it should be (1) student centred, (2) meaningful, (3) clear and focused and (4) observable or quantifiable. See NAFSA, “The Four Essentials of a Student Learning Outcome” (Global Learning Colloquium on Legal Education, 1 June 2017), available at www.nafsa.org/_/File/_/2015colloquia/2015_legal_landorf_essentials_of_student_learning.pdf (visited 10 April 2018): student-centred learning outcomes are framed in terms of what the student will be able to know, do and feel, rather than what the professor teaches. A meaningful outcome expresses knowledge, skills or attitude that the student can take and use in life; it has enduring meaning. A clear and focused outcome is expressed in simple language, target towards a single big understanding, skill or attitude, and geared towards higher thinking. Finally, there must be observable and quantifiable means to measure the outcome directly or indirectly.

we have numbers) was down 7 per cent from 2010. The number of LSATs taken has fallen for three years in a row, with the 2012–2013 figure fully 34.4 per cent below the 2009–2010 peak. With reduced applications, law schools around the country have in many cases reduced their entering class sizes to maintain their standing in *US News* rankings.⁴³ In some instances, they have compensated by adding a one-year masters in legal studies programmes, international LLM or other non-JD programmes. At this juncture, approximately 10 per cent of students enrolling in law schools are enrolled in non-JD programmes, but very little is known about how the addition of these non-JD students may affect the overall educational programme of the schools in which they enrol.⁴⁴

More problematically, in an effort to maintain their rankings, law schools have engaged in an escalating war of offering tuition discount to recruit “high merit” JD students with strong credentials (but often those who have had privileged education) in the form of merit scholarships. Previously, these discounts might have been awarded to those students in financial need.⁴⁵ This has resulted in the anomaly of putting a greater burden on first-generation students to pay full freight and subsidise their economically better-off “high merit” classmates.⁴⁶ Thus, those students from less privileged backgrounds who enter law school with lesser educational credentials often end up with greater debt and face greater pressures related to job prospects.⁴⁷ Indeed, “the result of such practice is that students whose credentials

43 ABA for the period 2011–2016 is information. See American Bar Association, “Statistics” (n.18): “Comparison of 2011–2016 Matriculants”.

44 From 2006 to 2016, the proportion of non-JD students enrolled in ABA law schools has risen from 6 to 10 per cent. See AccessLex Institute, “Legal Education Data Deck” (2017) 13, available at www.accesslex.org/legal-education-data-deck (visited 10 April 2018).

45 Farran Powell, “Law Schools Shell Out Deep Tuition Discounts to Students” *US News & World Report* (20 November 2017), available at www.usnews.com/education/best-graduate-schools/top-law-schools/paying/articles/2017-11-20/law-schools-shell-out-deep-tuition-discounts-to-students (visited 10 April 2018).

46 The American Bar Association’s 2014 Task Force on the Future of Legal Education raised this issue of tuition discounting in its report. See American Bar Association, “Report and Recommendations” (January 2014) p.22, available at www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf (visited 10 April 2018).

47 AccessLex Institute provides extensive information about student debt loads. See AccessLex Institute, “Legal Education Data Deck” (n.44), entering law students have median debt load of \$18,000; *Ibid.*, p.19 (median of 58 per cent of law students report working while in law schools), p.29 (median salary of recent law graduate in 2015 was \$100,000, down from \$144,000 in 2010) and p.30 (median salary for law graduates low in 2015 than in 2007). See also Gallup and AccessLex Institute, “Life after Law School” (2017), available at www.accesslex.org/life-after-law-school (visited 10 April 2018). The Law School Survey of Student Engagement (LSSSE) has documented that non-white, non-Asian law school graduates assume a greater debt load than others. See Deborah J Merritt, “Race, Debt, and Opportunity” (Law School Café, 10 March 2016), available at www.lawschoolcafe.org/2016/03/10/race-debt-and-opportunity/ (visited 10 April 2018); JakkiPetzold, “Law School Survey of Student Engagement (Part 4)” (LSSSE, 1 September 2017), available at <http://lssse.indiana.edu/blog/lssse-annual-results-2016-scholarships-and-debt-part-4/> (visited 10 April 2018), outlining student expectations regarding debt loads versus scholarship support. See also LSSSE, “Law School Scholarship Policies: Engines of Inequality” (LSSSE, Annual Report, 2016), available at <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf> (visited 10 April 2018).

are the weakest incur large debt to subsidise higher-credentialed students and make the school budget whole”.⁴⁸

As noted by astute observers such as Judith Wegner, today’s tuition-dependent law schools in the United States face a conflict of interest.⁴⁹ Schools with an “access” mission, that is, a mission to diversify the legal profession and give first-generation, minority and economically disadvantaged students an opportunity for a legal education, now face the risk of “going under” if they fail to enrol students in sufficient numbers who can cover their costs of operation or to enrol and graduate students who can pass state bar examinations as required by ABA accreditation standards.

What this dilemma may cost in terms of US legal education environment is still unclear. It could follow the trend at the undergraduate level, with the children of the college educated twice as likely to attend college than children of high school graduates.⁵⁰ If so, then, not only will this mean that law schools have failed in maintaining a diverse learning community but they would have also failed to provide society with the needed diverse legal representation.⁵¹

Finally, the need to educate for a global legal practice needs to be mentioned. In the 1990s, there were calls in academia to internationalise the curriculum and to create global American law schools. The 2000s saw enhanced interest and focus on globalisation within the US legal academy, as evident through the greater numbers of international and comparative law courses, the proliferation of international legal education conferences and symposia,⁵² increased number of foreign enrolment in

48 “Draft Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education, September 20, 2013”, available at https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legal_education_draft_report_september2013.authcheckdam.pdf.

49 Judith Welch Wegner, Law School Assessment in the Context of Accreditation: Critical Questions, What We Know and Don’t know, and What We Should Do Next, *Journal of Legal Education* (Winter 2018) (in press).

50 Eduardo Porter, “Education Gap Between Rich and Poor Is Growing Wider” *New York Times* (22 September 2015), available at www.nytimes.com/2015/09/23/business/economy/education-gap-between-rich-and-poor-is-growing-wider.html (visited 10 April 2018).

51 See “Draft Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education” (n.48); see also Deborah Rhodes, “Law Is the Least Diverse Profession in the Nation. And Lawyers Aren’t Doing Enough to Change That” *The Washington Post* (27 May 2015), available at www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/?utm_term=.4f6d5dc2216c (visited 10 April 2018).

52 See, eg, Symposium, “A Legal Education Prospectus: Law Schools & Emerging Frontiers” (2009) 61 *Rutgers L Rev* 1037; Symposium, “Enriching the Law School Curriculum in an Increasingly Interrelated World — Learning From Each Other” (2008) 26 *Penn St Int’l L Rev* 831; Symposium, “Association of American Law Schools Annual Meeting January 3–7, 2006, Internationalizing the First Year Curriculum” (2006) 24 *Penn St Int’l L Rev* 809; Symposium, “Globalizing Legal Education” (2005) 23 *Penn St Int’l L Rev* 753; Symposium, “Continuing Progress in Internationalizing Legal Education — 21st Century Global Challenges” (2002) 21 *Penn St Int’l L Rev* 1; Symposium, “Working Together: Developing Cooperation in International Legal Education” (2001) 20 *Penn St Int’l L Rev* 29; Symposium, “Emerging Worldwide Strategies in Internationalizing Legal Education” (2000) 18 *Dick J Int’l L* 411.

US LLM programmes and the expansion of study abroad programmes offered by law schools.⁵³ Several schools launched global programmes or curricula to internationalise the scope of legal study.⁵⁴ The Association of American Law Schools even announced as its 2006 annual meeting theme “What is Transnational Law and Why Does it Matter?” and noted that “[I]t is important for first-year law students to gain experience in transnational law, both for purposes of their later legal education and to prepare them for the kind of law practice they are likely to engage in after graduation.”

A 2007 American Bar Association survey found that of 159 schools participating in the survey, 110 schools said they encourage students to attend education abroad programs offered through the school, and all but one of those said they also encourage students to attend study abroad programs offered through other law schools.⁵⁵ That same study found that 95 schools reported that they have a summer abroad program and 57 said they have a semester abroad program. Those numbers track a steady process of globalization in the practice of law itself. For US students, “internationalizing” of the law curriculum can mean participating in international law clinics, journals, joint or dual degree programs, study abroad and international and comparative law courses. Also expanding are international LLM programs that focus on educating foreign students about the US legal system and good legal practices.

However, to date, it is still the rare law school that *require* some exposure to international and/or comparative law before graduation. Furthermore, the momentum towards internationalization arguably may have stalled in recent years in light of the economic challenges in legal education and the attention on training “practice-ready” lawyers.⁵⁶ And while the new ABA Standards do not stress internationalization, Standard 307 does however expressly allow law schools to give credit “for student participation in studies or activities in a foreign country” and sets the criteria for accreditation of such programs. Furthermore, the new ABA accreditation standards arguably suggest the relevance of global competency to the demands of the profession. In Interpretation 302-I, the ABA identified cultural competency as a skill that schools may choose to establish as a learning outcome:

53 Carol Silvers, “Internationalizing US Legal Education: A Report on the Education of Transnational Lawyers” (2006) 14 *Cardozo Journal of International & Comparative Law* 143.

54 Most notably, New York University established the first global law school program in the 1990s. Others, such as Columbia, Northwestern, Michigan and Georgetown, quickly followed with expansion of their international programs during this period to provide robust curricula, in addition to degree programs, student and faculty exchanges and study abroad opportunities. David S Clark, “American Law Schools in the Age of Globalization: A Comparative Perspective” (2009) 61 *Rutgers L Rev* 1037, 1054–1056.

55 David Tobenkin, “Legal Minds: Internationalizing Is Expanding Rapidly in Law Schools”, available at https://www.nafsa.org/_/File/_/janfeb09_feature_legalminds.pdf.

56 See Upham, “The Internationalization of Legal Education: National Report for the United States of America” (n.20). For critiques of the current state of legal education and its failure to adapt to the dynamics of the evolving profession and practice, see generally Brian A Tamanaha, *Failing Law Schools* (Chicago: University of Chicago Press, 2011); Steven J Harper, *The Lawyer Bubble: A Profession in Crisis* (New York: Basic Books, 2013).

“...professional skills are determined by the law school and may include skills such as, interviewing, counselling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, *cultural competency*, and self-evaluation.”⁵⁷

One could argue, as Professor Rosa Kim has, that this “cultural competency” in the new 2016–2017 ABA standards on professional competency should be interpreted to encompass global competency.⁵⁸ That is, some basic fluency with cultural and legal systems other than one’s own as well as the ability to understand the broader context of complex issues is necessary.

Indeed, global competency in lawyers is more critical than ever as even domestic practice has globalised. National Association for Law Placement survey of a nationally representative sample of JD graduates of the class of 2000 in their 17th year of practice revealed that 44 per cent of the respondents reported having dealt with matters involving non-US clients or cross-border matter in the preceding year.⁵⁹ Professor Simon Chesterman posits that the paradigm shift for legal work has gone from international (“archipelago” of jurisdictions) to transnational (“patchwork” of jurisdictions) and to global (“web” of jurisdictions).⁶⁰ As mentioned earlier, unlike the majority of other countries, where law is taught at the undergraduate level in conjunction with an apprenticeship requirement, the United States requires a three-year graduate degree programme with no required apprenticeship.⁶¹ Where an apprenticeship might have filled in the global competency gap, the lack of an apprenticeship meant that the globalisation

57 For Interpretation 302-I see American Bar Association, “2016–17 ABA Standards” (n.29).

58 Rosa Kim, “Globalizing the Law Curriculum for 21st Century Lawyering” (Summer 2018) *Journal of Legal Education* (forthcoming).

59 RonitDinovitzer *et al*, “After the JDII: Second Results of a National Study of Legal Careers” (NALP Foundation for Law Career and Research and Education and the American Bar Foundation, 2009) (After the JDII), available at www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf (visited 10 April 2018). The original After the JD study, published in 2002, reported on graduates in their third year of practice and did not contain data on international law work. See also, RonitDinovitzer, Bryan G Garth, Richard Sander, Joyce Sterling and Gita Z Wilder, “After the JD: First Results of a National Study of Legal Careers” (NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2002), available at www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf (visited 10 April 2018).

60 Simon Chesterman, “The Evolution of Legal Education: Internationalization, Transnationalization, Globalization” (2009) 10 *German LJ* 877, 880–883.

61 Recent changes instituted in Korea and Japan, where the legal education system was transformed from one entailing an undergraduate program, national bar exam with a single digit pass rate, followed by mandatory training at a government-run judicial training institute, to three-year graduate law programs signalled a significant change in the legal profession and reflected a resolve to create competitive lawyers in the global market. Kim, “Globalizing the Law Curriculum for 21st Century Lawyering” (n.58) pp.58–63; Setsuo Miyazawa *et al*, “The Reform of Legal Education in East Asia” (2008) 4 *Ann Rev L & Soc Sci* 333 (discussing legal education reform and the influence of the US education model in Japan, Korea and China).

trajectory of US legal education is needed more than ever. Yet, it has been erratic, reflecting the lack of uniformity in perceptions of the need to globalize and also the recent economic downturns faced by American law schools.

IV. Legal Education Reforms in the United Kingdom

The Legal Education and Training Review⁶² (LETR) was a root and branch review of legal education and post-qualification training in Great Britain that was undertaken jointly by the BSB, SRA and Chartered Institute of Legal Executives (the regulators of the three legal professions: barristers, solicitors and legal executives). The two-year review interviewed a wide range of “stakeholders” and aimed to determine how legal services education and training practices in England and Wales were aligned to meet future challenges. The report focused on quality, access and flexibility and a number of the conclusions resonated on both sides of the Atlantic.

As in the United States, LETR emphasised the need to strengthen requirements for education and training in key skills, including legal ethics, values and professionalism, management skills, communication skills and equality and diversity. It also identified the need for a more robust system of learning outcomes, standards and increased standardisation of assessment. It urged an emphasis on assessing continuing competence through the imposition of continuing legal education requirements. It also highlighted the need for a range of pathways (such as apprenticeships) into the profession to improve access and mobility. Although LETR was more broadly framed within the landscape of regulation of legal education, LETR was influenced in part by the Carnegie Report,⁶³ particularly its attention to ethics and professionalism and the relationship between the liberal arts and professional education.⁶⁴

The SRA “Training for Tomorrow” programme is currently reviewing the education and training of solicitors with the aim of ensuring greater competence. As a part of Training for Tomorrow, the SRA has already issued a Statement of Solicitor Competence, which sets out what solicitors need to be able to do to perform their role effectively and provides consumers of legal services with a clear indication of what they can expect from their solicitor.⁶⁵ “Training for Tomorrow — Ensuring the Lawyers of Today Have the Skills for Tomorrow”⁶⁶ has put forward

62 J Webb, J Ching, P Maharg and A Sherr, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (London: Legal Education and Training Review, 2013) (LETR Report), available at <http://letr.org.uk/the-report/index.html> (visited 10 April 2018).

63 William Sullivan *et al*, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007).

64 See Wegner, “The Value of Legal Education” (n.13).

65 SRA, “Statement of Solicitor Competence” (Solicitor Regulation Authority, 11 March 2015), available at <https://sra.org.uk/solicitors/competence-statement.page> (visited 10 April 2018).

66 SRA, “Policy Statement: Training for Tomorrow — Ensuring the Lawyers of Today Have the Skills for Tomorrow” (Solicitor Regulation Authority, 2013), available at www.sra.org.uk/sra/policy/training-for-tomorrow/resources/policy-statement.page (visited 10 April 2018).

a new approach to qualification as a solicitor. From 2020, this will be through a standardised national assessment for all intending solicitors. These proposals were further developed in the SRA's consultation paper.⁶⁷

The more detailed consultation paper proposed that in order to be admitted as a solicitor, individuals would need to pass a new centralised exam, called the Solicitors Qualification Examination (SQE). Stage 1 of the SQE would test a candidate's ability to use and apply legal knowledge referred to as the Functioning Legal Knowledge Assessments. Stage 2 would assess a broad range of skills and knowledge and is referred to as the Practical Legal Skills Assessments. In addition to passing both Stage 1 and 2 of SQE, new solicitors would need to hold a degree, apprenticeship (or equivalent), undertake a substantial period of workplace training, and meet character and suitability requirements. This effectively is a wholesale change to qualification as a solicitor with the replacement of QLD, the GDL (for those that have a non-law degree) and the Law Practice Course with the externally set and marked SQE.⁶⁸

The SRA claims that the proposals will provide a more reliable and rigorous test of competence than is possible at present by reducing the number of organisations involved in assessing solicitors, but even they accept that the plans are "radical". Currently, assessment is done through the LPC, which is offered at universities around the country. Pass rates vary on the LPC from below 50 to 100 per cent, and the SRA feels that it is difficult to be satisfied that standards of graduates are identical. The new model would aim to introduce transparency and competitive pressures to drive up standards and reduce cost.

Stage 1	Stage 2
6× Functioning Legal Knowledge Assessments: <ul style="list-style-type: none"> • Principles of Professional Conduct, Public and Administrative Law and the Legal Systems of England and Wales • Dispute Resolution in Contract or Tort • Property Law and Practice • Commercial and Corporate Law and Practice • Wills and the Administration of Estates and Trusts • Criminal Law and Practice 	2 × 5 Practical Legal Skills Assessments: <ul style="list-style-type: none"> • Client Interviewing • Advocacy/Persuasive Oral Communication • Case and Matter Analysis • Legal Research and Written Advice • Legal Drafting
1× Practical Legal Skills Assessment: <ul style="list-style-type: none"> • Legal Research and Writing 	

Candidates would take SQE 1 *after* their three-year law degree (or degree in any other subject), but before their work-based experience and SQE 2 at the

⁶⁷ SRA, "Training for Tomorrow: Assessing Competence" (Consultation Paper, 7 December 2015).

⁶⁸ A lack of reliable standardised assessment at the vocational stage was identified as a weakness in LETR, recommendation 2.

end of their work experience. Candidates would have to pass all SQE stage 1 and SQE stage 2 assessments and would be given a score for each of the modules, but would only be graded as “pass” or “fail”. SQE stage 1 would use computer-based objective testing using the following question formats: single best answer questions, extended matching questions and multiple-choice questions. All of the assessments would include unflagged ethical questions.

The SRA will continue to require intending solicitors to complete a period of prequalification legal work experience. The experience a candidate obtains through the period of work-based learning should enable them to develop the competences in the Statement of Solicitor Competence. It could be acquired through a formal training contract or through working in a student law clinic, as an apprentice or a paralegal or through a placement as part of a sandwich degree. Candidates would typically complete the SQE stage 1 before undertaking their period of work experience, but the work experience would not be formally assessed. Instead, a candidates’ competence would be tested via the SQE stage 2. The period of work experience is yet to be set but is likely to remain at two years.

Obtaining a training contract is currently one of the main barriers to qualification as a solicitor with many more students graduating from the LPC than there are training contracts for. The SRA believes that the changes make training as a solicitor more flexible as they recognise a greater variety of experience, obtained across a number of different workplaces. By including a wider range of experience, the SRA believes that this would allow candidates to seek innovative ways of gaining workplace experience and could give more flexibility to firms who might wish to offer a training experience, but feels unable to do so under the current system. This may ultimately widen access to the profession to a greater range of backgrounds.

The initial proposal is that anyone wishing to become a solicitor would need to pass the SQE (including overseas lawyers and apprentices) and that the SRA would offer no exemptions except for those required by EU legislation. Although they have promised to hold separate discussions with other relevant legal regulators about what (if any) arrangements for the automatic recognition of title and qualifications might be if equivalence with the SQE, or aspects of it, can be demonstrated. This would mean an end to the Qualified Lawyers Transfer Scheme (QLTS 1 and 2).

In March 2017, the BSB decided that to authorise a limited number of future training routes for prospective students to qualify as a barrister. The future system for training for the Bar will retain the three elements of training that have proved successful in the past: academic (a QLD), vocational (the BPTC) and work-based learning (pupillage). After the academic stage, students will continue to be required to pass a computer-based Bar Course Aptitude Test, which is designed to show how likely it is that they will succeed in the next level of training. Students will continue to be admitted to one of the Inns of Court, who will continue to be responsible for “call to the Bar” at an appropriate point in the training.

Alternative routes to the current structure of BPTC have been proposed. The BSB currently allows, by exception, one provider (Northumbria University)

to combine the BPTC with a Master's degree in Law to help reduce the costs of training. It enables students to fund their studies through the student loan system and gives them a more widely recognised qualification, whether they then go on to seek pupillage. The BSB sees this as a positive development and a training route that should continue and be encouraged. A number of other providers of the current BPTC already offer an LLM, and this will also be welcomed in the new system. The route of training most similar to (higher) apprenticeships will also be permissible in the BSB's regulatory framework.

A new two-part model for vocational training, proposed by the Council of the Inns of Court and the Bar Council, is also under consideration. A key aspect of this proposal would be to split vocational training into two parts. Part 1 would consist of the knowledge-based parts of the course — civil and criminal litigation and evidence, which are centrally examined by the BSB. Candidates would be able to prepare for Part 1 either independently or on a formal course. Only those who pass Part 1 would then be able to proceed to Part 2, which will consist of the remaining skills-based elements — which include advocacy, drafting, opinion writing and conferencing skills. Part 2 would require formal attendance at a course. The current pupillage arrangements would not be substantively changed. Only those who pass Part 1 would then be able to proceed to Part 2.

The proposals of both regulators but particularly those of the SRA have far-reaching implications for higher educational institutions and will impact (and already have impacted) law school's programmes and business models. The SRA believes that the current system is overly prescriptive and does not provide consistent standards throughout the range of institutions who deliver the QLD and the LPC. They are not confident that graduates have the skills they need nor that the current route encourages diversity in the profession. It is uncontested that there should be opportunities for applicants from a variety of backgrounds to study and qualify as a lawyer but academics have argued that "it is difficult to see how the SRA's proposal will address the issue dealing with social mobility and fair access to qualifying".⁶⁹

In part, this can be demonstrated by the lack of evidence as to how the proposed model will affect the cost of qualifying as a solicitor. A reduction in cost is only likely to happen if significant parts of the course can be studied online or through blended learning to reduce travel costs or the need to move location. It is not clear that the new proposals will result in this reduction in cost. Further criticisms centre around the underpinning pedagogic practices of the proposed qualification which are not clearly identified with critics pointing out that the SRA has not provided the necessary information at "the front end of their proposal in order to put in place the teaching, learning and training provisions that are needed to support

69 Ross Fletcher, "Legal Education and Proposed Regulation of the Legal Profession in England and Wales: A Transformation or a Tragedy?" (2016) 50(3) *The Law Teacher* 371, 374.

these changes”.⁷⁰ There is no real rationale as to why the Benchmark statement (discussed below) is not a sufficiently robust standard in itself and “the SRA seem to be self-regulating and who is monitoring the design behind the framework?”⁷¹

V. Risks and Opportunities for UK Law Schools

Legal education in the United Kingdom has always occupied an uneasy position between the theoretical and the vocational.⁷² Flood notes that:

“on the one hand the academy is trying to justify a model that it has used for a number of years — indeed since the 19th Century— and is comfortable with, while on the other the economy is exerting huge pressures on legal services such that law jobs are no longer as plentiful as they were.”⁷³

The introduction of the SQE and the abandonment of the QLD is the first time UK law schools will be able to test market forces to see how many students will choose to study a law degree without a professional accreditation attractor.

Around 17,000–18,000 law students are currently admitted annually with teaching funding about 70 per cent of income. Current QLD providers will face the prospect of balancing their future academic preferences with market predictions. This will be of concern to law faculty worrying about their jobs as well as universities as a whole concerned about income. This is a once in a generation opportunity. If a law degree provides no SQE exemptions and therefore no qualification time frame advantage unless it provides partial or full student preparation for SQE assessments, will it still be attractive to students?⁷⁴

Further to this, the separation of barrister and solicitor academic training with the former retaining the QLD may result in law schools having to make the difficult choice as to whether they comply with BSB imposed requirements for relatively little financial gain given the comparatively small size of the barristers’ profession. Davies posited that:

⁷⁰ *Ibid.*, p.377.

⁷¹ *Ibid.*

⁷² John Flood, “Global Challenges for the Legal Education: Competing for the World’s Law Students” (2015) 24 Nottingham L J 79.

⁷³ *Ibid.*, p.79.

⁷⁴ SQE 1 is more practice orientated than the current QLD with the removal of EU law and the introduction of Professional Conduct, Commercial and Corporate law with the word “practice” frequently appearing. This is reiterated by the Statement of Solicitor Competence, which SQE will closely align with. SQE 1 will contain a significant element of multiple-choice examinations. As the SQE exam will be taken after graduation, there are serious questions surrounding the level of and the year of SQE preparation modules. This may necessitate a move to bring forward into earlier years optional subjects that are currently usually dealt with at level 6 (final year). See Solicitors Regulation Authority, “Solicitors Qualifying Examination: Draft Assessment Specification” (SRA, 2016).

“a potential tangential consequence of the BSB and SRA going their separate ways in terms of the academic stage of training is that the BSB could find the number of QLD providers shrinking and with it a reduction in the diversity of the QLD graduate pool from which the Bar can draw.”⁷⁵

Even before the introduction of the SQE, there has been a rise in tension between academics who embrace engagement with practice and employability skills and those that see it as inconsistent with the liberal ideal.⁷⁶ Guth and Ashford argued that:

“if the foundation subjects are more focused towards the key subjects which are considered important for practice it would logically follow that they will, for the most part, be taught in a way which focuses on professional knowledge and skills rather than in a way which considers the subjects in a more general way in order to enhance education and encourage critical exploration.”⁷⁷

There is an increasing potential after the introduction of the SQE for the content of the law degree to be driven by the legal profession and what is considered important to practice with law schools explicitly marketing their programmes as providing students with the “day one learning outcomes” required by the profession.⁷⁸ It is arguable that this would see the true site of legal education moving from the law school to the law firm with disastrous consequences for sociolegal education.⁷⁹

Recent trends in legal education suggest that the need to focus on employability and professionalism is ever more pressing with this focus overwhelmingly skills based.⁸⁰ This is reinforced by the Higher Education Academy that defines employability as “a set of achievements, skills, understandings and personal attributes that makes graduates more likely to gain employment and be successful in their chosen occupations”.⁸¹ Universities have embraced skills acquisitions.

75 Mark Davies, “Changes to the Training of English and Welsh Lawyers: Implications for the Future of University Law Schools” (2018) 52(1) *The Law Teacher* 100.

76 Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Oxford: Hart Publishing, 2003).

77 Jess Guth and Chris Ashford, “The Legal Education and Training Review: Regulating Socio-Legal and Liberal Legal Education?” (2014) 48(1) *The Law Teacher* 5, 12.

78 *Ibid.*, p.3.

79 John Flood, “Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation” (Report for the Legal Services Board, University of Westminster), available at www.legalservicesboard.org.uk/news_publications/latest_news/pdf/lwb_legal_education_report_flood.pdf (visited 10 April 2018).

80 EgleDagilyte and Peter Coe, “Professionalism in Higher education: Important Not Only for Lawyers” (2014) 48(1) *The Law Teacher* 33; Dagilyte and Coe argued that the “challenge for legal educators is to deliver effective legal education by producing employment-ready graduates”.

81 Higher Education Academy, “Embedding Employability in Higher Education”, available at www.heacademy.ac.uk/individuals/strategic-priorities/employability (visited 10 April 2018).

Some initiatives include the creation of Higher Education Achievement Report (HEAR)⁸² for graduates, specific employability or skills-based modules,⁸³ personal development planning and career management planning.⁸⁴ The link to employability in law schools has become increasingly explicit with employability rankings frequently prominently advertised.⁸⁵ The message being that law schools will ensure that their students have the skills and attributes employers require. The employability drive has strengthened the links between the law school and the profession as the regulators show little interest in what employability actually should look like. As formal regulatory ties have loosened, the link to the profession has strengthened.⁸⁶

As a result, UK law Schools increasingly seek a competitive edge by adopting differentiated pedagogies. For example, York Law School branded itself as the first law school to have a curriculum entirely problem based,⁸⁷ and a number of law schools have added placements and skills-based modules into the curriculum or created new pathways such as apprenticeships.⁸⁸ While the United States has a long history of CLE with the first clinics appearing in the early 20th century,⁸⁹ the United Kingdom has only really embraced CLE in the last 40 years.⁹⁰ However, the rise

82 The HEAR provides a single comprehensive record of a learner's achievement, as recommended by Universities UK, Robert Burgess, Measuring and Recording Student Achievement Steering Group, "Beyond the Honours Degree — The Burgess Group Final Report 2007" (October 2007), available at www.hear.ac.uk/reports/Burgess2007 (visited 10 April 2018). The HEAR enables institutions to provide a detailed picture of student achievement throughout a students' time at university, including academic work, extracurricular activities, prizes and employability awards, voluntary work and offices held in student union clubs and societies that have been verified by the institution. Higher Education Achievement Report, "About" (HEAR), available at www.hear.ac.uk/about (visited 10 April 2018).

83 For example, "passport to employability" is a compulsory year 1 module at Northumbria University with employability heavily emphasised throughout the degree. Northumbria Law School, "Empowering your Employability with Northumbria Law School" (373324/06/15, Northumbria University, 2015), available at www.northumbria.ac.uk/media/6828606/373324lb-law-careers-brochure.pdf (visited 10 April 2018).

84 As an example for this, see the Changemaker scheme in operation at Northampton University: Northampton University, "A Quick Guide to Changemaker at Northampton" (2017), available at <https://mypad.northampton.ac.uk/changemaker/a-quick-guide-to-changemaker-at-northampton/> (visited 10 April 2018).

85 Paula Baron and Lillian Corbin, "Thinking Like a Lawyer/Acting Like a Professional: Communities of Practice as a Means of Challenging Orthodox Legal Education" (2012) 46(2) *The Law Teacher* 100.

86 See Francis, "Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience" (n.12).

87 York Law School, "Problem-Based Learning" (University of York), available at www.york.ac.uk/law/undergraduate/pbl/ (visited 10 April 2018).

88 Juliet Turner, Alison Bone and Jeanette Ashton, "Reasons Why Law Students Should Have Access to Learning Law through a Skills-Based Approach" (2016) 52(1) *The Law Teacher* 1: Bone and coworkers argued that opportunities for undergraduate students to participate in interviewing, negotiation and/or mootings can redress the gaps in communication skills and commercial awareness highlighted in the LETR.

89 John Bradway, "The Nature of a Legal Aid Clinic" (1930) 3 *Southern Californian Law Review* 173.

90 Elaine Campbell, "A Dangerous Method? Defending the Rise of Business Law Clinics in the UK" (2015) 49(2) *The Law Teacher* 165.

of CLE has been exponential, and the latest figures suggest that at least 70 per cent of all law schools in the United Kingdom are now involved in *pro bono* and/or clinical activity.⁹¹ Although the rise in clinics predates LETR and the regulators' reviews, the pace at which such activities have been embraced is, in part, driven by the LETR recommendations and the outcomes focus of the professional statement.

By contrast, an outcome or competency-based approach to higher education is not new in the United Kingdom. Since 1997, the Dearing Report has recommended that "achievement and expectation, at the threshold and at the highest end of the spectrum for different programme types, should be identified".⁹² The professional bodies in law adopted an outcome-based approach to the professional training courses. However, with the introduction of the SQE, UK law schools now need to consider how an undergraduate degree, which purports to prepare students for SQE 1, is linked to the SRA's competence statement. But if all courses are to be constructively aligned to a computer-based multiple-choice-based assessment, how will law schools ensure that their students have developed the higher-level skills outlined in the law benchmark statement? Currently, the focus of most law school curriculum has been to develop a full range of cognitive skills through a variety of assessment methods. The concern is that this method of learning will be replaced by memory recall aimed at passing a computer-based test.

Donnelly posited in 2011 that in the common law world, there is an increasing convergence in the manner in which lawyers are educated academically but significant divergence in the way they are educated professionally.⁹³ From the most basic perspective, legal education in the US and Anglo-Irish perspective remains distinct in that legal education in the United States is at the postgraduate level only. However, the arrival of the SQE in the United Kingdom potentially signals a convergence in professional training as the SQE is much more aligned to US bar exams (albeit with a required period of apprenticeship). The concomitant liberalising of the undergraduate law degree may allow UK law schools to look to the JD model to a greater extent than previously was possible.

Finally, the issue of diversity and social mobility also plagues UK legal education. Research shows a strong preference for graduates of high status law schools with elite law firms and chambers. Seventy-one per cent of all barristers went to Oxbridge or a Russell Group university.⁹⁴ LETR identified employability as a tool for addressing social mobility concerns within the profession.⁹⁵ Despite

91 Damien Carney *et al*, "The Law Works Law School Pro Bono and Clinic Report" (LawWorks, 2014), available at <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> (visited 10 April 2018).

92 The National Committee of Inquiry into Higher Education, *Higher Education in the Learning Society: Main Report* (London: HMSO, 1997) para.10.66.

93 Catherine Donnelly, "Convergence and Divergence in Educating Transnational Lawyers" (2011) 46(1) *International Lawyer* 627.

94 Bar Standards Board, "Barristers Working Lives: A Second Biennial Survey of the Bar" (BSB, 2013).

95 LETR paras.6.11–6.15, 5.25–6.34 and 7.51.

significant progress being made in diversity, particularly for woman, social class stubbornly lags behind. However, Francis argued that there are deep-rooted structural constraints upon law schools' ability to support student employability.⁹⁶ Despite the Law Society's recommendation that steps should be taken to remove value judgments about institution attended, this is a key part of a graduate recruitment strategy of law firms. In reality, many "employability" activities can be seen as compensatory, "an attempt to make up for the personal and social deficiencies that set them apart from the talent in top Universities".⁹⁷

As in the United States, the cost of tuition plays a significant role in influencing students' choice of institution. Traditionally, in England and Wales university fees have been capped (currently at £9,250), and almost all institutions, regardless of ranking, will charge the same fees. Nevertheless, the United Kingdom continues to struggle with socioeconomic inequalities.

Indeed, students from the most privileged geographical area in the United Kingdom are up to 12 times more likely to be admitted to a Russell Group university than those from disadvantaged areas. This rises to 14 or 16 times more likely to gain admission to Cambridge and Oxford University for students from privileged backgrounds.⁹⁸ Davies argued that it is high-status universities that are more likely to choose to step away from SQE preparation to allow for a more academic or liberal arts degree. Studying at these universities would then require a period of SQE preparation, which would increase the costs of qualification. If a student is faced with two offers, one from a high-ranking institute and another from a lower ranked institution which will incorporate SQE preparation, it is likely to be students from more disadvantaged backgrounds, where cost is a prohibitive feature, will choose the lower ranked option and "law school's decisions about their engagement with the SQE have the potential ... to worsen the accessibility landscape".⁹⁹ There is no evidence that the introduction of SQE will reduce the cost of vocational education, and previous experience has shown that the cost of the LPC remained static despite significant decreases in demand, which is likely related to the narrowness of profit margins.¹⁰⁰

96 See Francis, "Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience" (n.12).

97 Phillip Brown and Anthony Hesketh, *The Mismanagement of Talent: Employability and Jobs in the Knowledge-Based Economy* (New York: Oxford University Press, 2004) p.30.

98 Office for Fair Access, "Outcomes of Access Agreement Monitoring for 2014-15" (2016) paras.21 and 65-66, available at <https://www.offa.org.uk/wp-content/uploads/2016/05/2016.04-Outcomes-of-access-agreements-monitoring-1.pdf> (visited 10 April 2018) and UCAS, "UCAS Undergraduate Reports by Sex, Area Background, and Ethnic Group" (UCAS), available at www.ucas.com/corporate/data-and-analysis/ucas-undergraduate-releases/ucas-undergraduate-reports-sex-area-background-and-ethnic-group (visited 10 April 2018).

99 Davies, "Changes to the Training of English and Welsh Lawyers: Implications for the Future of University Law Schools" (n.75).

100 Julian Webb, "The LETRs (Still) in the Post: The Legal Education and Training Review and the Reform of Legal Services Education and Training — A Personal (Re)view" in Hilary Sommerlad *et al* (eds), *The Futures of Legal Education and the Legal Profession* (Oxford: Hart Publishing, 2015).

VI. Preparing Students for a Global Market

Globalisation has had significant implications for the legal profession with declining trade barriers and the rise of technology forcing law firms to adapt to a global competitive market. Many UK and US firms have merged with international rivals such as SJ Berwin who were the first London firm to merge with a Chinese firm.¹⁰¹ Other firms such as Slaughter and May have worked on a “best friend” strategy and created a “community” of firms operating all over the world.¹⁰² The rise of global challenges such as climate change, terrorism and human rights has seen an expansion of international law as an area of practice. Higher educational institutions are not just objects of the forces of globalisation but they also active participants and law schools are no exception.

In England and Wales, law is one of the largest recruiters of international students. In 2016, there were over 23,000 international students studying law, the 6th most popular subject area.¹⁰³ Globalisation has changed the face of many law schools, which now have a greater proportion of international staff as well as students. This increased mobility in staff and students has had an effect on the curriculum with a proliferation of modules offering study in international or transnational subject areas. This can particularly be seen at the postgraduate level with more students studying for “international” LLMs than any other subject area.

As a part of the drive to capitalise on globalisations, a number of universities from countries such as the United States, United Kingdom and Australia have established campuses in overseas locations especially in the East, eg, Singapore, China, Malaysia and Japan. However, in the United Kingdom, law schools are not at the forefront of these international expansions with other programmes such as business often taking the lead. In the United Kingdom, while there are a number of overseas campuses that offer UK law degrees, only Queen’s University Belfast offers a JD degree as an alternative option to the traditional LLB.¹⁰⁴ The only University to award a dual JD/LLB degree in the United Kingdom is the University of London¹⁰⁵ in collaboration with Columbia University.¹⁰⁶

101 Yun Kriegler, “King & Wood Mallesons and SJ Berwin Merger Goes Live Tomorrow” *The Lawyer* (31 October 2013), available at www.thelawyer.com/issues/online-october-2013/king-wood-mallesons-and-sj-berwin-merger-goes-live-tomorrow/ (visited 10 April 2018).

102 Slaughter and May, “The Best Friends Group” (Undated), available at www.slaughterandmay.com/where-we-work/international-approach/the-best-friends-group (visited 10 April 2018).

103 UKCISA, “International Student Statistics: UK Higher Education” (Undated), available at <https://ukcisa.org.uk/Research--Policy/Statistics/International-student-statistics-UK-higher-education> (visited 10 April 2018).

104 The JD is a three-year degree specified as being a professional doctorate at the doctoral qualifications level in the UK framework.

105 Offered at the following colleges: University College London, King’s College London and the London School of Economics.

106 These are four-year undergraduate courses leading to the award of both a UK LLB and a US JD. Students study for two years in the United States and two years in the United Kingdom. They also offer a dual

US law schools seem to have embraced transnational opportunities to a greater extent, but such programmes are still few and far between. For example, New York University School of Law has an arrangement with the National University of Singapore, which allows students to acquire two LLM degrees after studying in Singapore, Shanghai and New York City; Cornell Law School and Université Paris I offer a dual JD and Master en Droit; Temple University of Philadelphia has offered a US LLM degree in its Tokyo campus for many years and is accredited by the ABA for semester-abroad programmes for its US JD students. The University of Wisconsin–Madison runs an East Asian Legal Studies Centre that runs a series of LLM programmes in China alongside professional courses for judges and other officials, as well as facilitating US JD students to spend study time in China.¹⁰⁷

Some law schools have gone even further than partnering with other overseas institutions and instead tried to create “global” law schools. One of the most innovative is the Jindal Global Law School in Delhi, India, a private institution committed to providing a global legal education achieved through a curriculum and pedagogy designed to give extensive exposure to students to domestic, international and comparative law courses. However, as can be seen, this drive towards innovative global legal education is predominantly US driven with the United Kingdom lagging behind.

Legal education in the United Kingdom cannot be viewed in isolation from the rest of the world. Research has demonstrated the significant effect that globalisation has had and will continue to have on legal services, and this must be reflected in legal education. While the UK legal profession has considerable status around the world, it is clear that the United States is better at exporting its postgraduate model of legal education. The move to remove the need for the QLD and the replacement of the Law Practice Course with the SQE opens up opportunities and creates risks for the United Kingdom. Any changes in the way legal education is delivered in the United Kingdom needs to take account of globalisation. Ignoring its effect will result in the United Kingdom being left behind to the detriment of UK law graduates.

VII. Conclusions

Articulating the benefits and failings of legal education on both sides of the Atlantic may help us to navigate the difficult seas legal education has found itself in over the last decade. The risk of not learning from the past is that we could inadvertently

JD/LLM programme which only takes three years to complete. The third year is spent in the United Kingdom. Both of these programmes are very small with only 2–3 students admitted from each college per year.

107 See Flood, “Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation” (n.79).

travel backwards. Consider these comments on UK legal education made by Glower in 1950:

“... The universities have partly followed the professional bodies and partly reacted from them. If the universities say ‘The professional bodies are so severely practical that to get a balance we must continue to be theoretical’, the professional bodies say ‘The universities are so woolly and wide of the mark that we must insist on something useful’. Between the two the law student has fared none too well...”¹⁰⁸

Are we at risk of repeating the same cycle in the United Kingdom 68 years later? Introducing the most radical changes to legal education in recent times presents dilemmas and opportunities. There is momentum for change as we move away from the prescriptive nature of the QLD in the United Kingdom, and in both the United States and United Kingdom, law schools have grasped on to opportunities to integrate clinic- and other skills-based learning opportunities into their curriculum.¹⁰⁹ However, there are risks.

As legal education is pushed to forge greater ties with the legal profession and produce graduates who are ready on “day one”, we put at risk the very best that a liberal legal education can provide, particularly if we want our students to be critical thinkers rather than rote learners. The difficulties of the last decade have caused both UK and US law schools (but particularly the United Kingdom) to become too colloquial, out of touch with the demands of transnational practice. However, creating global links with opportunities for students to expand their jurisdictional horizons and engage with global problems cannot be regulator driven. The move to outcome-focused regulation should create a more liberalised environment for law schools to innovate and create more dynamic programmes. Law schools in the United Kingdom must do this if they are to ensure the currency of a UK LLB in the years to come.

In order to fully address the requirements of the law benchmark statement which requires students to gain a “knowledge and understanding of theories, concepts, values, principles and rules ... within an institutional, social, national and global context”, law schools must think beyond their jurisdictional borders to provide this “global context”. Many students are currently graduating with very little understanding of the demands of transnational practice, and this places them at a disadvantage in the global market. Internationalising the law curriculum has a number of benefits. Not only it can help students to learn to deal with legal issues that cross boundaries but also it can be a forum for exploring the nature of legal uncertainty. International issues are often the perfect place to consider broad

108 Lawrence Gower, “English Legal Training” (1950) 13 *Modern Law Review* 137, 155.

109 Not everybody agrees with these sentiments. For example, Sanders argues that “academic education is supposed to challenge the *status quo*, not simply equip students with the skills to leech off it”.

sociolegal questions such as what we mean by the terms “law” and “justice” and whether these concepts can have a universal definition.

This article has sought to set out comparatively the future direction of law schools in both the United Kingdom and United States. While we have demonstrated that law schools in both countries have experienced a troubled decade with many challenges concomitant to the economic downturn, each jurisdiction has its own nuisances and complexities. However, both have a window of opportunity to embrace change and make sure the academy is leading the way forward, ensuring its voice is heard alongside the profession. This includes embracing collaborative opportunities which allow students to have a global experience.

