

Milsom, S. F. C. *Legal Framework of English Feudalism*, CUP (1976), 201pp.

Milsom, S. F. C. *Studies in the History of the Common Law*, Hambleton Press (1985), 348pp.

Baker, J. H. & Milsom, S. F. C. *Sources of English Legal History. Private Law to 1750*. Butterworths (1986), 655pp.

Milsom, S. F. C. *A Natural History of the Common Law*, Columbia University Press (2003), 175pp.

Biography

Lesley Dingle is the Foreign and International Law Librarian and Founder of the Eminent Scholars Archive at the Squire Law Library, University of Cambridge. She is a Senior Member of Wolfson College.

Legal Information Management, 12 (2012), pp. 314–317

© The Author(s) 2012. Published by British and Irish Association of Law Librarians

doi:10.1017/S1472669612000680

CURRENT ISSUES

The Future of Legal Research

Abstract: This article is based on a presentation given by John Bell at the annual conference of The Society of Legal Scholars (SLS)¹ held in Bristol in September 2012. His talk reflects the immediate challenges facing law schools, academic lawyers and the legal publishing industry in the light of the recent Finch Report² and the subsequent response by the Government³ whereby it has adopted an open access policy to publicly funded research.

Keywords: higher education; funding; open access; legal publishing; academic

INTRODUCTION

On 16 July 2012, the UK Government announced that, in response to the Finch Report, it had decided to adopt an Open Access policy to publicly funded research. This means that research which is publicly funded (by research grant from a research council or government department, or by public funds, such as QR (Quality Research) research grant from the Funding Councils) will have to be available for free electronically, after a short period for the publisher to gain money from it. This is known as “Gold Access”. Basically, instead of journals being funded by subscriptions from libraries, people and firms, they will be funded by payments from the author of the article. The UK Research



John Bell

Councils (RCUK) announced on the same day that all articles funded from their research grants which are submitted to journals after 1 April 2013 (seven months time from now!) will have to be open access. That means the publishers can only embargo the publication for 1 year before everyone will have access. The Funding Council will be consulting in the autumn on how this applies to research funded by its QR research grant. This policy applies only to journal articles. But it is quite clear that ‘Chapters in Books’ will follow suit and possibly academic monographs. This paper picks out some issues.

Academic lawyers come as both consumers and producers of open access works. Open Access is fundamentally a system which is in our interests, and it needs to work properly. The main concern is to ensure that the

process of transition, which is likely now to be quite rapid, does not produce problems.

ACCESS IS A GOOD THING

As CONSUMERS, we really like them. Personally, I could not have produced my latest book on Tort liability with David Ibbetson, Regius Professor of Civil Law at the University of Cambridge, if we had not been able to access a lot of French material from the late 19th century from the French Bibliothèque Nationale's open access *Gallica* collection. Our institutions are able to afford more works if they are available electronically. We are able to work more easily at home or at work if the material is available electronically. Open access would increase the number of institutions from which research could be undertaken and enhance our flexibility as researchers. So, basically, we are all in favour.

As PRODUCERS, we have two different concerns. The first is what happens to royalties (if any) for what we produce. Does the open access policy spell the end of author's royalties? The second is how will this be financed? The first seems likely, but rarely applies to journals. It is this second issue on which I wish to spend time.

The model that is presented in EU and Government announcements is, to quote HEFCE (Higher Education Funding Council for England), "we would like to make clear that institutions can use the funds provided through our research grant to contribute towards the costs of more accessible forms of publication" (16 July 2012). So, existing public money that funds research (research grants and funding council research block grant funding (QR)) is expected to be used to pay APCs. Basically, according to calculations done for the Finch Report (see Appendix F, p. 131) the model is to recycle existing funding. Institutions stop paying subscriptions and other costs involved in making research accessible (ie. 'pay-to-read' costs) and pay the journals to publish articles ('pay-to-publish' costs = APCs). In addition, to manage the transition, on 7 September the government announced £10 m would go to 30 institutions to pump prime paying access charges to publication. On 16 July 2012, Research Councils announced that they will pay Article Processing Charges (APCs) by means of a block grant to institutions, rather than as a cost within the research grant. Research council funded articles in journals will have to be openly accessible in relation to submissions from 1 April 2013. (It is not clear whether this applies to existing grant holders, and RCUK will be consulting on this shortly.)

Now institutions have three main sources of funds: any contribution to libraries (limited to a few institutions, such as Cambridge), QR funding and research grant funding. The institutional pot to pay APCs will have to come from QR and this new Research Council block grant, which is currently limited to 30 institutions. The money is paid to *Institutions* and they will have to determine how the money is made available internally. So a key

control over what gets published moves to institutions. To get published, you will need to ask your institutional manager for money to pay for it, and, as I will show, there is a limited pot, so rationing will become the order of the day.

WHAT WILL IT COST?

At the last Board of the Cambridge Law Journal (CLJ), of which I am currently the editor, we agreed to adopt the Cambridge University Press current charge of £850 per article for it to be made open access in the Humanities and social sciences (£1700 in the sciences). Actually, this is grossly under-priced. The cost is a marginal cost. If we have to move to funding the entire journal from APCs, the figure would be nearer £2000 per article. The Finch report suggests a figure of about £1450 per article (\$7.14), and models deviations from this.

The basic assumption of the Finch report is that, for the UK as a whole, taken across all disciplines, will be cheaper to the tune of £5.2m a year. But the model is clear that the open access system works by moving costs significantly onto universities and away from 'others' such as private subscribers, publishers and the like. Both business and private individuals (at home or abroad) will benefit.

My worry is that the very global set of figures produced at a UK level will be distorted at the micro level. Humanities and Social Science Journals are estimated at but 1% of the whole Gold Global journals budget. The biggest cost is medical journals (40%). Publishers such as Elsevier are considered by many to be charging too much for their journals, especially in sciences and medicine. By going to open access and APCs, it is expected that there will be huge savings in the cost of information in those disciplines. (The Royal Society also wants open data as well.) The savings, if there are any, will be in the science and medicine budgets. Given that most universities work with decentralised budgets, it is not clear that Arts, Humanities and Social Science departments will actually find that costs are neutral.

I have made some very preliminary calculations, and I think we need to be prepared for being worse off within our own institutional budgets from the way the Open Access Policy is being driven (quite rightly) by the costs of science journals and the public benefit of the availability to business of science and technology ideas.

I wish to look at three steps:

- (1) What do we publish as lawyers?
- (2) What will open access to journals cost?
- (3) What are our sources of funding?

WHAT DO WE PUBLISH?

I tried to do an analysis of the rough breakdown of research outputs. I chose 4 institutions: the University of Bristol, University of the West of England, the University of Nottingham and Nottingham Trent University. I

analysed the outputs selected by those institutions for the 2008 RAE (467 outputs):

Journals	61%
Chapters in Books	18%
Monographs	11%
Professional works	6%
Student Texts	2%
Research Papers	2%

Books are currently outside the policy, but continental Europeans are used to the author having to provide support for the publication of their book. Thesis prizes are essential to get a thesis turned into a book. So there might well be a move in the UK to move at least Chapters in Books, if not monographs, to a position where we pay the publisher to publish the output. It is rather haphazard how some volumes are classified, such as the Cambridge Yearbook of European Legal Studies (Hart Publishing), which I used to edit. Richard Hart (of Hart Publishing) and I guess that the cost of paying a publisher to publish a monograph or collection of essays would be typically something like £10,000.

At the very least, this analysis of publications would suggest to me that we should not think that our entire library budget can be hypothecated to paying APCs in relation to journals. The importance of outputs other than journals means that the HEFCE, Research Council, EU and UK government strategy focuses only part of the picture. There is no way that professional works (such as Halsbury's Laws of England (published by Lexis Nexis) or Chitty on Contracts (Sweet & Maxwell Ltd) and student texts will become open access. But they may simply slip out of the category of 'publicly funded research' and cease to be REF'able⁴. We also need to recognise that our journal subscriptions cover non-UK journals, and are paid not on an individual basis, but by way of consortia purchases. These buy a block of titles, foreign and domestic, from publishers. Licensing to get these might well continue, even if some UK work becomes open access.

WHAT WILL IT COST IN LAW?

In Law, if the policy is carried out (as seems very likely), what ought we to budget for? First, we need to have a budget for APCs both for UK journals and for Chapters in Books, which will almost certainly follow suit.

Secondly, in a transition phase, we need to budget for continuing licences and subscriptions to a large number of journals. These will be UK journals which are not open access, foreign journals, and journals that we want in hard copy. The fewer paper copies we want of journals, the cheaper this will be. (But one point needs to be a change in VAT rules on electronic journals and books.)

Despite what Government and research councils say, I think the transition could be rapid. If institutions decide that they will stop paying subscriptions by way of consortia purchases for 2014, then journals will lose their subscriptions and have to move over to charging APCs for articles published, possibly even in the financial year 2013–14, for which we start the budgeting process in universities in January 2013.

Thirdly, we need to prepare ourselves for changes to the funding of academic book publishing, which will come upon us quicker than we imagine. Publishers at this conference are already advertising their 'Kindle-friendly' books, which can replace paper copies and be cheaper. The era of publicly funded open-access books cannot be far away.

WHAT ARE THE AVAILABLE FUNDS?

Cambridge University Library (CUL) is fortunate in that it is one of the UK's deposit libraries, so it receives a considerable number of books free of charge from the publishers. All the same, some of the costs in the budget are not atypical.

Very broadly speaking, the main budget of the Squire Law Library, an affiliated library of CUL, splits as follows:

Books £55k
 Journals and other periodicals: £258k
 Electronic resources (databases and e-resources):
 £59k.

If we just look at the journals budget, then the University of Cambridge budget would pay for 2 articles per research active person per year at £2000 per article or 4 at around £850. But we cannot expect to spend the whole of the Journals budget in this way. Many of the journals are from overseas or are professional works (and the latter are often the most expensive). So we could be rationed to 1 or 2 articles a year, if we concentrated only on using the existing Library budget to pay for APCs.

If we need to go further then we need to look at the rest of the QR budget, this affects institutions differentially. The English Law QR budget has been steadily declining. Before the Research Assessment Exercise (RAE) in 2008, it was £24million. For 2012–13, it is £18.7million. These days, only 47 institutions receive any QR money. 12 institutions get over £500k, and 9 get less than £30k. Nottingham gets a little over £1million, Bristol, £645k, Nottingham Trent £27.5k, UWE £78k. So a very large number of Law Schools do not have a large HEFCE grant from which to pay APCs. After all, this budget also pays for research leave, research travel and conferences. Effectively, the cost will be coming out of the teaching budget.

What I am saying is that the cost of open access is more expensive to the institutions of the producers than the saving they would make on their subscriptions budget for journals. It is not a matter of recycling the same amount of money in different ways. The reason is obvious. Subscribers to journals are not all members of the university library consortia. There are individuals,

firms, foreign libraries and so on. There is also advertising revenue. If journals lose these, the cost loaded onto the author of articles has to be higher.

IS THE PROPOSED MODEL THE WAY WE WANT TO GO?

Talking with my colleague and predecessor as editor of the CLJ, David Ibbetson, he remarked that he would simply put his work up on the web – no APCs and it will be immediately found through SSRN at a fraction of the cost of what is being discussed. I think his approach raises an important question. Actually, if we believe in Open Access, is the route of Gold Open Access the right way forward for law?

The real question is the value of journals like the Cambridge Law Journal, which David and I have edited. What contribution do they make?

If we look at the contribution of publishers and the editorial team, there is an improvement in the quality of the layout, referencing and sometimes English of the authors. The publishers are guardians of quality in the form of the work, and they provide value in terms of the accessibility of publications as they are mounted on the web. They also provide marketing and distribution. There are a range of value-added services which publishers provide which we would be willing to pay for. But how much is that worth?

If we look at the contribution of the journal editors, then the key is peer review. They are selective and often send articles back for improvement. Peer review is taken for granted in the whole Finch report as a requirement in an era of data overload. We will only look at articles that have been authenticated by respected peers. Well, is that true in Law? And what is the price we are prepared to pay?

If we really think the importance of the journal is peer review, then surely Submission Charges, rather than Article Processing Costs are the right way forward. We should be paying the Journal to pay reviewers to report on articles, and paying the cost of the back office in managing the processes of review, writing letters to authors and then selecting the publications to be mounted on the web. But these valuable processes are ones which are often unpaid. Submission Charges might be £300 an article: £100 each to the reviewers and £100 for the editorial team.

The whole question of Open Access challenges us to think what we want our journals to achieve and we may not want what is being proposed, which is effectively the status quo in a different guise. Urgent thinking has to happen between now and Christmas. Journals like the CLJ will be undertaking contingency planning. We cannot assume that 2014 will be 'business as usual'.

Footnotes

¹ <http://www.legalscholars.ac.uk/>

² Finch, Janet. Accessibility, sustainability, excellence: how to expand access to research publications: report of the Working Group on Expanding Access to Published Research Findings. Research Information Network, 2012. <http://www.researchinfonet.org/wp-content/uploads/2012/06/Finch-Group-report-FINAL-VERSION.pdf>

³ Letter to Dame Janet Finch on the Government Response to the Finch Group Report: "Accessibility, sustainability, excellence: how to expand access to research publications". 2012. <http://www.bis.gov.uk/assets/biscore/science/docs/112-975-letter-government-response-to-finch-report-research-publications.pdf>

⁴ The Research Excellence Framework (REF) is the new system for assessing the quality of research in UK higher education institutions (HEIs). It has replaced the Research Assessment Exercise (RAE) and will be completed in 2014. <http://www.ref.ac.uk/>

Biography

John Bell, FBA, has been Professor of Law (1973) at the University of Cambridge and Fellow of Pembroke College since 2001. Previously, he was Professor of Law at the University of Leeds (1989–2001) and Fellow and Tutor in Law, Wadham College, Oxford (1979–1989). Between 2005 and 2009 he was the Chair of the Council of the School of Humanities and Social Sciences at Cambridge. He is the editor of The Cambridge Law Journal.