

This is grossly to oversimplify the question, but may suggest the kind of engagement that needs to be pursued. There remains also the nagging unease that, while the inchoate relativism that emerges, at least from these sources, is employed to subordinate political rights to (the less easily vindicated?) economic rights — and so permit oppressive regimes to flourish — it rarely finds expression as an attack on *economic* rights. In other words, those governments (for it is they, not their victims) who rely on ethical or cultural relativism manage somehow to find political rights less culturally congenial than economic ones.

A plague on both houses? Adherents, principally in the West, of liberalism need to acknowledge the genuine importance of local culture. And relativists and communitarians (if such they be) must accept the need for enhancing the cultural legitimacy of human rights norms.

At the heart of the Bangkok/Beijing hostility to political rights is a statist logic that operates to resist aspirations of universal acceptance of human rights. Cynically to employ the claim of relativism (or contextualism) and communitarianism as camouflage for executive self-preservation and privilege is repugnant.

Nothing I have sketched above is intended to detract from the importance of economic, social, and cultural rights (or, indeed, the third generation rights of solidarity). Far from it. The real question is whether, in the championing of economic, social, and cultural rights, at the expense of political rights, human suffering is indeed diminished.

*Raymond Wacks\**

## The Purpose of Legal Education

In June 1994 The Lord Chancellor's Advisory Committee on Legal Education and Conduct published a consultation paper<sup>1</sup> about legal education that is of great interest to legal educators everywhere including Hong Kong. It makes a number of suggestions for reform to the initial stage of legal education and raises many legal-education issues. The first and most fundamental issue it raises is one which has bedeviled legal education for a long time: what should be the purpose of legal education?

The authors of the paper seem to suggest dual purposes: legal education should train students to become practising lawyers; and legal education should provide an educational foundation for a variety of careers, not just law practice.

\* Professor, Department of Law, University of Hong Kong.

<sup>1</sup> Review of the Lord Chancellor's Advisory Committee on Legal Education and Conduct, *Legal Education, Consultation Paper: The Initial Stage* (London, June 1994).

The authors allude to the idea of dual-purpose legal education at the beginning of the paper as they set the framework for discussion. They mention that they have 'kept firmly in mind that not more than half of those who read law at university, and not even all of those who complete professional examinations, become practising lawyers.' 'University law degrees,' they add, 'will continue to be the foundation for a wide variety of careers, not just the practising legal profession.'

When describing the five functions of the initial stage of legal education (previously known as the academic stage) the authors elaborate upon this idea. They define 'lawyers' as 'not only members of the practising profession,' but 'all skilled in the discipline of law.' From this definition, one can safely conclude that the authors believe that lawyers fall into two groups — those who practise law and those who do not. One can further conclude that since they took the trouble to divide lawyers into these two distinct groups, they think legal education should serve the needs of both groups. This can only mean that legal education ought to serve two purposes: it should train people for professional practice as well as for other non-specified, or general, purposes.

Many problems can arise from mixing a professional purpose with a general purpose. One of the most serious is that it can create confusion among teachers, course designers, and students. What course content would one develop to produce 'lawyers' who do not practise law? Indeed, the presence of general purposes in legal education, whether explicit or implicit, has already been a considerable source of confusion in programmes of legal education. In such programmes, the curriculum often seems unfocused, without clear direction.

In order to design effective educational programmes, teachers need to put aside the notion of legal education as 'academic' or general education. From formal schooling through to traineeship and beyond — at every stage — legal education ought to be viewed exclusively as professional education, designed for students to learn the knowledge and skills needed for competent legal practice.

When developing a curriculum for legal education, teachers and course designers ought to concentrate on this educational purpose. Without it, two obvious design problems can occur. First, one can easily lose direction, so that making decisions about what to teach and how to teach becomes increasingly perplexing. This does not mean that general knowledge and skills ought to be excluded in a curriculum with an exclusively professional purpose or that law students should receive a narrowly technical education. On the contrary, teachers should develop a balanced, integrated curriculum in which students learn general and technical knowledge and skills both in theory and practice.

In such a curriculum, designers can create a course that starts with a general focus and progresses over time to a more professional one. This is a common approach in the design of many educational programmes: they require certain general entry-level prerequisites and then progress logically and systematically

from the general to the specific and from the simple to the complex. But if the educational purposes — the end-products — are both general *and* professional, one is bound to wonder where the general education ends and the professional education begins. Other questions come to mind. How should the two purposes be integrated? When they cannot be integrated, which should predominate? Without a clear purpose to refer to, what criteria should be used to make decisions about what to teach and how to teach?

The second design problem arises when the design task is complete and teaching begins. If there is no clear educational purpose to begin with, teachers will find it difficult to measure whether the purpose has been achieved. Designing appropriate evaluation methods to measure educational purposes that are unclear is difficult if not impossible. Programmes with unclear educational purposes often produce evaluation methods that are sloppy and inaccurate.

Educating law students exclusively for legal practice is so obviously what legal education should be about that arguments against it seem out of place when analogies to other professions are drawn. To use the medical-education analogy, would anybody these days plan medical curricula to educate non-practising doctors? Would dental schools design dental education to prepare their students not to practise dentistry? Would people want their architects to have been educated as non-practising architects?

University education in these professions may be many things, but it would be difficult for society, particularly in an age characterised by financial accountability in education, to accept the notion that universities should develop professional schools to produce non-practising physicians, dentists, or architects.

For professional schools such as law, professional purposes are the purposes most worth pursuing because they meet the needs of students, lawyers, and society at large. Vague purposes such as educating non-practising lawyers or people 'skilled in the discipline of law' are misleading, because it is unclear whose needs such purposes would meet. To a considerable extent, vague and misleading purposes have already created an environment in which law is taught in a contextual vacuum — removed not only from the concerns of lawyers in the everyday challenge of solving clients' problems, but also the real world. The fact that law programmes have, for many years, relied on general purposes should not justify arguments in their favour. It may be strongly argued that because we are living in an age of great change, and that lawyers must constantly adapt to, and even lead, this change, society has a greater need than ever before for law students to be well prepared for competent law practice.

This is a contentious argument. Many take the view that general educational purposes have always been, and should continue to be, part and parcel of legal education. This viewpoint is supported by numerous law teachers. They view legal education as different from other professional education. They

describe legal education as 'general' or 'liberal,' and believe that this kind of education implies a wider scope, and greater depth, to what they teach. Legal education, as characterised by some law teachers, is just a way of training the mind to think critically, to argue effectively, and to investigate meaning and purpose in a variety of phenomena. As a form of general training in intellectual skills, they argue, legal education is an appropriate form of education for a variety of careers. To support their argument they point to the fact that many students who go to law school do not end up as practising lawyers.

There are a couple of weaknesses in this line of reasoning. First, the fact that many law students do not become lawyers is not a justification for designing courses that do not teach them how to be lawyers. If this argument were accepted for all the professions, it would mean education in medicine, dentistry, and architecture should have general purposes as well as professional ones to satisfy the needs of those students who study in professional schools but who choose not to be doctors, dentists, and architects.<sup>2</sup>

Second, there is no evidence to suggest that a law degree is a suitable foundation for a variety of careers or a particularly effective trainer in general intellectual skills. One wonders whether other forms of study such as philosophy, psychology, physics, literature, or economics are not equally, or more, effective in developing general intellectual skills. Some may argue that playing chess or bridge for three years is the most effective programme for developing intellectual skills. Many professionals like to claim that their own disciplines are especially effective for training the mind, but there is no body of evidence to suggest that one discipline is any more effective in helping students develop general intellectual skills that are transferable to a variety of careers.

What the research does tend to show is that the more broadly based the skills are, the more likely they will be transferable. It can therefore be argued that a broad-based general education (such as a general arts or science degree) with a variety of different courses is probably more effective than legal education in promoting the learning of skills that are applicable to a variety of careers.

Paradoxically, it may even be that law programmes with exclusively professional purposes could actually provide a more effective *general* education than those espousing general purposes. The claim can be made that, in a well-designed programme, the inclusion of legal-practice skills — such as negotiation, interviewing, advocacy, writing, and problem solving — would not only create realistic, meaningful contexts for learning a variety of general intellectual skills, but would also provide excellent preparation for a variety of careers besides law practice. This claim, if substantiated, would mean legal education

<sup>2</sup> At the University of Hong Kong the vast majority of law students (89.7%) commencing their studies intend, as their first priority, to become lawyers. Compare the figures for new students in other professional faculties: medicine 94%, dentistry 95.7%, engineering 66.9%, architecture 62.1%. See *A Profile of New Full-Time Undergraduate Students* (Hong Kong: Office of Student Affairs, University of Hong Kong, 1993), p 45.

has the potential to be developed in ways that would make it both relevant to law practice *and* broadly transferable. Perhaps the answer to the question of how to make legal education serve both general and professional purposes, is to create an efficient and sophisticated curriculum focused on learning complex professional skills such as problem solving. This argument is a powerful one and merits further investigation.

If legal educators are to reform legal education successfully, they ought to concentrate first on clarifying its purpose. Mixing general purposes with professional ones is confusing to teachers and students. It results in a product that is mired in tradition, out of date, and inadequate to the needs of students and society. Legal educators ought to design a curriculum that helps students develop knowledge and skills that will contribute to their competence, and to their confidence, as professionals. For the legal profession to maintain its high standards and to continue to gain respect from society, law programmes must adhere to the purpose of educating students for legal practice. The future of legal education lies in focusing exclusively on this purpose.

Stephen Nathanson\*

### The Old Age Pension Scheme: A Tax by Any Other Name ...

In July 1994 the Education and Manpower Branch, Government Secretariat issued a pamphlet on its proposals to introduce an old age pension scheme (the '*Pension Consultation Paper*').<sup>1</sup> The proposals are based in large part on a feasibility study prepared by the Wyatt Company, an employee benefits firm.

The government has proposed that old age pension benefits in the amount of HK\$2,300 per month<sup>2</sup> will be payable to individuals aged 65 or over<sup>3</sup> who continue to reside in Hong Kong<sup>4</sup> and who have resided in Hong Kong for a minimum of seven continuous years prior to the date of application for the pension.<sup>5</sup> Pension benefits will be paid to eligible individuals whether or not they are employed at the time of payment and will be payable in addition to benefits payable under the civil service pension schemes or under voluntary

\* Senior Lecturer, Department of Professional Legal Education, University of Hong Kong.

<sup>1</sup> Education and Manpower Branch, Government Secretariat, *Taking the Worry out of Growing Old: A Consultation Paper on the Government's Proposals for an Old Age Pension Scheme*, July 1994 (the '*Pension Consultation Paper*').

<sup>2</sup> *Ibid*, para 5.1, p 9.

<sup>3</sup> *Ibid*, para 4.1, p 7.

<sup>4</sup> Absences of up to 180 days per year would be permitted. *Ibid*, para 4.4, p 7.

<sup>5</sup> *Ibid*, para 4.3, p 7. Benefits presently payable under the Normal Old Age Allowance ('NOAA') and the Higher Old Age Allowance ('HOAA') will be subsumed by the new scheme, but transitional arrangements will enable recipients of the NOAA and HOAA who do not satisfy the proposed residency requirements for the new scheme to receive pension benefits. *Ibid*, para 3.6, p 6.