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"BACK TO BASICS"? UNIVERSITY LEGAL EDUCATION AND 21ST CENTURY PROFESSIONALISM

by
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In times of globalization and of rapid economic and social change it is difficult to establish what relationship exists between the things students learn at law school and the knowledges practicing lawyers need. This article investigates the complexities lying behind this seemingly straightforward question. It does so in three stages. First, criticisms of contemporary legal education that take the form of a call to move "back to basics" are evaluated. Secondly, an empirical assessment of law student course choice at a major Canadian university is reported. Third, the "fit" between existing legal education and the likely needs of future practitioners is evaluated.

I. INTRODUCTION

What goes on at contemporary Canadian law schools? What is taught? To whom? What teaching methods are used? What do students learn?

And, how does all of this relate to the changing needs of law graduates, lawyers, clients, law firms, Canadian society and an increasingly global world? Are Canadian law faculties doing a good job? How would we know? What criteria define excellence?

Although each of these would seem to be a basic question, surprisingly little is known about such matters.

Ignorance is no bar to opinion however. Lawyers, law students and legal academics hold tenaciously—ferociously even—to opinions about legal education. So too do university administrators, politicians, law society benchers, media pundits and others, but virtually no scholarly research focuses on what *actually* happens in legal education. Opinion in these

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fields is undisciplined, entirely unconstrained by reliable, verifiable data or evidence of any sort. Predictably, much heat but distressingly little light is generated. Discussions quickly crystallize into debate; debates take on a party or schismatic character. Faith prevails over reason.

The education of lawyers, however, has an importance that extends beyond the cloisters of the university or professional guild. The practice of legal education, the social construction of "law," the social roles of jurists and legal practitioners and the character of what Ian Duncanson calls "the law discipline" are all thoroughly intertwined.[1] The experience of living under law and the real-life meanings of governance in accordance with principles of legality and constitutionality are much shaped by ongoing and dynamic constructions of legal knowledge. Oddly, legal educators have not paid much attention to such matters either. Perhaps this is because we simply take it for granted: we participate in the construction of legal knowledge (in books or academic journals, in the classroom, faculty seminar and, occasionally, in media interviews or in representative roles) *and* find ourselves subjected to constructions and constraints originating elsewhere (e.g., courts, legislatures, government ministries, law offices, law societies, published research, political posturing, media interviews, talk-shows, sitcoms and the discourses of daily life).

Though generations of legal academics have tended to overlook issues related to their work's relation to the social construction of legal knowledge, this cannot continue. The world around us is changing. For better or worse, we are called upon to rethink both law as a discipline and law school as educational practice.

II. EXTERNAL PRESSURES ON LAW AND LEGAL EDUCATION

The task of approaching social and legal change "in the round," as it were, and in relation to the implications of change both for education and for the wider social constructions of legal knowledge is immense. A few legal scholars have begun to sketch out the various consequences and relationships amongst education, globalization, neo-liberalism, new social movements, social diversity and the urge to community. Economic, technological, demographic and social changes have been reflected at dizzying speed in transformations in law, legal regulation, legal work and the conduct of legal practice.[2]

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1 See I. Duncanson "The Ends of Legal Studies" (1997) 3:1 *Web J. Current Legal Issues*, online: Web Journal of Current Legal Issues Website http://webjcli.ncl.ac.uk/1997/issue3/duncan3.html (last modified: June 24, 1997 1:58:31 PM GMT); "Broadening the Discipline of Law" (1994) 19 *Melbourne U. L. R.* 1075; "Degrees of Law: Interdisciplinarity in the Law Discipline" (1996) 5 *Griffith L.R.* 77; "Mr. Hobbes Goes to Australia: Law, Politics and Difference" (2000) 13 *Int'l J. for the Semiotics of L.* 278.

2 For example, C. Taylor, *The Malaise of Modernity* (Massey Lectures, Concord, Ont: House of Anansi Press, 1991). Also reprinted in the US *as Malaise of Modernity: The Ethics of Authenticity* (Cambridge Mass: Harvard U.P., 1992); J.R. Saul, *The Unconscious Civilization* (Concord Ont: House of Anansi Press, 1995); H. Arthurs, "Poor Canadian Legal Education: So Near to Wall Street, So Far From God" (2000) 38 *Osgoode Hall L.J.* 381; M. Thornton "Technocentrism in the Law School: Why the Gender and Colour of

Legal education however remains largely unchanged, proceeding on well-trod paths. A new course here or there is all that distinguishes contemporary legal education from that of thirty years ago. Employing only modest poetical licence, it could be said that nothing *fundamental* distinguishes present educational practices from those of Toronto in 1968 or Vancouver in 1945, Winnipeg in 1925, Halifax in 1900 or Oxford in 1885. Contemporary common law legal education takes its form from schemes launched by elite Anglo-Canadian lawyers a century ago. Existing curricula, structures and relations between academic and practical training for the practice of law have been remarkably stable over the long term.[3] However, profound contemporary transformations raise important challenges for the future, affecting universities, the economy and professionalism equally. Accelerating social and political transformations, the increasing diversification of both producers and consumers of legal services, the changing roles of Canadian universities and developing hierarchies amongst universities are all significant. They combine with intellectual and economic currents to blur disciplinary boundaries both within the academy and in the marketplace for services.[4]

Even the most casual observer cannot have failed to notice that fundamental changes are under way. At one end of the spectrum, former "main street" practices have been mall-ified, squeezed financially, transformed in character and challenged by competition from an array of non-lawyer service providers.[5] At the other end of the spectrum, law firms specializing in providing high-end legal services to large businesses have grown in size, scale and complexity, entering into inter-provincial and, now, continental

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Law Remain the Same" (1998) 36 *Osgoode Hall L.J.* 369; A. Sherr, "Professional Work, Professional Careers and Legal Education: Educating the Lawyer for 2010" (2000) 7 *Int'l J. Leg. Profession* 325; W.W. Pue, "Lawyering for a Fragmented World: Professionalism after God" (1998) 5 *Int'l J. Leg. Profession* (symposium issue on "Lawyering for a Fragmented World," ed., W.W. Pue) 125; P. Emberley, *Zero Tolerance: Hot Button Politics in Canada's Universities* (Toronto: Penguin Books, 1996); P. Emberley, *Bankrupt Education: The Decline of Liberal Education in Canada* (Toronto: University of Toronto Press, 1994); A.D. Bloom, *The Closing of the American Mind* (New York: Simon and Schuster, 1987).

3 For accounts of the history of Canadian Legal Education see W.W. Pue "British Masculinities, Canadian Lawyers: Canadian legal education, 1900-1930," in R. McQueen & W.W. Pue eds., *Misplaced Traditions: British Lawyers, Colonial Peoples*, Special Issue, (1999) 16:1 *L. in Context* 80 (and sources cited therein); C.I. Kyer & J.E. Bickenbach. *The Fiercest Debate: Cecil A. Wright, the Benchers, and Legal Education in Ontario, 1923-1957* (Toronto: The Osgoode Society, University of Toronto Press, 1987).

4 For example, C. Schmitz, "CBA Wants Law Societies to Let Lawyers Join MDPs" (2000) 20:16 *Law. Weekly* 1. The extent of the transformation is captured by the first paragraph: "After a decade which saw accountants called 'jackals' and 'sons of Satan,' the Canadian Bar Association voted overwhelmingly last week to ask law societies to let lawyers join with accountants and other non-legal professionals in multidisciplinary practices (MDPs)."

5 Competing service providers include a new semi-profession of independent para-legals, "alternative dispute resolution" services, notaries public (in British Columbia), self-help books and computer programmes. An excellent account of the workings-out of relations between independent notaries public and lawyers in British Columbia is provided in: J. Brockman, "'Better to enlist their support than to suffer their antagonism'" the game of monopoly between lawyers and notaries in British Columbia, 1930-81" (1997) 4:3 *Int'l J. Leg. Profession* 197.

partnerships.[6] Powerful social, political, and economic changes all affect the character of legal work. Though no full listing of the transformations wrought over the past fifty years is possible, some major categories stand out. These include massive social changes,[7] veritable revolutions in transportation, communications and technology, economic transformation (globalization), cultural change[8] and political change.[9] Professional careers are palpably more "fluid" than before. Talented young lawyers are themselves internationalized commodities, tempted now by extraordinary opportunities in New York, London or San Francisco, and no longer afraid to take them up.[10] It is not unusual to find individuals moving in and out of legal practices, cities, provinces and countries with a promiscuity that would have incurred the wrathful judgment of their professional seniors only a decade or so ago.

All this, of course, profoundly warps the world in which professional legal education takes place. Legal educators, then, might wish to seek answers to questions such as the following:

1) how does the construction and transmission of legal knowledge matter to the larger societies within which we live?
2) what is the relationship between lawyers as engaged intellectuals and the shaping of public policy?

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6 Nearly two decades ago the merger of an Ontario and an Alberta firm sent shock waves through the Canadian legal professions. Inter-provincial expansions are now taken for granted, giving way to international and continental partnerships. The first Canadian firm to merge with a U.S.A. firm was Tory, Tory, DesLaurier & Binnington of Toronto, which merged with Haythe and Curley of New York in 1999. See: N. Southworth, "Torys: The state of the union," *Globe and Mail* (25 September 2000) M1.

7 For example, in gender relations, urbanization, migration and multiculturalism.

8 New patterns of population migration, "diversity" politics, the so-called "new social movements" and so on.

9 The contradictory trends of economic deregulation and increasing centralization of political power in most western democracies.

10 See, for example, P. Armstrong, "A Pay Rise For City Lawyers all the Way From Silicon Valley," and "Chatline Feeds Salary Fever," *The Times, London* (7 July 2000) 27, reporting that Keith Wood, CEO of the middle-sized London law firm S.J. Berwin & Co., started the recent round of salary hikes in the City as a pre-emptive strike following on inflation in Silicon Valley lawyers' salaries. As a result, "The recently completed round of salary reviews set a benchmark of £42,000 for newly qualified lawyers – a rise of £6,000 on last year. Those with about four years of post-qualified experience (known as pqe's in the trade) can now expect £80,000 a year, 40 per cent more than a year ago." At current exchange rates of approximately $2.30 to the pound this last figure comes to $184,000.00, a decent income for someone still in their early thirties – made more attractive still by low personal tax rates in the United Kingdom. Canadian salaries are not far behind. J. Gatehouse, "Law firms raising the bar on novices' salaries," *National Post* (9 May 2000) reported that career opportunities in New York and San Francisco have been draining young talent away from major firms. As a result of two wage hikes in one year, he reported (all figures in Canadian dollars) that "Torys raised the bar all over Bay Street by giving its first-year lawyers an unheard-of $88,000 a year. Salaries generally increase $10,000 to $15,000 *per annum* over the first five years in practice." Associates often earn annual bonuses, according to Gatehouse, "typically in the range of 20% to 30% of their gross pay." These are still considerably short of the reported earnings of first year lawyers in San Francisco of US$125,000. See also online: Greedy Associates' Website http://www.greedyassociates.com/y2000salaries.html (last accessed: August 9, 2001 PST), and online: Findlaw's Infirmation Web Page http://www.infirmation.com/shared/insider/payscale.tcl (last accessed August 9, 2001 PST).

3) what is the relationship between legal knowledge and the cultures, political economy, structures, rules, customs and discourses within universities, within society at large and within the "global village?"
4) how does legal knowledge relate to cultural identity? how is legal knowledge embodied and whose culture(s)—or what shared culture—does it reflect?
5) how are legal knowledge and legal education affected by the technological and communications revolutions which envelop us?
6) what is the relationship between legal knowledge and contemporary technocratic culture?
7) how do legal educators respond to its perversely narrowed form of instrumental pragmatism? how should they respond?

Because Canadian university law faculties have never systematically looked at the implications of change for what we do, how we teach or who we teach, all of this is virtual *terra incognita*. The most recent authoritative assessment of legal education in Canada was the Arthurs' report.[11] A brilliant and thorough study, it emerged in 1981: another time, another place.

III. CRITICS OF CANADIAN LEGAL EDUCATION

Of course, *critics* of legal education do have things to say.

Limited-purpose criticisms are more or less commonplace. Sometimes scholarly, well-researched and illuminating,[12] such critiques are equally likely to be shallow, shoot-from-the-hip expressions of anger at who-knows-what.[13] Ever-absent however is research exploring the *actual* state of contemporary Canadian legal education. The empirical foundation which one might have thought essential to any reasoned education review or assessment of reform proposals is curiously lacking. Astonishing though it seems, no systematic data whatsoever is available on such matters.

This is unfortunate for two reasons. First, a good deal of acrimony and distrust inevitably results when unverifiable faith-positions collide. Secondly, there is a very real danger that damaging consequences might follow from emotion-driven reforms implemented without adequate understanding of where things stand, how they might be changing and the implica-

11 Consultative Group on Research and Education in Law, *Law and Learning in Canada: Report to the Social Sciences and Humanities Research Council of Canada.* (Ottawa: Council Press, 1983). (The "Arthurs' Report," after the Group's Chair, Harry Williams Arthurs)

12 See, for example, feminist critiques of legal profession including credentialling in J. Bouchard, S.B. Boyd & E.A. Sheehy, "Recherches Féministes en Droit au Canada: Une Bibliographie Annotée 1980-1998" en Français/ "Canadian Feminist Literature on Law: An Annotated Bibliography, 1988-1998" in English, (1999) 11:1&2 *Rev. Femmes et Droit/ Can. J. Women & L.*. See also B. Trevino & J. St. Lewis, *Racial Equality in the Canadian Legal Profession* (Ottawa: Canadian Bar Association Press, 1999) and sources cited therein.

13 See, for example, the repeated "surveys" of Canadian legal education conducted by the Canadian Lawyer, as assessed in M. Young, "Making and Breaking Rank: Some Thoughts on Recent Canadian Law School Surveys" (2001) 20 *Windsor Y.B. Access Just.* at page 000

tions of the whole for lawyering and education alike. Professor Margot Young's ongoing research apart, Canadian legal educators have made no attempt to understand or assess the limited "empirical" data which is out there.[14]

Although many common perceptions about legal education—often reducible to the concern that students "don't learn any law anymore"—verge on the ludicrous, they are not without effect. In 1999, for example, the Law Society of British Columbia proposed to abolish the law degree-exemption for entry to the bar admission/articling stages of professional qualification.[15] The stated reason for contemplating so fundamental a change was said to be:

> that many law school graduates do not have the breadth and depth of knowledge that they did years ago. This is a result of the increasing number of law students who decide not to select those law school courses that might help them in the practice of law.[16]

If such proposals were to be implemented, a Canadian law degree would no longer be taken as evidence of educational attainment sufficient to the demands of articling and bar admission courses. Such a move would mark a veritable sea-change, reversing over fifty years of educational practice in British Columbia. Spokespersons for the British Columbia Law Society have flagged their intention to export their plan to the rest of Canada, presumably through the agency of the Federation of Law Societies.[17]

IV. "BACK TO BASICS": THE ONTARIO – BRITISH COLUMBIA AXIS

In legal education as in other fields, a strong "back to basics" urge is felt. Law Society of British Columbia Bencher Richard Gibbs, for example, told a public forum in September 1999 that his Law Society considers contemporary law school graduates to be deficient in practical legal skills.[18]

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14 *Ibid.*

15 The mechanism under contemplation is the introduction of a pre-bar admission courses and possibly pre-articles "entrance examination."

16 M.F. Fitzgerald, "Memorandum to the Credentials Committee" (Vancouver: Law Society of Britich Columbia, 28 October 1998). No evidence is provided here or elsewhere in Law Society of British Columbia documents to sustain either limb of this rather damning indictment of new lawyers.

17 Hints to this effect are found in M.F. Fitzgerald, *ibid.* The point was made clearly and unambiguously during a September 19, 1999 forum on the "Law Society of British Columbia Entrance Examination" at which Richard Margetts, Anna Fong & Richard Gibbs (as representatives of the Law Society) made presentations and answered questions.

18 N. Bradley, "Law Exam Under Fire" *Ubyssey* (17 September 1999). Although representatives of the Law Society were clear that their primary cause of concern was not with graduates from either of British Columbia's two law faculties, they were unwilling to specify exactly which Canadian law faculties they considered to be deficient in this regard. Larger questions also remain unresolved such as what is meant by "practical legal skills" in such a context and what the precise roles of universities, law societies and law firms is thought to be with respect to teaching them.

Though evidence to support this position is notably lacking, the forum Mr. Gibbs addressed was treated to a number of anecdotes showcasing the supposed ignorance of unnamed recent graduates in one or another area of law.

Anecdote seems an odd sort of evidence on which to ground educational or professional reform. If we accept, as surely we must, that no one can possibly know everything about the practice of law,[19] it would not be the least surprising to find new law graduates—in common with *all* lawyers—suffering from gaps in their knowledge. Equally, we should expect new graduates—who have only three years of legal training behind them—to be in general less knowledgeable than the best of experienced lawyers: that is the nature of law, the nature of learning. Any other result would in fact be shocking and highly disturbing. Alluring though it is then, anecdotal evidence is undisciplined, beyond critical scrutiny and more likely to confirm prejudice than to reveal unknown truths. It is, in short, thoroughly unreliable.

That said, there is a long history of *some* law society officials registering their concerns about university legal education. An oft-expressed sense of disquiet forms an important part of the historical backdrop to contemporary developments. The nether-world of internal professional memoranda and private meetings and casual discussions in the office hallway or over lunch or dinner have indubitably affected the perceptions of current law society officers and journalists who have attempted to evaluate, assess or rank Canadian law faculties.

The influence of Ontario's Kenneth Jarvis, Q.C., a past Secretary of the Law Society of Upper Canada (*i.e.,* Ontario) and Chair of the Joint Committee on Accreditation, has undoubtably been considerable. A longstanding critic of university legal education, Mr. Jarvis crystallized his views in two lengthy internal documents. On February 20, 1984, writing as Secretary (*i.e.,* Chief Executive Officer) of the Law Society of Upper Canada, he wrote to David H. Jenkins, President of the Federation of Law Societies, offering an account of the history and status of law degree recognition by Canadian law societies. He also sketched out some ideas about the role of professional associations in recognizing (*i.e.*, accrediting) professional law degrees. Mr. Jarvis reasserted his views in 1995 in a memo directed to members of the Joint Committee on Accreditation in his capacity as Chair of that Committee.

Such documents are for the most part invisible to public scrutiny. Nonetheless, they can have considerable long-term impact. Circulating freely within professional spheres (unlike academic writings on, say, the history of Canadian legal education—a field that is reasonably well documented), they are undisciplined by peer review, open debate or scholarly critique. Explicitly policy-oriented, outlining courses of practical action that might be taken by law societies or by the Federation of Law Societies, such documents are written in a language which immediately makes sense to law society officials. They have a long shelf-life as bureaucratic documents and

19 According to the Law Society of British Columbia, "It has always been recognized that it is not possible for lawyers to know *all* the law": *Statement of Pre-Call Requirements,* Law Society of British Columbia (October 1996) 4.

significantly colour the perceptions of influential lawyers. They deserve to be taken seriously.

V. THE JARVIS CRITIQUE OF CANADIAN LEGAL EDUCATION

Although he was unwilling or unable to point to any evidence at all, Jarvis asserted in 1984 that legal profession policy-makers felt a growing sense of unease about law school curricula: "There are *some* indications that *some* graduates of approved LL.B. courses are coming to the Bar Admission Course in Ontario without adequate grounding in *some* areas of substantive law."[20] Acknowledging the rapid pace of change and increasingly varied character of legal practice at the time, Jarvis nonetheless felt that "[t]here is a bedrock of basic law which every lawyer must know ... ."[21] What precisely it might be, he did not—probably *could* not—say.

Similarly, in 1995 he reported that the "trust" which had existed between law societies and law faculties in 1968 "had begun to erode."[22] Unnamed "provincial representatives within the Federation" were said to be advocating "unilateral provincial action to remedy what they regard as educational deficiencies in some students who come to their bar admission course."[23] Although acknowledging that the "Governing bodies in the various provinces have always contained critics of the system who are inclined to blame on the law schools the human shortcomings they observe in young lawyers,"[24] Jarvis unequivocally asserted that "[t]he problem, however, does exist, and is becoming urgent ... ."[25]

Disturbingly, this conclusion and an associated "call to arms" was issued *without any solid evidence whatsoever* being produced in support. Oddly too, his outline of "the present situation" might well have led in many directions, not all of which conspired toward his preferred back-to-basics approach:

> In the sixteen years that have passed since the law course at the University of Moncton was approved in 1979 many things have changed. The number of identifiable areas of law has multiplied, specialization has been recognized and sanctioned, national and international practice has burgeoned, NAFTA and GATT have put Canadian practice in close comparison to other practices especially American and Mexican, and the number of applicants from abroad to the Joint Committee has climbed steadily. No doubt there have been many changes in the courses leading to portable degrees but deans and faculty

20 Letter from K. Jarvis to D.H. Jenkins (20 February 1984) at 11 (emphasis added).
21 *Ibid.*, at 12.
22 Letter from K. Jarvis to Members of the Joint Commmittee on Accreditation (27 July 1995) at 3. The Committee members were Vern Krishna, Hamish Cameron, Richard Tinsley and Lynn Smith. The letter was also copied to Phyllis A.L. Smith, President, Federation of Law Societies.
23 *Ibid.*
24 *Ibid.*
25 *Ibid.* at 7.

> members have come and gone and no one thought to seek approval of the changes from the Federation or anyone else.[26]

Developing his argument from the perceptions of a hypothetical "disgruntled Bencher" who suspects that Canadian LL.B. degrees do not provide "a complete foundation for what is done in their bar admission course," Jarvis speculated on the causes of this rather vague-but-sincerely-felt "problem":

> It may be that the mischief began when certain of the so-called core subjects were dropped in 1968. *Anecdotal* horror stories have circulated ever since of young lawyers appearing in court with no grounding in the law of evidence because they had neglected to take that subject at law school. The stories relate to other areas of law as well. It is apparently true that some law schools insist on all of the core areas being covered whereas others do not. Because of this unevenness there may be some reason for nervousness within the governing bodies.

The problem, they say, will not go away if it is left alone.[27]

Curiously, policy arguments are developed on an evidentiary foundation consisting *exclusively* of undocumented "anecdotes" or on the perceptions of fictitious people. Even such distinguished fictional personages as imaginary "Benchers" should not be allowed to dictate significant educational and professional reform without testing their ideas against evidence *of some sort.*

Moreover, the discrepancy between diagnosis, however arrived at, and Jarvis' prescription is jarring. Beginning from the premise that the world of legal practice had changed profoundly in recent years, largely in directions making it harder than ever to identify any "core" of law-work, Jarvis moves in quite contrary directions when it comes to suggesting remedies to the perceived problem. Lawyers, on his analysis, are a much more diverse bunch then in the past: we are now as likely to work in specialized areas, to operate within NAFTA or GATT frameworks, or to deal with U.S. or Mexican clients as we are to do real estate transactions in Markham or criminal practice in Hamilton. The sole basis for Jarvis' firm and unqualified conclusion that there is a "problem" of significant dimensions, however, is found in vague references to the uninvestigated "perceptions" of unnamed "disgruntled" Benchers. Despite the talk of specialization and international trade, the criticism developed is ***not*** that legal curricula are too narrow, too conventional or too inflexible to meet contemporary demands—criticisms that might seem plausible—but rather the opposite.

Although he never clearly articulates the problem or the failings of legal education, Jarvis implies (no evidence offered) that law schools no longer

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26 *Ibid.* at 2. One might note, in passing, that the Federation of Law Societies is not a regulatory body. The reasons why anyone should have sought its approval for curriculum reform at any law faculty in any province are not at all clear.

27 *Ibid.* at 5. (emphasis added).

provide graduates with the education required to commence articles. Anecdotal horror stories and undocumented "perceptions" of unnamed individuals alone sustain his conclusion that "there *may* be some reason for nervousness" [emphasis added]. All tentativeness disappears as he moves to declare the existence of a very real problem requiring bold action. The "solution" offered to the hypothesized problem is for the Federation of Law Societies to mandate a core curriculum of sorts[28] or to impose "examinations for entrance to the bar admission course."[29] This, as it happens, is exactly the proposal which the Law Society of British Columbia has recently sought to put on the national agenda.

All this is very curious. The outline of Mr. Jarvis' argument is in three stages. First, a problem is said to exist (no evidence given). Secondly, the cause of the problem is said to lie in the practices of law schools (no evidence offered). Third, the solution to the problem so identified is said to lie in greater policing of university law faculties by Canadian law societies (no evidence offered). This is "bootstraps" argumentation if ever there was such.

Let us assume for a moment, however, that Mr. Jarvis is correct in saying that *some* law graduates in *some* jurisdictions do indeed experience difficulty with Bar Admission courses. This much seems altogether likely. Any number of possible explanations might suggest themselves:

i) University Law Faculties might indeed be doing a lousy job (Mr. Jarvis' explanation);[30]
OR
ii) Law Society administered bar admission courses might be inadequately funded, poorly structured, badly taught or poorly examined;
OR
iii) Law Society regulation of the articling process might be deficient, lawyers as principals may be ignoring their educational duties and professional responsibilities toward *their* students;
OR
iv) There may be insufficient financial support for Bar Admission Course candidates, leaving them unable to focus properly on their professional qualifying courses;[31]
OR
v) There may be other educational failings that lie within the domain of the profession rather than the academy;
OR

28 *Ibid.* at 5.
29 *Ibid.* at 6.
30 Logically, criticisms of law faculties might be directed either to their curriculum or to their pedagogy. Law Societies have directed surprisingly little critical attention in the latter direction although this is arguably the area in which contemporary Canadian law schools are most vulnerable.
31 Most law students have had to fund themselves through at least seven years of post-secondary education, producing not inconsiderable financial pressures on all but the most well-heeled of them. Financial pressures on aspiring lawyers will inevitably increase as Canada moves to adopt US-style based fee structures with ever-upwardly spiraling fees for professional degree programmes.

vi) Some statistically predictable number of students may have difficulties for reasons unrelated to either professional or educational deficiencies: life throws curve balls even at the best and the brightest, making some incidence of human failing inevitable;

OR

vii) Students with poor law school records may also do poorly in bar admission courses.

In other words, even if we accept that some sort of problem—however vaguely defined—exists, it is very difficult to even begin to describe it in detail, to identify its causes or, thus, to think in terms of remedies. A good deal more information is needed.

Jarvis' two documents propose radical changes to the structure of Canadian legal education. They amount to a renunciation of the post Second World War tripartite partitioning of lawyers' training: pre-law undergraduate education; university education to the bachelor of laws (LL.B.) level (an equivalent to the USA's Juris Doctorate degree), articles and professional legal training/bar admission courses.

This, in itself, is no reason to shy away from desirable reform. When we look closely at the proposed "solution," however, matters become more and more curious. Although the idea of a coast-to-coast imposed "core" curriculum is confidently offered, the "core" is nowhere identified. It exists only as an imaginary "core." Devoid of any substance whatsoever, its relation to the demands of articles, of practice or even merely of Bar Admission Courses cannot be demonstrated. While we are busy imagining things, it is useful, perhaps, to imagine a possible exchange between Jarvis' disgruntled bencher and a newly disgruntled law dean:

> *Disgruntled Bencher: "We urgently need more core. LOTS more core. And we need it now."*
> *Disgruntled Dean: "What do you mean by core?"*
> *Disgruntled Bencher: "Details, details, details .... I don't know, but we need it urgently."*

VI. BACK TO THE FUTURE?

Jarvis' reference to changes in 1968 as having caused the "problem" hints at what the imagined "core" might look like. Prior to that year, when Osgoode Hall Law School was transformed from a professional trade school into a university faculty, Ontario's Law Society had been in the habit of ruling Canada's legal curriculum. From 1957 to 1968 the Law Society of Upper Canada had effectively, though never *de jure*, established national standards for common law curricula. They did so simply by decreeing that approved law schools must offer a number of subjects. This 1957 core consisted of the following courses: Legal History, Contracts, Torts, Real Property, Personal Property, Civil Procedure, Criminal Law and Procedure, Agency, Partnership, Company Law, Constitutional Law, Evidence, Banking and Bills of Exchange, Family Law, Sale of Goods, Equity,

Real Estate Transactions, Trusts, Wills and Administration of Estates and Municipal Law.[32]

Under the 1957 regulations eleven of these twenty courses were to be compulsory for all students. The remainder only had to be available as part of the curriculum. This smaller core, a "core core" if you wish, consisted of standard first year law courses and Evidence, Agency, Company Law, Wills and Trusts, the last five of which ceased to be compulsory in 1968.[33]

The 1968 changes gave Law Faculties a much-appreciated freedom in curriculum matters. A 1969 University of British Columbia committee, for example, expressed relief at being "freed for the first time from the shackles of Ontario."[34] That faculty seized the opportunity to introduce a new curriculum, reducing the number of compulsory subjects to allow greater choice in course selection and expanding the range of courses and seminars available.[35] All leading law faculties proceeded in similar fashion. It is important to recall that such changes took place within well-defined channels. They were far from radical in either intent or effect. Modest evolution, not revolution, best describes what happened. From Halifax to Victoria, law faculty curricula in 1978, 1988 or 1998 remained clearly recognizable as closest-possible-kin to that of previous decades.

Jarvis possibly did not intend to establish the 1957 Law Society of Upper Canada regulations as the *sine qua non* of legal education (though that inference might fairly be drawn). The *desire* to have *some* core curriculum, whatever its content might be, is, however, clear. What are we to make, then, in the abstract, of the idea of a law society or perhaps the Federation of Law Societies attempting to impose a curriculum? One might begin by noting that the very notion of a curriculum core sits oddly with Jarvis' emphasis on the fluid and changing nature of legal work during the 1970s and 1980s. The difficulties associated with forcing legal education back to (someone's idea of) "the basics" when law practice itself is demonstrably lacking in any common structure, practice or business needs, are apparent.

Nonetheless, the *idea* of a bedrock of legal education has strong emotional appeal. For that reason alone it has considerable force: the concept of a curriculum "bedrock" is so very reassuring as to seem inevitable, necessary and obvious even if it cannot be identified, described or explained! The idea is clearly reflected in a number of recent Law Society of British Columbia documents.[36]

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32 See D.H. Clark, "*Core* vs. *Elective Courses: Law School Experience Outside Quebec,*" in R. J. Matas & D.J. McCawley, eds., *Legal Education in Canada: Reports and Background Papers* (National Conference on Legal Education, Winnipeg, Manitoba, 23-26 October *1985)* (Montreal: Federation of Law Societies, 1987) at 214.

33 Jarvis, *supra* note 20 at 8.

34 1969, Report of the Curriculum Committee of the Faculty of Law, University of British Columbia, as quoted in Pue, *Law School: The Story of Legal Education in British Columbia* [Vancouver: Continuing Legal Education Society of British Columbia & Faculty of Law, University of British Columbia, 1995] (xxvii + 285 pages) at 277.

35 Pue, *ibid.*, at 278

36 Many of these were gathered together as "Consultative Committee Materials for Discussion" (Vancouver: Law Society of British Columbia, Meeting of the Consultative Committee Entrance Examinations, October 20, 1999). The crude notion of a curriculum

Certainly, the open curriculum of contemporary law faculties does, in principle, permit some students to specialize in a thoroughly non-professional stream (much as at Oxford or Yale, for example). A noble dream in the view of some Canadian legal scholars, this nightmarish vision haunts some legal practitioners.

VII. LEGAL EDUCATION AT ONE MAJOR CANADIAN UNIVERSITY

We cannot here begin to adequately address the many issues relating to the structures of legal education, pedagogy and curriculum which need to be understood if the challenges of change are to be confronted. Recognizing that wide-ranging concerns register large within both the legal profession and the legal academy we have set out on the more modest task of evaluating the patterns of legal education as reflected in curriculum and course selection at one major Canadian University. The University of British Columbia ("UBC") seems an appropriate place to begin gathering data of this sort for a number of reasons. First, UBC is the largest law faculty in the province where professional concerns have recently registered most strongly. UBC is also one of Canada's leading law faculties, consistently placed in the top rank by the USA Gourman report.[37] It is also one of the largest in common law Canada, second only to York University's Osgoode Hall Law School in student enrollments and with a sizeable faculty complement. The UBC curriculum is one of the most diverse in Canada, featuring a wide array of courses, seminars and workshops. Many of these are innovative, exploring fields not traditionally part of the common law curriculum. Moreover, the combination of a large array of courses with an all-but entirely optional upper year curriculum, makes it theoretically possible for UBC law students to almost entirely avoid taking conventional law subjects after their first year. Possibly for this reason, maybe for others, the faculty is relatively routinely taken to task in the annual surveys of the *Canadian Lawyer*.[38]

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bedrock was thoroughly denounced by Canadian Law deans (acting both individually and collectively through the Council of Canadian Law Deans) and, *sotto voce*, by the Law Society's own expert consultant, Australian Christopher Roper.

37 *The Gourman Report* ranks USA, Canadian, and International law faculties. Throughout the 1990's it has ranked the University of British Columbia second in Canada, with scores just below those of the University of Toronto and safely within the numerical score ranges of top-twenty USA law faculties. Sample scores for University of Toronto, University of British Columbia, and the twentieth ranked USA faculty are as follows: 1993 (4.69, 4.65, 4.62); 1996 and 1997 (no change) (4.70, 4.66, 4.61): J. Gourman, *The Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities* (Los Angeles: National Education Standards, 1993) at 113-114: J. Gourman, *The Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities* (Los Angeles: National Education Standards, 1996) at 97-98; J. Gourman, *The Gourman Report: A Rating of Graduate and Professional Programs in American and International Universities* (New York: Random House, 1997) at 90, 106.

38 Conversely, it should be noted that UBC, like many Canadian law faculties, also offers a large number of courses taught by hands-on practitioners. This makes it possible for students to select their courses in an almost exclusively practice-oriented pattern and, theoretically, obtaining few of the benefits of liberal legal education that University law faculties are supposed to provide. This possibility is less commonly commented upon in the professional press.

In order to advance discussions of legal education beyond arguments based on *assumptions* about what students and faculty get up to we have sought to systematically gather statistically reliable information about legal education at the University of British Columbia. Drawing on University records, we have sought answers to five central questions:

1) What courses do students take?
2) Who takes traditional "core" courses? Who takes non-traditional offerings?[39]
3) What proportion of UBC law students select entirely "non-professional" courses for their LL.B. studies?
4) What proportion of students shun full-time faculty, selecting significant proportion of upper year courses taught by legal practitioners (adjunct instructors)?
5) How do grades distribute between seminars and courses, "core" and untraditional offerings and full-time and adjunct teachers?

VIII. METHODOLOGY

The University of British Columbia's Registrar's Office provided us with data on student course selection for the 1991, 1993 and 1996 entry years.[40] These years provide a reasonable sample of classes of students who began their studies after a modest first-year curriculum reform in the early 1990s and who have since been able to complete their degrees. The sample spans the decade, including approximately 50% of students who began and concluded their degrees during the 1990s.[41] Since the first year curriculum is mandatory and comprised almost entirely of "core" courses,[42] we limited our study to second and third year course selection.[43]

In order to make sense of course selection patterns we classified the large number of individual courses into eighteen categories. Our taxonomy reflects both course content and delivery format. Most law school offerings can be classified in a simple "grid" showing variations in course content

39 Because of the data available to us from the registrar's office is limited in scope we were limited to a simple gender and age analysis.

40 In order to preserve student confidentiality data was provided to us in coded form which obscured the identity of individual students while nonetheless making it possible to engage in sophisticated statistical analyses.

41 We looked only at those students who began their law degree at UBC and excluded students on exchange from another university or those who transferred to UBC after the first year

42 The only courses in the first year curriculum in law at UBC which are not "core" by conventional definitions are a single course on "Perspectives" and the Legal Research and Writing programme. Legal Research and Writing is, of course, an essential legal skill in all sorts of professional work and its importance is widely recognized in the practicing profession. Obviously, given the mandatory and all-but entirely "core" character of the first year curriculum, the *overall* dominance of "core" courses in the education of LL.B. students at the University of British Columbia is considerably stronger than our upper year data indicates.

43 Only 3 courses are mandatory in the University of British Columbia upper year curriculum: Constitutional Law (*Canadian Charter of Rights and Freedoms* and Federalism), Evidence and Moot Court.

Table A
Course Grid

	Lecture	Seminar	Workshop
Core	"Core"/Lecture	"Core"/Seminar	"Core"/ Workshop
Substantive non-core	Substantive non-core/ lecture	Substantive non-core/ seminar	Substantive non-core/ workshop
Perspective	Perspective/ Lecture	Perspective/ Seminar	Perspective/ Workshop
Skills	Skills/Lecture	Skills/Seminar	Skills/ Workshop

along the vertical axis and the major variations in teaching method/delivery format along the horizontal axis (Table A). Several types of law school offering do not fit comfortably into this grid: clinical programmes, law review credits, exchange courses or courses in other faculties, directed research/studies or international, comparative and foreign law offerings.

For these purposes we have taken the most conservative possible approach to identifying "core" courses, treating as "core" only those offerings that focus primarily on areas of substantive law treated as most "relevant" in the writings of Canadian professional bodies. We arrived at our working definition of "core"—in this limited sense—by reference to the Law Society of Upper Canada's 1957 listing of courses and to the 13 "core" courses tentatively identified in more recent Law Society of British Columbia proposals for an entrance examination (See **Table "B,"** Table of Core Courses, below).

Our "non-core substantive" category refers to courses that have a solidly doctrinal content even though they are not in areas commonly designated as "core" by either professional bodies or law faculty rules. They are in all respects conventional law courses. The category includes main-stream or even bread-and-butter courses such as Securities Regulation, Consumer Protection, Insurance law, Construction law, Employment Law, Labour Law, Environmental Law, Natural Resources Law, Immigration Law, Intellectual Property Law and so on.

Our "perspective" category is admittedly somewhat arbitrary. It groups together courses which offer social-context and/or critical perspectives on law. Many of these in fact include significant and important substantive law content. Examples of courses we put in the "perspective" category include Feminist Legal Studies, Legal History, Sexuality and the Law, some First Nations subject-matter, Penal Policy and Tax policy. Our "skills" classification includes courses which emphasize practical skills such as legal research and writing and workshops on mediation, negotiation and alternative dispute resolution. Finally, although clinical courses might reasonably be treated as "skills" training, we consider them sufficiently distinct to merit a category of their own. These, too, involve a good

Table B
Table of Core Courses (excluding mandatory first year courses)

"Core" area	Examples of UBC Courses included in this category
Contract	
Torts	Advanced Torts, Personal Injury Law, Topics in Tort Law
Real property/real estate law	Real Estate law (landlord/tenant), Real Estate Development, Real Estate Transactions
Personal Property	
Criminal law and procedure	Advanced Criminal law, Advanced Criminal Procedure
Civil procedure/civil litigation	Evidence, Civil Litigation
Constitutional law	Federalism, *Charter*
Company law	Corporations I, Corporations II, Corporate Transactions, Close Corporations, Topics in Corporate Law (mergers & acquisitions)
Family law	Family law
Wills & Estates	Trusts, Topics in Trusts/Estates (pension law), Succession
Tax law	Tax I, Tax II (corporate tax), International tax, Topics in Tax law (trusts & estates; tax dispute resolution)
Commercial law	Commercial transactions, Secured Transactions, creditor remedies, insolvency law, Topics in commercial law (maritime law), Equitable remedies
Administrative law	Administrative Law
Professional responsibility	Professional Responsibility

First Year Courses: Contracts, Criminal Law and Procedure, Legal Institutions of Canadian Government, Legal Writing and Moot Court, Perspectives on Law, Real Property and Torts.

deal of substantive law teaching and much of that in conventionally defined "core" areas. In a word, our approach throughout has been to be conservative, not overly inclusive, in the definition of "core" courses. We have no wish to exaggerate the proportion of "core" legal education—however defined—to which students are exposed.

Along the "delivery format" axis, we treat courses as falling into one of three three categories: lecture, seminar and workshop. In principle we can understand "lecture" courses as encompassing both traditional lectures and classic law school "Socratic Method" courses. Seminars, by contrast, rely on less hierarchically structured forms of "discussional" teaching of one sort or another, while workshops involve students in regular active participation in assigned tasks as part of their classroom experience. In practice, however, we have been unable to obtain full information about teaching

methods actually employed by numerous instructors over a decade. Limited as we are to information provided by course descriptions contained in the law faculty calendar and in registration materials, our categories are largely based on the number of students allowed to enroll and the venue for the class (large lecture hall, seminar room, computer lab or outside venue).

Finally, we have combined all international, foreign and comparative law courses into one category ("International"), even though some might plausibly be considered as doctrinal non-core or perspective courses. Because "international" courses often fit uncomfortably into the other categories it seems better to create a distinct course category rather than smashing courses into boxes they do not entirely fit. For the purposes of statistical analysis we also created separate categories for directed research, clinical courses, law review credit as well as education abroad and courses offered outside the law faculty.

Even this relatively simple categorization of courses, however, proved unworkable, generating a level of refinement that exceeded the limits of statistical reliability in a study with our sample size. For the purpose of statistical analysis different categories had to be grouped together. In the result we compared "core" courses with all other courses, producing a simple core/non-core divide. Similarly, we treated "lectures" as one category and all other teaching methods as a group.

A. Findings

1. Course selection

We found that the average LL.B. student takes about 60% of her or his upper year (second and third year) course load from the "core" course category, a pattern which does not vary significantly with gender or age. For example, the average male from the 1996 entry year took 58.9% "core" courses, while 59.9% of the courses selected by his average female colleague were from the conventional "core" fields. The average student under the age of 25 in that entry class took 58.7% "core" subjects while the figure was 59.9% for students between 25 and 39 and 61.2% for those over 40. Finally, both the male/female ratio and the age profile in any given "core" subject classroom reflects the composition of the student body as a whole, again suggesting that there is no identifiable and statistically significant gender preference with regard to course preferences.

Looking at the 1996 entry year as a whole, the majority of students took between 9 and 13 core courses in their second and third years of legal education. Most students (52.3%) took between 17 and 20 upper year courses in total. In the result, 55.9% of students from that entry year selected "core" courses for anywhere between half and two thirds of their total course load. Only 11.3% of students took 5 core courses or less, and only 14.2% took more than 15 core courses. Surprisingly, despite the fact that the number of non-core courses offered increased at the University of British Columbia during the 1990s, the percentage of students taking between half and 2/3 of their courses as core courses increased over the decade. Of the 1993 entry year only 48% of students took half to 2/3 core courses while this was true

for only 39.3% of the 1991 entry year. Also in the 1991 and 1993 classes approximately 3% of students took less than 30% of their courses as core courses. In 1996, by contrast, *no* student did so. Four students from the 1996 entry year in fact managed to take 100% of their upper year courses from the "core" curriculum.

Moreover, a great proportion of students[44] counted between 1 and 4 non-core *substantive* law courses in their programmes of study. Interestingly, even though they have a large selection to choose from, the overwhelming majority of UBC law students have taken no more than one perspective course as part of their upper year course of study.[45] The percentage of students who choose to take only *one* or no such course has increased over the years despite an increase in the number and range of perspective offerings. No student *in those three entry years* took more than 40% of total courses (*6 or* 7 courses) from the perspective category. Most students did take one or two skills courses in their upper years,[46] although none opted to take more than 60% of their total course load from the skills course offerings.

Looking at our other criteria, course delivery format, we found that between 76 and 83% of courses taken by any average student (regardless of gender or age) were delivered as lectures rather than in seminars or workshops.[47] Again, the pattern in this respect does not vary greatly over the decade.

Of the 16 to 18 courses taken by the average law student, about 11 or 12 (or between 65 and 70%) were taught by full-time faculty and 5 or 6 (or between 29 and 32%) by adjunct faculty.[48] Most of the average student's upper year courses in our data run were taken during daytime classes (14, or 82%, as compared with only 3, or 18%, in the evening).[49] We found no student who had taken more than 75% of their courses with adjunct instructors or who elected more than 50% of their course load as night classes. Surprisingly, perhaps, there appear to be no significant variations by gender or age with regard to these preferences.[50]

2. Course grades

We found no significant differences in grade allocation between "core"

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44 86.3% in 1996; 82.8% in 1993 and 87.6% in 1991.

45 62.8% in 1996. The figures were 50% in 1993 and 59.1% in 1991 for students taking one or no perspective courses. In 1996, 85.1% of students took 2 or fewer perspective courses.

46 67.6% in 1996; 85.3% in 1993 and 69.7% in 1991.

47 Here, the percentage of lecture format courses is greater than the percentage of "core" courses. This might be explained by our inclusion in the "non-core" category of all substantive or doctrinal law courses, most of which would also use the lecture format as the main method of delivery of the course content.

48 "Adjunct" faculty are usually practicing lawyers who teach a course in their field of practice. UBC relies heavily on adjunct teachers. The 2000/2002 calendar, for example, lists 38 permanent faculty, 5 "visitors" and 95 "Adjunct Professors."

49 We have defined evening classes as those ending after 6:00pm, no matter what the starting time is.

50 Again, the results do not vary significantly between the 1991, 1993 and 1996 entry years, except in 1993, where the average student over 40 took up to 28% of their courses in the evening, whereas students under that age only took about 12-16% of their courses in the evenings.

and "non-core" courses, or between those courses taught by full-time faculty and those taught by adjunct faculty.[51] The mean grade point average was negligibly higher (by 1-3%) for seminar-type courses[52] (including workshops) than for lecture-type course[53] a small difference possibly attributable to the exemption of courses with fewer than 15 students from Faculty regulations requiring compliance with a grade distribution profile. Alternatively, practices of multiple evaluation, feedback and assessment that tend to prevail in smaller classes may simply produce better student performance. Regardless, the small discernible gap between lecture and seminar/workshop grade point averages had almost disappeared for the 1996 entry year.

IX. ACTUAL LEGAL EDUCATION AND THE KNOWLEDGE NEEDS OF CANADIAN LEGAL PRACTITIONERS

Many of these findings are surprising, running counter to our working hypotheses—and to many commonplace assumptions about legal education. If the University of British Columbia Faculty of Law is representative, then pause for reflection is in order. Contrary to common assumptions, most students during the last decade have overwhelmingly selected courses within the legal "core" as conventionally defined. Most, regardless of gender or age, take at least 60% of their upper year courses in the "core" subject areas and do relatively well in them. If we count the mandatory first year curriculum as being part of the "core" curriculum then approximately 73% of the coursework done by UBC law students during the past decade has been in fairly narrowly defined, "meat and potato" areas of substantive law or skills training.

These findings contrast particularly starkly with the strongly-put, oft-heard criticism that modern Canadian law faculties "hardly teach any law at all." While most full-time law teachers intuitively understand such assertions to ridiculously caricature faculty and students alike, the data from the University of British Columbia reveals student choices much more strongly skewed toward traditional doctrinal courses than many would have expected. Certainly, the results were much stronger and more consistent than we anticipated. Two consequences follow. First, and most narrowly, the fact that some proportion of students in Professional Legal Training Courses in British Columbia, Ontario or elsewhere encounter difficulty cannot be explained by a lack of significant exposure to "core" doc-

51 The younger students (*i.e.*, under 25 years of age) have a mean grade point average about 3 percent higher than those students over that age. The males over 40 seem to have the lowest mean grade point average, but the number of cases in each entry year is too small to have any great statistical relevance.

52 The mean grade point average for seminars and workshops lies between 76 and 78%, except for the 1996 entry year, where it falls to 74%, where it equals the lecture-type grade point average.

53 The mean grade point average for lecture-type courses is 73 to 74%.

trinal courses in their university education.[54] One needs to look elsewhere, casting a critical eye perhaps on law school pedagogy (rather than curriculum) or on the structure, content, delivery methods, costs and resources of those components of legal education controlled by Canadian Law Societies: *i.e.*, articles and professional training courses.

Secondly, we need to reflect on the seeming determination of law students to confine their university studies within the narrowest possible channels. The patterns here overwhelmingly suggest that Canadian law schools may be deficient, not for failing to teach "core" black-letter law, but in fulfilling the other important mandate of university legal education—providing a liberal education in law. Lawyers fulfill many diverse and important functions. In recognition of this one of the principal motivations behind placing legal education within universities in the first place was precisely to ensure the production of lawyers who are capable of fulfilling their functions *as citizens.* Lawyers need to be *educated*, in other words, not simply trained as technicians of law. Our data raises possible concerns—we put it no more strongly than that—in this regard.

A narrow conception of legal education[55] which enjoys considerable currency in Canada today constructs legal "knowledge" as consisting only of summary knowledge of a few substantive areas of law. It assumes that rote knowledge of a few designated "core" areas best prepares students for legal practice. If however law school graduates educated under this *narrow* model of legal education are not sufficiently prepared for the practice of law *in the view of professional governing bodies*, we need to re-examine or re-assess many of our assumptions. In any event, "knowledge" of a few designated core areas seems to fall short of preparing law students for legal practice in the 21st century. How then are we to redefine the knowledge that must be passed on from the educators to future lawyers? What skills should students acquire if they are to practice law in a rapidly changing world?

The narrow model of legal education treats "knowledge" instrumentally and precisely, as being more a matter of specific content rather than processes of learning and ways of knowing. Viewed as consisting of discrete bits and pieces that can be collected in the way one might load files on a computer or gather souvenir mugs in the cupboard, this is an impoverished

54 It is possible, of course, that the University of British Columbia's students are more conservative in their course selections than students elsewhere and, hence, that difficulties are only experienced at PLTC/ bar admission course by graduates of other law faculties. This seems a highly unlikely hypothesis to us for the reasons outlined above in our description of the University of British Columbia programme. If law societies have data showing significant differences in PLTC/ bar admission pass rates between one law faculty and another, they have not released this to public scrutiny.

55 This narrow conception is emphatically *not* the "traditional" Canadian view. From Weldon through Aikins to Curtis, Canadian legal education has always aspired to citizenship education as well as technical training in professional education. See, for example, J. Willis. *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979); R. MacDonald "The National Law Programme at McGill: Origins, Establishment, Prospects" (May 1990) 13 *Dalhousie L.J.* 211; Pue, "'The Disquisitions of Learned Judges': Making Manitoba Lawyers, 1885-1931," J. Phillips & G.B. Baker, eds., *Essays in the History of Canadian Law: In Honour of R.C.B. Risk* (Toronto: Osgoode Society, 1999), 825; Pue, *supra* note 34; Pue, *supra* note 3.

conception of learning. Reduced to separate and specific subject-areas, equally uncontaminated by skills (literacy, for example) or the social knowledge necessary for legal practice—let alone citizenship—this is a sterile and unnecessarily constrained vision of "learning." The specification and prioritizing of particular subject areas (divided into separate courses and taught by the "experts" in those areas) tends to encourage the teaching of law, unthinkingly, as "unproblematic categories of finite technical knowledge."[56] The eminent scholar Margaret Thornton argues that the "core" legal curriculum has not changed substantially over the past half-century. Centred on private property, individual rights and profits,[57] the tendency of narrowly technocentric approaches to legal education has been to marginalize affective, intuitive, critical, theoretical and contextual knowledge—tolerated, at best, as decoration. Perversely, however, it is precisely *these* marginalized sorts of knowlege which lie at the heart of the practice of any human profession.

The conventional "core" identified by professional regulatory bodies inevitably reflects this constrained understanding of legal learning, ironically in the hope of listing discrete course content essential to the practice of law. It is knowledge of those subject matters that are perceived to be an integral part of any general practice or of the articling experience. However, "relevancy" is notoriously hard to pin down. It is problematic not just because of the huge array of tasks and functions lawyers undertake, but also because no snapshot picture of legal tasks—even if such were available—can remain accurate. What constitutes "relevant knowledge" continuously changes—now at the accelerating pace propelled by developing technologies and by the globalization of legal practices.[58] The concern of professional bodies to ensure a base level of "competence" is thoroughly legitimate but the strategies currently relied upon in pursuit of that desirable goal seem flawed and of doubtful utility in protecting the public interest.[59]

Concern for "competence" as a justification for the imposition of "core" subject areas in the law school education depends on the assumption that there is a significant relationship between success in law school (or on a professional exam) and competence in legal practice. This commonplace assumption has considerable commonsense appeal. Surprisingly, however, there is, in fact, little solid evidence demonstrating any such correlation between law school performance and professional competence.[60]

Under a narrow model which divorces "knowledge" of black letter legal rules from practice "skills,"[61] both are trivialized. When we fall into such habits of thought, both "skills" and "perspective" courses (teaching critical and theoretical forms of knowledge that are immensely practical in relation to sophisticated appellate litigation or offering legal policy advice to corpo-

56 M. Thornton, *supra* note 2 at 373.
57 Thorton, *ibid.*
58 J. Macfarlane, "Assessing the 'Reflective Practitioner': Pedagogic Principles and Certification Needs" (1998) 5:1 *Int'l J. Legal Prof.*, 63 at 69-70.
59 *Ibid.* at 71.
60 *Ibid.*
61 *Ibid.* at 74.

rations, municipalities or sovereign governments, for example) are marginalized. A false dichotomy between "academic" and "professional" learning about law is ultimately damaging to technical legal competence itself.

Finally, under the narrow model of legal education, the "knowledge" that is passed on to students is measured by their ability to recall, in a three-hour written examination (usually open book), the set of "objective legal rules" and to mechanically apply them to a fictitious set of facts. Although the ability to carry out legal analysis is arguably well-evaluated in such examinations, such skills are rarely explicitly *taught*.

Disturbingly, our findings suggest Canadian law students have overwhelmingly internalized a narrow conception of legal learning, to the detriment of their own professional lives and citizenship roles. We are called upon to go "back-to-the-basics," starting with fundamental questions about what "knowledge" we need to pass onto our students if they are to excel in the changing world of 21st century legal practice.[62]

Several existing models of legal education may provide alternative starting points as we begin to reflect upon the constructions of legal knowledge likely to prove most helpful in meeting evolving professional and societal demands. One, the "reflective practitioner" model seeks to integrate knowledge and skills. Starting from the premise that law only has meaning through its application to concrete situations and through its effects upon society, "reflective practitioner"—oriented education would emphasize that knowledge is best acquired through learning that is "dynamic, open-ended and contextual." Promoting reflection, rather than just narrowly conceived "competency," "reflective practitioner training would emphasize reflectiveness, the exploration of feelings, self-awareness and self-appraisal."[63] "Knowledge" under this model includes the development of responsiveness to change, flexibility and professional self-growth[64] rather than merely on knowledge of the black letter legal rules. Such an education would encourage team work as fostering self-reflection and awareness of the learning process.[65]

An alternative model of legal education seeks to merge theory, critique and practice. Andrew Goldsmith has argued for a broad understanding of legal knowledge, drawing on a variety of disciplines to allow students to appreciate the social consequences of law as it plays out in every day life. Understanding effective legal practice to require the integration of critical and ethically-oriented understanding of lawyers' social responsibilities that go beyond *the needs of* their clients, Goldsmith's model, like "reflective practitioner" approaches, emphasizes self-examination and self-critique.[66] Deliberately critical of many "current orthodoxies" in professional life,

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62 See S. Coughlan, *The Future of the Legal Profession: The Challenge of Change* (Canadian Bar Association, 2000). This report is discussed in C. Schmitz, "Study Maps Future of Legal Profession" (2000) 20:17 *The Lawyers Weekly* 1.

63 *Supra* note 58 at 73.

64 *Ibid.* at 64.

65 *Ibid.* at 74.

66 A. Goldsmith, "'Failed Sociologists' in the Marketplace: Law Schools in Australia" (1998) 25 *J. L. & Soc.* 33 at 47.

such an approach would seek to ensure that the special interests played out in law and the social consequences of legal interventions are rendered transparent to students, in order to foster their participation, as professionals, in social and legal reforms.[67]

The two approaches converge in suggesting that legal knowledge should be communicated to students in ways that integrate knowledge of legal rules with the skills necessary for legal practice in a changing world. These include *problem solving skills, legal research and writing*, reflexivity, flexibility, communication, critical *thinking* and the ability to see law in its *social* context. All are and should be taken together. They are part of a single package. Appreciating this renders the borderlines between "core" courses and "perspectives" or "skills" training much fuzzier and less clear than we have become accustomed to thinking. Law students should acquire "knowledge" that encompasses legal rules and skills and which merges "theory" with "rules" and "practice" at every level and pervasively. Merely enumerating subject fields as "core" or "non-core" does little to flesh out what legal education can and should properly be. Ideally these elements, at present dichotomized and kept apart in the law curriculum, would be reintegrated so as to educate reflective and ethically responsible citizen-lawyers rather than mere technocrats who mechanically apply "legal rules" in the service of client interests, devoid of any sense of social responsibility or context. Prevailing approaches to education have been critiqued by John Ralston Saul. They miss, he says, "the simple, central role of higher education—to teach thought. A student who graduates with mechanistic skills and none of the habits of thought has not been educated. Such people will have difficulty playing their role as citizens."

By contrast, the broader approaches of Macfarlane and Goldsmith do not focus on the transmission of knowledge as a finite set of objective and easily identified legal rules in very specific areas. An education focused instead on the skills and abilities required in the rapidly changing, increasingly globalized and specialized legal profession promises a better preparation for 21st century legal practice, for a multitude of other fascinating law-related careers and for full participation as citizens of the communities in which our students will live.

X. CONCLUSIONS

In keeping with our objectives, our conclusions are modest. Empirical evidence suggests, but does not dictate, certain lines of future enquiry that we believe would prove fruitful. Though our results raise concerns about legal education, they are not the concerns that dominate current professional thinking. Most strikingly, commonplace assumptions about law students' education have been shown to be false: law graduates clearly do not avoid courses in the so-called "core" areas. In fact they select an overwhelming proportion of their course load in such subjects. Moreover, at

67 *Ibid.* at 48.

least at UBC, the average student can be expected to have taken about 30% of their courses directly from practicing lawyers.

Three consequences flow from this. First, if there are problems in law society-administered bar admission courses, they need to be looked at and fixed where they emerge. It will not do to project all sins back onto the curriculum of University law schools. Secondly, and for any number of reasons, our findings raise serious questions as to whether contemporary university legal education may not be narrower and more constrained than it should. An overly constrained legal education does not adequately prepare students for the demands of real-world legal practices. Any educational innovation or professional initiative which might tend to exasperate a premature urge to narrowness of vision can only be counterproductive—at least if it is the long-term interests of the public and of upcoming generations of lawyers with which we are concerned.

The last word belongs to John Ralston Saul, who has criticized our educational systems for "teaching most people to manage not to think. Not only do we not reward thought, we punish it as unprofessional .... The teaching of transient managerial and technological skills is edging out the basics of learning."[68]

The possibility of Canadian legal education degenerating to such a level should strike terror in the hearts of lawyers and legal educators: law and lawyering are too important for ***that***.

68 J.R. Saul, *supra* note 2 at 15.