The author's approach was to begin his product liability course with traditional classes and to devote the second half to practical issues that arise in product liability litigation, namely damages, discovery, settlement and mass tort case management.

The damages section of the course introduced students to factors affecting the sum of damages, such as contingency fees, the jury system, pain and suffering as well as punitive damages, medical expenses, economic loss, the presentation of these issues by a plaintiff's attorney and defensive strategies open to the defendant. The discovery section covered an overview of the advantages of the different discovery vehicles and their relative strengths and weaknesses. The settlement component of the course discussed the advantages of settlement and how tactically to improve the client's position. The mass tort case management section addressed the legal framework for class certification and the requirement of a predominance of common issues. The practical realities preventing the certification of nationwide classes was discussed, as well as multi-district litigation.

The practice of product liability is largely litigation based and the introduction of the litigation component in the classroom is well worth the effort.

INHOUSE CLE

[no material in this edition]

INSTITUTIONS & ORGANISATIONS

REVIEW ARTICLE

Blackstone's tower: the English law school
W Twining
Stevens & Sons/ Sweet & Maxwell, 1994

This eagerly awaited book from Professor William Twining was written contemporaneously with his preparation of the Hamlyn Lectures which he delivered in 1994. Twining is the Quain Professor of Jurisprudence, University College, London.

As the product of one of the most eminent thinkers on the function of law in society in general and the discipline of legal education in particular, Twining's book could be confidently assumed to contain a wealth of information and opinion on a wide range of important issues. In this expectation we have not been disappointed.

However, for this review the principal focus will be upon what he has to say about law schools, legal education and legal scholarship.

In the preface he indicates that a central theme of the book is that law as a discipline has become somewhat isolated from the mainstream of our general intellectual life and that this is in part explained by the peculiar history and culture of the institutionalised study of law as it has developed in England and of its primary base, the law school.

Chapter 1 contains much of Twining's thought about how law operates in society. He explains why he chose the title *Blackstone's Tower* and then, to illustrate the all-pervading nature of law, outlines an exercise he regularly sets for first year law students in which they are asked to read a newspaper and identify all the passages which deal with the law or are law related. He also indulges in what he calls the bookshop fantasy to demonstrate the puzzling relationship between law as a discipline and law in culture and society. He adopts what he labels 'the broad and deliberately vague conception of law as a social institution specialised to the performing of certain tasks or meeting certain needs in human groups, especially those groups which we call societies'.

In Chapter 2 Twining provides a detailed examination of the history of English law schools. He identifies as a recurrent theme that runs through historical debates about legal education the low prestige of law schools and the low status of academic lawyers, both within the university and in the eyes of the legal profession. The dilemma for law schools is that they tend not to be perceived as performing the role of professional schools and for a long time law's credentials as a proper university subject were questioned by colleagues in science, social science and the humanities. There is a particularly useful reassessment of the Ormrod Report and its legacy for legal education. He concludes that in 1994 'there is a sense that, despite a period of adversity, law as a discipline...is generally more diverse, more interesting and more ebullient' than it was at the time of Ormrod in 1971.

In the next chapter Twining essays the difficult question of 'what law schools are for'. He isolates two main conceptions of the role of law schools: as a service institution for

the profession (the professional school model) and as an academic institution devoted to the advancement of learning about law (the academic model). He rightly identifies many of the recurrent tensions in legal education as rooted in disagreements about objectives and priorities that centre on these two competing views of the law school role. In his opinion, the Ormrod Report first gave university law schools a specifically academic role, as well as the traditional professional one. However, it was not until the early 1990s that a series of largely economic factors led to concerns about the overproduction of law graduates, which contained the underlying presumption that the main function of undergraduate law degrees was preparation for the practising profession, at a time when the market for legal educational service was expanding.

Of the four possible future law school models he identifies, Twining advocates one which embraces the diversification of function, placing greater emphasis on advanced studies for lawyers and non-lawyers and taking all law, not just lawyers' law, for their province.

To illustrate the culture and tribal territories of law schools, in one fascinating chapter Twining takes us on a tour of an imaginary law school, Rutland. The description he offers of the buildings and plant, the faculty and the student body and the level of conflict and clashes of interest that regularly surface provides an insightful comment on the modern law school with which many law teachers will only too readily identify. He isolates a number of factors that affect law schools in the mid-1990s: there is less consensus among the faculty about the objectives and ethos of the undergraduate degree; the students are generally more vocationally oriented than the teachers and have more financial pressures than their predecessors; and the fact that a law degree is no longer an automatic passport to a professional qualification. Moreover, there tends to be a regular divergence between the conceptions of teachers, students and employers about what is vocationally relevant at undergraduate level.

In Chapter 5 Twining turns his focus to the law school library. He agrees with Langdell that most learning about law centres on books and that the centre of the law school is the library, where more learning may take place than in the classroom. Yet, there is an apparent paradox which he pinpoints which suggests that the great majority of practising lawyers devote relatively little time to consulting or reading law books. There is a detailed discussion of the types and uses of primary legal resources, namely legislation, law reports (what makes them fascinating, their overuse and their neglect), periodicals and other legal literature (particularly its diversification in today's law library). Twining concludes that, despite the tensions inherent in the views about the objectives and priorities of legal education, the one distinctive feature of the law school is the library which both reflects and defines law school culture. The only strange omission in his account is his concentration on the traditional legal information resources to the neglect of the escalating availability and increasing reliance on the new information technologies. These are relegated to a relatively brief reference in the final page of the chapter on libraries.

Chapter 6 is devoted to the nature of legal scholarship and the roles of the jurist. Twining rejects the common view from within universities that academic lawyers are uncreative and mainly concerned with ordering the existing corpus of legal knowledge. He argues that this negative version of legal scholarship is out of date, oversimplifies by focusing solely on expository work and fundamentally misconceives the nature of legal exposition. The idea that legal scholarship is essentially a descriptive and authority-based enterprise refers to only one activity, exposition, which is less prominent and prestigious than in previous years. However, in his opinion, even the lowest form of exposition involves interpretation, selection and arrangement of often elusive data which can scarcely be labelled as merely descriptive.

There is an account of what academic lawyers in fact do in terms of extra-curricular activities and a model is presented to capture the range of legal scholarship. He emphasises that law is an applied and participant-oriented discipline, that academic lawyers are overtly participating in the legal system when they make recommendations for law reform or are involved in policy-oriented research or professional training. However, he also cautions that there is a need to recognise the concern, often expressed by the legal profession, that academic law, particularly if it is seen to be focusing on traditional expository work and neglecting the commercial realities of law in action, and legal practice have grown further and further apart. The section on the reaction against legal exposition as the core activity for academic lawyers and the search for alternatives is a valuable addition to the thinking about the purpose of legal scholarship.

The final chapter, called 'The Quest for a Core' (possibly the search for the holy grail of legal education?), is a good point to end Twining's dissertation. At the outset he expresses scepticism about the desirability of even having a settled core or essence of a discipline. However, because of the persistence of this sort of thinking, he says he has decided to look at some of the salient examples of attempts to define a core of legal knowledge, out of which he has chosen the following: conceptions of legal science; law as a branch of rational ethics; the core subjects debate; ideas about law as craft and technology; do-it-yourself pluralism; and the idea of rules as a necessary focus of legal study.

Twining reviews the development of the core subjects debate, which he recognises to most practising and academic lawyers in England refers to the subjects prescribed by the legal profession as granting exemption from the first or academic stage of the qualification for practice. He discusses the list of core subjects originally recommended in the Ormrod Report, how this core began to 'creep' and the emergence in the 1970s of lists of desirable skills, all leading to sustained pressure on the undergraduate curriculum. However, Twining also acknowledges that only rarely did academic lawyers assert their status as professional educators and advance a coherent and cogent rationale for undergraduate legal education and a principled solution to the problem of curriculum overload. He points out the semantic confusion that has bedevilled what different people have meant by a core, that is whether it refers to an irreducible minimum of knowledge that might be expected of a fledgling practitioner or trainee or to those foundation subjects which are necessary or useful building blocks for the study of further subjects at the academic or later at the vocational stage.

There is also some discussion of the modern skills movement and the introduction of legal practice courses. However, Twining contends that a switch from knowledge to skills does not necessarily solve the problem of determining a core for legal training purposes. The problem is expressed thus: 'Instead of asking: what should every lawyer know? the question becomes: what should every lawyer be able to do? But if legal practice is both varied and changing, is this a meaningful question?' He also raises doubts about the educational value of problem-solving skills, although admittedly very useful in analysing the nature of lawyers' work, which he considers by themselves to be too general to be very helpful.

Finally Twining provides a brief (9 page) 'Epilogue' to his seven Hamlyn Lectures in which he reflects further on the proper role of the modern English law school and provides his considered advice on the future directions they should take.

In many respects, this is quite a remarkable book, displaying the powerful intellect of the author as one of the foremost thinkers on how law functions in society, with a clear vision, despite the pluralism in approaches evident in the professional, academic and wider communities, of the contribution that law schools can make in the provision of legal education. Although lucidly written, with a wealth of footnoted references in support of his arguments, it can be a mite heavy-going in parts. However, there can be no doubt that this book is a major addition to the literature on law schools and legal education which is bound to stimulate a great deal of reflection in the discerning reader.

Editor

JUDICIAL EDUCATION

[no material in this edition]

LEGAL EDUCATION GENERALLY

Of rat time and terminators
D Barnhizer
45 J Legal Educ 1, March 1995, pp 49-60

Rat time refers to the time when a given population begins to exceed the resources needed for its basic sustenance. At this point it is unrealistic to expect individuals in the population to behave civilly and the rats exhibit increasingly aggressive behaviour until the population falls to a level where civility can re-emerge.

A version of rat time is being created in the legal profession as 40,000 new graduates a year enter an already saturated system. The concept of rat time can help us to isolate the problems of the legal profession, identify the future responsibilities of law schools and the profession and create more effective solutions than the stop-gap measures usually employed.

Lawyers and law schools are in a transitional period and the legal profession is being transformed as it adjusts to the shift in demand for its services. Moreover, the glut of lawyers is not necessarily bad, as it will make for a more competitive