Secretary, ex parte Venables and Thompson [1997] 3 WLR 23, an application for judicial review in which the two boys challenged the Home Secretary's decisions in setting the tariff on several grounds. His decisions were overruled in the House of Lords and thus did this horrible murder give rise to what will in future years become a leading decision on several aspects of judicial review.

THE HOME SECRETARY'S MISTAKES

The case demonstrates the development in the context of the detention of children of the already strong judicial policy that determining the penal element in a sentence – such as fixing the tariff – is a function akin to that of a sentencing judge. Thus such decisions are to be accompanied by the highest standard of procedural propriety (as in *R v Home Secretary, ex parte Doody* [1994] AC 531) and to be decided with strict regard only to relevant considerations.

TABLOID JOURNALISM

Ill-informed and emotional criticism, fanned by tabloid journalism, should not determine how long any individual stays in jail or detention.

Consequently the Home Secretary could not take into account the public clamour (as evidenced by the petitions) for a severe penalty in the *Venables and Thompson* case (per Lords Goff, Steyn and Hope; Lord Lloyd dissenting), although he could take into account public concern of a general nature (for instance, 'relating to the prevalence of certain types of offence'). This, it is submitted, is clearly right. While public confidence in the administration of justice is important, ill-informed and emotional criticism, fanned by tabloid journalism, should not determine how long any individual stays in jail (or detention).

But that was not the only error made by the Home Secretary. His policy of treating children detained during Her Majesty's pleasure in the same way as mandatory life prisoners meant that he set the tariff and then did not, save if evidence about the circumstances of the commission of the crime or the applicant's state of mind at that time came to light, review it. This policy was rejected as unlawful (Lords Browne-Wilkinson, Steyn and Hope; Lords Goff and Lloyd dissenting), mainly on the ground that it was too rigid in that it excluded review on the ground of events that had occurred since the commission of the offence. This reasoning does not depend upon the applicants being children, although with children the changes in the individual as the child grows up are likely to be greater.

THE WELFARE OF THE CHILD

But in addition, in the case of children, s. 44 of the *Children and Young Persons Act* 1933 required that '*every* court in dealing with a child shall have regard to the welfare of the child' (emphasis added). Surprisingly, perhaps, counsel for the Home Secretary conceded that the minister (although not a court) was bound by this duty. It then followed that, while he could set a provisional tariff, he was bound, in having regard to a child's welfare, to keep that tariff under review and to adjust it (if appropriate) to take account of the precise circumstances of the child as he or she grew up.

THE IMPORTANCE OF THE DECISION

The consequences of the decision will be far-reaching. Several high profile murderers who have been set very high tariffs, or told that they will remain in prison for the rest of their lives, may seek to force the Home Secretary to review their tariffs on the ground that they have changed over the years since the crime. For the general law of judicial review, however, the case is likely to be less dramatic. None the less the extensive discussion of the errors made in setting an over-rigid policy (which was arguably in conflict with a statute) and the determination of relevant and irrelevant considerations will prove very valuable. The orthodox principles of judicial review, ever flexible, have once more borne fruit in a novel and difficult area of decision-making and have brought fairness even to the perpetrators of an horrific murder.

Dr Christopher Forsyth
Assistant Director of the Centre for Public Law
University Lecturer in Law
Fellow of Robinson College
University of Cambridge

Legal Education & Practice

The Faustian bargain and the devil you know

by Nick Johnson

Vocational legal education is on the cusp between the universities and the professions. Historically the universities stayed aloof from the process of training, regarding the courses as lacking intellectual and educational credibility. The training schools such as the Inns of Court School of Law and The College of Law were regarded as trade schools that were wholly subordinate to the professions. The polytechnics, with clear vocational aims, were more amenable to partnership with The Law Society and largely accepted professional regulation of their Common Professional Examination and Law Society Finals courses.

LEGAL PRACTICE COURSE

The Legal Practice Course (LPC) brokered a compromise between the providers of legal education and The Law Society, which brought a few of the old universities into the market. Standards, in the form of outcome statements, were specified by The Law Society with each provider building its own course around them. Rigorous and continuing control is retained by The Law Society through a system of validation and inspection.

Examinations are set locally but supervised by external examiners appointed by The Law Society. In this way, the profession has maintained control of what is needed as preparation for practice while allowing the providers to decide how those needs are met.

INTEGRATION OF TRAINING

The Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) report backed the universities' call for greater freedom from professional control at the academic stage, while recommending that in return the law schools should start to integrate academic and professional training. To Harry Arthurs, this is 'a bargain with Faustian potential' (see H W Arthurs, 'Half a League Onwards', *The Law Teacher*, Vol. 31 No. 1 p. 8). The pure waters of academic law will not mix with the oil of vocational training.

Even the call from certain quarters of the profession for more black letter law (see R Youard, 'A Plea for an Old Fashioned Academic Education', *The Society of Public Teachers of Law (SPTL) Newsletter*, Winter 1996 p. 9) will be viewed with deep suspicion by academics of a different persuasion. As the recently published survey of law schools shows (see P Harris and M Jones, 'A Survey of Law Schools in the UK 1996', *The Law Teacher*, Vol. 31 No. 1 p. 38), the proportion of law students going into the professions differs wildly from law school to law school. Sad ironies are apparent. Highly academic Oxbridge graduates are snapped up by the professions, whereas graduates from vocationally-orientated new universities are ignored by firms and chambers. Pluralism rather than uniformity is the best way forward in such a context (see Professor W Twining's address to the SPTL Conference, 15 September 1995).

FREEZING LPC PLACES

Freezing the allocation of LPC places has been strongly criticised by universities and privately by members of The Law Society's own Legal Practice Course Committee.

The parties to this allegedly Faustian bargain endow each other with diabolic qualities. Academics are regarded as dealing only with the pathological legal situation, while the professions emphasise the routine and the boring. Academics compartmentalise, professionals oversimplify. Academics begin with principles, professionals with their unprincipled clients.

THE NUMBERS GAME

The battle for control of the vocational stage does not just encompass the aims and content of the courses. Numbers are a potent source of conflict. Solicitors, suffering from the recession and the loss of traditional monopolies such as conveyancing, have complained bitterly at the burgeoning numbers graduating from universities who are seeking training contracts in an already overcrowded profession. Martin Mears, who represented the Poujardiste tendency in The Law Society, campaigned to limit the numbers entering the LPC and to gain professional control of the numbers entering the profession. The attempt was abandoned following legal opinion that the proposed restriction would contravene competition law.

© *Digital Vision*

The universities' slant on numbers is wholly different. They had entered a market for the LPC which had a monopoly supplier, the College of Law. At validation, their intakes were subject to an upper limit, normally 100–150, and considerable capital investment was required to gain validation. Since the LPC began in 1994, the market has crashed. Applications were down by 15% in 1996 and have decreased by a further 12% in 1997. Some courses have been less than half full, although a minority of courses continue to receive strong applications.

Against this background, The Law Society's Training Committee decided in April 1997 to freeze the allocation of LPC places, with a moratorium on approvals for additional places until the year 2000. The allocation of places to LPCs had, in the vast majority of cases, not been looked at since 1993. With some institutions straining at the leash and some less than half full, the freeze has been strongly criticised by universities and privately by members of The Law Society's own Legal Practice Course Committee.

SOLICITORS COMPLAIN

Solicitors have complained bitterly at the burgeoning numbers graduating from universities who are seeking training contracts in an already overcrowded profession.

CROSS-POLLINATION TAKES TIME

Professional bodies and universities should stick to their respective lasts. As a validating body, The Law Society has an interest in ensuring that every LPC maintains quality as its numbers grow or reduce. That does not give it a licence to meddle in the market or artificially to maintain a historical distribution of student numbers. The cross-pollination of academic and vocational education will take time to bear fruit. It would be tragic if The Law Society's lurches of policy caused the tree to be cut down before the fruit even begins to form.

Nick Johnson
Oxford Institute of Legal Practice