

Book Review

Fiona Cownie and Raymond Cocks, *'A Great and Noble Occupation!': The History of the Society of Legal Scholars*. Oxford: Hart Publishing, 2009. pp. x + 276.

Reviewed by Kim Economides

The rallying cry of “A Great and Noble Occupation!,” also the title of this history of law teachers in the UK and Ireland, was invoked by Professor Henry Goudy, who held the Regius Chair of Civil Law at Oxford and was the first president of the Society of Public Teachers of Law (SPTL), at the group’s inaugural Annual General Meeting held at the Law Society on July 1, 1909. Forty-two people were in attendance and it is clear that Goudy, who also chaired the meeting, was determined that the SPTL become a vehicle to promote the dignity and professional status of the academic lawyer. But it was Goudy’s friend Edward Jenks, a London-based law teacher who behind the scenes had done much of the groundwork, at one point even suggested that the SPTL model its rules on those of the Association of American Law Schools, though this never happened (20). Without the support of Jenks, Goudy’s vision alone—still highly relevant today—probably would not have launched the SPTL, now known as the Society of Legal Scholars (SLS). Goudy’s legacy was a challenging and ambitious vision for the law teacher who “...was neither an adjunct to the legal professions nor someone confined to conventional academic roles. Instead he discharged duties that were both highly intellectual and public” (16). Two points about the origins of the SLS are perhaps worth noting as it celebrates its centenary with publication of this volume: first, the Society’s place of birth was the Law Society and not a university; and second, that Jenks, one of its “founding fathers,” had been Principal and Director in Legal Studies at the Law Society since 1903 and was someone who “...combined a knowledge of international developments in legal education with personal experience of teaching law in both academic and professional contexts” (5). Law teachers, as this volume chronicles, are still struggling to reconcile ambivalent relationships with the academy and the legal professions and to find the right leadership pointing the way forward from carrying out an *occupation* to becoming a true, if not a great and noble, *profession*.

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This volume documents the ascendancy of academic lawyers in the United Kingdom and Ireland throughout the 20th century and is perhaps most fascinating when exploring their ambitions, practices and prejudices up until the 1960s. Ray Cocks who covers the first fifty years of the Society does so with all the skill of the trained historian but also considerable wit. Cocks, who has published extensively on Sir Henry Maine and the history of the Bar,¹ is able to place the early days of the Society in the wider context of ideas then shaping the profession and legal education. I particularly like the way the importance of what was *not* said about legal education by the profession is brought out, rather than simply recording official or insider views (10). This account provides genuine insight into the often unstated views of the profession and judiciary which for the most part held law teachers in low esteem and looked down on them, not as jurists, but rather as failed practitioners. At this time law teachers found themselves in an occupation that with few exceptions genuflected toward their professional masters: practising lawyers and judges. In reality the Society was little more than an introverted and highly conservative gentleman's club, absorbed with house-keeping issues such as social status, eligibility for membership, finances, and—most important of all—the menu and venue of the annual dinner. Women were not admitted until 1959, though formal barriers were removed in 1919, and only in recent years have five women become president (with Fiona Cownie as fifth) of what today is an increasingly influential, though in some ways still insecure and unrepresentative, learned society. Progress with realizing Goudy's founding vision—particularly his ideal of establishing a more activist, intellectual, and extrovert role for the “public” teacher of law—had been painfully slow, and the authors' cautious mid-term assessment (79–83) is that mere survival was a not insignificant achievement.

The second half-century, from 1960 to the present, covered by Fiona Cownie, a legal education specialist who has published on English law schools,² focuses on the Society's transition from education to scholarship that occurred against the backcloth of the expansion of British higher education. The authors rely heavily on the Society's patchy archive but while their account of the earlier period successfully manages to draw in other sources and situate internal debates within a wider historical context, helping us better understand how the role of the law teacher evolved, their later narrative, by contrast, rarely transcends a parochial, internal view frequently caught up in ephemeral detail. These later chapters are organized around decades, always rather arbitrary historical cut-off points, that internally repeat themes under sub-headings such as “relations with outside bodies,” “research matters,” “socio-legal studies,” and “legal education” which makes the chronology of sub-plots difficult to track and obscures how debates and developments evolved over longer periods.

1. See Raymond Cocks, *Foundations of the Modern Bar* (Sweet & Maxwell 1983), one of two books published in the SPTL Book Series; R.C.J. Cocks, *Sir Henry Maine. A Study in Victorian Jurisprudence* (Cambridge Univ. Press 1988).
2. See, e.g., her latest volume Fiona Cownie (ed.), *Stakeholders in the Law School* (Oxford Univ. Press 2010).

This approach raises but does not answer more fundamental questions about the professional role and constitutional structure of the Society. To be fair, covering territory that many of us have lived through was always going to be the more difficult task. The authors are alert to the danger of losing perspective as we approach the present and that proximity to living sources means critical assessment has either to be suspended or somewhat muted. But all the same, one senses that a valuable opportunity to draw together and articulate lessons for the future development of the organization may have been missed. The public and intellectual role of the Society in representing and promoting legal education and scholarship while advancing the professional status of the law teacher—the original goals set by Goudy—tend to receive less critical attention as we approach the present.

For example, when Professor Clifford Parker, president in 1974,³ expressed doubts about the legitimacy of the Society's officers (who to this day are elected not by the whole constituency but only those in attendance at the annual general meeting) performing the role of critic on behalf of all university law schools (126),⁴ he was making a quite profound observation exposing the Society's fundamental weakness and strength. The weakness is its democratic deficit and its strength, the pluralism in modern legal scholarship that it must strive to advance. The fact that the Society, unlike the Association of American Law Schools, lacks automatic membership and therefore is unrepresentative of legal scholars outside the Society as well as some within, further undermines its capacity to canvass, lead, and promote collective legal academic opinion. The task of representing legal academics in the UK and Ireland is in fact shared with several other professional associations⁵ and specialist learned societies, no doubt reflecting a healthy pluralism that now characterizes those who work within the discipline of law. Parker was quite correct to observe that the Society's officers could not speak credibly on behalf of the whole profession of academic lawyers, a point sometimes overlooked by subsequent officers and editors of the Society's newsletter. Many who are eligible to become SLS members, some immensely distinguished, prefer not to join thus leaving leaders of the Society unable to speak for all legal scholars. Moreover, the task of influencing legal and higher education policy is now shared with a range of bodies interested in the law and legal education based outside academia. Particularly since losing the passion and enthusiasm of the late Professor Peter Birks (258–259), who at times managed to attract attention from the popular

3. Parker was also elected the first chair of the Committee of Heads of University Law Schools (CHULS) in 1974 which formally broke away from the SPTL in 1975. See CHULS, *available at* <http://www.chuls.ac.uk/About.aspx>.
4. Interestingly, all those working in universities established in New Zealand are under a statutory obligation, contained in section 162 (4)(a)(v) of the Education Act 1989, to accept as part of their defining role the responsibility to act "...as critic and conscience of society."
5. See, e.g., Association of Law Teachers (ALT), *available at* <http://www.lawteacher.ac.uk/>.

press, and like Goudy was another visionary leader and occupant of the Regius Chair of Civil Law at Oxford, the Society's public visibility if not influence has noticeably declined over the past decade.

Although one former president of the Society did produce a powerful, potentially unifying vision, this fails to get mentioned. The late Professor Sir Neil MacCormick's May 1993 proclamation on the role of the legal scholar, found on the inside cover of the SLS *Directory of Members* published annually, in many ways updates Goudy's vision and could serve as the basis for a more contemporary manifesto for the role of legal science and law teachers. Given that it is such an inspirational statement, it is curious that in this history there is only a fleeting reference to MacCormick found in a footnote referencing his presidential address (199).⁶ It is worth noting that MacCormick, along with Goudy and most recently Professor William Twining in his first Centenary Lecture (263), strongly asserts both a *public* and *intellectual* role for the law teacher and concludes:

The fate of constitutionalism and the Rule of Law is nowhere a matter for complacency. Teachers of law protected by a justly defined academic freedom and imbued with a proper sense of professional self-respect and civic responsibility have a special role to play in maintaining critical awareness of the preconditions for law and liberty. The part they play is scarcely less vital than that of an independent judiciary and legal profession.

Two other presidential addresses are worth mentioning in this context for they too contain ideas highly relevant to strengthening the professionalism, confidence, and status of modern legal scholars. While Twining's presidential address does receive some attention (148–149), no mention is made of the proposal it contains that legal scholars “develop a reasonably sophisticated code of research ethics,” an idea that was left to the Socio-Legal Studies Association (SLSA) to carry forward in 1993. And similarly there is no reference to Professor Sir Ross Cranston's presidential address, also in 1993, in which he castigates law schools for “...failing in the areas of legal ethics and professional responsibility.”⁷ This cause is now being championed by a new global learned society, the International Association of Legal Ethics (IAOLE).⁸ It may be in the future that law schools, and also law libraries, increasingly occupy virtual rather than physical space and that national bodies such as the SLS are superseded by global or regional organizations, and already there exists a virtual community that links law deans in the form of the International Association of Law Schools (IALS) founded in 2005.⁹ The reactive, if not reactionary, stance of the SLS has over the years

6. Neil MacCormick, *The Democratic Intellect and the Law*, 5 *Legal Stud.* 172 (1985).

7. Ross Cranston ed., *Legal Ethics and Professional Responsibility* 33 (Oxford Univ. Press 1995).

8. See International Association of Legal Ethics, available at <http://iaole.org/>.

9. See International Association of Law Schools, available at <http://www.ialsnet.org/>. See also Commonwealth Legal Education Association, available at <http://www.clea-web.com/>.

indirectly spawned a number of other, more dynamic specialist bodies at the national level such as the SLSA and the Critical Legal Conference (CLC), that represent new, dissident, or younger perspectives in legal education and scholarship. Unfortunately, this has resulted in the voices of legal scholars either falling silent or becoming discordant in certain debates. And while the SLS, with around 3,000 members, remains the oldest and largest of the learned societies in the field, despite having had some excellent leaders and made valuable contributions through its committees and subject sections, it has not always nurtured scholarly development outside the mainstream. Consequently, its influence on the discipline has not perhaps been as great as it might have been and, as Parker lamented back in the 1970s, legal scholars often are still unable to come together to present a coherent, unified position to counteract powerful external interests. Cownie and Cocks's history suggests that a fundamental review of internal constitutional structures and external relations may be overdue and that, in looking for other possible models, it could be time to follow Jenks and revisit some of the rules of the Association of American Law Schools.

The authors are to be congratulated on producing a readable, entertaining, and informative account of the history of the SLS. Their assessments are on the whole balanced and they rightly note progress, often achieved in concert with other bodies, in supporting and developing standards, for example in relation to law library provision (234-236). Unfortunately, the Society's shortcomings, its relationship with the professions and professionalism, as well as with other emerging learned societies, funding and technological resources for law schools and law libraries—all key issues for the future—remain somewhat obscure perhaps because at the end of the day this is an "official" house history attuned more to recording views of its leading personalities than those of the subaltern or informed outsiders. Historians covering the next century would do well to focus not just on creating a mirror for the Society's self-image but also to identify underlying or emergent principles and structures that, although less obvious, could prove more effective if and when the next generation of leaders decide to realize Goudy's original vision. And it will be interesting to see to what extent such principles and structures are common to the academic and practicing branches of the legal profession, and whether each will recognize the other as an equal, if not a partner, when facing up to global as well as local challenges.