Who were the first professional law teachers? An historical investigation

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There has been relatively little interest in and debate on the origins of law teachers, their role and their influence in the development of legal education generally. However, there has been some research in recent years that has explored their work, backgrounds, motivation and employment context[2].We also have an excellent critique of the leading teachers/jurists in the 'classical period' of c 1850-1907[3] and some notable biographies of leading writers on law[4] but these biographies focus little on their teaching and interaction with students. Yet, we know that law teaching has a distinct culture which manifests itself in a number of ways and which sometimes makes law teachers hard to accommodate in developmental, research and other aspects of university life[5]. And we also know, albeit more anecdotally, how important individual law teachers are to students.

The aim of this paper is to pose a basic question. What might explain the priorities, methods and culture of contemporary law teaching and law teachers? The focus is on the law curriculum, including assessment and teaching methods rather than on other activities of law teachers, such as research. It is hypothesised that law teachers are, indeed, a distinctive group, especially in terms of how they define their role and their work within higher education.

Broadly, it appears that most law teachers today continue to take their inspiration from the legal profession, just as law schools continue to promote themselves through marketing materials to prospective students as preparing students for a career(solely?) in the legal profession[6]. Indeed, it is likely that most law teachers today more closely identify with the *legal*

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[2] See for example, Leighton P. Mortimer, T and Whatley, N (1994) Toady's Law Teachers: Lawyers or Academic? Cavendish; Cownie, F (2004) legal Academics: Culture and idenitity Hart Publishing.

[3] Sugarman,D (1986) Legal Theory, the Common Law Mind and the Making of the Textbook Tradition.OUP

[4] See, for example, Fifoot,C (1971) F W Maitland: A Life; Abel-Smith,R and Stevens, R (1967) Lawyers and the Courts; Twining.W (1974) 'Some jobs for Jurisprudence vol 1 British Journal of Law and Society 151; Lacey,N (2004) A Life of HLA Hart: The Nightmare and the Noble Dream Oxford. OUP;Parry, R G (2010) David Highes Parry-A Jurist in Society Cardiff, Cardiff University Press.

[5] See generally, Beecher,T and Trowler T (2001)Academic Tribes and Territories ; Intellectual Enquiry and the Culture of Disciplines Open University and SRHE. It may also be of interest that Judith Willis is currently completing a LERN-backed project on the experience of and attitudes towards law teachers undertaking qualified teacher status where it has often been asserted that such programmes do not adequately reflect the needs of law teaching and law teachers..

[6] See, Broadbent, G and Selman P (2013) ' Great Expectations :Law Schools' Websites and the 'Student Experience' Vol 47 The Law Teacher 44

profession than with the *teaching* profession, including those that do not teach on legal vocational programmes. So; the question of identity may well be of great importance. Although the expansion of university law teaching has led to increased affinity between law teachers and teachers of other disciplines along with the culture of higher education generally, this is counterbalanced by the major growth in the private providers of legal education where it is thought the majority of teachers are recruited from the legal profession. The question, therefore, of law teacher identity(ies) is complex [7], though in many respects it is shared with other teachers of disciplines with a strong vocational orientation, such as medicine and architecture.

There is then the question of title. The earliest law teachers were to be found in the Inns of Court and Chancery. But they were called Readers. The development of law teaching in universities in the nineteenth century produced some famous teachers and writers on the law. These include Bentham, Dicey, Maitland, Pollock and Amos. But these are generally referred to as Jurists. The title Tutor is used by Oxbridge and other universities and where professional bodies such as the Law Society provided courses from 1825, the person who delivered them was referred to as a Lecturer. What is striking is the reluctance to use the word 'teacher', perhaps indicating that such a title carries with it a lack of substance and credibility? Or perhaps there is too strong an association with the less prestigious 'school' teacher?

Interestingly, in 1909, the Society of Public *Teachers* of Law (SPTL) was set up. However, it was launched at the Law Society and its guiding light was Edward Jenks who was the then Director of the Law Society's School of Law. The early history of the SPTL has been recently documented and analysed[8] and in a review of the work by Economides it was commented on that at the time of its foundation; 'the (legal) profession and the judiciary, for the most part held law teachers in low esteem and looked down on them, not as jurists but as failed practitioners[9]'. The same reviewer considers the early years of the Society as 'little more than an introverted and highly conservative gentlemen's club'[10] , though he accepted that great progress had been made more recently. In 2002 the Society dropped the title '*teacher* from its name and is now called the Society of Legal Scholars.

A particularly difficult but perhaps significant period had occurred in the 1960s when legal education was greatly expanding , but mainly outside the universities. The refusal of the SPTL to allow into membership those teaching outside universities led to the setting up of the Association of Law Teachers (ALT) in 1965 that has retained and even expanded its concerns with teaching issues[11]. The two associations have retained their separate identities and commitments but possibly there is still an uneasy calm between them. This unease is perhaps very much about law teacher priorities, loyalties and how they view themselves.

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[7] See research projects referred to in Note 2 supra where empirical work clearly indicated the ambiguities and tensions on this issue.

[8] Cownie, C and Cocks, R (2009) A Great and Noble Occupation:The History of the SPTL Hart Publishing

[9] Economides,K (2011) Review of Cownie and Cocks, supra, in Vol 61 Journal of Legal Education 325

[10] Ibid at p 326

[11] Marsh, S (1990) A History of the Association of Law Teachers: the First Twenty-five Years , London, Sweet and Maxwell

The key questions

How did this come about? Why are there these tensions around teaching and some unarticulated but well understood hierarchies within the profession, such that some activities, some ways of working are seen as more worthy than others? There are so many question, only some of which can be addressed in this paper but it argued that there is no denying the weight of tradition and culture that impacts on law teachers today. And there are other broader questions such as why are law teachers in the UK different from law teachers in other parts of Western Europe? This is in terms not just of what and how they teach but also their influence and their relationship with state institutions and those within a wider professional context?

This paper seeks some answers from a variety of sources, some of which focus on the nature of the common law and the legal profession but others, less well known, on the origins of law teaching itself, how law teachers worked and what they achieved. Importantly, we need to know this legacy, so as to better understand some of the anomalies, tensions and controversies in contemporary legal education.

This paper poses a number of key questions in order to help define this legacy, starting, inevitably, with the origins and key developments in legal education itself. It sees the critical phase as the nineteenth century. This century saw major legal changes ,but also the formalising of legal education, the flowering of law publishing, and also the rise of university teaching and teachers of English law. As well as considering the contributions of major academic and other commentators, the paper draws on a range of primary and secondary relevant source materials from this period and , including various reviews and surveys of legal education, the views of contemporary commentators and the records of legal education providers. The providers include universities, the legal professions and the often ignored or derided so-called law crammers. Particular reliance is placed on hitherto neglected rich sources. These are basic legal education materials. Included here is evidence of the law curriculum, the nature, content and statistical data on examinations, examination papers and suggested answers. Emphasis is placed on learning materials, especially law texts and books designed specifically for a student, as opposed to practitioner, market.

We cannot, of course, access data which sheds light on the questions of how they taught, how they related to students or their audiences and whether we would consider them effective teachers. The lack of data makes it difficult to assess their work. A few lectures by prominent jurists have been reported or published, generally given by university teachers or judges but we have virtually a blank sheet of paper for those who taught students facing examinations on a day to day basis. We have to rely on their publications if they were active in writing. We can read their student texts, their treatises on English Law and of course, we can rely on wider data, such as student numbers and sometimes evidence of student performances in examinations. However, it is arguable that these endeavours are made more difficult because research, scholarship and writing have always had far higher status than teaching, a matter that has intensified in recent years with greater pressure on teachers to publish following the Research Assessment Exercises and similar.

A preliminary issue

This paper seeks to identify and explore the contribution of law 'teachers'-and given the wide range of titles ,when undertaking this task it is important to ask what is, specifically, a 'law teacher'?. There will many views on this and on what constitutes a 'good' law teacher[12]. There is anyway today an emphasis now on facilitating 'learning' rather than teaching, which some see as too 'top down', giving the teachers too dominant a role and being inefficient in students' gaining understanding.' Learning'. of course, requires sufficient learning materials and that those materials are well designed so as to enable learning. These are not always available and can be a variable quality..

'Teaching' can, of course, sound a bit bossy but if a teacher is an explainer(as opposed to a simple 'declaror' or expositor) of the law, a facilitator of understanding and ideally a critic and challenger the learning experience should be good. A teacher should allow different ideas to surface and, maybe importantly, is student- rather than subject- focussed. Additionally, they should be able to empathise with student needs and aspirations. The 'reader', the 'tutor' and 'lecturer' may also exhibit these qualities, but it is the emphasis on the student that marks out the 'teacher'. Let us now turn to the key Questions in order to try and identify where our current traditions regarding teaching came from.

1 What is the essential background to the enquiry?

In setting the scene, a few points need to be made. The first is the relatively recent development of legal education, at least in the universities, in England and Wales. Essentially, university legal education did not achieve a critical mass until after the Second World War. That is not to say that before this date there were few law students and few law courses but that they were not university law students. We need therefore, in seeking the origins of professional law teaching to investigate the early manifestations and evolution of legal education outside the universities.

We have a rich literature, harnessed by the Selden Society, in particular, that covers the origins of the English Legal System , the legal professions(barristers, attorneys and solicitors) and legal education. This shows the emergence of the education system in the later medieval period, which was managed exclusively by the judiciary and barrister, mainly in the Inns of Court and Chancery[13], with the universities not teaching the common law at all. The education included some lectures but was mainly mooting, case-putting and other practical exercises derived from the practice of the embryonic common law. This is, of course, in marked contrast to the position of law teaching and universities in the civil law jurisdictions where law and law teaching *was* systematised and fully integrated into the university traditions.

[12] See Broadbent,G (2014) How do we define a good teacher? Paper delivered at the Association of Law Teachers Annual Conference, Leeds, April 2014.

[13] These were smaller Inns populated by attorneys and solicitors, see ,for example, Douthwaite,W (1887) Staple Inn; Ringrose, H (1909) The Inns of Chancery.

The common law had developed through responding to the needs of property owners and commercial interests by providing legal processes and possible remedies. If those 'processes', in reality the Chancery Clerks, considered a claim had merit they issued a writ. Writs initiated legal proceedings and defined the legal issues. The number grew dramatically and quickly. As well as providing an income stream for the State, they embody the 'esprit' of the common law- its empiricism, its pragmatism and its willingness to respond to consumerism. The system therefore combined opportunism with practical responses. There was no development of legal principle, legal codes or systematic portrayal of law. Unsurprisingly, therefore the lawyer had to know the detail of law and procedure, be able to draft and be able to put forward a case in a convincing way. There appear to have been no calls for a wider education, theory or jurisprudence; it was technical competence that was required!

The way that you became proficient in this system was, therefore, by 'doing' ,through articles for attorneys and solicitors and pupillage for barristers, rather than being taught. Today we talk of developing' competences', and there remains the emphasis in professional legal education on some form of apprenticeship, albeit with increasing flexibility. Perhaps there is still a strong attachment to the notion that 'learning through doing' is the best or even the only way for legal experts to gain their skills[14].

Despite the emphasis on 'learning by doing' were there any professional law teachers in the period up to the nineteenth century?[15]. Until the seventeenth century the Inns of Court provided some form of formal instruction through, as has been said, mooting, case-putting etc. There were also Readings by eminent lawyers[16]. Being a Reader was, in theory, a prestigious role and one that continued into the nineteenth century. In the sixteenth century Readers included Coke and More but in reality, as judged by the content of the Pension Books of the Inns, the influence of the Readings has been exaggerated. Often they failed to take place, despite high fees paid to the Readers. If they did they were generally poorly attended and were likely of more symbolic than educational value. Importantly, the Inns had very limited libraries and the benchers of the Inns seem to have had little interest in legal education. The few texts on law, such as Bracton[17], were simply declaratory of the law and its rules and procedures.

So; coming into the dawn of the nineteenth century we have a picture of only two universities in England, neither of which taught English common law, and of a profession which had limited educational facilities and activities, backed up by a tradition of apprenticeships for barristers, attorneys and solicitors, which appears to have been generally poorly

[14] Setting Standards:The Future of Legal Services Education and Training Regulation in England and Wales(2013) Also known as the legal education and training Review (LETR) Ilex professional Services, Bar Standards Board and the Solicitors Regulation Authority. See Chap. 4, in particular.

[15] 'Professional' is used to connote a commitment to teaching, usually for reward and at least on a significant part-time or full time basis

[16] Baker, J (1990) Readings and Moots at the Inns of Court Selden Society

[17] Bracton Notebook (A collection of cases from the Thirteenth Century) edited and translated by Thorne, S (1968)) Harvard University Press and Selden Society

supervised[18].Nonetheless, the profession-in effect the judiciary, populated only by barristers, controlled entry to practice and had a monopoly on the criteria for entry. Of course, we did have Blackstone's Commentaries on the Laws of England, from 1769, followed by a number of Commentaries by other writers, and, though practical, they occasionally raised broader issues[19]. The Commentaries were designed to form the basis of legal education in universities. This, of course did not happen at the time.

It is important to reflect on these features of severe practicability, utility and narrowness in legal education which led one eminent writer, Milsom, to conclude that 'Lawyers have always worked with their eyes down'[20], untroubled by contextual, comparative or conceptual matters.

2 What changed?

The nineteenth century was a period of enormous change-industrial , economic, social and demographic. The previous century had been one of growing confidence and consolidation but, importantly, it also saw the rise of professional bodies to promote the interests of medical and other professions. Did this affect the legal profession? In the run up to the political and legal reforms of the nineteenth century there was some nascent interest in legal education and the need for change. Interestingly, it was the poorly rated attorneys that began to organise, and form associations. In 1739 they set up the first law society-the Society of Gentleman Practisers in the Courts of Law and Equity[21]. Importantly, at the end of the eighteenth century, they noted the move towards written examinations for various professional roles, not least for apothecaries, the civil service and also for Oxford and Cambridge degrees. It seemed to them a positive way forward for their professions.

The London Law Society, founded in 1825 aimed to dominate the profession and had built the prestigious building that exists today in Chancery Lane and began to exert influence on the judiciary, charged with controlling entry to the Rolls[22]. It is worth noting that it was not until after the First World War that the Law Society had in membership a majority of solicitors. They seemed well able to 'punch above their weight' .Things happened quickly. The Society almost immediately launched a course of lectures, delivered by barristers on the then seen as core legal subjects in Common and Statute Law, Conveyancing, Equity, Bankruptcy and Criminal Law. In 1836 written examinations were introduced for attorneys and in 1837 for solicitors, with the apparent support of the judges, but who were totally uninvolved in the examinations themselves and presumably content to see the Law Society take over this irksome task.

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[18] For an nineteenth century account of life as an apprentice see The Diary of Thomas Loughborough, 1832-4 Law Society Collection

[19] Blackstone, Commentaries on the Laws of England 2001 Edition edited by Morrison, W. Cavendish Publishing

[20] Milsom, S (1969) Historical Foundations of the Common Law Butterworths at p.x11 Introduction. The whole of the Introduction is well worth reading as an overview not only of the evolution of law itself but of institutional and human responses to it.

[21] See Birks, M (1960) Gentleman of the Law.; Christian, E (1925) A History of Solicitors. See generally, Reader,W (1966) Professional men: The Rise of the Professional Classes in Nineteenth Century England.

[22] See, Sugarman, D (1995) A brief History of the Law Society London The Law Society; Sugarman, D (1996) ' Bourgeois Collectivism, Professional Power and the Boundaries of the State: The Public and Private Life of the Law Society 1825-1914' vol 3 International Journal of the Legal Profession 81

However, there are two aspects of this development of interest. First, judging by comments in and letters to the legal press at the time, the primary motivation for introducing the examinations was not educational but to give the profession increased credibility. It was hoped that the exams would weed out the 'sharpers' and other undesirables that allegedly proliferated in the profession. A few pointed out that the sharpers were often rather bright and might do well in the exams![23] .The second matter of interest is that the exams represented a delegation to the relatively small and unrepresentative body-the Law Society. The exams took place in the Law Society's Hall and were, unsurprisingly, quickly referred to as the 'Law Society Examinations'. The ambition and opportunism of the Society had certainly had rapid impact.

But, thirdly, the significance of these examinations in legal education terms cannot be exaggerated. No longer were intending lawyers dependent on the judgment, some would say whims, of judges in order to become qualified. Clearly, this process was open to influence, 'old boys networks' and the like. Examinations tested the individual in a more or less objective way and provided a clear target for intending lawyers. Inevitably, what they attached importance to was dictated by the content and form of the examinations. Just as today, one suspects students then quickly adopted a strategic approach to the task, learning (Just?) what was required to pass, but little more. The 'cue seeking' student had been born. And they would want as teachers those who prepared them effectively for the task of passing the examinations.

The topics for the examinations were also determined by the Society, for they were the self-same subjects of the Law Society's lecture programme referred to above. As the century progressed other subjects were added such as Ecclesiastical and Admiralty Law and, for example, Criminal Law was sometimes optional. An Intermediate Examination was added in 1861 that covered Contracts, Real Property, Equity and Book-keeping, with Stephens Commentaries on the Laws of England being, in effect, the prescribed text. A non-law Preliminary Examination was added, also in 1861, and included History, English, Arithmetic, Latin, Greek and modern languages. Aside from the Preliminary Examination, there were no non-law subjects in the Examinations. In 1880 an Honours examination was added and graded students into, First, Second and Third Class Honours. Interestingly, even then there was a reluctance to award Firsts! Interestingly also, the Honours award was very prestigious with a high failure rate. Those holding the recently established LLB from various universities, appear to have been subject to a higher failure rate than those who had done the Intermediate examination. Some commentators, perhaps unfairly, found that amusing and a sad reflection of the poor standard of university examinations!

By the mid -1860s, the examinations were well established, and written examinations for the Bar were added in 1872. Passing these examinations was no easy matter with a steady failure rate of 40%, at least for the Law Society examinations. Much as in recent years, there have always been concerns about 'too many lawyers' and 'too many' law students. Sceptics detected

[23] Ibid Sugarman also points out that examinations were a way of excluding 'undesirables' from the working class who likely had little formal previous education. He argues that there was a clear intention to move the profession toward a middle class one and generally improve its reputation..

a deliberate policy of restricting numbers passing the exams so as to protect the incomes of existing practitioners.

What were the examinations like? Fortunately, as the Examination papers were published until 1870 we are able to know quite a lot about them.

3 What were the examinations like?

Taking the examinations in Conveyancing, initially the questions were very basic. The 1836 examination simply asked questions such as '*What is an estate tail?'; At what age is a person capable of making a will?' and 'For how long may an agreement for a tenancy be made by parole?'.* However, even by the second examination in Michaelmas 1836 the questions became slightly more complex. For example, it asked; *'How is the personal property of intestates distributed?' and 'How do judgments affect real property?'*

Each examination paper contained 15 questions. Although questions tended to be simply knowledge-based, the incidence of repetition of specific questions was quite low, indicating the need to have wide knowledge. By the 1860s, some 'problem solving' question had emerged. An example would be;

'A and B are seisesd in fee of three estates which number 1,2,and 3. They hold estate 1 as tenants in common, estate 2 as joint tenants and estate 3 as copartieniers. Can A and B or either of them by will devise their undivided shares in these three estates, or any, and if any, which of them?'

We do not know from the examiners what answers they were expecting, at what length and in what detail. However, what we do know is that the crammers who prepared students for these examinations(of which more is said later) published model answers in their various journals. Law Notes, published by Gibson and Weldon, the leading crammers, are an especially useful source. It can be seen that the suggested answers are clear and concise but appear not to require precise source references, though the model answers generally suggested the students refer to specific texts. Interestingly, these short, focussed types of questions, requiring perhaps ten to twenty lines of writing or a short paragraph appear to be back in vogue today, possibly as a counterweight to lengthier essays/coursework or problem solving questions.

The Intermediate Examination which was first sat in 1862 covered some of what we would call Foundation Subjects, including Contracts and Stephen's Commentaries on the Laws of England, referred to above, which might be referred to as a Legal system course. For Contract, the questions were much as those for Conveyancing in the Final examination. For example, *Give a definition of a simple contract'* and '*Give some instances of consideration sufficient to support contracts'.* However, the questions on Stephen's Commentaries could be more discoursive . For example, the Lent Examination paper 1881 asked '*What is the fundamental difference between fundamental law and natural law?'*

It is likely that the same pattern of stereotypical, convergent responses would be expected but one could ask whether the format of the assessments, especially their requiring a breadth of knowledge, albeit in a context of high failure rates, was so different from the situation today. Of course, many schools today do use innovative and highly demanding assessment formats, However, the reduced role for both non-law and broader topics, the stagnant or declining role for course work, the rise of the MCT along with an increasing tendency in some law schools towards short questions, each attracting, say, 5% or 10% of half the marks on a paper, arguably indicate less change than one might expect. This is especially so in a context where assessment itself has been such an important topic for research and analysis, along with critical comment[24].

One point need be made on the evolution of the examinations. At no point, from the judiciary, Law Society members, or writers to the many law journals in this period did anyone call for a broadening of the assessment topics. All appeared happy with the practical and instrumental nature of the examinations: And with the arrangements for them by the Law Society[25].

4 What was happening in the universities?

Although University College and Kings College, London, were set up by the early 1830s, along with Durham, law teaching and law courses were somewhat unsystematic, There were few law students, despite the presence of some illustrious academics such as Bentham and Mill . The bulk of students at lectures appear to have been articled clerks. It is a futile exercise to look at the curriculum of the LLB and see a broad, challenging and liberal questioning of the law and legal system and to read accounts of excellent and well received lectures. However, with the setting up of the Victoria University and other so-called civic universities, bursting with ambition and local pride from the middle decades of the century a more systematic legal education did begin to develop, including in collaboration with the local profession, something that had never occurred in London.

5 What was university teaching like?

In effect, we had two legal education systems, which had only limited links. There was the severely practical system of articles and written examinations for those entering the profession, and the more recently established university law courses. We need now to turn to look who was doing the teaching and what was the nature of that teaching. First of all, let's look at the universities. Was the legal education 'academic', liberal and very different from that undertaken by the intending practitioners? Was a distinctive legal education tradition, perhaps influenced by legal education in other jurisdictions, being developed?

When exploring this question I shall place heavy reliance on a number of thought- provoking publications by David Sugarman who, probably more than any other researcher, has explored

[24] See, for example, '*Good degree awards not always in line with intake*' Times Higher Education 17th April 2014 at p.6

[25] The research covered professional law journals, especially editorials and letters to the editor as well as seeking specific features on legal education. It did not explore the national press or more political or reformist publications. Its focus was therefore on 'consumers' of the current education system but even allowing for this the lack of criticism and calls for change in noteworthy.

the 'reality' of nineteenth century legal education. It has to be borne in mind that universities, when developing law teaching and degrees had few constraints. Unlike those preparing students for professional examinations, they could choose the subjects and develop distinctive approaches to studying law. They could seek ideas from not just the common law world but from the experience of legal education in other jurisdictions. They could choose to reflect contemporary debates around societal changes and generally take the student away from simply procedural rules and case law . But what happened?

Sugarman argues compellingly[26] that particularly during the period 185-1907 a number of jurists, in an effort to 'transcend the chaos and darkness' of the common law, set out to create order and light. Against a backdrop of considerable hostility from both the profession and universities they produced a range of publications that sought to demonstrate that the common law was in fact internally coherent. Sugarman argues that this period was the classic age for the development of student texts, especially by Anson, Pollock, and Salmond, whereby they provided clear guidance on the core legal subjects. Their approach was in marked contrast with writings on legal practice, as the jurists focussed on the exposition, systemisation and analysis of legal doctrine as the cornerstone of legal education. However, Sugarman accepts the fragility of their role, in that it was liable at any time to be overwhelmed by the weight of culture and the narrowly defined interests of the legal profession[27].

As the nineteenth century wore on there were some major debates within the jurist (*Not* law teacher) community. Some felt that law could not be taught but only learnt, so the role of universities was necessarily limited. Such views were countered by jurists such as Pollock who argued for a more liberal education. However, even he accepted that the expository tradition must be recognised. What we do know, as considered above, is the jurists who taught in universities produced student texts which were the art form of the expository tradition. They explained law clearly but drew overwhelmingly on case law and created in a thirty year period from the late 1980s the classic student texts However as Sugarman says;' There was no pretence that wider educational goals are envisaged'[28]

So; what can we make of these developments? First, there was, indeed, a flowering of legal education in the universities, if only predominately in terms of the development of student texts and wider publications. However, we know little about jurists as 'teachers' as opposed to writers. Second, with some notable exception (Maitland and Bentham, for example) the work of these law teacher/jurists was primarily to promote the common law as a body of legal principles that commanded enormous authority. But third, most of these jurists generally ignored legislation or considered it an irritation. They saw legislation as undermining the integrity and purity of the common law. The scientific movement within the common law , as instanced by Langdell from the USA, re-enforced these views, as did the moves towards the

[26] See, in particular, the writings of AWB Simpson, including (1986) A History of Land Law, (1975) A History of the Common law of Contract: The Rise of the Action of Assumpsit, both published by Clarendon Press.
[27] Sugarman,D (1986)' Legal Theory, the Common Law Mind and the Making of the textbook Tradition' in Twining, W (ed) Legal Theory and the Common Law 26 Oxford,Blackwell
[28] Ibid at p. 31

socratic/case method that was popular for a while in the twentieth century, including in England and Wales, as a means of abstracting those common law legal principles.

Overall, it is possible to argue that what was being taught in the universities was, in truth, not that different from what was being taught by those preparing for the Law Society's examinations. Of course, in the universities, there was generally a high level of scholarship, history and data about the origins and evolution of both the legal system and the professions. The universities and their jurists, no doubt wanted to establish a distinctive contribution to legal scholarship. But, as Sugarman says, this ambition was fragile and liable to be overwhelmed by the traditional sources of power[29]'. Did these jurists gain an important new role? It is arguable that they did not; despite being eloquent, learned and articulate they were essentially accepting of the 'glory' of the common law and considered their role as being subservient to that of the legal profession and courts. Some excluded other legal sources, saw little or no relevance for policy debates and, generally saw little role for questioning and challenge. Clearly, they were generally better educated than most of the law teachers who prepared students for professional examinations but the 'message' was pretty much the same.

6 So; who else taught law students ?

Most nineteenth century law students were preparing for examinations, which quickly became rather predictable. When examinations were introduced for attorneys and solicitors in 1836/7 candidates must have been in shock, as there were very few law texts, no earlier examination papers to refer to, no teachers and so, initially, they muddled through. The recently established University and Kings College, London, did not seek a formal role in preparing students for the examinations. This does not infer that articled clerks did not attend lectures but that such teaching was probably not seen as appropriate for a university. Unsurprisingly, this left a vacuum into which some new 'players' stepped, a development to be considered shortly.

However, there were a few sources of support for those facing examinations. The lectures provided by the Law Society from its inception in 1825, in principle, looked promising. They covered the same topics as the examinations. But it appears the content of the lectures, which were given by barristers were more in the nature 'continuing professional development', ie topical and selective. This was not what the clerks wanted-they needed a basic, comprehensive coverage of the law.

What of, for example, the university law schools, not just in London but in other parts of England and Wales, especially the colleges that gradually evolved into universities in the major civic centres, such as Manchester and Liverpool.?[30] They were surely preparing students for assessments on the basic principles of English Law? The London University LLB had attracted

[29] Ibid p 36

[30] The 1846 Select Committee on Legal Education is very scathing about the contribution of universities at the time. For a more account, see Maharg, P (2007) Transforming legal Education London Ashgate. However, even by 1903 there were only 8 Law Faculties in England and Wales.

external students, which was the qualification the civic universities initially prepared students for. Gradually, these 'civic' or 'redbrick' universities developed their own degrees. Contemporary commentators were not enthralled by university law schools. The tone appears to have been set by Oxford and Cambridge. At Oxford from 1750 t0 1850 there had been no lectures at all on civil law and at Cambridge it was reported that at Downing College in 1800;*'the law school was recognised as refuge for those who were averse to intellectual effort'.*[31]

Interestingly, in the latter half of the nineteenth century and especially outside London there were efforts to combine 'university law teaching' with training for articled clerks sitting the Law Society examinations. The civic universities in the north of England and the University of Wales set up Boards of Legal Studies that combined representatives from the professional bodies with the university law schools. This was an innovative and unique attempt to combine legal education for both university degrees and professional education[32]. Where student numbers were not large this seemed a way to maximise efforts, reduce costs and support legal education on a partnership model.

The trail was blazed by the Manchester Law Association, that initially set up well attended lecture courses from 1844 on legal topics, most of which were useful for those entering the Law Society Examinations. The Manchester efforts metamorphosed into a Board of Legal Studies that worked with the Victoria University. The Liverpool Board of Legal Studies set up in 1886 had representatives from the university but also from Liverpool Law Society and the Liverpool Law Students Association. Again, after an initial flurry of interest and some very experienced lecturers delivering a coherent set of lectures, the numbers had declined even by 1890.This pattern was replicated in other university centres whereby courses struggled to survive, especially if they were more 'academic' or 'liberal' in nature and therefore seen as not relevant for the dominant formal structures and culture of legal education as defined by the legal professions. There were, of course some exceptions to this rather depressing picture. The Yorkshire Board proved very successful in attracting a range of students, as did the Board for Wales, where Summer Schools in Aberystwyth attracted significant numbers. However, the Boards did not survive long.

The picture is further depressed by the fact that the Legal Education Association, founded in 1869 with wide support from practitioners and with a remit to create an inclusive and comprehensive system of legal education also failed[33]. Many argue that it was the opposition of the Bar that was mainly to blame. Interestingly, the prime reason was probably that proposals tended to put universities in the 'driving seat', which, of course, caused alarm at the Inns and the Law Society. So; despite some very well intentioned efforts to introduce new initiatives in law teaching, which may have widened the appeal of law as a discipline, the total dominance

[31] Winstanley, D (1940) Early Victorian Cambridge .3

[32] For further information in the activities of these organisations, see the Annual Reports of, say, the Liverpool Board of Legal Studies, and the Wales Board of Legal Studies.

[33] See, for example, the Report of the Examination Committee on these developments in the Law Society's Annual Report for 1899 . By this date all efforts to develop legislation to provide an integrated system of legal education had failed.

of the 'common law mind', the professions and the expository method of legal education ensured that although new institutions were emerging, reforms were changing the nature of the legal system and there was a growing sense of the global nature of law and legal education, little changed. Law teaching remained marginal in the universities, despite the eminent jurists publishing many major law texts in the late nineteenth century. The texts have endured, but we need to look elsewhere for the origins of the pedagogic and other traditions of law teaching.

7 So; who did most of the law teaching?

If it was proving difficult to sustain lectures programmes both within and beyond the universities, where was it that most students prepared for their examinations? The answer was the so-called 'crammers'. Their history and role merits far more attention[34]. They were numerous, worked together in firms or on their own, used sophisticated marketing techniques such as advertising widely in law publications, publishing their claimed 'success rates', wrote numerous well thought through student learning materials and some achieved fame through writing law texts. Some of these texts are well worth reading, not least for their 'student centred approach'. This was in marked contrast to the rather dull practitioner texts which students had had to use until the crammers emerged. Crammers taught in small groups, often in the evening and sometimes at weekends and provided a generally cost-effective way for a student to pass their examinations. As time went on, students tended to prepare with the crammers on a short, intensive, typically three monthly basis, a pattern that intensified in the twentieth century.

Some crammers were mysterious and used initials or titles rather than their full names, such as Alpha, Lex, Examiner, R.H and B.C, which may reflect the ban on advertising by lawyers. The following advert in the Law Times in 1855 is typical;

'Law Examination-Gentlemen prepared for their examination by an Attorney who has been eminently successful. Terms 15 guineas in advance; balance on passing. Address 'B.C', Mr Hales, Law Stationers, 49a Lincolns Inn Fields'

But why are the crammers so important and why can they be properly considered the first professional law teachers? This paper has argued that what differentiates a law 'teacher' from other people that communicate legal principles is their focus on student needs. This was primarily , of course, to pass examinations but also to, in the later decades of the nineteenth century to succeed in the prestigious Honours examination and generally be able to demonstrate high achievement. As considered above, the articled clerks also wanted cost effective and convenient delivery of programmes. They were mostly working long hours and had to fit their studies in with their work. Few had an income so their needs were very practical and direct. Increasingly, clerks were drawn from the middle classes and were better educated than their eighteenth century counterparts but were rarely rich. The crammers were ,of course,

[34] One of the few sources is Kersley, R (1973) Gibsons 1876-1962;A Chapter in Legal Education:

opportunistic but they were not, it appears from contemporary reports, incompetent or lacking in drive[35].

With the introduction of the Intermediate and Preliminary Examinations from 1862 for solicitors and especially the prestigious Honours Examination there was considerable growth in numbers of crammers but also market consolidation. Three firms dominated the last decades of the century. They were Gibson and Weldon, that became the College of Law, Indemaur and Thwaites and Preliminary Law. Gibson and Weldon, for example, stated in the Law Times for 3rd May 1890 that *;'Of the 6 prizemen(In the Honours Examination) the first five were pupils of Messrs Gibson and Weldon; seven other pupils were in the first class…….'.*The leading crammers also dominated the law publishing market, a matter considered below, but also clearly had a well- developed and effective business model. The crammers were largely based in London, though Penningtons in Manchester, situated close to the university achieved success in the early years of the twentieth century.

The examinations, as has been referred to earlier, became predictable to an extent. The formats remained steady up to the mid twentieth century. However, the potential range of questions was wide, requiring a thorough grasp of a whole legal subject. It is inevitable that the crammers became experts in both spotting questions and learning what 'worked' to pass. Their personal advice was often backed up learning support such as Gibson's Law Notes for students, that survived until fairly recently. There is also evidence of active law student societies and publications, such as the Legal Telegraph[36] , something we continue to encourage today and often see as part of the law school culture.

However, there were sometimes openly voiced concerns by the crammers themselves, as well as others, about the teaching methods used. In 1905, Gibsons proudly announced that their system of student preparation'..*is as far as possible that of a Law School and all ideas of preparing students on a 'cram' system is disregarded'*[37].

One other general point should be made about the crammers. With the exception of GIbsons, crammers did not confine themselves to the Law Society examinations. They also prepared students for the Bar, law degrees, public and professional examinations, sometimes providing residential facilities, libraries, reading rooms etc. The crammers were, for the main part, teachers who were often working full-time and who were former practitioners. They focussed

[35] There are many accounts in the law journals of the period of the experience of clerks, letters to the editors etc. The leading journal used for the research were the Law Times, The Law Magazine and Law Review, the Solicitors' Journal, the Gentlemen's Magazine.

[36] This was but one of a considerable number of journals specifically designed for students. Most were published privately, sometimes by people with only tenuous links with the law. Some were related to student societies, such as The Law Students' Debating Society Journal and Reporter. In 1867 a law student could have a choice of 12 journals. They contained past examination papers and suggested answers, legislative and other key legal changes, and sometimes reprinted lectures given at the Law Society and elsewhere. However, their key feature, with one or two exceptions was that they generally were only published for a short time. The Law Intelligencer survived only four editions ion 1842. It was not possible to identify whether university teachers contributed, but it seems unlikely.

[37] Marketing information by the firm. See Kersley, supra at Note 28, p.113

on the specific needs of examinations, were clearly effective in developing sound learning and communication skills (And might have met our current demands for employability!) but who operated within a narrow vision of legal education. They did not play a part in formal curricular and assessment developments, so cannot be blamed for the narrow vision of what legal education is or should be about. They were just simple service providers who were not considered of sufficient relevance to participate in educational and policy development.

8 What is their legacy for law teaching and why is it important?

Identifying and assessing their legacy is, of course, problematic, not least because we do not know a great deal about how they taught and how effective they were. There was, of course, a market imperative, which was that if the students did not pass either the crammer had to repay some or all the fees or teach them free for the 'resits' and reputations would suffer. One suspects that they relied on a combination of explanations of the legal rules, rote learning and 'tests' to confirm the knowledge. There were many guides on how to pass the examinations, how to allocate time, and hints regarding effective examination techniques. One can see that in these matters, little has changed over the years. Indeed, one suspects that Albert Gibson would have salivated at the thought of using the technology that facilitates Multiple Choice Tests!

The crammers wrote a wide range of student texts[38], some of which were accessible, clear and openly anticipated student difficulties and concerns. These books did not just set out legal rules but aimed to help students to learn. The case-books are often good examples and although, of course, they do not exhibit the research and scholarship of the texts produced by the jurists, many do have real appeal.

It is argued that the culture of our current law teaching is far more dependent on these crammers than the traditions derived from leading jurists, academics or even the influence of other common law developments. These wider contributions are often seen as 'extras' evidenced by the continuing hostility towards the inclusion of so-called 'non-law' subjects on law degrees and their decline in recent years.

It is not being argued that most of the texts and guides were in any way 'liberal'. They were functional and had a fitness for purpose. That purpose was to pass examinations which themselves continued the deep seated common law traditions. However, one of the most interesting matters to emerge from this research into the work and outputs of crammers was that they, because of their close contact with fee paying and perhaps demanding students were acutely aware of the difficulties of presenting law as a coherent set of 'scientific' legal principles.

At the outset of this paper, I have explained my reliance on various publications by Sugarman, especially his scepticism regarding the intrinsic coherence of the common law. There is no doubt that throughout the nineteenth century questions were being asked about whether the

[38] For detail on these texts see paper for the W G Hart Workshop, 2014 at the Institute of Advanced Legal Studies where I presented a paper ' The LLB as a Liberal Degree: A Re-assessment from an Historical Perspective' . The paper contains a more developed critique of the texts and other materials.

common law really was a body of convincing legal principles[39]. But broadly, these concerns were brushed aside. The difficulties therefore remain. Many of us teaching the law of contract today, especially in its developed forms, for example, the employment contract, will be acutely aware that taking commercial contract doctrine into relational contracts creates so many tensions and anomalies that students find the subject hard to grasp. For example, the assumptions of 'freedom' to contract, of equality in bargaining position, and, perhaps, the ever-shifting and intrinsically unconvincing rules about implying terms, make teaching the subject very challenging. The writers of nineteenth century student texts, maybe because the crammers were not so much 'of' the common law system but stood alongside students, often tried to find explanations for clerks regarding these complex and often unconvincing 'rules'..

One of the most interesting writers of student texts was J W Smith, who lectured at the Law Society in the 1840s but who died tragically young at 38. His book on the Law of Contract, 1846 went to into several editions after his death. It is interesting to look at his coverage of the doctrine of consideration which is necessary to create a legally binding contract. The book asks why 'consideration' is required. Smith tries to explore policies underlying legal rules and he concludes that the reason was; '*to guard persons against the effects of improvidence in entering hastily and inconsiderately into engagements which may prove ruinous to them'* . We may not share that view but at least it provided some rationale for a puzzling legal rule.

Smith was also responsible for the leading casebook on Contract in, published 1837. Casebooks were critical for clerks, as law reporting at the time remained underdeveloped and erratic. The authors had to determine the important cases, describe and explain the decision. Smith did this very well, as he explained 61 important contract cases.

John Shirley, perhaps the most accessible writer for students produced his Cases on Tort in 1880. It covers 150 cases and its importance lies in the way it handled the generally complex description of pleadings. As an example, the case of Vaux v. Newman . better known as the Six Carpenter case is set out.

It was a warm September afternoon in the early days of James 1st that six thirsty carpenters entered a London tavern and there did buy a quart of wine and there paid for the same. Mark that, gentle reader, they paid for it. But a quart of wine does not go far with lusty working men; the reader will be scarcely surprised to hear that like Oliver Twist they asked for more….and our friends stoutly refused to pay' .Then follows a discussion of trespass ab initio and even the law of distress to which it was loosely connected. There was then a clear statement of law and even ideas for the policy of the law.

[39] In this, Maitland and Bentham were probably in the vanguard. Neither succeeded in changing the face of the 'common law mind' and one is forced to conclude that this remained the most powerful; force in the development of law teaching.

Strong feelings were aroused by the text-some considering it 'frivolous' but other reflecting on whether this was a good way to help students remember the cases. They then worried that the student would swallow the sugar but not the pill![40].

Whatever were the merits of individual texts and case--books, a reading of them suggests they were developed from the experience of teaching. They seemed to pick up on what we, too, know are the difficult areas to explain. Their authors were likely really good at finding out how those learning the law responded, the difficulties they faced and how best to resolve them.

9 What can be concluded?

The development and role of the crammers was but one element of legal education in the nineteenth and early twentieth centuries. Clearly, university legal education was emerging, sometimes in conjunction with the local legal profession. Some impressive legal academics were not only teaching but producing enduring critiques of English Law and contributing to debates on the future of legal education. However, overall, law degrees remained limited in their ability to attract students, with the numbers using crammers far exceeding those attending university. It has been argued that the crammers have been largely instrumental in creating the culture of law teaching, which still closely reflects the 'common law mind'.

However, two points need be made. First that crammers were not the originators of the system they served. Indeed, many crammers lamented the narrowness and lack of enquiry but they were never part of the discussions and policy-making on legal education. Second, if examined in detail, their work and their texts reveal the application of sound pedagogic principles and a sense of supporting students in effective ways. In truth, they knew their business. And while the profession, the universities and leading writers have been failing to establish a blue print for recent and contemporary legal education, the crammers' methods, their culture and their influence have endured.

[40] See a correspondent to Law Notes vol 10(1891) p 320