

**Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (Oxford: Hart, 2003). Pp. xi, 208.**

**Fiona Cownie, *Legal Academics: Culture and Identities* (Oxford: Hart, 2004). Pp. ix, 227.**

Law professors typically think that they have the best job in the world. Every law professor also typically thinks that only *he* knows what that job is about. The best job? Why not! Six-figure salaries, approaching \$200,000 annually in the richest schools; six months of the year when it is wise to be seen on the job; a paid leave every seven years; few assessments of productivity (whatever that is); and almost complete autonomy: all for thirty to thirty-five years, in a pleasant place to live. Why not, indeed! Compared to other university professors who lack the high social status of association with a well-paid profession, whose salaries rarely reach six figures, whose teaching loads are heavier, whose employment, tenure and promotion requirements are much more onerous, and whose working environments are considerably poorer, the lot of the law professor comes close to that of the fabled leisured classes of old. Bankers, surgeons and judges may earn more, but they have to sweat a lot more and are subject to greater scrutiny and accountability. The law professor's lot is, indeed, a happy one!

Yet not quite. Too much time, too much money, and too little accountability can facilitate profound ruminations. These luxuries also lead to lethargy, procrastination, superfluousness, narcissism, self-importance, petty jealousies, fractiousness over trivia, and for those aware of these temptations, identity crises. One result of these symptoms of the easy life is the recent propensity of the legal professoriate to proclaim its indispensability to society: the law professor knows best what ails the world and how to fix it (once the curriculum has been fixed in his own image). There are almost as many views about what law professors are good for as there are law professors. And a favourite topic for publication among law professors is themselves: who they are and what they should be doing.<sup>1</sup> The literature on this topic is vast and is itself the topic for self-laudatory study. Two more thoughtful examples of this genre have recently been published in England by an academic couple: Fiona Cownie's *Legal Academics: Cultures and Identities*<sup>2</sup> and Anthony Bradney's *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century*.<sup>3</sup>

Cownie's book is about who law professors are, and Bradney's book is about what law professors ought to be doing. While the focus of both volumes is the English law professor, their observations are equally appropriate for law professors in the common law world generally for several reasons. First, both authors rely extensively

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<sup>1</sup> Two recent examples of this genre are the published symposia: "Legal Education, Knowledge and Access" (2001) 20 Windsor Y.B. Access to Just., and "The Arthurs Report on Law and Learning / Le Rapport Arthurs sur le droit et le savoir, 1983-2003" (2003) 18 C.J.L.S.

<sup>2</sup> (Oxford: Hart, 2004) [*Legal Academics*].

<sup>3</sup> (Oxford: Hart, 2003) [*Conversations*].

on materials drawn from throughout the common law world, where the same kinds of debates have been carried on over the past generation, and where social and professional interactions—especially among English,<sup>4</sup> American and Canadian scholars—are frequent. Second, the fact that law is taught as an undergraduate subject everywhere except Canada<sup>5</sup> and the United States is a distinction largely irrelevant to the issues discussed in the books. Many law professors have experience as students and teachers at both undergraduate and postgraduate levels, and can attest to the similarity of experience and issues (although professors at self-proclaimed “high status schools” would disagree in order to protect their elitist aspirations). While the material and creature comforts and compensations are greater in postgraduate law faculties, the issues relating to what they do are no different once it is decided (as it has been) that a “narrow” training for the practice of law is not appropriate. Ironically, once postgraduate law faculties eschew being vocational training schools closely tied to the profession for academic scholarship, they have endangered their higher status, privileges and perks. Why should they enjoy greater status if all they are offering is another version of the undergraduate liberal education, albeit in law? Salaries based on compensation for Bay Street practices selflessly foregone become vulnerable, as do individuals who do not satisfy higher levels of scholarly achievement for employment, tenure, and promotion associated with mainstream university employment.

Who, then, are these fabulous people called law professors? In *Legal Academics*, Cownie states that her purpose is to analyse the “lived experience” of law teachers at English universities. By examining the everyday lives of legal academics, she seeks to describe both the culture of academic law and the professional identities of academic lawyers.<sup>6</sup> To do this, Cownie interviewed fifty-four legal academics at seven English law schools in 2001 and 2002. Interviewees were drawn from four “old” universities and three “new” universities in order to ensure representation from Oxbridge, old civic, new civic and former polytechnics. Cownie also ensured that the interviewees were representative of the legal professoriate: eighteen experienced, fifteen mid-career and twenty-one early career; thirty-five men and nineteen women; twenty-six professors or readers and twenty-eight lecturers—all drawn from various approaches to the study of law (doctrinal, socio-legal, etc.).<sup>7</sup>

After an interesting and fair overview of the recent trend in law faculties from doctrinal to contextual (feminist, critical, socio-legal, etc.) approaches to the study of

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<sup>4</sup> Scots and Irish law professors operate in their own respective self-enclosed worlds for legal and cultural reasons.

<sup>5</sup> Until the Americanization of Canadian legal education, led by the Laskin revolt at the University of Toronto, Canadian legal education was, with a few exceptions, an undergraduate affair. The Department of Law at Carleton University is the only continuing undergraduate program dating from the late 1940's to offer a B.A. in Law, although it has undergone several institutional transformations since then.

<sup>6</sup> *Legal Academics*, *supra* note 2 at 1.

<sup>7</sup> See *ibid.* at 14-16 for Cownie's research methodology.

law.<sup>8</sup> Professor Cownie proceeds to her main project: a sustained qualitative examination of the lived experience of her subjects. Unsurprisingly, she found academic law to be in a state of flux from doctrinal to pluralistic approaches: about half of her respondents characterized themselves as doctrinal scholars, although most of these also stated that they consider policy and contextual matters in their teaching and research.<sup>9</sup> She found a consensus that an academic lawyer need not be highly intelligent or even “intellectual” in a cultured sense, but required an enquiring and analytical mind and an ability to focus on a rigorous interrogation of a problem. She found that being single-minded about research, being male, and having an ability to network were perceived to be required to progress through the ranks, but that the personal measures of success, of research reputation and peer esteem, were more important to individuals, a trait shared with academics in other disciplines.<sup>10</sup>

Again, unsurprisingly, Cownie found that legal academics were very positive about their choice of career and felt proud to be law professors. Personal autonomy was identified by interviewees as being most important to their professional satisfaction. Most professors attached importance to teaching and research quality, but disliked those aspects of the job that impinged on their autonomy, such as administration, accountability, and career audits.<sup>11</sup> Most thought of teaching as a performance and desired to be good performers, although many did not think that research played quite as important a role in their professional identities.<sup>12</sup> University administration fell disproportionately to women and “good citizens” (or “suckers”), adversely affecting their career progression.<sup>13</sup> A number of negative aspects of law school culture were also noted to be of increasing concern, including the “publish or perish” push, increasing student enrollment, and increasing central government auditing and accountability. There was a sense that legal academics, like academics generally, are being proletarianized,<sup>14</sup> and this has significance for future scholarship.<sup>15</sup>

Finally, Professor Cownie found that academic lawyers became academics by choice. Most originally studied law with the intention of practising, and many had practising experience before deciding that scholarship was a preferable way of life. These professors did not regard their career choice as second best to a career in practice and their attitudes toward professional success were similar to those of other

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<sup>8</sup> *Ibid.* at 27-47.

<sup>9</sup> *Ibid.* at 72. This number is likely lower in Canada but there are no comparable studies to confirm my surmise.

<sup>10</sup> *Ibid.* at 95.

<sup>11</sup> *Ibid.* at 118-19. The UK Research Achievement Exercise (R.A.E.) is the source of considerable stress (see 139-41).

<sup>12</sup> *Ibid.* at 141-42.

<sup>13</sup> *Ibid.* at 143-50.

<sup>14</sup> See Richard Collier, “The Changing University and the (Legal) Academic Career—Rethinking the Relationship Between Women, Men and the ‘Private Life’ of the Law School” (2002) 22 L.S. 1 at 30.

<sup>15</sup> *Legal Academics*, *supra* note 2 at 165.

academics, favouring reputation as a scholar rather than accumulation of wealth. Cownie concluded that while there remains considerable ambiguity as to what academic lawyers should be doing (doctrine or socio-legal scholarship, pure scholarship, or training for the profession), there exists within the profession complete self-confidence about the value of academic work, about the value of that career choice, and about the position of the study of law in a university.<sup>16</sup>

The question of what law professors should be doing is taken up by Bradney in *Conversations, Choices and Chances*. His answer is simple: law professors should provide a liberal education. He reinterprets the historical concept of the liberal education as a backdrop for the protection and enhancement of pluralism within the university law school. A liberal education provides the framework for the wide variety of approaches to legal scholarship found within the contemporary law school, all of which Bradney thinks are appropriate to the law school culture, although he is unenthusiastic about doctrinal approaches if they are limited to narrow rule restatement without fleshing out related policies and principles.<sup>17</sup>

Professor Bradney begins by re-examining the historic notion of a liberal education. The work of John Henry Newman takes pride of place in this analysis: knowledge for its own sake; the principles on which knowledge rests; the inculcation of character, a disposition toward life and a habit of mind tempered by freedom, equitableness, moderation and wisdom.<sup>18</sup> Bradney suggests that recent educational trends toward utility have not erased the basic notion of a liberal education, but have underlined its core significance and function in any society, university, or higher education.<sup>19</sup> Bradney then turns to consider what a liberal education might involve.<sup>20</sup> The first purpose of a liberal legal education is to give structure to the curiosity that is inherent in being human, not as entertainment or for temporary intellectual satiety, but for giving purpose and direction for life. Rather than determining what students will become, or what they will take away from law school, this approach introduces students to the wide variety of conversations within and about law. It should afford students the opportunity to select their individual, future ends. Bradney supports the present pluralistic curriculum, which ranges from the doctrinal to the various socio-legal approaches currently taught.<sup>21</sup>

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<sup>16</sup> *Ibid.* at 198-99.

<sup>17</sup> *Conversations*, *supra* note 3 at 28-29.

<sup>18</sup> John Henry Newman, *The Idea of a University*, ed. by I.T. Ker (Oxford: Clarendon, 1976).

<sup>19</sup> *Conversations*, *supra* note 3 at 31-84. See e.g. U.K., National Committee of Inquiry into Higher Education, *Higher Education in the Learning Society* (London: National Committee of Inquiry into Higher Education, 1997), online: University of Leeds <<http://www.leeds.ac.uk/educol/ncihe/>> (Chair: Ron Dearing).

<sup>20</sup> *Conversations*, *supra* note 3 at 85-104.

<sup>21</sup> *Ibid.*

The second and the “most important element”<sup>22</sup> of a liberal legal education is to learn to reason well so as to see the pervasive nature of the issues and values inherent in the law and the world around us. This involves the “inculcation of matters that are wholly technical” as well as “a mastery of depth and detail.”<sup>23</sup> A law student should know some part of the world in an empirical sense if structures and values are to be truly understood. The choice of technical subject matter is of little importance; rigour is what is required. Doctrine is part of a liberal legal education, but narrow vocational courses are not.<sup>24</sup>

Bradney then goes on to give an example of how a legal principle can be opened up to deliver a liberal education. The choice of principle is obvious: Lord Atkin’s neighbour principle in *Donoghue v. Stevenson*.<sup>25</sup> Bradney shows who Lord Atkin was and highlights his Christian motivations.<sup>26</sup> Bradney then proceeds to explicate the values underlying the principle and considers why they might be accepted or rejected in postmodernity.<sup>27</sup>

In Bradney’s view, students who have acquired the intellectual tools provided by a liberal legal education, including flexibility, will be able to address the wide range of ever-changing tasks that will await them in their lives beyond law school, both in the practice of law and in other employment life. He also thinks that the skills inculcated in a liberal education will help students make the myriad other decisions, including personal decisions, that they will have to make in their lives.

Bradney then goes on to consider the implications of his version of the liberal education for research and administration. In both cases, he expresses his views about what should be taught and how it should be taught: plural views, topics and perspectives should be promoted in research. Furthermore, the administrative apparatus should value the requirements for a pluralistic education, such as individual autonomy, faculty equality, tolerance and collegiality (so as to encourage conversations), and limits on excessive top-down management and excessive audits. In a chapter entitled “A Short History of Madness,”<sup>28</sup> Bradney is bitingly critical of the central state assessment process recently introduced into British universities. He identifies this process as a danger to liberal education as a proper training for life in society and as a danger to the traditional vision of the liberal law school (and of those who teach and learn in it) once associated with the monastery and Oxbridge. Now adopted by Bradney, this vision is an all-consuming vocation, true and simple: “This I do for love.”<sup>29</sup>

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<sup>22</sup> *Ibid.* at 90.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.* at 85-104.

<sup>25</sup> [1932] A.C. 562 (H.L.) at 580.

<sup>26</sup> The parable of the Good Samaritan: Luke 10: 25-37.

<sup>27</sup> *Conversations*, note 3 at 91-98.

<sup>28</sup> *Ibid.* at 155-87.

<sup>29</sup> *Ibid.* at 189-204.

Although about different slices of the law school world, the books by Cownie and Bradney are clearly related and occasionally overlap, for example, in dealing with attitudes to research and administration. They can be read as two parts of the same research project: to describe and analyse the contemporary English law professor. In this, they are fascinating and valuable books. Both provide vivid snapshots of who teaches law and what they do and think today. But they are simply that: snapshots. Their descriptions of the contemporary law school are easily recognizable and accurate portrayals. I suspect most law teachers would agree that they describe their own faculties, whether in England, Canada or Australia. A future historian of legal education can rely on these books as an accurate depiction of the common law law school at the beginning of the twenty-first century.

To some extent, these books are also prescriptive. Both authors are pleased with current directions in legal education, but for the increasing emphasis on accountability. (No surprise there!) What Cownie and Bradney describe, they prescribe, and those looking for more radical agendas and strategies for legal education will be disappointed. The texts are fair, even-tempered and portray law faculties as such (which is a little surprising given the culture wars which flared in the eighties and nineties). Nevertheless, pluralism, including doctrinal approaches, seems to have been achieved in legal education, and most are happy with this outcome.

But legal education, like life, must be dynamic, or it will shrivel and die. So the question is: what's next in the law schools? Neither Cownie nor Bradney offer much speculation as to future trends. But perhaps it is not possible to do much once the liberal, pluralistic law school has been achieved other than to revert to a more monolithic model, such as professional vocational training or the adoption of some narrow, ideological, party outlook which will determine and rigidly police all that is taught and published. And that may be the future.

John Henry Newman's vision of the university, as adapted by Bradney to law teaching, suggests that that openness to all that is human is the best vision of what all university education should be about. But Newman's vision was of a university that played a role in a transcendent drama whose origin and end were not of this world, but which gave meaning to all in this world. The immanentist ends of university education will always be disputed so long as this world is the horizon. Pluralism is a compromise. The culture wars will continue.

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