Three Years' Hard: Learning Law at Chicago

by David J. Cocks

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The difference between learning law in Oxford and teaching it in Chicago is not only the difference between teacher and taught but between two systems of legal education. The Law School of the University of Chicago, built in the same grey Gothic style as the rest of the university but soon to be rehoused in a modern glass and concrete structure, is by general consensus one of the top five in America. I came out West as Bigelow Teaching Fellow and I teach first-year students a tutorial course in legal writing.

The transition from Oxford to Chicago is revealing and slightly intimidating. The vibrations of the American competitive machinery penetrate even the Law School, where its effect is felt in many places. For three years students with a very full curriculum read, eat and sleep law, and perhaps absorb it by mutual osmosis at night. Most of them live in a dormitory in which there are few students from other faculties. All this seems to me to produce a certain intellectual and emotional claustrophobia. But though a mild hysteria may be a necessary concomitant of American legal training, the achievements of this education give rise to feelings of admiration not unmixed with envy.

In spite of everything one is among people going places. The destination may be of doubtful value, but there is a sense of excitement and movement.

To understand both the advantages and the shortcomings of an American Law School it is necessary to understand how it is orientated. It is a professional
graduate school designed primarily to produce a technically equipped lawyer, unlike Oxford or Cambridge schools where law is merely another not very practical liberal arts subject. Nearly all the students at Chicago have had four years of undergraduate education, admittedly of a lower standard than English undergraduate education. Professional training entails three more years of hard intensive work. Virtually all who last the course will become academics or practicing lawyers, or alternatively men of public affairs—lawyers who still supply the hard core of men in public life in America.

This connexion with professional and public life is in the main, what brings a leading law school so much to life and divides it so sharply from an English university. Only three subjects that are of any practical value are taught at Oxford—Contracts, Torts, and Land Law. A random selection from the syllabus at Chicago illustrates the difference—Labour Law, Anti-Trust Law, Corporation Law, Evidence, Procedure, Family Law. The link, moreover, is not merely one of subject matter. It also concerns personnel. In England no member of the bench has ever been recruited from academic ranks (if we make the exception of Blackstone). In America the examples are many: Douglas and Frankfurter, two present members of the Supreme Court, stand out. On the faculty at Chicago are a past assistant head of the Anti-Trust division, a former recruit to Roosevelt's New Deal experts, a Labour arbitrator, and so on. In fact the standing of the American legal academic vis-a-vis the profession and his influence on the profession is much greater than that of his English counterpart.

There is little ground for an academic inferiority complex which affects even the greatest English teachers. The status of the law student is more ambivalent. On the one hand he is regarded as incapable of working completely on his own; on the other hand, if he is at the top of his class he will
probably be on the Law Review. (All university law reviews are run by students.) Here he may have the satisfaction of having a comment that he has written quoted in court or of rejecting an article written by one of his teachers. No English student would dream of either.

The Law Review is a very characteristic institution. There is tremendous competition to get on it (the top 10 per cent. do so), because a law review post is a good job-ticket. One has to realize that upon a student's standing in his class may depend his whole future career.

This professional orientation has its disadvantages however. To understand them fully one must look at teaching methods as well as the aims of those methods. Teaching is done mainly on a Socratic method, that is in classes with a theoretically continuous dialectic between teacher and student. At Chicago the size of a class varies from 120 to 30. Law is taught throughout America by the traditional case method. Basically what this means is that for each course the main material consists of a book containing a series of cases on a subject, the cases being so arranged by the compiler of the book as to contribute to the fullest possible understanding of a branch of the law by inductive reasoning.

The pragmatism of this approach and the self-conscious concentration on technique are very attractive in spite of the often aggressive atmosphere and a certain grim thoroughness. But there are serious drawbacks to the system. There is first too much to do and not enough time to think about it. Secondly, immersed as one is in a mass of fresh detail at the beginning of each term, it is difficult to gain much sense of perspective in a given subject or to envisage any satisfactory framework of reference.

It is here that the Oxford system is superior. The approach under the tutorial system tends to be more deductive. We work from text books which state rules, not from case books from which the rules have to be extracted. We have more time (too much) to keep our heads above water. We have more time for the sociological outlook that is essential for the practising lawyer even though we make appalling traditional use of that time. And, at Oxford at any rate, there is more opportunity to consolidate one's knowledge as the examinations are at the end of a three-year period instead of at the end of each term. Once you have taken a course at an American law school, it is too easy to put it on one side and forget all about it.

It is tempting to think that the results achieved in America outweigh the disadvantages for there is little doubt that in terms of sheer knowledge and intellectual interest the American student is far ahead of his English counterpart. The argument runs thus—the immense vigour and alertness in an American law school stems largely from its professional orientation. The only way in which we can awaken English legal education is to direct it in a similar way—i.e., by taking away legal training from the Inns of Court and giving it to the universities. This would probably be a mistake. The job of a university is not to train people professionally; that should be left to the profession.

It may be possible to introduce a little conscious preoccupation with technique and some much-needed vigour by doing two things. Here I must speak only for the Oxford school as this is the only one I know well enough. First, the syllabus could be reorganized to include more practical subjects such as Company Law and Family Law at the expense of nearly all the Roman law in the syllabus. Secondly, and perhaps more important, methods of teaching should be stringently reconsidered.