

2012

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Recommended Citation

James Faulconbridge, *Alliance “Capitalism” and Legal Education: An English Perspective*, 80 Fordham L. Rev. 2651 (2012).
Available at: <http://ir.lawnet.fordham.edu/flr/vol80/iss6/12>

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ALLIANCE “CAPITALISM” AND LEGAL EDUCATION: AN ENGLISH PERSPECTIVE

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INTRODUCTION

Elizabeth Chambliss’s analysis of developments in U.S. legal education is both comprehensive and instructive because of its critical perspective on the multi-dimensional changes currently under way as law schools increasingly collaborate with their “clients.”¹ In this response Essay, my intention is not to question Chambliss’s analysis. Instead, I seek to compare the documented U.S. developments with some recent changes in the English context. I then reflect on the shared conundrums that exist as a result of what I describe—perhaps provocatively—as the forms of “alliance capitalism”² that are emerging in and defining the challenges faced by legal education. I use “alliance capitalism” to refer tentatively to questions that the motivations associated with the growing role of collaborations in the U.S. and English contexts could raise.

Part I provides a brief review of the peculiarities of English legal education to situate the discussion. Next, Part II documents a number of recent trends in English legal education that indicate the emergence of “alliance” strategies. Part III outlines the questions raised by changes in English legal education over the past five to ten years. Finally, this Essay concludes with a discussion of the wider implications of “alliance capitalism” in the U.S. and English contexts.

I. ENGLISH LEGAL EDUCATION IN CONTEXT

Many readers will be familiar with the significant differences in the structural requirements of English legal education compared to those of the

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1. See Elizabeth Chambliss, *Patterns of Organizational Alliance by U.S. Law Schools*, 80 *FORDHAM L. REV.* 2615 (2012).

2. See JOHN H. DUNNING, *ALLIANCE CAPITALISM AND GLOBAL BUSINESS* 33 (1997) (discussing the advent of alliance capitalism).

Unites States. It is not the intention here to provide an extensive analysis of the historical or current-day explanations of such differences.³ Instead, this Essay offers a brief sketch of the most important distinguishing features of English legal education and its relationship to the process of qualifying as a solicitor. Importantly, the term “solicitor” captures a fundamental difference between the English and U.S. systems in relation to the jurisdiction of legal professionals. The English system differentiates between the work of solicitors, who can advise clients about legal matters but not represent them in court, and the work of barristers, who have sole jurisdiction over court proceedings.⁴ In contrast, the U.S. system makes no such distinction. This Essay focuses primarily on legal education relating to the production of solicitors in England, as this is the area where alliances and reforms have been most important.

Two main routes into the legal profession exist for solicitors in England.⁵ First, an individual may complete a law degree at a recognized law school, followed by the Legal Practice Course⁶ (LPC). At this point, a two-year traineeship must be completed at a law firm.⁷ Usually, individuals secure a traineeship before commencing the LPC, with larger firms paying the fees for their future trainees’ LPC course.⁸ On completion of the traineeship, an individual is licensed to practice as a solicitor, although she cannot set up in sole practice or become a partner in a firm until gaining several years of experience.⁹

Alternatively, an individual may become a solicitor without ever completing a law degree.¹⁰ The Graduate Diploma in Law (GDL) enables any university graduate to complete a one-year conversion course, which teaches the fundamentals of legal practice.¹¹ The individual then follows the same route as a law graduate, completing the LPC and a traineeship.¹²

For both routes, the traineeship is the main barrier to entry, with the number of law degree and GDL graduates far outstripping the number of training places.¹³ In fact, in 2009, this imbalance led the Law Society to actively discourage teenagers from undertaking a law degree because of

3. For a historical overview of developments in the English legal system, see RICHARD L. ABEL, *THE LEGAL PROFESSION IN ENGLAND AND WALES* 261–81 (1988); Stephen Ackroyd & Daniel Muzio, *The Reconstructed Professional Firm: Explaining Change in English Legal Practices*, 28 *ORG. STUD.* 729 (2007).

4. See generally Richard L. Abel, *England and Wales: A Comparison of the Professional Projects of Barristers and Solicitors*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 39 (Richard L. Abel & Philip S.C. Lewis eds., 1995).

5. See generally Stephen Mayson, *The Education and Training of Solicitors: Time for Change*, 45 *L. TCHR.* 278 (2011).

6. See *id.* at 280–81.

7. See *id.* at 291.

8. See *id.* at 288.

9. See *id.* at 290–91.

10. See *id.* at 282.

11. See, e.g., *Graduate Diploma in Law (GDL)*, BBP U. C., <http://www.bpp.com/postgraduate-course-details/-/d/postgraduate/GDL/145> (last visited Apr. 21, 2012).

12. See, e.g., *id.*

13. See Mayson, *supra* note 5, at 281–83. For further details regarding qualification pathways in the English system and debates about these pathways, see generally *id.*

concerns about the growing disillusionment with the dearth of training opportunities.¹⁴

Therefore, the fundamental difference between the U.S. and English contexts is that a law degree is not the exclusive means of entry into the English legal profession. This structural difference has a number of implications. Most pertinent to Chambliss’s article is the fact that the idea of a collective mission and shared law degree (J.D.) brand is perhaps less relevant—although not completely irrelevant—in England. I return to such issues in Parts III and IV. In the next part of this Essay, I document a number of developments relating to different stages in the English legal education process (focusing on the LPC in particular), which parallel those collaborative/alliance initiatives that Chambliss outlines. I then reflect on the implications of such developments in the final part of this Essay.

II. ALLIANCE TRENDS IN ENGLISH LEGAL EDUCATION

Important developments in the regulation and structuring of English legal education since the turn of the new millennium indicate the penetration of alliances into the legal education landscape. Of most relevance, there has been an increasing focus on the development of legal education in collaboration with “clients.” In this context, “clients” have primarily been defined as the law firms that employ graduates of various education programs, in particular the LPC.¹⁵

Collaboration trends first became significant in 2001 with the birth of the City LPC.¹⁶ This version of the standard LPC was targeted specifically at those students destined for a traineeship in a corporate law firm in the City of London.¹⁷ Eight heavyweights—Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer, Herbert Smith, Linklaters, Lovells, Norton Rose, and Slaughter & May—worked in collaboration with three legal education providers—BPP Law School, Nottingham Law School, and the Oxford Institute of Legal Practice—to design a course that was better suited to the realities of city practice.¹⁸

The underlying motivation of the alliance between city law firms and education providers was twofold. For the providers, the alliance offered a way to develop a sustained income stream; around 600 students participated in the first year, a number that has grown steadily over time.¹⁹ In the

14. See Husnara Begum, *Law Society Starts Campaign to Scare Off Wannabe Lawyers*, LAWYER, Aug. 3, 2009, at 24 (explaining how the Law Society has begun to warn students of the risks of a career in law).

15. For more on the relationships between law firms and legal education, see James R. Faulconbridge et al., *Practice Relevant Legal Education: Lessons from the Evolving ‘City’ Legal Practice Course*, DIRECTIONS LEGAL EDUC., Spring 2010, at 6–7.

16. See Emma D’Souza, *Revealed: The Contents of the New City LPC*, LAWYER (Mar. 12, 2001), <http://www.thelawyer.com/revealed-the-contents-of-the-new-city-lpc/100028>, article.

17. See *id.*

18. See *id.*

19. See *id.*

context of a fiercely competitive market for legal education, such an income stream provides a vital source of stability.

For the law firms involved, the City LPC offered an opportunity to exploit the flexibility that exists within the regulatory framework for English legal education, which is now controlled by the Solicitors Regulation Authority.²⁰ This flexibility allows changes to be made to the content of legal education courses and the pedagogic practices used in training, as long as the revised course is validated and proven to meet minimum standards. The firms, by developing alliances with what have ultimately become exclusive providers of LPC legal education for their future trainees, were able to ensure that education programs simultaneously minimized the amount of time spent on certain kinds of legal work—for example, wills and probate work that a corporate lawyer in London rarely, if ever, encounters—while maximizing the time spent developing skills and competencies needed to be an effective city practitioner.²¹

The aim of such tailoring is simple: it ensures that the educational process best prepares new recruits for the realities of the kinds of legal work they will encounter when they begin life working for the firm sponsoring their LPC course. Research suggests that approximately two-fifths of the content of the City LPC courses was tailored to firm-related work. In particular, the City LPC made an effort to maximize the focus on both “black letter” legal knowledge associated with financial market and merger and acquisitions work, and the “soft skills” associated with city practice—skills such as the ability to analyze the commercial impact of legal advice, and to counsel in a manner aligned with the expectations of sophisticated corporate clients.²² Most recently, such tailoring has enabled providers of city- and firm-specific LPCs to request and receive permission from the Solicitors Regulation Authority to deliver courses in a shorter time period, trimming the duration of a course from ten to seven months, thanks to the time freed up by more focused training.²³

Since 2001, the City LPC has developed and evolved in various ways, with providers changing as some were outcompeted (for example, Nottingham Law School) and others attempted to enter the market (for example, The College of Law).²⁴ The most significant development, however, is undoubtedly the emergence of firm-specific City LPCs. Some of the biggest players—including Clifford Chance, Linklaters, and Allen &

20. See Faulconbridge et al., *supra* note 15, at 7 (describing this flexibility).

21. See James R. Faulconbridge & Daniel Muzio, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 GEO. J. LEGAL ETHICS 1335, 1341–43 (2009).

22. For details of this research, see *Professional Education, Professional Service Firms and Cultures of Work*, LANCASTER U., http://www.lancs.ac.uk/professions/professional_ed/ (last visited Apr. 21, 2012) [hereinafter *Professional Education*].

23. Corinne McPartland, *Linklaters Launches Fast-Track LPC*, LAWYER (Feb. 12, 2010), <http://www.thelawyer.com/linklaters-launches-fast-track-lpc/1003436.article> (describing this development).

24. See Georgia Stanley, *BPP Fights Off Rivals to Retain Key City LPC Role*, LEGAL WK. (Aug. 2, 2007), <http://www.legalweek.com/legal-week/news/1148630/bpp-fights-rivals-retain-key-lpc-role>.

Overy—took their alliances with education providers to a new level post-2005 by designing courses exclusively for the firms’ future trainees.²⁵ Research reveals that such firm-specific courses involve seminars available exclusively to individuals sponsored by the firm, with learning exercises using case studies, standard forms, and precedents that the firm has provided.²⁶

The aim of such close integration between the firm and the educational institution is to further ensure that legal education provides experiences and learning that mirror the circumstances that lawyers will encounter on their first day at work. But the training can also go one stage further by beginning to indoctrinate the trainees into the “corporate culture” of the firm, in particular by emphasizing the kinds of behaviors, practices, and norms that new recruits are expected to embrace.²⁷ Often, such “cultural” training is conducted by delivering part of the LPC course “in house” at the law firm’s offices, with senior lawyers and associates from the firm participating in training sessions and acting as role models.²⁸

Indeed, the use of simulations, in which all of the strategies described above come together to allow the reproduction of a particular firm transaction in the classroom setting, is the ultimate exemplar of what tailoring can allow.²⁹ Simulations enable students to “work” on a transaction, including handling interactions with fake clients played by trainers or lawyers from the firm.³⁰ This transforms legal education into what could be described as a problem-based learning exercise—an approach used widely in medical education³¹—where the problems to be solved are the complexities of a “real” legal deal. As a result, tailored LPC legal education becomes very much a preparatory stage for firm life as well as a requirement for entry into the legal profession.

Since 2007, the logic underlying the City LPC and its firm-specific variants has also spread to the English regions. Providers such as BPP have begun to offer legal education in cities throughout England, including Leeds, Birmingham, and Bristol, thereby competing with universities in these cities for students. In particular, these providers have targeted as clients corporate firms operating outside London, such as Eversheds and

25. See Gemma Charles, *Bespoke LPC Wins Law Society Validation*, LAWYER (May 20, 2004), <http://www.thelawyer.com/bespoke-lpc-wins-law-society-validation/110098.article> (explaining the customized training offered by those firms and the College of Law).

26. For a summary of this research, see Andrew Cook et al., *Professional Education, Global Professional Service Firms and Professional Work in Europe: The Case of Law*, U.K. ECON. & SOC. RES. COUNCIL (Feb. 2010), http://www.lancs.ac.uk/professions/professional_ed/docs/key_findings.pdf.

27. See Faulconbridge & Muzio, *supra* note 21, at 1350–51; *Professional Education*, *supra* note 22.

28. See Faulconbridge & Muzio, *supra* note 21, at 1349–52.

29. See *id.* at 1356.

30. See *id.*

31. For an overview of problem-based learning, see generally Mark A. Albanese & Susan Mitchell, *Problem-Based Learning: A Review of Literature on Its Outcomes and Implementation Issues*, 68 ACAD. MED. 52 (1993).

DLA Piper, as well as individuals funding their own education.³² Indeed, both Cobbetts and Halliwells, two regional firms in England, teamed up with the College of Law to develop their own bespoke LPCs that follow the principles of the City LPCs but focus on regional corporate work.³³

Such moves pose a significant challenge to universities that provide legal education in these cities. One response, exemplified by Northumbria University in Newcastle-Upon-Tyne, has been for incumbents in regional centers to offer more applied and practice-focused law degrees. This is often accomplished by substituting a legal clinic approach with firm alliances, which allow students to gain experience in providing legal advice to consumers—a practice uncommon in most university-based legal education in England.³⁴

III. THE BIG QUESTIONS OF AN ALLIANCE “CAPITALISM” ERA OF LEGAL EDUCATION

Alliances between providers of legal education and “clients” are undoubtedly a core feature of the English legal education landscape in the early part of the new millennium. Such developments have not been without controversy, however. For example, one major provider of alliance education, BPP, was acquired in 2009 by Apollo Global as a joint venture between the U.S. Apollo Group and The Carlyle Group equity house.³⁵ This acquisition was controversial because it brought attention to the growing for-profit, capitalist motivations associated with legal and other education. This is an issue with which educational circles in England are only just beginning to grapple; until recently, degree-awarding institutions had been almost exclusively not-for-profit.

Significantly, this development is indicative of the questions arising in response to growing alliance trends in English legal education. In particular, suggestions that capitalist imperatives have come to pervade decisions about educational practice raise fundamental questions about the moral, ethical, and fiduciary values instilled by legal education³⁶—hence my provocative use of the term alliance “capitalism” to characterize recent developments. Reflecting the very dilemmas that Chambliss raises in her

32. See Laura Manning, *Eversheds to Offer Condensed LPC and Training Contract*, *LAWYER*, Dec. 12, 2011, at 1. On the controversy that BPP’s expansion plans have caused, see Laura Manning, *BPP Expansion Plans Trigger JLD Crisis Talks*, *LAWYER* (Oct. 27, 2010), <http://www.thelawyer.com/bpp-expansion-plans-trigger-jld-crisis-talks/1005908>. article.

33. See John Parker, *Cobbetts, Halliwells Set for Bespoke LPC*, *LAWYER*, Oct. 16, 2006, at 6 (covering this arrangement).

34. See Donald Nicolson, *Legal Education or Community Service? The Extra-Curricular Student Law Clinic*, 3 *WEB J. CURRENT LEGAL ISSUES* (2006), <http://webjcli.ncl.ac.uk/2006/issue3/nicolson3.html>.

35. See Mike Semple Piggot, *Apollo Acquires BPP—Law School Chiefs Respond*, *LEGAL WK.* (June 17, 2009), <http://www.legalweek.com/legal-week/blog-post/1531475/apollo-acquires-bpp-law-school-chiefs-respond>.

36. See Andrew M. Francis, *Legal Ethics, the Marketplace and the Fragmentation of Legal Professionalism*, 12 *INT’L J. LEGAL PROF.* 173, 174–76 (2005).

article about developments in U.S. legal education,³⁷ the growing role of alliances in English legal education—in particular, the ability of some providers but not others to develop such alliances and profit from them—raises a number of normative concerns.

At one level, questions exist about the maintenance of a unified system of legal education. To a certain extent, the fact that the law degree is not a unifying form of education that all in the legal profession share (because of the possibility of GDL entry) means that the kind of concerns Chambliss expresses about the J.D. degree and its identity³⁸ are less relevant, although not completely irrelevant, in England. But concerns do exist about the fragmentation of the profession through the development of twin tracks of LPC acquisition. Not only are the two “hemispheres” of law³⁹ that have long been recognized potentially pulled further apart by alliances that allow those entering certain fields to complete distinctive training, but there is also potential for fragmentation within the hemispheres. Most notably, the risk exists that an elite class will emerge within the corporate sphere: those who have completed a City or firm-specific LPC. This class might then distinguish and understand themselves as lawyers who are distinct from the rest of the profession.

The potential for the emergence of such distinctions makes it important to reflect on whether a “one-size-fits-all” model of legal education is appropriate in the twenty-first century. Is it reasonable, and indeed desirable, to strive for a unified system in which all lawyers complete the same education?⁴⁰ Or should more tailoring of, and distinguishing between, different professional career paths be encouraged? For instance, could or should the logic of the City LPC be deployed to develop variants of legal education targeted at those destined for other areas of practice, for example high (main) street consumer practice? If so, what would be the implications for the transferability of qualifications between domains of practice, and what does such a development mean for the coherence (or fragmentation) of the profession of law?⁴¹ Perhaps more fundamentally, one might ask what impact alliances have on some of the fundamental assumptions underlying legal education: that it produces individuals with the aptitude and associated ethics and understanding of responsibility needed to deliver appropriate legal advice.

Without a doubt, whether in corporate or consumer work, in London or New York City, legal educators increasingly are expected to produce lawyers capable of delivering advice in a “market-friendly” fashion. This may call for advice that meets corporate clients’ desires to develop

37. See Chambliss, *supra* note 1, at 2644–46.

38. *Id.*

39. JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR 319–23 (1982).

40. See Randolph N. Jonakait, *The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools*, 51 N.Y.L. SCH. L. REV. 863, 901–05 (2006) (describing the conflicts inherent in any attempt to unify the legal profession).

41. See Andy Boon et al., *Postmodern Professions? The Fragmentation of Legal Education and the Legal Profession*, 32 J.L. SOC’Y 473, 480–84 (2005).

increasingly sophisticated business structures that stretch common law principles, or consumers' demands for cheap "over-the-counter" advice, something to which the development of alternative business structures in England (and potentially in the U.S.) and the English "Tesco law" debate (associated with the idea that a major supermarket chain, Tesco, could exploit the alternative business structure regime and provide legal advice in their supermarkets) bear testament.⁴²

To be provocative, one could ask whether alliances are: (1) the response of educational institutions to capitalist pressures for more market-friendly education and, in turn, more market-friendly lawyers—a pressure to which educators respond in order to ensure a steady stream of students and thus income; or (2) a genuine attempt to ensure that legal education is aligned with the needs of society for "effective" (i.e., competent but also ethical) lawyers. The two scenarios may not have the same drivers—business interests of law firms may drive the former, while fundamental fiduciary principles of the profession drive the latter. The answer to the question may well lie somewhere between the two positions. Regardless, it seems incumbent on legal scholars to ask whether alliances are potentially beneficial, but also risky, and thus in need of the kind of careful analytical response that Chambliss promotes.⁴³

CONCLUSION

Three significant points for reflection and debate emerge from this brief response to the analysis of Elizabeth Chambliss.⁴⁴ First, alliances—what I have termed "alliance capitalism"—are an increasingly important feature of legal education in the English and U.S. contexts. As such, they should be the focus of future scholarly enquiry. Second, the role of alliances has the potential to open up different ways of thinking about the delivery of legal education, particularly in terms of the way education is tailored to the skills developing lawyers need to perform in particular professional contexts. Third, such developments need to be treated with caution and reflected upon critically. Valuable as they may be, alliances also have potential dangers that need to be explored and evaluated through the kind of critical scholarship that Chambliss offers.⁴⁵ By connecting the analysis of alliances more fully to debates about professionalism, ethics, fiduciary responsibilities, and the regulations underlying legal education, there is the potential to exploit the opportunity alliances bring, while avoiding—to the extent possible—the dangers they may create.⁴⁶ Undoubtedly, significant challenges exist in the future for legal educators and scholars of the legal profession, challenges that must be tackled in order to continue the process

42. See generally Kim Economides, *Strategies for Meeting Rural Legal Needs: Lessons from Local, Regional and International Experience*, 16 DEAKIN L. REV. 47 (2011).

43. See Chambliss, *supra* note 1, at 2648-49.

44. See *id.*

45. See *id.*

46. See, e.g., Francis, *supra* note 36, at 189-90.

of reproducing legal education and the legal profession in a manner fit for the constantly evolving field of law.