

The CEPLER Conference: The Futures of Legal Education and the Legal Profession

Friday 18 October 2013 9.30-5.30pm
Lucas House, Conference Park, University of Birmingham

The subject of this year's CEPLER conference is the future of the legal profession and legal education and, arguably, it has never been more pertinent. While the profession remains a pivotal, socially constitutive institution, the extent to which it has been transformed over the course of the last three to four decades can hardly be overstated. Dramatic and extensive socio-economic and political change has weakened its claim to be characterized by the traits - such as a distinctive ethical code and autonomy - which grounded its moral authority and legitimated its occupational monopolies. The result has been an erosion of law's 'sacral quality' (Arthurs & Kreklewich 1996) and of the profession's traditional intermediary role between market and state - a role which is fundamental to the abstraction and legitimation of power. In place of its original guild like structure, we now see a diverse and highly fragmented profession, in which the majority of practitioners work in large firms that are framed around the logics of efficiency and commerce rather than those of ethics and public service. The impact of the most recent developments - such as the introduction of Alternative Business Structures, the drastic cuts to legal aid and the recommendations of the Legal Education and Training Review (LETR) - may be viewed as a watershed in this process of radical change.

The conference aim is to explore some of the most significant aspects of this process and their implications for the profession and professional education, at both a practical and theoretical level. To this end we have gathered together practitioners, policy makers, and some of the most eminent scholars in the field including our keynote speaker, Rick Abel, Connell Distinguished Professor of Law Emeritus and Distinguished Research Professor, UCLA. Professor Abel, whose compendious output includes the seminal text *English Lawyers between Market and State* (2003), has, for several decades, been the leading scholar of the legal profession. His work has been grounded in a critical approach to its traditional claims (and their academic counterpart, 'trait theory') which one practitioner handbook described as a 'dedication to the pursuit of the elusive concept known as justice.. and ..prepared(ness) to represent all men and women equally....' (Tyrrell and Yaqub 1993:1). By contrast, Abel, like Larson (1977), has conceptualised professionalism as a project which aimed to control not only how many could enter in order to extract monopoly rents but also *who* could enter, so as to enhance lawyers' collective status. This perspective does not, of course, entail a denial of the central importance of law and the profession, but rather that the promise of ethicality and justice are regularly traduced - and he argues that law schools tend to be complicit in this process since they teach students to 'argue both sides of every case, approach law positivistically, as a set of constraints to be manipulated or evaded, followed grudgingly, only as required by the letter of the law, not its spirit' (2012: 187).

The connections between legal education and professional ethicality implicit in this comment have been central to Professor Abel's research, and underpin the themes he will address in his keynote. One such theme will be the relationship between the legal profession and the economy and its implications for legal education. Despite his critique of the profession's exploitation of their market shelters, Professor Abel has not endorsed its marketization, arguing that this is bad for consumers since, when trading off the quality of legal services for lower prices, they confront acute problems of information asymmetry. He

further argues that 'free' markets are bad for workers, as they make possible poorly paid, insecure working conditions, the most extreme of which are generally performed by marginalized groups, and points to the growing phenomenon in the US of unemployed graduates, lower starting salaries, law firm layoffs and dissolutions and spiralling educational indebtedness – a picture we in the UK will all recognise. For Professor Abel, however, the profession's location in the economy and society is also central to issues of ethicality and these will be again addressed in a discussion of the causes of lawyer misconduct and possible remedies; the chronic problem of unequal access to law and what legal education can do to ameliorate it; and, finally, the defense of core rule of law concepts at moments when national security is threatened.

Professor Abel's keynote will conclude the conference. Before then many of the issues with which he is concerned will be explored in presentations in the two conference streams which focus on the Legal Profession and Legal Education respectively. The speakers in the opening Legal Profession session will consider the impact and implications of the marketization of the profession. Professor Julia Evetts (School of Sociology and Social Policy, University of Nottingham), one of the most eminent and cited sociologists of professionalism, is less inclined than is Abel towards the critique of professions as ideological constructs. Instead she regards professionalism as an important occupational value which is worth retaining and her presentation considers whether this will be possible for practitioners who work in service and knowledge-based occupations such as law, which now operate and function in a market economy and with profit expectations. Her concern with the extent to which it is possible to reconcile the logics and culture of professionalism, expertise and service with the logics and culture of enterprise, profit, commercial success and organizational efficiency is echoed in Professor Muzio's paper. As a result of research into the financialisation of large law firms, he suggests that the impact of discourses of shareholder value led to large law firms' re-organization in order to make them appear increasingly profitable when assessed using the metric of profits per equity partner. The session concludes with a practitioner perspective by Dawn Dixon (founder member of Black Lawyers' Directory, former AWS Chair Association Women Solicitors and independent consultant), who draws on her personal and professional experience to consider the effect of marketization and globalisation and to speculate about the future impact on the profession of commoditisation.

A major site of change has been the courtroom and in the following Legal Profession session Mavis Maclean CBE (joint Director Oxford Centre for Family Law and Policy and Academic Adviser to the MOJ) draws on empirical work on family lawyers and the judiciary to reflect on changes in forms of service delivery and client care offered by solicitors, mediators, and the internet following the reduction in resources available for legal representation. The re-shaping of judicial practices is also the focus of Professor Hunter's presentation. Tracing the relationships between such developments as judicial case management, key performance indicators for the judiciary, multi-disciplinary practice in courts, transparent and merit-based application and appointment processes and adjustments to processes to cater for litigants in person, Hunter considers the extent to which these have transformed the judiciary. Finally, the focus switches to judicial reasoning in the UK Supreme Court as Helene Tyrell draws on her doctoral research to demonstrate a shift towards plurality style judgments and the use of foreign jurisprudence.

Innovation in, and radical approaches to, legal training are themes in the second Legal Education session. It will open with a presentation by David Howarth (Cambridge University) entitled Law as Engineering. In this he will reflect broadly on the development of legal

education and its traditional bias towards litigation, and will consider whether it is appropriate for the needs of the contemporary profession. Martin George (Birmingham Law School) will also engage with the nature of the law degree, through a discussion of the recent proposition by Lord Sumption that those who wish to practise law should not study law at university. George will put forward several counter arguments for why a law degree is inherently valuable, claiming that the 'common law is structured imagination: problem-solving, lateral thinking and pure intellect'. A very practical approach is then presented by Jon Harman (The University of Law) whose discussion of legal education and LETR will challenge traditional pedagogies by drawing on his use of 'Flipped Learning' and Saljo's work on Digital tools. The session will be concluded with an examination of similarities and differences in European legal education in curricula, pedagogical methods and ways of setting up new forms of classrooms. In presenting this, Professor Ole Hammerslev (University of Southern Denmark) will draw on the comparative research which, prompted by the increasing significance of international law and of the European transnational legal order, he recently conducted (with others) into legal and judicial training.

The conference aim of drawing on academic, policy and practitioner expertise to reflect on the future for the profession and training is continued in the final sessions of both streams, through a panel conversation about the potential of research to support developments in policies and practices. The Legal Education panel comprises Nina Fletcher (Head of Research, Law Society); Professor David Sugarman (Lancaster University); Louise Ashley (University of Kent Business School); Professor Ed Cape (UWE) and the conversation will be led by Professor Richard Young. The Legal Education conversation, which will focus on the implications of LETR for legal education over the next 10 years, will be between Simon Thornton-Wood (BSB), Mandy Gill (SRA), Simon Mayson, Legal Services Institute and Professor Lonbay (Birmingham Law School) and will be led by Professor Andrew Sanders.

Conference Venue: Lucas House, Edgbaston Park Road, Edgbaston, Birmingham B15 2RT

Delegate Fees: Practitioner and Academic: £69; Student: £59

THIS EVENT ATTRACTS 6 CPD POINTS

For more information and to register visit: www.birmingham.ac.uk/ceplerconf13

References:

- Abel, R (2003) *English Lawyers between Market and State* Oxford University Press
- Abel, R (2012) 'Comparative studies of lawyer deviance and discipline' *Legal Ethics* 15, 2: 187
- Arthurs, H.W. & Kreklewich, R. (1996) Law, legal institutions and the legal profession in the new economy, *Osgoode Hall Law Journal*, 34: 1
- Tyrrell, A & Yaqub, Z (1993) *The legal professions in the New Europe* Cavendish Publishing