

CHAPTER 3

LAW PUBLISHING AND LEGAL SCHOLARSHIP: A CASE STUDY

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This paper is based on the experience of the Society of Public Teachers of Law Working Party on Law Publishing.¹ It may seem ironic to present a study of a relatively wealthy and certainly not small jurisdiction in the present volume, but as will become clear, the economic pressures of recent years have forced legal academics in the UK to face many of the problems with which their colleagues in small jurisdictions have long been familiar. It will also, I hope offer not only a case-study of problems, but of the way in which academics themselves can be actively involved in diagnosing those problems and suggesting ways to resolve them. I was involved as Research Associate in this exercise, which explains the editorial 'we' which occurs spasmodically below.

The Working Party was established in May 1974 with the following terms of reference, "To investigate the problems of law publishing as they bear on legal scholarship and legal research and to make recommendations", and its aim was to represent the interests of teachers, students, researchers and authors concerned with all levels of academic law in the British Isles. It should be made clear that this study was not conceived of as a project of pure academic research into the British law book trade, but its purpose was rather to stimulate a greater awareness of the problems facing publishers, authors and educators and to define some possible strategies for the different groups concerned. The Working Party saw its role as twofold. Its first function was to investigate and analyse the current situation in law publishing in the light of the problem created by inflation. It was felt that rising costs and prices were likely to have a serious effect on publication of some important types of scholarly and educational material which were not immediately commercially attractive and also on levels of provision of books and other material in libraries and for students generally. Information was sought by questionnaire, correspondence and interview from different groups involved in the production and consumption of academic legal literature (publishers, periodical editors, librarians and lecturers) and from other bodies and individuals concerned with the general problems of academic publishing. In the course of our investigations it became apparent that the Working Party could perform a number of useful functions beyond that of pure research, and in the final year of its existence adopted a slightly more active policy. Its second function was seen as that of stimulating activity on the problems themselves, through advice to the academic legal community on the publication of their work, through encouragement of further research projects in specific areas² and through discussion with publishers, editors and others involved in the production of legal material. Its advisory role is reflected in the series of separate working papers on aspects of law publishing and production of materials.

Five papers are now available and the following is an outline of their contents:

1. *Book publishers*: the effect of economic constraints on editorial and marketing policies and production methods; the role of specialist, general, academic and university presses in law publishing; requirements for authors with regard to planning and presentation of proposals; listing of UK publishers expressing an interest in law.
2. *Legal periodicals*: the effect of economic constraints as above; publishing arrangements, history and editorial structures and procedures; factors governing acceptance of articles, rejection rates, time-lapse before publication; etc. Listing of journals with requirements for authors with regard to submission of articles.
3. *Semi-publishing*: the creation of teaching materials and short-run works within institutions; co-operative ventures on an inter-university basis; techniques of production, distribution and costing.
4. *New technologies*: the application of alternative media e.g., microform and on demand publication, to the provision of legal material; user resistance, implications for research, etc.
5. *Subsidies*: the possible application of subsidies to legal publishing: maximum effectiveness in reducing price and/or assuring the dissemination of information; policies of grant-giving bodies.

The Problem Stated 1974:1977

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It may be useful at this point to take a backward glance at the thoughts which prompted the Working Party's inception. These first impressions were in part confirmed and in part modified as the project proceeded. The idea of a Working Party on law publishing was born of a strongly felt but vaguely defined dissatisfaction and unease about the current state of British law publishing and the prospects for its future. The suggested starting point for our investigations was the curious position facing the scholar teacher of law, who, at least in universities, is paid approximately half his salary in order to advance his subject through research, writing and publication. Under present arrangements his activities as teacher and scholar are largely financed from public funds, but what gets communicated in printed form to his students, his fellow scholars and to a wider audience is largely left to the world of commerce. Commercial publishing thus seemed a vital subject for academic concern and in the early 1970's academic publishing in general appeared to be in a state of economic crisis, so that considerations of cost and profit were more and more dictating key decisions as to what was published, in what form and at what price. There were certain indications that during the next ten to fifteen years scholarly and educational publishing would be subjected to great financial pressures and that law publishing would, along with other disciplines, be faced with major difficulties. The first aim of the Working Party was to analyze the problem, to create a greater awareness of it, and to make suggestions for containing and palliating it, if not solving it completely.

Our initial impressions were based on a blend of common knowledge, personal experience and academic gossip. We knew that publishing costs were spiralling and that certain items in these costs, such as paper, might have particularly drastic effects on law publishing where a high proportion of books tended to be of substantial length. We heard that there were long queues for space in some law journals and that many young scholars were having difficulty in finding publishing outlets for their work. Some of us felt that the operation of market forces had been fundamental in less obvious ways in that scholars were accepting constraints, pressures and incentives which were not always healthy for the quality of their publications. We knew that it was particularly difficult to persuade publishers to venture into areas of minority interest, new or expanding or rapidly changing fields and so on.

In 1974 we did not have a reliable and balanced picture of the scale of the problem, the areas most severely affected and the major causes of genuine difficulties. We tried, therefore, from the outset to get as clear and accurate a view as we could of the problems facing law publishing and the ways in which these might affect education and research. Our concern throughout was with academic publishing and not with the provision of books for the practitioner since we believe that there is little threat to the publication of material for practising lawyers although prices will certainly continue to rise. Indeed this side of law publishing has become more attractive as the market is secure and is not undermined by the same loss of purchasing power experienced in the academic world.

Our first public statement of the central problem as we perceived it in 1974 was as follows:

"Rising costs are exacerbating an already unsatisfactory situation in which nearly all law publishing is run on commercial lines but much scholarly legal writing and the provision of source materials for students in a readily accessible form are commercially unprofitable. Market forces as perceived by the publishers appear to have a particularly inhibiting effect or distorting influence on specialized monographs, on educational works in new or neglected fields, and on law publishing generally in the smaller jurisdictions such as Scotland and Northern Ireland. In the field of information for students the Working Party believes that English and Commonwealth universities face a common difficulty in ensuring that their students have a ready access to the wide range of source material to which their teachers wish to refer them. The high and rising cost of books and the high and rising number of students, allied with various library problems (such as lack of funds, lack of security, and the conflict of reserve and loan policies), present problems of student access to information which are part of the wider aspects of law publishing with which the Working Party are concerned³."

Our diagnosis of the situation has not altered radically. Although some features of the publishing scene had changed for the better by 1978, the bulk of the evidence we received supported our early statement and we would also add three additional points for concern. Firstly, with regard to publication problems it appeared that the existing legal periodicals, themselves under pressure from commercial constraints, may not be able to provide sufficient space for the increasing number of research articles which would require publication in the next few years. Secondly, it was also our impression that because publishers are looking for quick returns on capital investment, they are choosing

shorter print runs. Some works may, therefore, not remain in print as long as they did formerly and second editions of background works as opposed to essential texts may not be issued until a considerable demand has built up. This effectively shortens the life of many useful books for teaching purposes as they are unlikely to be placed on reading lists if there is doubt as to their availability. Thirdly, with reference to educational needs it was drawn to our attention that the lack of provision of stimulating teaching works at non-degree level presents a particularly acute problem.

Although commercial publishers and university presses in Britain have adjusted their policies to suit the new commercial climate the central conflict between the requirements of commercial publication and those of scholarship and higher education remains. In particular the element of distortion persists, in that publications tend to be tailored to suit the publisher's perception of his market rather than the academic's perception of intellectual or teaching demands. The publisher must concentrate on achieving continued profitability while the academic desires continued and expanding channels of communication. Obviously the two interests can coincide to a large degree but the present inflation which has forced publishers into greater selectivity does threaten some academic interests. One correspondent put the dilemma very succinctly: "The basic problems are simple enough: too many worthy books cannot find a publisher at all, and those that are published are much too dear".

In the First Interim Report the likely consequences of economic stringency in the publishing industry were defined thus: "...the serious decline in the scholarly monograph, a sharp reduction in the number of books published, the drastic reduction in the variety of choice currently enjoyed by teachers, and the concentration of publishing activity in serving large and established markets, with the consequent refusal to experiment or invest in books which seek to create their own market and thus tie up capital for too long"⁴. When translated into consequences for potential authors it was felt that potential authors are "deterred from writing on certain subjects which have limited appeal; they are encouraged to write elementary rather than advanced books; there is concentration, indeed bunching, in a limited number of fields...and neglect of potentially important subjects of general appeal"⁵. Our findings suggested that these pressures and patterns do exist although we would make one modification. After the reduction in commissioned titles in 1974/75 the situation stabilized and there is unlikely to be a further large drop in the number of works published; indeed the major law publishers have maintained their previous rate of publication and some new companies have moved into law publishing. The principal effect will be on the type of work published and therefore on the type of teaching and research undertaken.

The Current Situation: Problems of Publication

By July 1975 the inflation in Britain was at its height. Production costs had outstripped the general inflation which had pushed up salaries, overheads and distribution costs. Binding and printing costs were rising twice as sharply as the cost of living index, paper costs three times. Figures produced in 1976 showed that production costs had risen by almost 70% in the four years to 1975⁶. Since then the rate of inflation has lessened, but not significantly for the publishing industry, where, for example, paper costs were still further increased by the fall in the value of sterling. Correspondence with publishers in 1977 suggested that costs for books and periodicals were still rising by approximately 25% per year. In addition publishers faced further pressure in terms of reduced markets due to restricted library funds and student finances, and were unable to spread increased costs over longer print runs. What has lessened is the sense of crisis as the industry has become accustomed to these conditions and has taken steps to reduce the accompanying risks. We are not now faced with the drastic measures of 1975 when the escalating costs were forcing publishers into a strong reaction against the publishing boom of the previous decade. As is now clear, this reaction involved cutting back lists even to the extent of cancelling some contracted titles and reducing overheads, occasionally by such severe means as redundancies among editorial staffs.

One far-reaching consequence was that the crisis led to a revision of policy on the time which can be allowed for a book to achieve profitability. In a period when borrowing rates have at times reached 14-16%, publishers need a quicker return on capital than can be expected of a slow-selling specialized study or an innovative book which takes time to establish a market. Borrowing costs, combined with rising warehousing and stocking charges, have cut the two or three years which used to be allowed before a new book moved into profit, to one year or less.

Financial pressure has had some positive effects, for example the increased effort devoted to the reduction of production costs. British publishers have for many years looked for cheaper printing in the UK, Europe, India, Hong Kong, Singapore, Japan, Canada and the USA and have also experimented with cheaper formats and cheaper techniques. In recent years this search has intensified. Cost cutting methods range from alterations of

detail, such as the placing of notes at ends of chapters or books instead of at the foot of the page, to different methods of composition and even to "direct editions" where the final version is reproduced directly from the author's typescript. These initiatives have not proved easy to establish, on one side meeting stiff reaction from the print unions and on the other encountering some suspicion from reviewers and potential authors. Economies of production are also unfortunately comparatively small when set against the rising cost of distribution and marketing.

Other means of reducing costs affect the authors themselves. In some cases we have found that authors are asked to forego royalties in favour of a small fee; elsewhere overall royalty rates have been reduced from 10% to 7 % or even 5% with higher limits being put on the scale of increasing royalties in proportion to sales and other publishers, particularly those carrying monographs, offer no payment at all beyond duplicating and typing expenses. Taking this a stage further, one small publisher starting a series of direct editions expects the author himself to pay for the typescript which will be used for reproduction, an expense which may amount to over 200. If we accept that such restrictions apply to marginal books which might otherwise not be published, such practices may have to be tolerated.

The publishers most severely affected by the inflation were the medium to large firms with relatively high overheads. In companies with a diverse list, general, academic and educational, it has generally been the academic list which has received the hardest scrutiny and which has been purged of low-profit works. But one interesting feature of the 1970's has been the growth of small companies which operate on relatively low budgets and take maximum advantage of cheap publishing techniques to specialize in precisely the type of work which has been jettisoned by larger firms. Although their output is small as yet and their marketing is less sophisticated than that of the established publishers, they are beginning to make a significant contribution to academic publishing. Several such companies have expressed an interest in law although so far there have been more statements of goodwill than demonstrations of faith.⁷ We also noticed that more continental publishers, particularly Dutch firms such as North Holland, Kluwer Harrop, Sijthoff and Nijhoff are keen to publish English language law-books in areas which cross national boundaries, for example urban legal studies or law and development.

Another factor which has affected the situation in the past few years has been the increased discussion about changes in approaches to legal education and research themselves, particularly the relation of law to other social sciences. These changing approaches have gradually affected the form and content of law publishing in the United Kingdom and the history illustrates the slow reactive nature of academic publishing. Experimentation and debate about the content of legal education was a feature of the mid-1960's but there was little reaction from the law publishers until the end of the decade when the first socio-legal and contextual works started to appear. At this point the discussion caught the interest of some general academic publishers such as Penguin, Weidenfeld and Martin Robertson and new series developed. When the Working Party first looked at the situation in late 1973 there were still relatively few publishers for such works, but the last few years have seen a sudden growth in outlets as more publishers, large and small, leapt on the bandwagon once they perceived that there was a true demand.

Legal academics have been very ready in the past to accept the publisher's dictat as to the form and even the content of a publication and with greater choice there may now be scope for greater independence on the part of the author. In one sense, therefore, the law publishing scene has never been so varied, although some problems still remain. Firstly, the publishers now expressing an interest in law are only beginning to develop their lists and test their markets. Secondly, although some of the small firms have been willing to consider scholarly works they are still looking for works which appeal to established markets preferably with an international dimension, and thirdly they have tended to concentrate on short expository works and only one or two firms have tackled the central teaching works, text-books, and case-books, which are still, on the whole, produced on traditional lines. Several interesting works have appeared recently and it seems safe to say that this variety of outlets is more than a mere temporary phenomenon.

Although one would like to be optimistic about this broadening base of law publishing, it is still too early to make definite prognostications. In essence the pruning of low profit works from editors' lists and the insistence on relatively secure markets for new books must make the publishing of scholarly and innovatory work more difficult.

In the *First Interim Report* the situation was summarized as follows: -

"there are certain kinds of academic legal publications which in our view are desirable and which need at least partial subsidisation if they are to be viable. Alternatively, such works will need to find alternative outlets to orthodox commercial publishers. In particular, the following classes of work appear generally to fall within this category:

- a) works dealing with the law of smaller jurisdictions;
- b) works dealing with relatively narrow topics as contrasted with whole fields of law;
- c) educational works, whether texts or anthologies, dealing with subjects which attract small numbers of students or with fields which are "new" in a sense that they have not previously featured in many curricula;
- d) ambitious scholarly projects (e.g. The Collected Works of Jeremy Bentham);
- e) works which whether rightly or wrongly are unpopular with commercial publishers, such as doctrinal dissertations, symposia, collection of essays, conference papers, etc.;
- f) works (described by a publisher who testified before us, as "think-books") which seek to change established ideas or ways of thinking so that textbooks and courses are themselves changed thereafter⁸.

We can now amplify this statement in the light of our subsequent work and explain some of the reasons why these works are put under pressure by the tighter policies of the publishing companies.

With reference to works dealing with the law of smaller jurisdictions, evidence from within the British Isles as well as from countries co-operating with the International Legal Center project on the legal literature of small jurisdictions, confirms the great difficulties which face the publication of work where the market is insufficient to attract commercial publishers. The absence of adequate literature has serious implications, not only for legal education, but for the practice and development of the law itself and all forms of publication, primary sources, educational works and periodicals are obvious candidates for subsidization by government, professional and educational bodies.

In the area of specialized studies it is clear that works dealing with relatively narrow topics cannot compete in library or students' budgets with basic course texts. Their reduced market renders them unattractive to most publishers. Academic monographs pose a serious problem to publishers in that they are intended for sales in small numbers over a long period of time. This means that not only does the revenue from monographs come back extremely slowly but even if the books do sell reasonably quickly the return is too little, after a few months of inflation, to finance new books of a similar type. The problem is seen especially clearly in the research institutes and one letter presented a sad picture of the result of publishing cutbacks: "In particular we have experienced difficulty in obtaining publication of monographs and small books which clearly deserve publication and would be of great value to the legal world but which are commercially not viable. As a result we have a number lying in our office here awaiting a publisher. The sad part is that the longer they lie here the more out-of-date they become and the less chances there are of publication even if favourable conditions should arise."

A dissertation, even more than a proposal for a specialized monograph, is likely to encounter a suspicious and adverse reaction from the publisher as the image is of a very narrow topic with limited appeal probably not extending beyond a small section of the library market, and the author is likely to be inexperienced, without an established reputation to boost his work. It used to be the case that publishers might accept a rewritten thesis, if they thought they were thus acquiring a good (and profitable) author for the future, but such indulgence is now something which can be afforded only in the most exceptional cases. Unless a thesis is substantially revised for publication (and even then it faces the difficulty of any specialized monograph) we feel authors must explore means of disseminating their work outside the professional publishing system or by communicating its essence in articles in periodicals. Background books dealing with particular aspects of an area should have a different sales pattern from monographs in that they are presumed to be of interest to students on a particular course, but reduced spending power has made such works a luxury since their price, while realistic to the publisher, seems to the purchaser out of proportion to both the length of the work and its value to his studies. With regard to innovative educational works and "think-books", both of which seek to establish a demand rather than meet an existing one, there is no doubt at the moment that publishers are unwilling to take the risks. One publisher blamed the problems of such books on "the total indifference of law teachers", which suggests that the academic community is not voicing its demands loudly enough. The publishers' attitude is wholly understandable but it does indicate that economic constraints can indeed affect the progress of legal education.

If we turn to ambitious scholarly projects we find that the high costs of production, increased by a need for meticulous editing and a desire for high quality presentation in keeping with traditional ideas of the appearance of scholarly work, make such ventures

unattractive to publishers. If a series is envisaged, inflation can result in the final volume being many times more expensive than the first, thus demanding a substantial commitment to investment. On the other hand some other categories of work which we described as unpopular with commercial publishers - symposia, essays, conference papers, may be relatively cheap to produce, but are notoriously difficult to sell. This is possibly because specialists feel that the interesting short papers in their field are likely to be found in the subject journals and they are unwilling to pay for a collection if they feel that only one or two of the contributions are of direct relevance to them.

Indeed it would be unrealistic to expect commercial publishers to undertake the publication of the above categories, where their role might be that of subsidizing an academic and educational service, rather than making a reasonable profit. Scholars may fairly ask them, however, to consider very carefully the long-term advantages as opposed to the immediate risks of publishing innovative educational and theoretical works. But on the whole we feel that the problems facing publication of these important types of work are ones which must be solved by the academic community, either by agitating for greater subsidization, or by employing and accepting alternative means of publication, for example the production of material by educational institutions or the greater use of microform publishing.

The Current Situation: Student Access to Material

The Working Party suspected that universities and other institutions of higher education were experiencing a common and increasing problem in ensuring that their students had access to the wide range of books and periodicals to which their teachers feel it desirable to refer them, and we still believe there is a pressing need for research in this area. This happens to be a serious problem and one which is likely to grow rather than to diminish. In the first place there can be no dispute that the price of law books is continuing to rise, and there is no doubt that the massive escalation in law book prices over the past few years has affected student textbooks as well as monographs, practitioners, works and periodicals. Rising prices have caused headaches for librarians whose spending power has been effectively curtailed by inflation and restricted budgets and in institutions with small or non-existent law libraries there has been no available money in recent years for substantial expansion of library holdings. These developments have coincided with the continued growth of the law student population doing degree work at the universities and polytechnics and of the very large numbers of students taking a range of law courses at the sub-degree level. In a 1975 survey of the law student population in universities and polytechnics the total number of students in England and Wales showed an increase of 68% on the previous survey of 1965/6 (7072:4204) and Scottish law schools have seen a similar growth in numbers of 53% (1934:1588), while the annual intake has been rising at a rate of around 200 students per annum⁹.

In response to a questionnaire organized for the Working Party by the British and Irish Association of Law Librarians, respondents were unanimous that these pressures would result in the purchase of fewer titles, particularly of "fringe" material, such as foreign law, the provision of fewer multiple copies and the cancellation of some journal subscriptions. Essential materials which must be kept up-to-date such as statutes, law reports, encyclopedias, reference works and journals were using a large proportion of available funds at the expense of monographs, background works and text-books. In libraries with a lending policy more stock would have to be put on reference or in short-loan collections and several libraries already have a separate text-book collection for reference or short-loan use. Some respondents justified limiting the provision of multiple copies of text-books on the grounds that students need to buy their own texts. We had doubts about this argument as such purchases are proving an increasingly heavy burden on the student grant.

Librarians are finding it especially hard, with competing demands on funds, to provide adequate material for special options and for post-graduate courses. It is ironic that the broadening base of law teaching, which had an encouraging effect upon publishers has caused difficulties for librarians. With increasing interdisciplinary work there is a need for materials which are not strictly legal and yet, in view of budget restrictions, these are the first works to be excluded. This provides a simple example of the way in which the economics of publishing, in terms of the sheer cost of material, can hamper developments in legal education.

It is important to note that there is a vast area of law teaching outside universities and polytechnics where not only is library provision pitifully inadequate but where photocopying resources may not be available and where lecturers lack the time, and sometimes the motivation, to prepare special materials for their students; instead they rely almost exclusively on unimaginative "potted" versions of basic texts. This is true of many, although not all, colleges of further education where law is taught at non-degree

level, often as a component in another course which may be anything from accountancy to hotel management and catering. The financial pressure on polytechnic libraries may not yet be fully appreciated in establishments which have recently founded law departments or divisions but collections in many technical colleges and colleges of further education will remain meagre or virtually non-existent. One worrying feature about the lack of provision at this level is the absence of good liaison between such colleges and nearby universities or polytechnics with relatively well-stocked libraries and other facilities.

Possible Strategies for Alleviating Current Problems

a) Within the Commercial publishing system

In the Final Report the Working Party offered a variety of suggestions for legal academics, and in some cases, to publishers. Most of the strategies we considered are discussed in the context of small jurisdictions in the final chapter of this book under the heading 'Strategies for Planning and Publishing' and I will only refer to them briefly here. They are, of course, dealt with in considerably more detail in the separate S.P.T.L. Working Papers. Following the Final Report the Society established a Standing Committee to keep the situation under review and to initiate action in certain areas, as indicated below. It had become clear, in the course of our work, that a first step must be to establish a better liaison between all those concerned with law publishing. This could assist in a noticeable improvement in the present unsatisfactory situation. For example, prospective authors would have less reason to complain of rejections if they were better informed about the policies, requirements and interests of publishers and journal editors. In the case of journal articles a piece rejected by a highly prestigious journal on grounds of space might well find a place in a less pressured periodical, and a book which does not fit the list of one of the major law publishers might suit a general academic publisher or university press.

On a practical level, as noted above, considerable efforts are being made by law publishers to find cheaper means of production. Although publishers complained about the conservative views of legal academics as illustrated by the complaints of book reviewers, we stated our belief that practitioners, law students and teachers, given a more informed climate of opinion about the problems of publishing, would not reject out-of-hand text-books produced with typewriters and unjustified lines, notes collected at the end of the book, less comprehensive tables of cases and statutes, etc. In fact, it was frequently suggested to us that the current experiments do not go far enough as people were beginning to realize that these may be the only methods which will allow a book to reach any sort of commercial viability. Similarly we found that several prospective authors were sufficiently aware of economic realities to accept restrictions on royalties for low-profit books.

There may also be room for more experimentation on the part of law publishers in methods of updating standard textbooks. As the cost of producing such large works increases, so the gap between editions lengthens, with the result that the lecturer has to draw the student's attention to a great deal of supplementary information. Supplements have not proved very successful commercially, but there may be a place for more loose-leaf works, or for a modular approach based on part-publishing.

A different problem is the need for reprints of works which are in constant demand but not in sufficient quantity to justify the publisher in undertaking a large reprint. The problem proved especially severe in the smaller jurisdictions of the British Isles and it was rumoured that in Scotland, where there is a gap of a good many years even between editions of basic texts, the price of secondhand books depends on the quantity of updating in the margins. There seems to be a need for a system of short-run reprints, and although in the future technological advances may help to solve the problem, we suggest that in the meantime the law publishers might consider entering into arrangements with companies who specialize in this kind of operation.

A major problem to which no really satisfactory solution has been suggested is the cost of distribution, which adds significantly to the price of a book. One or two companies have used direct selling techniques whereby the lecturer takes orders from his class and passes them straight to the publisher. Although these help students to purchase books at more reasonable prices, there has been a sharp reaction from booksellers, and this has had an inhibiting effect on this kind of experiment.

The greater difficulty in achieving book publication has undoubtedly led to an increased emphasis on periodical articles and the Working Party was offered a number of ideas for reducing pressure on space in law journals. On examination it appeared that this pressure is as yet more perceived than real, as there is still room for good articles to be published quickly in several specialist and in general journals. One suggestion was that more space be allocated to articles within existing journals, at the expense of other

sections, particularly book reviews, but this idea was strongly opposed by publishers and by some editors. Another idea, linked to the view that journal publishing might help monographic studies, was that periodicals should accept more doublebarrelled and long articles which might formerly have been conceived of as monographs. In fact at the beginning of 1979 two proposals on these lines were being considered; the first for a new journal and the second involving a remodelling of the J.S.P.T.L. We also believed that there was no real outlet for the best student work and one of the projects being explored by the new S.P.T.L. Standing Committee on law publishing is the establishment of a national scholarly journal in which all the contributions would be by students - undergraduate, postgraduate or professional. Experience suggests that student-run journals, based on a single institution, have a rather high mortality rate; on the other hand, there is a good deal of work done by students up and down the country which is of a high standard but which never sees the light of day. This is probably increasing in both quality and quantity as course work assessment is becoming established in law departments.

b) Subsidization of Legal Literature

Subsidized works have traditionally been unpopular with publishers although with rapidly rising costs there is evidence of some change in the climate of opinion. The very need for a subsidy indicates that the book is unlikely to support itself commercially and there is a natural reluctance to carry inevitably low-profit titles. But the subsidization of production costs is one way in which important works with limited markets have been published, and the Working Party felt that this is a pattern which is in the interests of all academics to support and press for, especially within their own institution. A subsidy is less useful in reducing the price of a work than in making a vital difference to the initial calculation to publish.

There are some obvious candidates for subsidization, notably the legal literature of the smaller jurisdictions of the British Isles and some schemes (mentioned in the final chapter) are already in operation in Scotland and the Republic of Ireland.

Another category is that of specialist studies, particularly those resulting from sponsored research projects. The Working Party urged prospective authors working on research grants to consult their funding bodies and their university about possible contributions to publishing costs. A further type of work which will almost definitely not be published in the traditional printed form without financial support, but which is important to the advancement of scholarship, is the ambitious scholarly undertaking, such as the Collected Works of Jeremy Bentham. Finally, among the written evidence submitted to the Working Party were suggestions that the Society should set itself up as a publisher, possibly financing its operations from a publishing fund element in the Society's subscription, assisted by a copyright bequest scheme. In this case legal works would effectively be subsidized by lawyers themselves. This idea was considered carefully and it was ultimately decided that it would be more useful to arrange publication less directly by, for example, establishing an S.P.T.L. series in conjunction with a publisher, and setting up a subsidy fund which could be used in connection with a variety of publications and with different publishers.

c) Alternative Methods to Conventional Publishing

One of the principal ways in which the problem of student access to book and source materials is being tackled is by the photocopying or duplicating of published work. Most libraries replying to the BIALL questionnaire had photocopying facilities and in some cases they were themselves making multiple copies of cases for deposit in short-loan collections. Copying is also heavily used by lecturers building up their own course materials either for distribution to individual class members or in sufficient numbers to put on reserve for the whole class.

Photocopying does, however, have several attendant problems including frequent breach of the copyright law. It is most unpopular with publishers and one publisher has stated: "We believe that photocopying must be contained and copyright safeguarded for the sake of all the constituents of the book - author, printer, publisher, bookseller, teacher, librarian. Nothing has contributed more to the rejection of worthy manuscripts than the unbridled use of the copying machine"¹⁰. It is hard to accept this judgment in toto, since copying is chiefly used at present in situations where there are insufficient funds to purchase copies, or where students would not be recommended to buy the whole book from which the extract is taken, and it does not therefore reduce the market.

It may be relevant to mention here the recent report of the Whitford Committee on Copyright and Designs Law¹¹. The Committee was unwilling to accept that education should be viewed as a special case entitled to free copying facilities and argued that "if copyright material is used in education then copyright owners are entitled to payment. They should not as a class, be expected to make some exceptional contribution to this field."

The Committee took the view that blanket licensing was the only possible solution to the photocopying problem and formulated ideas as to how this might work in practice. Put very simply, they suggested that provisions for such a scheme be written into a new Copyright Act. Reprographic reproduction should still be a restricted act, but within particular areas designated by regulation (including copying by libraries, educational establishments, government departments, industry and professional interests and even copying agencies) a period should be allowed in which copyright owners, acting through recognized collecting societies, could set up blanket licensing schemes. This would allow the collecting society to have considerable flexibility in making arrangements with different classes of users. The Committee also suggests that blanket licensing would involve provision for arbitration by a copyright tribunal, which would have regard to what is reasonable in the circumstances, having power to decide on rates of payment, terms and conditions. The Working Party welcomed these suggestions and in view of current problems of student access and of the central role of case, statute, law book and periodical in legal education stressed the desirability of a system which allows freedom of copying without considerable expense.

The issue is of particular interest since libraries gave as one of their reasons for limited provision of multiple copies of text and case-books, the preference of many lecturers to prepare their own source books for individual courses. This practice appears to be on the increase and it is a means of providing students with material when published works are either not available or do not coincide with the teacher's approach. But we have found that cuts in departmental budgets are likely to make this a luxury rather than common practice, unless extra funds are made available. At the moment most departments provide materials free but some have implemented systems of charging students at a cost per page. In one instance, the department passes on the charge made by the central print room, with each lecturer being responsible for distributing material and collecting the money for his own course. The cost to the student is not insubstantial, but at around 5 for a 1000-page book it compares well with current book prices. It is, of course, cheap only because of the considerable hidden subsidies in the form of departmental typists, overheads and so forth.

When taken to the lengths of providing almost all the material for a law course, one can see why this is a source of worry to publishers, particularly if they suspect that their copyright is being infringed at the same time. Arguments against wholesale home production of materials are also raised within the academic world. First, that the student's reading is too fully structured by his teacher (but is it any less so by the standard text-book?), and secondly, that too much of a lecturer's time is devoted to organizing, editing and updating his materials. In addition, with little exchange of information between law schools there must be considerable duplication of time, effort and expense, up and down the country, an ironical situation when one considers that this is only possible in the relatively privileged universities and polytechnics and that many colleges are unable to produce any of their own materials. There is certainly some truth in these arguments, and there is a strong case for greater co-operation and exchange of ideas about these problems within the academic community. One step might be for teachers to make their materials available to lecturers in other schools at cost, although we appreciate that there is some jealousy about personal source books, particularly where these are seen as a pilot for a work later designed for commercial publication. But a further move could be for teachers in the same field to pool their materials and co-operate in producing basic teaching texts around which they would build courses. This would be especially valuable in courses with few students where published works are not available; but in mainstream courses such works might catch the publishers' attention and proof of their wide use might lead to full publication. The one or two experiments in this sort of scheme in the UK have run into difficulties of cooperative editing among a group with different individual views and demands. The problems may, however, be overcome. Different individual approaches could be catered for by adopting the module approach described above where individual booklets, produced on institutional printing or duplicating facilities, could be combined to link varied approaches in a course series.

The use of institutional facilities could be extended beyond teaching materials to the "publication" of other commercially unattractive works, such as conference papers, monographs, occasional papers and journals. High quality production and binding are not of importance at this level. A more sophisticated scheme is practised by some institutions, such as the British Institute of International and Comparative Law which sets its own publications on IBM machines and then has them produced by a local printer. Departments engaging in production of works for sale should realize the problems of accounting, invoicing and distributing which they will have to face; but on a small scale, say 50 to 100 copies, this is not too great a problem. One fundamental need, if this activity is to be coordinated and if material is to be generally available to individuals and libraries, will be a good information system, starting for example with an annual listing of unpublished teaching works, occasional papers and special studies and the Working Party suggested that this might be undertaken by either the professional associations or by an enterprising law publisher.

d) New Technologies

The development of new technologies in printing and in photographic reproduction and advances in microform publishing may both be of benefit to law publishing. For example computer setting, where the main text is held on tape, and corrections and updating are keyed onto another tape which is then collated with the original, could help speedy updating of textbooks and is of obvious use for encyclopedias and reference books. At present, however, computer setting facilities in UK printers are limited and the initial investment for a book produced in this way is very high. The present application of micro-publishing in general to law is limited to publications such as statutes, official documents, law reports and some periodicals. Indispensable reference sets can absorb 70% or more of library shelf space and microform copies can obviously make a substantial saving in the use of such space, the costs of which at present makes British librarians reluctant to carry large sets of, say, EEC or foreign reports and periodicals. The use of microform could be extended. It would be valuable for libraries to have microform copies of old, rare or out-of-print books. Microfiche is cheap to produce and cheaper to copy and the same qualities apply to cassette microfilm. This method could apply equally to monographs, dissertations, symposia and conference papers. The great disadvantage is that microform is still unattractive to readers and its use is limited to libraries. But with the development of print-out machines which could be located in libraries and of cheaper hand readers, the pattern of use may change. In future it may be possible to loan students a copy of set texts and readings in microfiche together with a hand reader. The law of copyright precludes libraries preparing the microtext themselves but publishers could be approached to provide simultaneous publication in book form and in microform of all standard texts, law reports and periodicals.

CONCLUSIONS AND IMPRESSIONS

In conclusion it appears that the law publishers, like other academic publishers, have been forced in the present economic climate to exercise more stringent profit criteria in accepting books for publication. This is true also of the general academic firms who have recently moved into law publishing attracted by its closer links with other social science disciplines. This means that it is very difficult - and it was never easy - to achieve publication in book form for specialized studies, scholarly works and innovative books which will not have a large market at the moment of publication. Such work, in any subject, requires dissemination if a tradition of scholarship is to be maintained and advances in education are to be fostered. It is of special importance in legal education in the United Kingdom where the last decade has seen a considerable increase in legal research combined with the application of new ideas to law teaching, such as the contextual and socio-legal approaches. At the same time, rising book prices and reduced library budgets and grants threaten to limit even the availability of published works to the growing number of law students.

Although some specific initiatives have been taken by the Standing Committee, one can only hope that the situation will be eased in the future by the extended use of subsidies, the development of journals, the increasing application of new and cheaper publishing techniques and the growth of semi-publishing by law schools themselves.

But we cannot help feeling that the one thing which is going to have to change most is the academic's attitude towards publications. The Final Report argued the gravity of the current situation and suggested that, for academic lawyers, being well-informed and being prepared to adjust to publishing changes, for example, in format or technology, was an essential part of a professional approach to their work. I would think that the adjustment may have to be more profound than that. In the course of my research and writing for the Working Party, I was fascinated, as a non-lawyer with a publishing background, at the attitudes I encountered among law lecturers. Their diagnosis of what was wrong with law publishing varied, but one theme was the belief that publishers were villains driven solely by the profit-motive and were deliberately out to counter academics' desire to publish scholarly work (frequently this work was an unamended thesis dumped on a publisher's desk without thought of what the final form might be). On pressing further it often transpired that a rejected author had only approached one, or possibly two publishers who may have turned down the proposal because it did not fit in with their present publishing policies or lists. The author had tried no further and had not even done any elementary research, such as looking at his own bookshelves to see what the most appropriate publishing outlet might be. Similarly, complaints about queues for journals came from people who had not looked beyond two or three outlets.

A second pattern was the rejection of alternative forms of publication, such as microfiche, or xeroxed copies, (although attitudes became noticeably more flexible over the three year exercise) a certain resentment among authors involved with economical formats such as 'direct editions' that they had to do a lot of editorial work themselves. On the other hand, despite the generally disgruntled air, I had the impression that legal

academics were unwilling to tackle the publishers directly to persuade them to alter their policies with regard either to subject coverage or forms of presentation, but that many (including the thesis writers) tended to plan their writing to suit existing outlets, such as text-book or background series and effectively handed over much more power to the publishers than they themselves would have demanded, or even wished.

Perception of these attitudes led to the Working Party's emphasis on providing information, dispelling ignorance and creating a better understanding between publishers and prospective authors. But an important point is that the patterns I have indicated are, to a degree, institutionalized within the academic legal community. Again, I feel, attitudes may be changing but in the early and mid 1970's many appointments boards and promotion committees tended to judge the list of works on a curriculum vitae by looking at the publisher's name or by the quality of the presentation on the library shelf rather than by the content. Even though this might be unfair the vital point is that this is what was believed - no wonder a young academic shied away from being 'published' in an unorthodox way. Yet if one really cares about originality and scholarship it is patently ridiculous to judge by external attributes or prestige publishing traditions in the present economic conditions.

If one takes a different perspective on the way academic publications are judged by appointments boards, or by periodical reviewers, I believe one encounters a deeper and more problematic issue. The Working Party was concerned with the problems encountered by a single group of 'producers' and in the context even of educational legal literature this leads to a very one-sided emphasis. It has been suggested that in the rush to publish, (a growing pressure in the UK where the financial squeeze on academic budgets is already having an effect on promotion prospects), the needs of the audience are forgotten, or reduced, compared to the needs of the author. If one looked at academic law publishing from the viewpoint of the students one would have a different picture. Hence, it might be more or at least as, useful to produce interesting books for technical college students or for social workers than strive to get a tightly argued article into the Law Quarterly Review. Yet a publisher concentrating on developing the former kind of work commented at a recent conference that potential writers had to be 'wooed with large cash advances' because young academics felt that writing such books might actually endanger their future career prospects. There is a real conflict here between values of utility and of scholarship, or between commitment to personal aims and the desire for prestige, and although I do not think there is an easy answer it is a conflict which I believe needs to be aired and debated seriously among those concerned.

Many of the questions raised in this paper - the means of achieving publication, changes of attitude to presentation, the determination of criteria in judging writing in relation to scholarship or educational needs, are more immediately visible in smaller jurisdictions. But they may be just as acute, if better camouflaged, in a jurisdiction which one would assume had reserves of money, manpower and varied publishing outlets. In either case, at a time when it is unrealistic to expect commercial publishers to take unnecessary risks the only course must be for the academic community to ponder the problems and, to some degree, to start taking the risks itself.

1. It covers the main points in the S.P.T.L. Working Party Final Report, and a slightly fuller account can also be found in J. Uglow, "Law Publishing and Legal Scholarship in the United Kingdom", International Journal of Law Libraries, 5, (3) (November, 1977).

The Chairman of the Working Party was Professor W.L. Twining and the project received a grant from the Nuffield Foundation. Copies of the Report and the separate working papers are available from Professor P.F. Fairest, S.P.T.L. Executive, Department of Law, The University, Hull, U.K.

2. These included proposals for a general inquiry into the problems of academic publishing at a national level, a detailed research project on the information needs of law teachers and students, and a study of the problems of developing local legal literature. The pilot stage of this last project is represented by the present volume, and a specific study of the smaller jurisdictions of the British Isles has been sponsored by the Nuffield Foundation.
3. First Interim Report of the S.P.T.L. Working Party on Law Publishing, para 6.
4. *Ibid*, para. 9.
5. *Ibid*, para. 15.
6. Library Association Record, 78(2), February 1976.
7. The principal law publishers in the United Kingdom are Sweet and Maxwell Ltd. and Butterworth Law Publishers Ltd. However, Working Paper No. 1; Marketing Your Manuscript, lists an additional twenty-one companies who express an interest in carrying legal material.
8. First Interim Report, para. 16.
9. J.F. Wilson and S.B. Marsh, "Second Survey of Legal Education in the United Kingdom", Journal of the Society of Public Teachers of Law, xiii(4) (N.S.), July 1975.
10. The Law Librarian, 7(3), December 1976.
11. Report of the Whitford Committee on Copyright and Designs Law, (Command Paper 6732).