

What are university law schools for?

Celebrating 60 years of the School of Law at Queen Mary University of London

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It is an honour to have been invited to join you in celebrating sixty years of the School of Law at Queen Mary University of London. The question posed by my lecture – what are university law schools for? – is one to which Queen Mary gives a convincing answer as I will go on to explain. Some of you might wonder why I bother to pose this question at all. Surely, at least one of the purposes of university law schools is obvious: to prepare students for careers as lawyers and judges. But this is not obvious at all. For many years the English universities had very little to do with legal training. There were law schools at Oxford and Cambridge by the early thirteenth century, but they taught only Roman civil and canon law, not the common law of England. Few university law students went on to practice as lawyers.¹ Instead, most lawyers were trained by professional law schools, in particular the Inns of Court,² and through apprenticeships with established practitioners.

The inclusion of law in university education was controversial. The vision of thinkers such as John Henry Newman and Matthew Arnold influenced the conception of the university “as a place dedicated to learning for its own sake, rejecting narrowly utilitarian and professional agendas.”³ Law was generally seen as a practical discipline which did not fit neatly within this emergent liberal tradition. There was also resistance from the legal profession, which sought to maintain its traditional privileges and autonomy. As A V Dicey observed in his inaugural lecture at Oxford, entitled “Can English Law be taught at the Universities?”, the general view of “eminent counsel” was “that English law must be learned and cannot be taught, and that the only places where it can be learned are the law courts or chambers.”⁴ Writing about Victorian Cambridge, the former Vice-Master of Trinity College went so far as to say that “the law school ... was generally recognised to be a refuge for those who were averse to intellectual effort”.⁵ I would like to think that no-one would have said that about Oxford, but the legal historian and

* President of the Supreme Court of the United Kingdom. I am indebted to Professor Rachael Mulheron KC (Hon) for sending me her invaluable research into the history of the Law School at Queen Mary. I am also grateful, as ever, to my judicial assistant, Rebecca Fry.

¹ John Baker, *An Introduction to English Legal History*, 5th edn (Oxford University Press, 2019), p. 181: “The majority of [university law graduates] before Victorian times became country parsons; a few chose administrative positions in the Church, and only a tiny proportion became advocates in Doctors’ Commons.”

² See John Baker, “The Third University of England” in *Collected Papers on English Legal History, Vol 1* (Cambridge University Press, 2013), pp. 143-167 and Wilfred R Prest, *The Inns of Court under Elizabeth I and the Early Stuarts 1590-1640*, 2nd edn (Cambridge University Press, 2023).

³ Andrew Boon and Julian Webb, “Legal Education and Training in England and Wales: Back to the Future?” (2008) 58(1) *Journal of Legal Education* 79-121 at 86. See further Anthony Bradney, *Conversations, Choices and Chances: The Liberal Law School in the Twenty-First Century* (2003).

⁴ A V Dicey, “Can English Law be taught at the Universities?”, Inaugural Lecture delivered at All Souls College, Oxford, 21 April 1883.

⁵ D A Winstanley, *Early Victorian Cambridge* (Cambridge University Press, 1940), p. 3.

philosopher Brian Simpson, who read law at Oxford in the 1950s, recalls that the law school enjoyed a reputation as a dumping ground for “very dim young men” often with “marked sporting ability”.⁶ In other words, law was, perhaps unfairly, thought to be a safe haven for rowing Blues. It is unsurprising that most barristers had chosen to read classics or mathematics rather than law.⁷

As a former law student myself, I am pleased to say that law has emerged from these doldrums and is now generally recognised as a rich and valuable discipline in its own right. Although I still occasionally encounter some puzzlement among scientists, for example, as to how one can carry out academic research in law, most academics realise, I think, that law is one of the more demanding undergraduate subjects and that it can be the subject of serious academic study. Indeed, Sir Henry Maine, Regius Professor of Civil Law at Cambridge, demonstrated that in Victorian times. Towards the end of his life, Stanley Baldwin was asked by the future Lord Longford whether his career in politics had been guided by the ideas of any thinker. Perhaps surprisingly, since the former Conservative prime minister was not known to take much interest in ideas, Baldwin is reported to have replied that the thinker who had influenced him most was Sir Henry Maine. Maine had argued that human history was a process of development in which societies that were based on status were progressively replaced by ones based on contract. It was this grand idea of history as a movement from status to contract, Baldwin said, that had inspired him throughout his political life. But then, seemingly perplexed, Baldwin paused. “Or was it”, he asked, “the other way round?”⁸

The earliest known English professional law school was established by the mid-thirteenth century. Its students, known as “apprentices of the Bench”, seem to have been attached to the court itself and would watch court proceedings from a raised platform known as the “crib”.⁹ In the middle of the fourteenth century, legal professional education for both barristers and solicitors¹⁰ was taken over by the Inns of Court. There were around twenty Inns which provided accommodation to the lawyers, statesmen and civil servants whose work brought them to London when Parliament and the courts were in session. Four Inns – Inner Temple, Middle Temple, Gray’s Inn and Lincoln’s Inn – became the most prominent and continue to play a role in the education of barristers today. These were known as the Inns of Court, while the smaller inns were known as the Inns of Chancery.

By the Tudor period the Inns of Court had become known informally as England’s “Third University”.¹¹ After a grounding in an Inn of Chancery, a student who aspired to the Bar would seek admission to one of the Inns of Court as a student, or “inner barrister”. Here, they could

⁶ A W Brian Simpson, “Herbert Hart Elucidated” (2006) 104(6) Michigan Law Review 1437 at 1438.

⁷ John Baker, note 1, p. 182.

⁸ John Ramsden, *The Age of Balfour and Baldwin 1902-1940* (Longman, 1978), p. ix.

⁹ Ibid, p. 168. The “crib” also appears to have been known as the “pecunes” or “pekynnes”. See John Baker, “The Pekynnes” in *Collected Papers on English Legal History, Vol I* (Cambridge University Press, 2013), pp. 308-314.

¹⁰ At this time, solicitors were also known as attorneys. By the end of the 16th century, the Inns of Court had begun to exclude solicitors and attorneys and refused to call them to the Bar.

¹¹ Wilfred R Prest, note 2, p. 151. See also John Baker, note 2.

expect what the legal historian John Baker has called “minimal tutorial coddling”¹². Students were expected to teach themselves and to help one another. They learned the law by visiting the courts and reading and copying yearbooks and reports, as well as by attending readings, moots and other practical exercises organised by their Inn. They could also try to obtain an apprenticeship in order to learn the art of pleading and conveyancing from a more senior practitioner.¹³

Readings were delivered twice a year, in the Lent and summer vacations. They usually lasted between seven and twelve days, spread over a couple of weeks.¹⁴ A barrister of at least ten years’ standing would be nominated to deliver a course of lectures on a selected statute. But, although the reading would focus on the text of the statute, many readers would take the opportunity to “expound the common law piecemeal, as the readers reached appropriate trigger words in the legislation.”¹⁵ In this way, each reader would illustrate his interpretation of the law. I say “his” here because all of the readers would have been men: women were not called to the English Bar until 1922, following the passing of the Sex Disqualification (Removal) Act 1919.¹⁶ Readings were a little like university lectures, but their primary function was to preserve and elaborate key legal propositions, without much analysis or comment. Nevertheless, they were important in “shaping and refining the common thinking”¹⁷ of the students, barristers and benchers.

Case exercises and moots took place more frequently. At Middle Temple cases were argued every weekday during term, after the midday dinner in hall. One of the benchers would pose a legal problem raising two or three difficult questions for the students and more junior barristers to argue. Students would also put cases to one another as they walked around the Temple Church.¹⁸ Moots “involved more elaborate preparation and procedure in the form of a mock trial, with two or three ... barristers or benchers presiding, and two students ... acting as counsel.”¹⁹ They were not concerned with abstract legal argument as they are now, but were instead designed to test the vocational skill of the mooter in framing writs and pleadings.²⁰ The moot problems were not at all easy: surviving moot books indicate that they often raised complex questions about the finer points of real property law.²¹ The moot-men would begin by reciting the pleadings from memory, before addressing the points in issue. The judges would

¹² John Baker, “Learning Exercises in the Medieval Inns of Court and Chancery” in *Collected Papers on English Legal History, Vol 1* (Cambridge University Press, 2013), pp. 315-334 at p. 316. See also Wilfred R Prest, note 2 above, pp. 178-184.

¹³ John Baker, note 1, p. 181. See also John Baker, “Legal Education in London 1250-1850” in *Collected Papers on English Legal History, Vol 1* (Cambridge University Press, 2013), pp. 270-307. t

¹⁴ John Baker, “Readings in Gray’s Inn, Their Decline and Disappearance” in *Collected Papers on English Legal History, Vol 1* (Cambridge University Press, 2013) pp. 342-351 at p. 344.

¹⁵ John Baker, note 1, p. 170.

¹⁶ Dr Ivy Williams was the first woman to be called to the English Bar, in May 1922. She never practised as a barrister but instead became the first woman to teach law at an English university. Helena Normanton, who was called to the Bar in November 1922, became the first woman to practise as a barrister in England. See further: [Timeline - First 100 Years](#)

¹⁷ John Baker, note 1, p. 171.

¹⁸ Wilfred R Prest, note 2, p. 153.

¹⁹ Wilfred R Prest, note 2, p. 154.

²⁰ John Baker, note 2, p. 158.

²¹ Wilfred R Prest, note 2, p. 155.

then explain the issues and give feedback on the students' efforts. Finally, "the mooters presented the judges with a slice of bread and a mug of beer and the exercise was over."²²

Mooting was, in fact, compulsory for those who wanted to progress. In Tudor times, there were no written exams or formal qualifications for lawyers, and a university degree was not essential (as continued to be the case until relatively recently: the law lord Lord Bridge, for example, did not have a university degree when he was elevated to the House of Lords in 1980). Instead, students graduated to the rank of "utter barrister" by performing a pleading exercise at the bar of their Inn.²³ This was initially just an internal promotion on the Inn's membership ladder, and did not in itself confer any rights of audience in the superior courts. But by the end of the 16th century, it had become "the basic prerequisite for practice in the central courts"²⁴, much as it is today.

The system of professional legal education in the Inns of Court was irreparably disrupted by the English Civil War. From then onwards, lawyers were trained primarily through apprenticeships.²⁵ The Attorneys and Solicitors Act 1729 required aspiring solicitors and attorneys to enter into an apprenticeship, known as an articulated clerkship, for a period of five years with a duly qualified practitioner. Written proof of having served articles was needed to become enrolled to practice in either the central or the local courts.²⁶ There was no formal requirement that aspiring barristers undertake a pupillage: all that was required was membership of an Inn for five years (or three for university graduates) and attendance at a certain number of dinners. However, most of those who intended to practice served a pupillage of at least two and generally three years.²⁷ Neither solicitors nor barristers received any real instruction on legal principles: they were required, as Sir William Blackstone put it, "by a tedious and lonely process to extract the theory of law from a mass of undigested learning."²⁸ Some students joined debating clubs where they would discuss points of law with one another,²⁹ but these had no formal status within the Inns or the universities.

This rather uninspiring position continued into the 19th century. Charles Dickens, who was admitted to the Middle Temple in 1839, described himself as "uncommercially preparing for the Bar... by having a frayed old gown put on in a pantry ..., and, so decorated, bolting a bad dinner in a party of four, whereof each individual mistrusts the other three..."³⁰ In 1846, a Parliamentary Select Committee was established to investigate and report on the state of legal education in England and Ireland, in response to widespread calls for improvement. In its Report, the Committee found that "the student... is left almost solely to his own individual

²² Wilfred R Prest, note 2, p. 156.

²³ John Baker, note 1, p. 170. See also John Baker, note 2, p. 161.

²⁴ Wilfred R Prest, note 2, p. 77.

²⁵ Andrew Boon and Julian Webb, note 3 at 83. Note that articulated clerkship for solicitors has been compulsory since the 17th century. Pupillage for barristers, though almost universal, was not compulsory until 1958.

²⁶ Andrew Watson, "The Legal Education Revolution that Failed – Attempts to Establish a Legal University in Victorian Britain" (2023) 14(2) *Journal on European History of Law* 28-39 at 29.

²⁷ *Ibid* at 30.

²⁸ Blackstone, "Introduction: On the Study of Law" in Wayne Morrison ed, *Commentaries on the Laws of England*, Vol 1pp. 3-28, p. 23

²⁹ John Baker, note 13, pp. 281-282.

³⁰ Charles Dickens, *The Uncommercial Traveller* (1860-61), ch 14.

exertions... and that no Legal Education, worthy of the name, of a public nature, is at this moment to be had” in either England or Ireland.³¹ It followed that lawyers were inadequately prepared for a legal career or for judicial office. Inspired by the situation in continental Europe, in particular in Germany, the Report recommended the universities should play a leading role in the provision of legal education, and that this should be complemented by professional training undertaken in specialist, more technical institutions: a College of Law created jointly by the four Inns of Court for barristers, and a “separate but cognate institution for the solicitor.”

As I have explained, the universities initially taught only Roman and Canon law, not the English common law. The first English law lecture series was given at Oxford by Sir William Blackstone in 1753. In 1758, the Oxford lectures were endowed by the foundation of the Vinerian professorship.³² Blackstone’s view was that law should be taught as part of a broad liberal university education so that students could gain an understanding of legal principles as well as its practical mechanics.³³ But, at least initially, common law legal education in universities was a bit of a flop. Blackstone’s successors did not attract large audiences at Oxford, nor did the early Downing professors at Cambridge. However, the universities did not give up and, over time the numbers of university law teachers and students increased and new courses were introduced. In 1839, the University of London awarded the first academic degrees in English common law. This was followed by the introduction of the BCL degree at Oxford in 1852, the Cambridge LLB in 1855 and the Durham BCL in 1858. From the early 1870s, law courses were introduced at universities in the midlands and the north of England. In London, the law schools at University College and King’s were followed in 1895 by the founding of a law school at the newly created London School of Economics.³⁴ By 1933, there were over 300 students studying law as an academic discipline at the University of London, and around 500 at Oxford and Cambridge respectively.³⁵

These university law schools developed alongside private colleges and “crammers” designed to help aspiring lawyers pass their professional examinations, which were made mandatory for solicitors in 1860 and for barristers in 1872.³⁶ The Law Society took over responsibility for the solicitors’ examinations in 1877 and, in 1903, established its own School of Law, the predecessor of what is now known as the University of Law. The Inns of Court jointly established the Council of Legal Education in 1852 to offer lectures to aspiring barristers. Teaching was delivered by practitioners and visiting academics until 1967 when the Inns of Court Law School, now known as the City Law School, was established with a permanent teaching staff.³⁷ Both the Law Society and the Inns of Court Schools focussed primarily on practical preparation for a legal career.

So, where does Queen Mary Law School fit into all this? The post-War period saw a rapid expansion in student numbers and a corresponding expansion of higher education

³¹ Report of the Select Committee on Legal Education, 25 August 1864, HOC 686.

³² Baker, note 1, p. 181.

³³ William Blackstone, note 28.

³⁴ Andrew Boon and Julian Webb, note 3 at 85.

³⁵ Edward Jenks, “English Legal Education” (1935) 51 Law Quarterly Review 162 at 179.

³⁶ Andrew Boon and Julian Webb, note 3.at 84.

³⁷ Andrew Boon and Julian Webb, note 3.at 84-85.

generally.³⁸ During the 1960's the number of UK universities more than doubled, from 22 to 46.³⁹ And the course offerings at established universities, like Queen Mary, also expanded. The School of Law began life in October 1965. It was created following the Report of the Robbins Committee on Higher Education, which encouraged universities to seize the opportunity created by increased student numbers to “develop broader courses on a new and exciting scale.”⁴⁰ The then-Principal of Queen Mary College, Sir Thomas Creed, responded by encouraging the creation of the Law School. Sir Thomas Creed had himself previously enjoyed a distinguished legal career, including as Chief Justice of Sudan.⁴¹

The first Dean of the Law Faculty, as it then was, was Professor Roger Crane. He was well-suited for the job, having already set up a successful Law School at the University of Nottingham. Professor Crane was supported by just three academic staff: one Reader and two Lecturers, one of whom worked part-time. The Reader was Julian Farrand, who was the external examiner in property law when I was an undergraduate student at Edinburgh. Julian went on to have a distinguished career as Professor of Law at the University Manchester and as a Law Commissioner. He also became the husband of Baroness Hale. I got to know Julian through Brenda, and he became a friend. The part-time lecturer was Cyril Davies, who had just retired after spending many years teaching at King's College. The full time lecturer was Jennifer Levin, a family law specialist, who later went on to serve as the Director of the Legal Action Group and to found the law school at Swansea University. The latter appointment secured her promotion to the rank of professor; something that had been achieved by comparatively few women at that time. Indeed, no women held a Chair in Law at a UK university until 1970, when Claire Palley was appointed professor at Queen's University, Belfast.⁴²

Queen Mary's first cohort of law students comprised 27 men and three women, almost all of whom were drawn from England and Wales. In contrast with the position today, there were very few students from an international background. The students spent their first year studying Roman law, constitutional law, the English legal system, and elements of contract law. In their second year, they studied criminal law, tort, trusts and, in most cases, land law. In their third year, they studied jurisprudence and legal theory, together with three optional courses. Much of this was typical of law degrees of the time; the content of the law degree at Queen Mary was influenced by the intercollegiate LLB degree offered by the University of London, and of course , it covered the compulsory subjects then required for a qualifying law degree. But the optional courses included what were then called Muhammadan Law and Hindu Law, which would not have been widely available. Queen Mary was also one of the first UK law

³⁸ Harold Perkin, “University Planning in Britain in the 1960's” (1972) Higher Education 111-120.

³⁹ Harold Perkin, “New Universities in the United Kingdom: Case Studies on Innovation in Higher Education” (Paris, OECD, 1969).

⁴⁰ *Report of the Committee on Higher Education under the chairmanship of Lord Robbins*, October 1963, p. 93.

⁴¹ I am very grateful to Professor Rachael Mulheron KC (Hon) for sharing materials on the history of Queen Mary on which this section of the lecture is based.

⁴² Fiona Cownie, “The United Kingdom's First Woman Law Professor: An Archerian Analysis” (2015) 42(1) *Journal of Law and Society* 127-149.

schools to offer a course in the law of social security, reflecting its commitment to providing its students with topical and relevant courses as well as its commitment to social justice.

As one would expect, the number of staff and students at Queen Mary School of Law and the variety of legal courses and options have expanded significantly since 1965. There are now more than 2,000 students, who are taught by over 130 academic staff.⁴³ There are significantly more international students, as well as significantly more women than there were when the law school opened in 1965. Queen Mary is rightly proud to have been ranked by the Sutton Trust as the UK's top university for social mobility: it admits a comparatively high number of students who were eligible for free school meals, and those students go on to have successful professional careers.⁴⁴ Indeed, many of Queen Mary's law students have gone right to the top of the legal profession. There are numerous Queen Mary graduates amongst the KCs in chambers and the partners at top firms, and it is impossible to mention everyone who deserves it. But I would like to highlight some of those who have received a judicial appointment, in particular: Sir Christopher Pitchford and Sir Wiliam Davis, both of whom became Lord Justices of Appeal; Dame Laura Cox and Sir Joel Bennathan, who became judges in the High Court; Brian Doyle, former President of the Employment Tribunals; and John Finch, the first judge of the Royal Court in Guernsey.

Over time, the content of the LLB course has shifted: Roman law has disappeared from the curriculum and EU law and human rights have taken its place. The optional subjects now available cover topical issues such as the law relating to the internet, property and colonialism, class actions, and green finance, among many others.⁴⁵ Queen Mary's traditional LLB is now complemented by other courses, including the two year Senior Status LLB for non-law university graduates. If I were an undergraduate law student today, I would be attracted by the LLB in Global Law, which enables students to spend their third year studying at a university outside the UK, in countries including Australia, Canada, China, Hong Kong, India, Singapore and the United States of America. The LLB in English and European Law or in English and French Law also provide invaluable opportunities for overseas study.

Queen Mary also provides options for aspiring lawyers who want to gain practical experience. There are opportunities for law students to spend the third year of their LLB on a paid internship at one of a number partner organisations, which include various law firms, businesses and the Government Legal Department.⁴⁶ The aim is to give students the opportunity to learn practical legal skills first-hand, and to enable them to develop a clearer understanding of their career options. After completing their placement year, students return to Queen Mary for a fourth and final year before graduating. The testimonials from students who have done this are impressive. They credit their year in practice with helping them develop legal and professional skills, including team-working, communication with clients and time management,⁴⁷ all of which are essential to successful legal practice. Students can also develop

⁴³ [About the School of Law - School of Law](#)

⁴⁴ The Sutton Trust, "Which university degrees are best for intergenerational mobility?" (November 2021), available at: [Which university degrees are best for intergenerational mobility?](#)

⁴⁵ [Law - Queen Mary University of London](#)

⁴⁶ [M130 Law in Practice - School of Law](#)

⁴⁷ [Student Experience - School of Law](#)

these skills by working at Queen Mary's Legal Advice Centre, which provides free legal advice to members of the community.⁴⁸

Turning to postgraduate study, when it opened in 1965, Queen Mary offered LLM, M Phil and PhD degrees on an inter-collegiate basis with the other University of London law schools. Today, Queen Mary's taught postgraduate programmes are thriving: the Law School has become the largest postgraduate law school in Europe.⁴⁹ In addition to PhDs, Queen Mary offers a wide range of LLM programmes, including some which incorporate overseas study, as well as MSc degrees in Law and Finance, Intellectual Property and Regulation and Compliance. Many of these courses are taught at the Centre for Commercial Law Students in Lincoln's Inn Fields. The Centre was established in 1980 by Sir Roy Goode KC. His vision was to bring practising commercial lawyers and academics together to exchange ideas, and it is clear that many students have benefited from the opportunities he created. Interestingly, Queen Mary is the first Russell Group university to offer an LLM in combination with a preparation course run by the commercial provider BARBRI for the Solicitors' Qualifying Examination. Students can therefore choose to combine their academic studies with more practical preparation for the centralised examination for solicitors administered by the Solicitors' Regulation Authority.⁵⁰

But as I asked at the beginning, what is all of this for? I would like to use the rest of the time today to say something about why I believe the academic study of law to be valuable, and to comment on the impact that academic teaching and research have had on legal developments, speaking from my perspective as an appellate judge.

I can begin by referring to a painting by Gauguin in the Museum of Fine Arts in Boston which has the title, translated into English: "Where do we come from? What are we? Where are we going?" Those are good questions for any lawyer or judge to consider.

Where do we come from? Sir Walter Scott, himself a lawyer and judge as well as a novelist, wrote in *Guy Mannering* that "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect".⁵¹ Any understanding of the law today must be based on understanding its history, and the history of our society, because the materials on which our law is based – the legislation in the statute book and the cases in the law reports – are the cultural products of a range of periods in our history. Students need to understand that the judgments they study were decided in a specific historical and social context.

What are we? Understanding the history of the law and being able to place judicial decisions and statutes in their context is not enough. It is also necessary to be able to think clearly about the problems raised in our own time and their possible solutions. That requires careful thought about the concepts we use and also about the objectives and the social realities which we are trying to capture through those concepts. For example, we do not generally

⁴⁸ [Optional Undergraduate Modules - Legal Advice Centre](#)

⁴⁹ [Postgraduate law programmes - School of Law](#)

⁵⁰ [LLM with SQE - School of Law](#)

⁵¹ Sir Walter Scott, *Guy Mannering* (1815), ch 37.

impose legal duties on individuals to protect other people from harm caused by others, but in some situations we do, for example when a teacher is in charge of a group of children on a school outing. To work out a principled basis for ascribing responsibility in some situations but not others, which can be applied consistently, requires careful analysis of the cases, and critical thought.

Where are we going? Once we have worked out the enduring principles which can be derived from the materials of the past, and once we understand the problems of our own time and the analytical tools available to us to devise solutions, we have to do our best to develop the law, in response to new problems, in a way which will set it on a sustainable course for the future.

Let me give you two examples of different kinds of legal reasoning. The first concerns the interpretation of a statute. In a case called *Canada Square*,⁵² the Court was asked to consider a claim relating to the mis-selling of permanent protection (or “PPI”) insurance. The claimant, Mrs Potter, had entered into a credit agreement with Canada Square, which was then known as Egg Banking plc. Almost 20% of her loan covered a payment protection premium relating to PPI insurance that Canada Square had arranged on her behalf. Over 95% of that premium was paid to Canada Square as commission on the sale of the PPI policy. This meant that only around 5% actually went to the insurer. Mrs Potter’s claim was brought after the ordinary time limit had expired. But the Limitation Act 1980 provides that time will not start to run if any fact that is relevant to the claim has been “deliberately concealed” from the claimant by the defendant. So, we had to decide whether this exception applied. That raised some difficult questions about the meaning of “deliberately” and “concealed” in the legislation. For example, did the word “concealed” require that the defendant was under a duty to disclose the information? Was it necessary for the defendant to know that the information was relevant to the claim? What was meant by “deliberately” in this context? Must the defendant have concealed the information on purpose? Or was recklessness enough?

In other words, we were through Alice in Wonderland’s looking glass, trying to find out what words mean. “When I use a word,” Humpty Dumpty famously told Alice, “It means just what I choose it to mean — neither more nor less.”⁵³ Fortunately, this is not how judges decide cases. It is true that the answer to the questions raised in *Canada Square* could not be found by looking only at the text of the legislation. But judges have a professional obligation to reach their decisions through a process of legal reasoning. We cannot think about the problem purely on its merits, nor can we reach our decisions on non-legal grounds.⁵⁴ Words in statutes are generally intended to be given the meaning used in ordinary conversation, unless Parliament has indicated otherwise. They are also generally, though not always, used consistently in legal contexts. So, we considered the meaning of the words “deliberately” and “concealed” in ordinary English, as well as the ways in which they have been used in other judicial decisions

⁵² *Canada Square Operations Ltd v Potter* [2023] UKSC 41.

⁵³ Lewis Carroll, *Through the Looking Glass, and what Alice Found There* (1871), ch 6

⁵⁴ HLA Hart, “Positivism and the Separation of Law and Morals” (1957) 71 *Harvard Law Review* 593 at 607-608. See also John Gardner, “Legal Positivism: 5½ Myths” in *Law as a Leap of Faith: Essays on Law in General* (Oxford University Press, 2012), pp. 39-42.

and statutes. Looking to the ordinary meaning of the word “concealed” enabled us to reject Canada Square’s argument that it required the defendant to be subject to some form of duty to disclose the relevant information. Similarly, we rejected the contention that “deliberately” could mean “recklessly”, on the basis that ordinary English, other judicial decisions, and other legislation all suggested that “deliberately” and “recklessly” have different meanings.

But being able to place legal language in its context is not by itself enough. Since society is constantly evolving, it follows that the common law is also constantly being developed and refined by the judges who decide the cases before them in the courts.

For example, in *Wolverhampton City Council v London Gypsies and Travellers*,⁵⁵ the Supreme Court held that the courts have the power to grant what are called “newcomer” injunctions. These are injunctions against persons who are unknown and unidentified when the injunction is granted, and who have not yet done, or even threatened to do, anything wrong. The context was injunctions obtained by local authorities to prevent unauthorised encampments by unnamed gypsies and travellers, but the case had wider implications for other situations where legal wrongs may be committed by individuals who cannot be identified in advance, for example on the internet. At the time the appeal was decided, newcomer injunctions were a wholly new form of injunction, with no obvious legal ancestor. However, because the court’s equitable jurisdiction to grant injunctions was unlimited (subject to any statutory restrictions), the court could grant injunctions in new circumstances, as and when required by the principles of justice and equity which underpin them. This was demonstrated by the courts’ development of a number of new kinds of injunction over the past 50 years, including freezing orders, search orders and internet blocking orders. We concluded that, as a matter of principle, newcomer injunctions should be granted (subject to certain safeguards) because equity demands that where there is a right there should be corresponding remedy, and it responds flexibly to changes in circumstances over time.

Cases like these raise questions which require time for thought, and skill in analysis. Judges and lawyers may not all possess that skill, and those that possess the skill may be under great pressure of time. Academic scholarship is vital to help the courts – both counsel and judges – to arrive at answers to legal problems which are carefully reasoned and reflect an awareness of the relevant social and historical context.

Three points emerge from this. The first is that judges need to be able to think clearly about the problems raised in the cases before them and their possible solutions. This requires careful consideration of the concepts we use, and also of the objectives and the social realities which we are trying to capture through those concepts. Otherwise, we find ourselves in the position described by John Maynard Keynes: “Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist.”⁵⁶

The second point is that judges must decide cases through a process of legal reasoning. This is not the same thing as economic, social, political, ethical, or indeed any other kind of

⁵⁵ [2023] UKSC 47.

⁵⁶ J M Keynes, *The General Theory of Employment, Interest and Money* (1936), ch 24.

reasoning. We do not agree about politics or morality, but we are generally able to agree that there is an obligation to comply with the laws of our society as laid down by Parliament and applied by the courts. In order to maintain public confidence in the courts' application of the law, judges have to focus on the methods of reasoning which are sanctioned by the law. The point is illustrated by a matter which arose when James I became King of England, and sought to act personally as a judge, arguing that "the law was founded upon reason, and that he and others had reason, as well as the Judges." The Chief Justice, Sir Edward Coke, tactfully responded that although "God had endowed His Majesty with excellent science, and great endowments of nature... His Majesty was not learned in the laws of his realm of England."⁵⁷ This disqualified James I from sitting because, Coke continued, "causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason but by the artificial reason and judgment of law, which law is an act which requires long study and experience."⁵⁸ This point is critical to public trust and confidence in the courts and in our wider legal system. Legal reasoning results in a distinctive form of decision-making, which the public is willing to accept to determine their disputes because it is clear that judges' decisions are not based on contested political, ethical or other values.

Thirdly, it follows from the previous two points that university law schools are immensely important for the proper functioning of our legal system. To begin with, we need to train lawyers who are capable of understanding the law and of subjecting it to critical analysis through a process of legal reasoning. We derive great assistance from the submissions of counsel in the appeals before us. We also benefit from academic scholarship. In the past judges used academic work with caution. As Lord Buckmaster put it in *Donoghue v Stevenson*, "[t]he law books give no assistance, because the work of living authors, however deservedly eminent, cannot be used as authority."⁵⁹ There was, in addition, a convention amongst academics of deference to the judiciary. In the 1950's, case notes published in leading journals such as the *Law Quarterly Review* were "famously deferential: criticisms of judicial opinions had to be packaged in mealy-mouthed phrases such as 'it is respectfully submitted that.'"⁶⁰

The position is very different today. In the Supreme Court, we ask our Judicial Assistants to identify any notable commentary on the cases that come before us on applications for permission to appeal. Our Library provides us every week with summaries of all of the latest articles in the leading academic journals. When appeals come before us, we look to academic material, which is often cited by counsel or, if not, turned up by us or our JAs. I find that different types of scholarship can be valuable in different ways. On the Supreme Court, we all have to become generalists, because we can be asked to decide appeals which concern a very wide range of areas of law. So, I derive great assistance from textbooks and practitioner texts, which provide a map of the territory to be navigated and help me to understand where

⁵⁷ *Prohibitions Del Roy* (1607) 12 Coke Reports 63 at 65. Note that James I did go on to sit as a judge in England. See further Ian Williams, "James VI and I, rex et iudex: One King as Judge in Two Kingdoms" in William Eves, John Hudson, Ingrid Ivarsen and Sarah B White (eds) *Common Law, Civil Law and Colonial Law* (Cambridge University Press, 2021), pp. 86-119.

⁵⁸ *Ibid.*

⁵⁹ [1932] AC 562 at 567.

⁶⁰ Nicola Lacey, *A Life of Herbert Hart: The Nightmare and the Noble Dream* (Oxford University Press, 2004), p. 157.

the issue in the appeal fits. As my colleague Lord Burrows has observed, another benefit is that the textbooks provide a relatively neutral analysis, whereas of course counsel's submissions are framed in the way that is most beneficial to their client.⁶¹

Doctrinal scholarship can also be a valuable source of ideas. Sometimes academic criticism can prompt the courts to change course. Who can forget Glanville Williams' blistering attack on the House of Lords' decision in *Anderton v Ryan*,⁶² which prompted the Lords to change their minds only a year later in *Shivpuri*?⁶³ But it is not always prudent for judges to adopt academic theories wholesale. The House of Lords' adoption of Peter Birks' theory of unjust enrichment provides a cautionary example. Birks initially supported the "unjust factors" approach to unjust enrichment, meaning that the claimant had to point to a specific factor, such as mistake or duress, in order to show that the enrichment was unjust. However, later in his career, Birks moved towards what is known as the "absence of basis" approach, which holds that enrichment is unjust if there is no explanatory basis for it, for example, because there is no valid contract or gift.⁶⁴ The trouble was that, by this time, the unjust factors approach had become embedded in the case law.⁶⁵

The courts also make use of non-doctrinal scholarship, or what is sometimes called "law and". Legal philosophy, law and economics, law and sociology have all been influential, and it is obviously desirable that judges should reflect on the law not only from a purely legal perspective, but from social, economic, moral and above all philosophical perspectives. Such research can be of great value to judges.

To give just one example, consider the influence of the legal philosopher Herbert Hart. His inaugural lecture on "Definition and Theory in Jurisprudence",⁶⁶ delivered in 1953, is closely reflected in the modern approach to the attribution of responsibility for companies' decisions, as set out by Lord Hoffmann in the *Meridian* case⁶⁷ in 1995. Hart's idea of the rule of recognition, as a non-legal norm underpinning the legitimacy of laws, developed in his book *The Concept of Law*, published in 1961, has been applied by the Supreme Court in important constitutional cases such as *Miller 1*,⁶⁸ in 2017, concerned with the need for Parliamentary approval of Brexit. Hart's 1959 book on *Causation and the Law*, co-written with Tony Honore, has had a major influence on judicial thinking, illustrated by its citation by Lords Leggatt and Hamblen in the *Financial Conduct Authority* case⁶⁹, concerned with the question whether the closure of businesses during the Covid pandemic could be said to have been caused by the

⁶¹ Profile of Lord Burrows, Cherwell, 14 October 2025, available at: [Lord Burrows: "If you can't explain this area of the law to an intelligent teenager, you don't really understand it yourself." - Cherwell](#)

⁶² [1985] AC 560. Glanville Williams' attack on the reasoning in this case is set out in "The Lords and Impossible Attempts, or Quis Custodiet Ipsos Custodes?" (1986) 45(1) Cambridge Law Journal 33-83.

⁶³ [1987] AC 1.

⁶⁴ Peter Birks, *Unjust Enrichment*, 2 edn (Oxford University Press, 2005).

⁶⁵ See, for example, *Banque Financiere de la Cite SA v Parc (Battersea) Ltd* [1999] 1 AC 221.

⁶⁶ (1954) 70 Law Quarterly Review 37.

⁶⁷ *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500.

⁶⁸ *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

⁶⁹ *Financial Conduct Authority v Arch Insurance (UK) Ltd* [2021] UKSC 1.

outbreak of disease within 25 miles of the business, so as to trigger liability under business interruption insurance policies.

In my own judgments, I have derived assistance from sociological research on the affordability of employment tribunal fees⁷⁰ and on the impact of silent protests on staff and patients at abortion clinics,⁷¹ and from research by criminologists into Parole Board hearings,⁷² to give just a few examples. But I think it is important to remember that “law and” provides us with a way of examining the law from the perspective of another academic discipline. “Law and” is of undoubted value, but it should not be confused with law, which is animated by a distinctive mode of thinking and discourse.⁷³ It is important that law schools should continue to produce students trained in the particular methodology, the particular skills of research and techniques of reasoning, which are distinctive to law as a subject and are different from those of other disciplines.

Queen Mary’s law school has made a valuable contribution to legal teaching and scholarship in its first sixty years. I wish the law school a very happy birthday, and I look forward to seeing it continue to light the way forward for students, lawyers and judges in the future.

⁷⁰ *R (UNISON) v Lord Chancellor* [2017] UKSC 51.

⁷¹ *Re Abortion Services (Safe Access Zones: Northern Ireland) Bill* [2022] UKSC 32.

⁷² *Osborn v The Parole Board* [2013] UKSC 61.

⁷³ See further Ernest Weinrib, “Can law survive legal education?” (2007) 60(2) *Vanderbilt Law Review* 401-438.