

DIMENSIONS OF PUBLIC LEGAL EDUCATION: WHAT WOULD A LEGALLY CAPABLE PERSON LOOK LIKE?

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A citizen-centred approach

Our Press Officer came to see me recently and asked if the Financial Learning Team should be making some sort of statement to the media in the light of the current world economic turbulence. I asked him what he thought an organisation whose mission is to promote adult learning would say at a time like this. Realising the irony of the situation and drawing on his Fleet Street past, he suggested, "We're all doomed – Financial Education Courses available here."

Financial learning is a young subject, arguably only about 8 years old in the United Kingdom but in those 8 years it has been through some very rapid developments and changes that may well provide some food for thought for the even newer field of public legal education. Indeed, some of the discussions and writings that have moved public legal education forward even this far contain clear echoes from the world of financial learning.

The tongue-in-cheek comment from our Press Officer reminded me of one of the dilemmas that is already woven into the brief history of financial learning and it is one that is well-known in other areas of public life as well: how do you balance the need to develop long-term frameworks of learning and behaviour that can be used as models for the entire population with the all-too-frequent situation that some members of the public are clearly failing to manage this aspect of their lives and need extreme remedial action if their lives are not to fall apart completely.

Some of these problems are on a slow-burn and their consequences may not manifest themselves for some time. The failure of large sections of the population to save sufficient for retirement is now a national problem that the Government has attempted to take out of the hands of individual citizens by bringing in a new national pension scheme in 2012 into which everyone without equivalent provision will be automatically enrolled.

At the other end of the time-scale, there is a serious problem for many people around over-indebtedness and this clearly highlights the learning-versus-remedial action challenge on a daily basis. Citizens Advice Bureaux have traditionally provided remedial help through their Money Advisers for individuals whose debts are out of control. Salvage operations can include producing statements of income and expenditure that can be used in negotiations with creditors, writing letters for clients and actually representing them in negotiations about settlement and repayment.

However, in recent years, Citizens Advice has responded to the frequent observation that many of their clients are "repeat offenders", who will often reappear in their offices 6 months after the last remedial action with yet another crisis, by introducing training in financial capability for clients, the aim of which is to help these clients learn sound practices of financial management that can help them stay out of trouble in the future. There is plenty of evidence that this approach is working with some clients but many money advisers have told me of clients who, after they have been hauled back from over the brink and then been offered some help in avoiding problems in the future, have replied with such comments as, "I think I'll just wait and see whether the Bailiffs come round".

Faced with such frustrations, it would be easy for financial learning to become focused largely round "people with problems" but in fact the subject has begun to develop a broader approach, certainly

tackling problem areas but also reflecting on the wider questions of what constitutes a financial capable person. It follows from the latter approach that financial capability is seen as a concern for all citizens – indeed, we might call this a “citizen-centred” approach.

So why is all this of any interest to those currently tending and watering the green shoots of public legal education? I would suggest that, even at this early stage, public legal education faces the same challenge over the relationship between a citizen-centred approach or a problem-centred approach – should public legal education focus mainly on legal problems or should it adopt a wider framework that seeks to build general public discussion and learning about the law as a concept that embraces notions such as community, citizenship, social responsibility and family. To return to my title, can you have a concept of public legal education without a concept of a legally capable individual?

To highlight the dangers of a problem-centre approach, I will venture a medical analogy by asking: can you have a valid ambulance service without also having a medical research university? Can the practice of remedial medicine at crash sites exist without all the “back office” paraphernalia of hospitals or discussions of medical ethics or public education campaigns about healthy eating? The world of medicine has already been through many changes in defining its public roles over the centuries, developing from a central interest in death to later focusing on illness and subsequently health and now even broader concepts of wellbeing. But in our new world of public legal education, there is as yet, no notion of legal wellbeing outside the avoidance of transgression. To further stretch our health analogy, what would the equivalent of “five-a-day” healthy eating look like in the context of public legal education?

Has the Law travelled similar journeys? Certainly, the Law has a very long pedigree and has responded to all manner of social change over the years. However, my analogy with medicine has (at least!) one limitation: while a *public* health policy is certainly desirable, one can intellectually imagine a society in which health was an entirely personal responsibility. However, the Law is almost by definition a societal necessity. It codifies and regulates the principles of behaviour by which we all live with each other. We simply cannot imagine a society where there are no laws (even in fictional post-apocalyptic world visions such as *Mad Max*, groups of individuals always seem to start with, “We’re going to need a few rules around here”!)

An important advantage that public legal education enjoys over financial learning is the long history of the Law and the fact that it has an intellectual and academic framework that can help frame this new public concern over what the public should need to know about it. However, this intellectual heritage needs to be used wisely. All voices need to be heard and louder voices should not drown out others. So who are the louder voices?

Social policy in the United Kingdom has a tendency to grow from the ground up and initially be defined by those working closest to problem areas at “the coal face”. This has certainly been the case in some areas of financial capability work where there has been a tendency to focus on the perceived most urgent problems such as overindebtedness and financial exclusion (a concept generally referring to the reluctance of the financial industries to provide goods and services to some – often mainly poorer – sections of the population). In the arena of public law, as an outsider, some of the loudest voices I hear come from the legal profession and the advice community who have clearly played a major part in the definition of public legal education to date. Indeed, the report of the PLEAS Task Force contained the following definition:

‘Public legal education provides people with the awareness, knowledge and understanding of *rights* and legal issues, together with the confidence and skills they need to deal with *disputes* and gain ac-

cess to *justice*. Equally important it helps people to recognise when they might need *support*, what sort of *advice* they need and where to get it' (PLEAS Task Force 2007 – my italics). Let me be clear, I am not trying to diminish the importance of the adversarial aspects of the Law but merely to say that there are other issues that need to have an equal voice. Indeed, there is a danger that defining public legal education in terms of disadvantage and problem-solving may alienate large sections of the population who have contact with these worlds.

Aspects of capability

So what might be some of the other dimensions of legal capability for the public? If our laws regulate the interactive behaviour between individuals and groups, recognising that we are all different and that our differences need to be acceptable to others, this gives us quite a large canvas. We might start by including personal responsibility and the rules applying to the individual and those closest to him or her. Some of these do not carry a force of law but are represented within codes such as decency and fairness. Others such as rules around physical violence, rights of spouses and partners or the ownership of property are governed by enforceable law. Should public legal education explore the relationship between moral codes and legal codes?

In the world of financial capability, a connection has been established between knowledge and skills and the ability to use them to create desirable outcomes (capability). However, little so far has been said about the differences in knowledge and skill sets that are appropriate to different individuals. This has been in part due to the assumption, contained in the Financial Services and Markets Act 2000, that there is *one* financial system. In practice, there are many different financial systems, some arising out of cultural and ethnic differences and some arising out of the different parts of “the” financial system that are used by different people. An example of the first type of difference might be the fact that, in some ethnic communities, families provide much more mutual financial support than in “native” British culture; a new business venture established by someone from a Chinese background is far more likely to be capitalised by family members than it is by banks.

Examples of the second type of difference would include the fact that some people are “excluded” from retail financial services, mainly due to low income or, indeed, that the use of credit unions is limited by their geographical spread or that some sophisticated financial products are only of use to the wealthy.

Similar differences exist within the usage of the Law. You may argue that the Law is universal and applies to everyone and this is of course true but, in the same way that people actually *use* different financial transactions or different aspects of the financial system, so, in practice, people may also use different parts of the legal system. Living in a small rural village where I cannot remember the last time we saw a police officer, I have little knowledge of the laws on stop-and-search but I may need to have a detailed and thorough knowledge of the laws concerning the keeping and usage of shotguns. So my legal “five-a-day” might be quite different from that of a young person living in an inner city. Venturing beyond the individual and the immediate household, we might want to include social responsibility within communities. Again, there are subtle boundaries between behaviour governed by non-enforceable rules and those governed by enforceable laws. This is an obvious point at which consideration of the differences between groups defined by cultural codes or ethnic ancestry can be brought in along with recognition that the value of these differences crosses both social and legal frameworks.

Is there going to be room for consideration of ethics in public legal education? In our legal tradition we have a distinction between the “letter of the law” and the “spirit of the law” which represents one of the tensions in an essentially adversarial legal system, recognising that an ethical dimension is im-

portant as well. How do we promote belief in a non-zero sum game approach to the law where everyone can benefit within a wider ethical framework? This is clearly an area where public legal education can make connections with financial learning, given our recent experiences in the financial markets. Behaviour of individuals and companies that may not have been technically illegal has nevertheless raised questions of ethics. Aside from the laws we put in place to regulate markets, should there be a more public discussion of the relationship between ethics and the Law?

Indeed, this could be extended into the whole area of economic sustainability. How do businesses and the individuals who work for them use our laws to make the country and the world more prosperous within a framework of responsibility for the environment? If our vision of a modern multi-cultural Britain includes the right and the ability for people to critically appraise the legal system as one of the cornerstones of citizenship in a democracy, then it follows that public legal education must foster a critical approach to the Law and not take it as a given. After all, the fundamental process of our democracy is that people elect representatives to make laws on their behalf to shape the society they want to live in. Public legal education for citizens of all ages must therefore also provide an intellectual framework to encourage people not only to respect and understand the laws we currently have but also to keep them under continuous scrutiny so that they can play their part in the democratic process of changing them.

Public legal education in public policy: lessons from financial capability

If by now you feel that this aspirational approach has entirely lost touch with any pragmatic realisation of the very real immediate needs of some groups and individuals, who may be facing serious danger or hardship, let me suggest that there are also pragmatic reasons why this should be addressed.

If public legal education is to become embedded in the fabric of society, it has to gain wide support in Government, not just from its "home" Department but from the other large Departments also. The whole business of running a complex modern country is so challenging that Government Departments really do struggle to achieve joined up thinking. Public legal education must not only tick the boxes at the Ministry of Justice – it also has to offer recognisable contributions to the fulfilment of policy at:

- The Department of Children Families & Schools – a wide field to go at – everything from Family Learning and intergenerational learning to Personal, Social, Health and Economic Education in schools in addition to adult literacy policies
- Her Majesty's Revenue and Customs – tax law for the individual has assumed a new importance with the arrival of new groups of migrant workers from Eastern Europe
- The Ministry for Transport – its mission statement: "Working to deliver a transport system which balances the needs of the economy, the environment and society" – any legal education issues there?
- The Department for Work and Pensions – employee rights and responsibilities.
- The Department for Business Enterprise and Regulatory Reform – with enterprise now finding its way into the school curriculum via Economic Wellbeing, the I doubt if the legal aspects of enterprise, for example, have yet been addressed. Issues of the rights of consumers are an area where there are well-established information and advice industries but, arguably, as yet little in the way of consumer education.

I can imagine you wondering, even after this very brief sally into Government, who is going to do all this work? It sounds like the remit for a Government Department-sized organisation all on its own!

The experience of the personal finance learning world is interesting in this respect. Around the year 2000, the then Secretary of State for Education and Science, David Blunkett, convened a group drawn from a wide range of organisations that became known as the Advisory Group for Financial Literacy (AdFLAG) to discuss what was needed to improve the nation's financial literacy. This group did not develop into a permanent body but it did publish two reports and also enthuse many of the organisations present to go off and develop this as part of their work.

One of the organisations involved was the newly created Financial Services Authority (FSA), a replacement for a number of organisations previously regulating various parts of the financial services industry. In addition to its statutory remits (Financial Services and Markets Act 2000) of maintaining market confidence, reduction of financial crime and protection of consumers was a responsibility for "promoting public understanding of the financial system". Given all the other responsibilities it had been given, the FSA might easily have been excused for taking a restrained approach to this public interest remit but instead it set off, under the direction of a very motivated Board, to create a "National Strategy for Financial Capability". Without delving into the detailed story of how this programme developed we can note some particular points that have relevance for public legal education:

- In the early days, the Government clearly saw the financial capability role of the FSA as being focused around the relationship between the public and the financial services industry. This enabled them to stress the benefits for the public and for the industry, in the form of a better informed, more engaged consumerate, which in turn justified the fact that the costs of the programme were to be borne entirely by the financial services industry through the regulatory levies charged by the FSA.
- In recent years, through the work of the FSA and a large number of other organisations, the Government has come to realise that there is a wider public interest in financial learning and it has found its way into other Government programmes and policies. There are now many, many organisations that would account themselves involved in one or more of the manifestations of personal finance learning (financial literacy, financial capability etc) but it is probably fair to say that the FSA has played a pivotal role in generating public and Government awareness of this.
- In the legal world there is no comparable body to the FSA, whose core purpose is to regulate the commercial transactions (sale and purchase of financial "products") between the financial services industry and the public. The FSA regulates the activities of "manufacturers" (banks, insurance companies etc) and also the "salespeople" (banks, IFAs, company salespeople etc). This is clearly different from the legal landscape where the service transactions are generally of advice rather than product and each type of legal practitioner is governed by a self-regulatory framework through professional associations. It is hard to identify any one organisation or group in the legal landscape for whom it is possible to argue that a more legally educated public provides a commercial advantage for the constituency it represents.

So, if there is no obvious "beast of the jungle" organisation that could carry the flag for public legal education, how is critical mass to be achieved? Can an alliance of other organisations create a "virtual" "beast of the jungle" to take on this role? Indeed, do the public legal education players even want that level of critical mass or would they prefer a more organic, "softly, softly" approach that gave a more equivalent recognition to the contributions of large and small organisations?

A few words on the relationship between education and advice are also probably in order. All of the service industries involved in the Law are generally involved in an advisory capacity. In essence, they advise clients – on a voluntary or commercial basis – how to navigate particular bodies of Law. This is quite different from education or learning but may not be mutually exclusive! That is to say that a more educated, capable and confident public may not result in a reduction in the call for professional

legal services! However, this point is certainly worthy of further discussion.

There is a tendency in areas of public policy that are not driven from within the “learning industries” to confuse information with education. Many, many initiatives from Government and other organisations have in the past failed to fulfil their potential because the sponsors believed that all that was required for the public to act differently was the provision of good information. This is rarely the case and learning professionals are very sensitive to the “wiggly journeys” that learners often take to arrive at a state where they are both knowledgeable, capable and confident enough to act on the basis of their knowledge. Learning processes are complex and rarely linear. This is not to diminish the importance of information but more to stress the importance of the relationship between information and learning – and even advice.

Public legal education supporters will be advised to seek early engagement with the learning professionals both at Government level, formal education institutions and other agencies such as community organisations. There is a dizzying array of settings within which learning takes place and which may be suitable resting points for public legal education and a knowledge of these may help advance the cause. These range from schools to Colleges of Further Education and Universities, from workplaces – supported by a strong network of Trade Union Learning “Reps” – to Public Libraries, from local community organisations to large national charities.

As a Research Fellow at the National Institute of Adult Continuing Education, I have to also declare my hand and urge you not to assume that the answer lies solely with schools! Demographic change is massively shifting the balance of the population and the natural emotional desire that we all have to ensure a good future for our children may not necessarily be a useful indicator for a balanced public policy. As an indicator of this, over 75% of the workforce of 2020 has already passed through and out of compulsory education and into the adult population. So any public education policy that does not seriously address the needs of the adult population as well as children will be doing the nation a grave disservice. Indeed, there is no need for these two groups to be set up in opposition to each other in priorities; Family Learning, joining the child agenda to the adult agenda, has recently taken a great leap forward both in recognition of its potential and also in the creation of support and resources.

Where next?

In spite of my earlier comments about branding, I would suggest that time spent on branding will not be wasted. But this is more than merely inventing a catchy name, although “public legal education” does need to be revisited if for no other reason than that the word “education” is profoundly out of favour in favour of “learning”. Education, in spite of its Latin derivation, carries connotations of an inflicted one way process rather than the individually-focused learning journey. Asking the public their thoughts on suitable naming might be a way of raising public awareness also.

Whatever we are going to call it, public legal education is a new “subject”. To avoid it being tossed around on the waves of grass-roots passions or political steering, it needs to start defining itself as a subject, an intellectual discipline, if you like, with connections to other academic fields. In this, public legal education has a distinct advantage over the world of financial learning where there was no existing culture of learning to relate it to. In the Law, there is clearly a great tradition of learning that should be used shamelessly – even if public legal education may in places want to stress its distinctive nature from “The Law” as a professional learning pathway.

This exercise of locating public legal education in the academic firmament is not so much for the

benefit of the public as a way of creating a rock that can be clung to in the inevitable turbulence that will ensue when the worlds of public policy, advocacy and the media get hold of it and start tyre-kicking to see what it is made of.

Overcome the fragmented nature of PLE provision

Again, building on the need for the “rock” of an academic discipline, I would suggest that an academic community of interested people is brought together and encouraged to discuss, debate, write and publish about the new subject. It is difficult to overcome fragmentation without giving people something to rally round or to look up to – get a high profile donor to fund a chair in Public Legal Learning.

Secure sustainable funding

This is self-evident but needs careful thought. With the principle of “no free lunch” in the back of our minds, we must think carefully of appropriate sources of funding that will be:

- manifestly independent,
- respected by the public but
- will not skew the culture of subject in subtle ways and
- will not discourage others from giving their support

We live in a world of public private partnerships where we can no longer assume that Government will see itself as the first port of call for funding learning. However, a sustainable relationship should be established not only with the Ministry of Justice but also a range of other Government Departments where demonstrable links can be made with their PSA target areas. Funding will also be needed from elsewhere. There is no equivalent in the legal world of the Financial Services Authority, which has channelled funds from the Financial Services Industry into its National Strategy for Financial Capability through the levy arrangements. Indeed, some would argue that this preponderance of funding into one organisation has not always helped with the development of a wider family of funders. Admittedly, the presence of a “beast of the jungle” like the FSA has given the subject respectability that has encouraged some to join in but there have been others who have said that “the FSA seems to have all that covered”.

So a careful mapping of the interested parties will be critical, covering central government, local and regional government, the voluntary sector, the legal “industries” and the various sectors of the learning world.

Conclusion

As a friendly external supporter to the cause of public legal education, I feel that the subject is both an exciting and very valuable one. At this early stage in its development, it is important that as many voices as possible are invited in to the debate about how and where it should grow. However, given the inevitable pressures to show practical progress, I would urge all parties to also step back and make sure that the right level of discussion about aims, philosophy and direction is built into the process. After all, we do want to be the health service of public law and not just the ambulance service!

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