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## Twining's Tower: Metaphors of Distance and Histories of the English Law School

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# BOOK REVIEW

## TWINING'S TOWER Metaphors of Distance and Histories of the English Law School

*Peter Goodrich\**

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### I. INTRODUCTION

To the extent that they are not repressed, my memories of law school as a student are of a world of progressive disappointment. My unexceptional emotional trajectory from aspiration to estrangement and from optimism to fear reflected, in part, the privilege of my background and, in part, the intellectual paucity of "school law" in England.<sup>1</sup> Law school stole my hopes of change and robbed me of any surviving sense of the relevance of my inner world, of poetry, desire or dream, to the life of the institution. My experience of law school was of the denial of the relevance of my experience of law school. The irony of that paradox, of the experience of repression as a mode of knowing, of the embodiment of denial as a mode of being, is the secret of the school's success as a rite of reproduction: an institutionally managed trauma gives birth to a conforming or believing soul.<sup>2</sup>

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1. I borrow the term "school law" from W.T. Murphy, *Reference Without Reality: A Comment on a Commentary on Codifications of Practice*, 1 LAW AND CRITIQUE 61 (1990). This article refers to school law as the form of commentary taught in law school:

The principal genre of school law is commentary. Students are assigned carefully delimited texts to read for the next class, whether or not these texts are appended to a problem. Yet what are such "exercises" about? Is more at stake here than debating . . . whether God could have become a cucumber or a beetle rather than a man? In what sense is school law a "discipline?"

*Id.* at 62.

2. This biographically explicit and psychoanalytically informed analysis of law school has been well represented within critical legal studies, critical race theory and feminist legal thought. For diverse examples, see Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW 40 (David Kairys ed., 1982); Duncan Kennedy, *Psycho-Social CLS: A Comment on the Cardozo Symposium*, 6 CARDOZO L. REV. 1013 (1985); Peter Rush, *Killing Me*

To the extent that they are repressed, my memories of law school are repeated, often in inverted forms, in my practice as a teacher of law. This repetition, unsurprisingly, has its origins in my student experiences of law school, but has its most intense and prolonged expression in my academic life: it is lived out obscurely in personal forms of non-communication and in institutional forms of non-relationship. This repetition can be formulated in the dual terms of the trauma and the insignificance of school law. The trauma has been well documented in novels, dramas and films as well as in academic and most usually self-consciously "critical" legal self-reflection. The trauma is mundane and concerns the isolation and impersonality, the elitism and relentless competitiveness, the objectivity and homosociality of law school. The trauma produces the reasonable man, the "black-letter" lawyer, the dull white face with one less thought each year. The insignificance concerns the self-effacement of the scholar within an institution which does not prize thought, but rather prestige, publication, the circulation of texts and the manipulative repetition of standard argumentative forms.

The insignificance of scholarship to the law school expresses the predominant epistemic form of law: it is a knowledge which is rigorously separated from any being that knows—in this sense the persona of judge or professor or lawyer is mystical, a status rather than a being—and it is a knowledge which denies the significance of thought and thereby allows for the reproduction, the repetition, of established legal forms. The mechanism of repetition institutes repression and does not necessarily distinguish between traditional and radical, black-letter and critical expositors of law.<sup>3</sup> The critics who live (and relive) the trauma of school law in the self-conscious form of subversion, rebellion or resistance to the norms of an externally defined law are likely to be as authoritarian, competitive, status conscious, elitist and existentially and politically lost in relation to their critical knowledges of law as are their traditional counterparts in relation to the more recognised forms of trans-

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*Softly with his Words: Hunting the Law Student*, 1 LAW AND CRITIQUE 21 (1990); PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

3. This point is made at length, and with characteristic acumen, in Lindsay Farmer, *Bringing Cinderella to the Ball: Teaching Criminal Law in Context*, 58 MOD. L. REV. 756, 760 (1995) (discussing a critical legal studies approach to criminal law). According to Farmer:

What is most immediately striking is that we are shown the mirror image of the orthodox account. Where the law is allowed no internal theoretical unity, [the critic] sees a unity in terms of its ideological purpose. Where one claims to be formal and abstract, the other sees moral and political decisions being made. In holding the mirror to conventional legal reasoning, [the critic] demands that it recognise its true self . . . .

*Id.*

mission of legal knowledge.<sup>4</sup> The power of law resides precisely in the unconscious diversity of the forms of its repetition. The history of the law school, and specifically a history written by a law professor, thus faces at the very least a double task. It is first a biographical endeavour, even if the expression of such biography takes the form of objective distance, purported description or a more or less direct denial. Second, it is a work of imagination, a work with a complex and somewhat indeterminate referent.<sup>5</sup> The history of law school, in this case of the English law school, is a history not simply of the forms of school law and of the jurists—in Twining's account the "extraordinarily talented men"<sup>6</sup>—who established or maintained the school and its patterns of knowing. It is also a history not only of a faculty in the university but of a moment within the legal institution. The history of law school is a part of the history of the formation and reproduction of lawyering and in that crucial facet it is a history of the relationship between or disjunction of forms of knowing and patterns of practice.<sup>7</sup> The history of law school is, therefore, a part of the history of law and must take a certain responsibility not only for the narrative of the legal educational institution, but must further endeavour to offer some account of the practice of law and of its effects—of its violence as well as its knowledge—upon those who come before or are otherwise affected by it.

William Twining's account of the modern English law school offers a species of social anthropology of the institution. It adopts the style of an objective description of the various activities, the development, purpose, curriculum, scholarship and resources of the law school. Twining's history is, I will argue, both an unwitting product and a brilliant expression of the culture of the English law school. In somewhat brutal terms, it is impersonal, status conscious, masculine and as divorced from the history and experience of students as it is from the impact of law upon the lives of those subjected to it. In offering such an

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4. I elaborate this point in Peter Goodrich, *Sleeping with the Enemy: An Essay on the Politics of Critical Legal Studies in America*, 68 N.Y.U. L. REV. 389 (1992).

5. Murphy, *supra* note 1, at 66:

The distance between law school and everyday life is sufficiently great to permit not only simulations but fantasy. The most Rococo fantasy of all which is engendered through this process is the fantasy of law itself. It engenders, in particular, the idea that "law" has some "essence," or, if it seems that this essence is hard to track down, the conviction that it should not be so.

Teaching law, in consequence, implies teaching of an essence, "teaching the law 'as it is' or the law 'as it should be' or how the law 'works in practice.'" *Id.* For a comparable argument in relation to the American law school, see Pierre Schlag, *Anti-Intellectualism*, 16 CARDOZO L. REV. 1111 (1995).

6. WILLIAM L. TWINING, *BLACKSTONE'S TOWER: THE ENGLISH LAW SCHOOL* 25 (1994).

7. A point which is well and extravagantly made in DERRICK BELL, *CONFRONTING AUTHORITY* (1994).

account, Twining faithfully expresses an elite vision of the law school and at the same time propounds a liberal progressive's faith in scholarship and in the right of the law school to intellectual and cultural status. In what follows, I will endeavour to supplement constructively the scope of scholarship and the range or diversity of experiences upon which the history of the English law school could usefully draw. My principal concern is to ask whose history or experience this narrative of the law school represents. I will be concerned, secondarily though correlatively, with the diverse forms of knowing that a more plural history would represent.

## II. HISTORY AND OTHER METAPHORS OF DISTANCE

Professor Twining has had a lengthy, laudable and progressive career within legal education. Educated at Oxford University, he has taught law extensively in Africa, America, Hong Kong, and Northern Ireland as well as in England. For most of his career, he has been concerned directly, at a governmental level as well as at that of the university, with the reform of legal education and with the expansion of the range of legal scholarship.<sup>8</sup> He is self-consciously a "modern" legal scholar, and has been lengthily and highly successfully responsible for promoting the study of "law in context" from a range of interdisciplinary perspectives. He has been a consultant in the establishment and in the reform of numerous law schools in Britain and in the commonwealth. He has sat on many committees and written innumerable reports on the state and fate of the curriculum and the academic profession of law. Professor Twining's view of legal education is, in short, understandably Olympian.

The image of the tower conveys well some of the aura of achievement and influence, of the doing of "Great Things," which Twining's work embodies. More than that, it is a significant and, at times, unconscious figure of the role, the culture, gender and ethos of the law school. In Twining's account, the tower has two principal significances. The first is drawn from the history of the Eiffel Tower: "[I]t is the only place in Paris," Maupassant is said to have remarked, "where I don't have to see it."<sup>9</sup> The second connotation develops from the first, allowing the

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8. For indicative works, see *LEGAL THEORY AND COMMON LAW* (William L. Twining ed., 1986) (arguing for the inseparability of legal theory and the doctrinal study of law); *WILLIAM TWINING & DAVID MIERS, HOW TO DO THINGS WITH RULES* (1991) (a course book in contextual legal methods); William L. Twining, *Reading Law*, 24 VAL. U. L. REV. 1 (1989) (suggesting imaginative alternatives to the contemporary legal curriculum); William L. Twining, *Treatises and Textbooks, A Reply to T.B. Smith*, 12 J. SOC'Y PUB. TCHRS. L. 267 (1973) (attacking the textbook tradition as both irrational and intellectually impoverished).

9. TWINING, *supra* note 6, at 190.

adoption of a "bird's eye, top-down, view," and reminding us that history is an exercise of construction and imagination commensurate with the complexity of human experience.<sup>10</sup> Such connotations of distance and of vantage point are in one sense unexceptional. In a more historically and biographically informed reading, however, the metaphor of the tower is symptomatic of a structural separation or void. The tower, whether prison, fortification, or skyscraper, isolates its occupants and, as panopticon, fortress, or viewpoint, it surveys and disciplines a landscape. In such a sense the tower is undoubtedly a fecund metaphor, but it is not as innocent—or purely metaphoric—as it appears.

Within the early modern history of law the tower is a metaphor of jurisdiction. In the depiction of ecclesiastical law the tower, *specula pastoralis* or pastoral watchtower, was the site from which the pontiff, bishop or judge would survey both the external behaviour and the internal dispositions of his subjects.<sup>11</sup> The tower signified a dual jurisdiction, an external regulation and an inner governance of the soul. The ecclesiastical law, of course, had its various tangible or written forms; but it also had another territory, an invisible or "ghostly power," which domain was that of the jurisdiction of conscience and the law of the heart. It was also clear that, no matter how evanescent its domain, the jurisdiction of the pastoral tower connoted a strict sense of hierarchy: "[T]o sit in a higher room, what is this but to have a primacy or superiority" over others.<sup>12</sup> The hard part of resurrecting this metaphor is not so much, however, the recollection of the hierarchy or militarism of its use, but rather the gender of its performance.

The tower as a symbol of ecclesiastical jurisdiction is tied explicitly to a "law of the father" and to patristic impositions of a pre-ordained truth.<sup>13</sup> From surprisingly early on in the history of common law, the ecclesiastical law was a part of the secular jurisdiction. It instituted a paternal metaphor of law within the subject and governed an inner polity of masculine legal souls. We may simply note that within that jurisdiction there were only men. It was not even clear, in the context of a

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10. *Id.* at 191.

11. The definition is taken from a post-Reformation polemic, THOMAS STAPLETON, A RETURNE OF UNTRUTHES UPON M. JEWELL 57r (n.p. 1566). For discussion of the "ghostly powers," see PETER GOODRICH, OEDIPUS LEX: HISTORY, PSYCHOANALYSIS, LAW 228-34 (1995).

12. STAPLETON, *supra* note 11, at 57r.

13. The principal constitutional source of this paternal metaphor is RICHARD HOOKER, OF THE LAWS OF ECCLESIASTICAL POLITY (Ernest Rhys ed., J.M. Dent & Co. 1907) (1593 or 1594-1600). For contemporary discussion of the metaphor, see PIERRE LEGENDRE, LES ENFANTS DU TEXTE. ÉTUDE SUR LA FONCTION PARENTALE DES ÉTATS (1992); and Alain Pottage, *The Paternity of Law, in* POLITICS, POSTMODERNITY AND CRITICAL LEGAL STUDIES (Costas Douzinas et al. eds., 1994).

lengthy theological and legal debate, whether women had a soul.<sup>14</sup> What was evident by the end of the sixteenth century was that women lacked legal personality or public presence. Law's tower was literally and metaphorically a masculine affair. When Blackstone introduced the study of common law to the English university as "the proper accomplishment of every gentleman and scholar,"<sup>15</sup> he drew upon a long tradition of class, race and gender privilege.

To move to a modern idiom, the tower is still a gendered symbol. It is the expression of a masculine law and landscape, and it signifies power through a verticality which in both popular and architectural imagination connotes a phallic control:

Regardless of the complex historical processes through which links between power and verticality have been created and sustained in a variety of cultures, a popular association with the phallus is . . . widespread: whether signifying religious or commercial [or legal] power, verticality operates via a key symbol of masculinity. Although most academic commentators pass this by, almost as if it is too crude to be taken seriously, it is graphically illustrated by the jokes that play on words like "erection". The [tower] speaks loudly of the masculine character of capital.<sup>16</sup>

By the same token, the tower as a metaphor of law school must be recognised as connoting not simply a higher viewpoint, but a higher place, a status, a gender, a hierarchy of governance.

In its internal depiction and workings, the panoptic tower, as Foucault elaborated so well, was a formative architectural trope in the development of modern carceral and disciplinary regimes.<sup>17</sup> The panopticon, as set out by Bentham, was the most modern form of prison construction, one which isolated and separated the inmates so as to place them face to face with their conscience. In this disciplinary form, the tower symbolised and embodied a species of moral science, a secular reform or control of the soul.<sup>18</sup> It ruled through an inexplicit or internalised terror. Its greatest efficacy was its fantasmatic structure, the fact that the subject of discipline was its bearer and enforcer, and that its jurisdiction was the mind. If the law school is a tower, it will follow that it seeks not only to institute a masculine subjectivity, but also that it trains its subjects in exemplary forms of self-governance, that it produces captives or prison-

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14. This debate is well discussed in IAN MACLEAN, *THE RENAISSANCE NOTION OF WOMAN* (1980).

15. WILLIAM L. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 6 (1765).

16. Liz Bondi, *Gender Symbols and Urban Landscapes*, 16 *PROGRESS HUM. GEOGRAPHY* 157, 160 (1990).

17. See ROBIN EVANS, *THE FABRICATION OF VIRTUE: ENGLISH PRISON ARCHITECTURE* (1982); MICHEL FOUCAULT, *DISCIPLINE AND PUNISH* (1977).

18. JEREMY BENTHAM, *THE PANOPTICON OR INSPECTION HOUSE* (n.p. 1787).

ers of law. The tower in this aspect represents quite directly the historical function, the unadorned disciplinary role of a training in law as a preparation for practice. The law school tower is a species of prison and demands a sacrifice on the part of its subjects. The legislation of the Inns of Court in the sixteenth-century was explicit. Outsiders or "foreigners" were to be excluded, temperance was demanded, and every detail of diet, dress, religious observance, lifestyle, company and behaviour was regulated.<sup>19</sup> The student or apprentice in law was to be stoical, sad, and studious. Even in the earliest apologetic legal treatises it was well recognised that studying law was the work of many years and would inevitably shorten life expectancy and "waste the greatest part of the verdour and vigour of our youth."<sup>20</sup>

Twining captures well certain dimensions of the conflict between professional interests, vocational imperatives and educational concerns. He wants scholarship to have a higher status or cultural place; he wants the law school to be integrated fully into the university; he wants legal studies to be an interdisciplinary, autonomous academic enterprise, and specifically to break loose of the coercive shackles and mundane demands of the practising profession. In this light, the tower also stands to protect the scholar from the realms of practice and the pressures of the polity. It creates a higher place within which the professor of law can return to his traditional role as *lux a tenebris*, as an oracle, "a starr in the firmament of the Commonwealth."<sup>21</sup> I have no doubt that this is a radical claim or project, but it is also somewhat ambivalent or paradoxical. Does scholarship thrive when separated from polity and politics? Can knowledge be said to have an object when it is self-consciously cut adrift from its responsibilities and its implications in practice? Does not legal rhetoric become decadent, as Tacitus lengthily observed, when its students debate law points without influence or relevance to the concerns of either government or lawyers?<sup>22</sup>

A consistent theme of the history of legal education in most common law countries, Twining claims, "is the low prestige of law schools and the low status of academic lawyers, both in the eyes of the univer-

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19. The legislation and rules are well described in WILLIAM DUGDALE, *ORIGINES JURIDICIALES OR HISTORICAL MEMORIALS OF THE ENGLISH LAWS, COURTS OF JUSTICE, FORMS OF TRYAL* 188-92 (n.p. 1666). For discussion, see GOODRICH, *supra* note 11, at 1-7.

20. SIR JOHN DODERIDGE, *THE ENGLISH LAWYER* 29 (n.p. 1631). Sir Edward Coke makes similar remarks in SIR EDWARD COKE, *A BOOK OF ENTRIES CONTAINING PERFECT AND APPROVED PRESIDENTS OF COURTS A5a* (n.p. 1610).

21. SIR JOHN DAVIES, *A DISCOURSE OF LAW AND LAWYERS* (1615), reprinted in 2 *COMPLETE WORKS* 279 (A.B. Grosart ed., n.p. 1876). For discussion, see PETER GOODRICH, *LANGUAGES OF LAW* 139-48 (1990); W.T. Murphy, *The Oldest Social Science? The Epistemic Properties of the Common Law Tradition*, 54 *MOD. L. REV.* 171 (1991).

22. CORNELIUS TACITUS, *DIALOGUE OF ORATORS* 127-33 (1911).



sity and in the eyes of the profession."<sup>23</sup> Even in academic terms, "the subject was a late-comer to English universities and for a long time it had low prestige within the academy and in the eyes of the profession;" it was but one "relatively small and insignificant part of the humanities and social sciences."<sup>24</sup> Popular perceptions of the legal academic invoke an image of the neurotic, the introvert, the failed practitioner, the silent, the inaccessible, the retired and the retiring. At the level of sources of law, a comparable low status, whereby primary sources "dwarf" secondary literature, is bemoaned: "The main primary sources, legislation and statutes, are far more extensive and continually proliferating; they also are authoritative texts, which trump even the most respected juristic writings: Coke, Blackstone, Salmond, and Cross are writers of authority, but they can be overridden on a specific point by the decision of even an inferior court."<sup>25</sup>

In Twining's view, the law school has never gained the recognition or the status to which he appears to believe that it is entitled. However, it is not very clear what it has done in England to earn such a title or to merit a prestige equivalent to that of the judiciary who on occasion so gainfully overrule or simply ignore the writings and opinions of academics.<sup>26</sup> Put more strongly, it is unclear why legal academics should gain a "higher place" or act as equals to an archaic and tradition-bound establishment elite. It is unclear how the accepted legal academic conception of scholarship, a mixture of "reportage" and interstitial comment and criticism either warrants greater status or would benefit significantly if such status were conferred.<sup>27</sup>

The issue of the status of the English law school and of the social class of entrants to the profession has a much longer history than Twin-

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23. TWINING, *supra* note 6, at 25.

24. *Id.* at 27-28.

25. *Id.* at 113.

26. A recent example, and one to which Twining could justifiably object, is the overruling of the leading English contract writers, Professor Patrick Atiyah, Professor Gunther Treitel, and Professor Michael Furmston, on the appropriate construction of section 2(1) of the Misrepresentation Act of 1967. Lord Justice Balcombe, giving judgment in *Royscot Trust Ltd. v. Rogerson*, 3 All E.R. 294, 300 (1991), simply observes that:

With all respect to the various learned authors whose works I have cited above, it seems to me that to suggest that a different measure of damage applies to an action for innocent misrepresentation under the section than that which applies to an action for fraudulent misrepresentation (deceit) at common law is to ignore the plain words of the subsection and is inconsistent with the cases to which I have referred.

The fact that the purported "plain meaning" was not plain to at least three leading law professors, and that on its surface the meaning which Lord Justice Balcombe attributed to the anaphoric phrase "shall be so liable" in the relevant statutory section, led to the extraordinary and arguably unsatisfactory result that an innocent misrepresenter would be faced with a punitive level of damages, did not inhibit his Lordship. See *id.* at 298.

27. TWINING, *supra* note 6, at 111.

ing acknowledges or reports. Viewed in a slightly broader perspective, the English law school long predates the modern university system of law degrees. The model of law school was practice and the exemplary institutions of such instruction were the Inns of Court, Coke's "third university" which, according to one contemporary, "might . . . be as worthily styled a university as either Angers or Orleans in France, or as Pavia or Perugia in Italy, wherein the study of civil law, is only professed."<sup>28</sup>

The Inns of Court offered a curious yet expansive tutelage in manners as well as in rhetoric, in revelry as well as in ritual, in diet as well as in dress, in religion as well as in law. What is interesting about such a history and institution in the present context is not the detail of the training in gentility and deportment, nor the thoroughly elitist and exclusory atmosphere of the Bar; but rather, the haphazard combination of scholarship and practice, and correlatively of education and status. The paradox is that, insofar as the legal academy seeks greater prestige, it is likely to be drawn away from scholarship and back towards practice by the exigency of making itself more marketable. This conflicts with Twining's more radical scholarly claims and suggests a misapprehension: the critical issue is not that of raising the status of legal academics but rather that of dethroning the judges and removing the mystical aura or sacral pretence of the lawyers. A critical pedagogy of law is not a matter of status or distance but rather of proximity and engagement.

### III. SCHOLARLY AND CRITICAL PRACTICES

The example of the Inns of Court and the community or university of practice has an ambivalent yet obsessive role within the English legal academy. The attraction of the Bar has always been its class, its status and its power. Even in its halcyon years in the sixteenth and seventeenth centuries the Inns of Court did not win praise through scholarship or pedagogy. In fact, the English Bar had always seemed derivative, parochial and unlearned to outsiders, uncritical and exploitative to those anti-quaries and scholars who sojourned within it, or close to it, for any length of time.<sup>29</sup> Twining is at his most perceptive and persuasive when

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28. SIR EDWARD COKE, 3 REPORTS C5a (n.p. 1777); Sir George Buc, *The Third Universitie of England*, reprinted in JOHN STOW, *THE ANNALES OR GENERAL CHRONICLE OF ENGLAND* 966 (n.p. 1615). Blackstone refers to the "juridical university," BLACKSTONE, *supra* note 15, at 25. See generally WILFRID R. PREST, *THE RISE OF THE BARRISTERS: A SOCIAL HISTORY OF THE ENGLISH BAR 1590-1640* (1986).

29. The earliest example is probably ERASMUS, *OPUS EPISTOLARUM* 17 (1922), who referred to common lawyers as being "as far as is possible from true learning." For others they were the most unlearned of learned professions, a view which certain English scholars willingly affirmed. See, e.g., ABRAHAM FRAUNCE, *THE LAWIERS LOGIKE, EXEMPLIFYING THE PRAECEPTS OF LOGIKE*

he turns to criticise the limited perception and the lack of confidence which characterise much of contemporary legal scholarship. In terms of scholarship, the English law school labours under the fantasm of certainties that other disciplines have long eschewed, and repeats traditional patterns of formal instruction or transmission of information which have long lacked any educational justification.<sup>30</sup>

The manifest thesis of *Blackstone's Tower* is in this respect the argument that legal studies are slowly but inexorably being drawn into the general intellectual culture and that, in recognition or furtherance of this movement or epistemic shift, the law school should finally identify itself unequivocally and fully with its educational context. The English law school of the modern period is specifically an academic institution; it has very little responsibility for the process of professional formation of its subjects, and in consequence both had and has a high degree of freedom in its choice of identity and scholarly objectives.<sup>31</sup> The law school, in Twining's view, should build upon this freedom, this power to define itself; it should "move more boldly" in the direction of diversification of function, and place much greater emphasis on "advanced and interdisciplinary studies."<sup>32</sup> The vocational model of legal education should, therefore, gradually give way to a general arts degree in law which provides as much for non-lawyers or for those who intend nothing more than an academic study of law. The law school would thus come to value a culture of research, and specifically, intellectual diversity of research, postgraduate studies and higher degrees, much more than has traditionally been the case.

In arguing for the primacy of scholarship and the correlative freedom of adopting methods and subject-matter from other disciplines, Twining is both a radical and a stringent critic of the legal academic

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BY THE EXAMPLE OF COMMON LAW (n.p. 1588); SIR ROBERT WISEMAN, THE LAW OF LAWS; OR THE EXCELLENCY OF THE CIVIL LAW (n.p. 1664). Both works are discussed in Peter Goodrich, *Critical Legal Studies in England: Prospective Histories*, 12 OXFORD J. LEGAL STUD. 196 (1992).

30. On the scholarship of the English law school, see IAN GRIGG-SPALL & PADDY IRELAND, THE CRITICAL LAWYERS' HANDBOOK (1992); David Sugarman, *Legal Theory, the Common Law Mind and the Making of the Textbook Tradition*, in LEGAL THEORY AND COMMON LAW 26-62 (William L. Twining ed., 1986); Tim Murphy & Simon Roberts, *Introduction*, 50 MOD. L. REV. 677, 687 (1987) (special issue on legal education). On the educational practices of the English law school, in addition to works cited, see Alan Thomson, *Critical Legal Education in Britain*, 14 J.L. & Soc'y 183 (1987).

31. TWINING, *supra* note 6, at 27-28.

32. *Id.* at 57. It should be noted here that the English law degree is an undergraduate Bachelor's degree. It is in this respect potentially markedly less vocational than its American counterpart. After law school, the English law student will need to continue in a one-year training course run by the profession and then complete somewhat over two years practical training (apprenticeship) in his or her chosen branch of the profession. The law school in England explicitly constitutes what is termed the "academic stage" of legal education, and in Twining's view it should take this intellectual role more seriously than it does at present.

establishment in England. To argue that the law school is intrinsically a part of the university—of “an aggregation of sovereignties connected by a common heating plant”<sup>33</sup>—is at its best both a powerful liberal indictment of current academic practices and a radical return to a much broader and intellectually optimistic sense of the discipline. A legal scholarship freed of the need to simulate professional knowledge and liberated of the traditional role of pretending to report doctrinal developments as if such would have an influence upon the law, would be a much more exciting, creative and uncertain intellectual enterprise. It would return the study of law to the context of ethics. Were it not that Twining is so resolutely forward looking, one could suspect that this recourse to the arts was, in part, a nostalgia for a humanistic enterprise, for a legal studies that treated law as one aspect of a pluralistic knowledge of things divine and human (“*rerum divinarum humanarumque scientia*”).<sup>34</sup> The figure of Blackstone stands guard over just such an enterprise, although the significance which Twining accords to this institutional work is unclear. *The Commentaries* purported to address the “gentlemen of England” and indulged, in Twining’s description, in the time-honoured fantasy of the “resurrection and conservation of traditional common law, the values it embodies, evolutionary development and legislative restraint,” and which pleaded “to restore, preserve and strengthen an ancient tradition which was under threat and which had already been damaged, first by the Normans, and more recently by ad hoc legislation.”<sup>35</sup>

The recourse to Blackstone, to the educational virtues of a gentlemanly knowledge and to immemorial myths of a pristine or original common law also, however, return the reader to the metaphor of the tower and the isolation of academic law. In epistemological terms it is not always evident what the values or the status of an expanded legal scholarship will transpire to be. On one side, the proposal of a new art of academic law or legal studies comes close to the notion of an autonomous art; a legal studies for the sake of legal studies, without any necessary relation either to the experience of law or to the modes of knowing that constitute its practices. The irony of this conception is, in part, that it promotes a domain or institution within which legal scholars and their

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33. *Id.* at 64. It is worth noting the irony that the author of this statement, Robert Maynard Hutchins, President of the University of Chicago, was a lawyer by training and had spent the bulk of his career as a law professor.

34. See SIR JOHN DODERIDGE, *THE ENGLISH LAWYER: DESCRIBING A METHOD FOR THE MANAGING OF THE LAWEES OF THIS LAND* 29 (n.p. 1631).

35. TWINING, *supra* note 6, at 131-32. One might compare this to GILBERT ABBOTT A'BECKETT, *THE COMIC BLACKSTONE* 1 (rev. ed. n.p. 1887): “Every gentleman ought to know a little of law, says Coke, and perhaps, say we, the less the better.”

studies are essentially without social being and lack any practical or ethical responsibility for what their institution produces. The failing of such a conception is that of unconsciously repeating the traditional patterns of legal scholarship by virtue of refusing to recognise either the politics of the legal academy itself or the reality of law's institutional practices. On the other side of this sophisticated neutrality is an almost exclusively narcissistic form of scholarship. Deprived of the legal world or excluded from the ontology of law, the self becomes the law and a slightly agonised narcissism becomes both the pleasure and the terror or blankness of the academic legal text.<sup>36</sup>

The danger of a theory of pure legal scholarship is that it abdicates the politics of the legal educational establishment, the internal and external and present and future relationships implied by the study of law. The scholarly, just as much as the pedagogic, is an institutional function and it implies a series of relationships within the law school, just as much as it projects or produces a certain educational product, a legal subject, an imbiber of law. Let us re-examine each dimension of this institutional condition. On the one side, oblivion or at least a good measure of turreted seclusion from the world is highly unlikely to produce a radical, creative or ethically responsible scholarship. Turning inwards, in a gesture of unconscious repetition of an earlier experience of education, is hardly likely to make the *homo academicus* of the legal academy a serious thinker, let alone a perceptive observer of the relationships which constitute the law school and dominate its teaching. Twining implies as much in a series of incidental remarks which paint a slightly sepia image of the twilight world of law school and of its melancholic and socially incompetent denizens. A few examples must suffice.

We are treated to a chapter on "The Law Library" which concludes that "the law library is at the heart of academic legal culture."<sup>37</sup> Searching for the meaning of this conclusion, it is interesting to note that, although academic legal culture imagines that it writes so as to report, criticise and develop the world of law, that is, of practice, judgment and

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36. The most striking recent example of such a phenomenon is probably David Kennedy, *Autumn Weekends: An Essay on Law and Everyday Life*, in *LAW IN EVERYDAY LIFE* 191-235 (Austin Sarat & Thomas Kearns eds., 1993). Commissioned to write on law and everyday life, Kennedy ignores the entire history and scholarship of phenomenological philosophy and existential theories of the everyday, and determines instead that the conjunction of law and everyday life is an exclusively individualistic affair. If the law professor is the law, then the law in everyday life must be nothing more and nothing less than what the law professor does. With a nicely ironic sensibility, Kennedy, therefore, treats the reader to a description of what he, the law professor, the law, did on his holidays—presumably because for him holidays are the law. While this position might just possibly make for entertaining narrative it cannot be viewed as scholarship.

37. TWINING, *supra* note 6, at 117.

legislation, practitioners pay little or no attention to the "pathological"<sup>38</sup> concerns of academics. For example, partners in a firm in Scotland were reported to spend less than fifteen minutes per week referring to books, but rather acquired their information about law by telephone and principally from non-lawyers.<sup>39</sup> Turning to the internal life of the library-bound legal academic, Twining remarks upon the psychosis of the common lawyers who have "quite understandably cherished and loved the law reports; the trouble is that they have too often loved them to distraction and have become case-mad."<sup>40</sup> It is tempting to imagine a clinical condition, mad-lawyer disease, a softening of the brain or "biblio-spongiform encephalopathy."

Whatever else may be learned from the discussion of the library, the activity of legal scholarship is curiously, but not inaccurately, drawn in terms of what is at best an other-worldly irrelevance and at worst a radical and doomed narcissism. As Twining remarks, "[i]n law, it is not too difficult to get published; it may not be too easy to get read."<sup>41</sup> It is again impossible to avoid wondering about the significance of this exercise, or how did I or we find ourselves here, linked by nothing more scholarly than a heating plant and the desultory bad habit of sending out huge numbers of offprints of publications? What kind of life is it of which it can be said that "jurisprudence is the lawyer's extroversion?" What relationships hold sway in such an institution and how could they not be closely linked to the extraordinarily self-referential prison of legal scholarship? Can it really be said, and if so, at what level of psychological or psychoanalytic understanding, that the law school has "no true legal masochists,"<sup>42</sup> or that no one there hates law?

In a chapter on "Law School Culture," there is a section titled "People." It includes an extraordinarily brief sub-section on "Secretaries," a mere eleven lines. Of secretaries it is remarked that "they provide both order and continuity," they alone "know the students and recognise the alumnae," they "pin up postcards from wandering [or better, lost] scholars." To this it is added that they are in fact administrators and in the last two lines we learn, quite accurately, that "they run the place, keep out of departmental politics, and more than anyone else contribute to a friendly atmosphere."<sup>43</sup> There is no mention that these secretaries are

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38. *Id.*

39. *Id.* at 92-93.

40. *Id.* at 105.

41. *Id.* at 111.

42. *Id.* at 78.

43. *Id.* at 73. Having been involved in establishing a new law school, in the University of London, I am particularly aware of the academic's reliance upon administrators and secretaries. For instance, Valerie Hoare, who was appointed at the same time as I was, knew the University of

women. There is no discussion of the powerlessness of these administrators or the appalling pay of these acting Deans. They are presumably friendly because they are women. It is as women that they keep out of politics, it is as women that they have a relationship with students, with the most numerous subjects of the institution, and recognise alumnae, it is as women that they pin up postcards, and it is presumably also as women that they stay. Why is it assumed that this is unproblematic or that it tells us so very little about law school and what it is properly about?<sup>44</sup>

What is significant is the apparent insignificance of the relationship of the academic lawyer to exploitation and to the exploited. What is at issue is the question of relationship itself and of the forms of relationship which law, and here the legal academy, institutes or inscribes. The important point is not simply that Twining observes what he has been trained to observe, that he repeats his own history in writing the history of the law school. Twining's tower aptly depicts what pass for relationships within the law school and in consequence it tells us a considerable amount about the ways of knowing that make up the epistemology of law, and about the embodiments or practices of knowledge and of teaching which constitute the experience or education and training of the legal academy. The academic, pedagogic and interpersonal relationships within the law school directly reflect the scholarship of the law teacher and are directly expressed in their teaching practice. A history of the law school would do well to supplement the information it provides with a more direct account of, and reflection upon, those relationships and the knowledge or forms of life which they imply.

In writing about Twining—about Twining's Tower—I also write about myself. My disappointments with his book are in many respects disappointments with myself and they share a recognition of the limits of my honesty or courage. The metaphor of the tower can serve to provide a final image, that of a highly visible imprisonment, of a captivity from which the prisoner, in the courtly lyric a woman, desires rescue or escape. In the modern terms of disciplinary logics, the body is the prisoner of the soul. To escape from that prison, in other words, is to transgress its rules of relationship and its obstacles to communication and to

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London system much better than I did. During the first years of the Department she was clearly as responsible as any of the academics for the tone of the Department and the structure of its administration. Further, in many respects she played the role of the unconscious of the Department in precisely the senses that Twining enumerates: building interpersonal spaces between staff and accommodating or understanding the needs both of the students and of the College.

44. To his great credit this is a question raised by DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (1983).

thought. It would be, in a sense, to inscribe the soul in different ways, to foster communication, to speak through the mask and across the distance and hierarchy of law. There can be no doubt that law school trains the soul, that it institutes the culture of law through a hierarchical conception of knowledge and through a variety of techniques of separation, isolation and fear. That English law schools remain hierarchical, homosocial, ethnocentric and masculine domains is hardly an exceptional observation. To observe that I am hierarchical, homosocial, ethnocentric and trained most effectively in obscure, indirect, impersonal and unfeeling forms of communication is a slightly more pertinent reflection. To the extent that my memories of law school are not repressed, I remain a student or at least attached to the person that a long time ago entered Twining's Tower: I can still learn, I can still change the future. To the extent that my memories of law school are not repressed, I can still say of law school, of its tyrannies and its relationships, that they need not be thus.