

# LEGAL EDUCATION AND THE PUBLIC INTEREST

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ANDREW GOLDSMITH\*

[W]hat justifies the existence of a law school [is] the study of the types of legal problems which arise in daily life, and the methods of resolving them satisfactorily, with the least amount of injustice and suffering. Law schools are set up not for the sake of the law or lawyers but ultimately to help human beings to solve legally the problems and predicaments encountered in the pursuit of conflicting social ends.<sup>1</sup>

## INTRODUCTION

Law is both powerful and pervasive. It is also, for the most part, highly public in nature. The social settings in which legal considerations arise are virtually endless. The number of ordinary citizens affected by legal problems on a daily basis far exceeds the number of those who go to court or consult lawyers about such matters, or even those who may seek to discover their legal position through a visit to a library, a legal advice service, or the Internet. In a democratic society, some knowledge of the law is a highly desirable commodity. It provides consciousness of entitlements to benefits and protections and also provides ways of organising and structuring a variety of personal and business transactions.

Legal knowledge can therefore play both a protective and facilitative role. This redistributive potential of legal knowledge raises questions about the conceptions, philosophies and structures of legal education in our society. What should count as legal knowledge, and how access to legal knowledge is determined, are profoundly political questions. As with most political questions, the interests at stake are not simply defined by the self-interest of a few individuals or well-entrenched groups. The range of people affected

by law means that the stakeholders in legal education in a democratic society cannot be narrowly limited. While there are some obvious traditional sectional and private interests involved, the *public* interest in legal education is easily forgotten or ignored. It is precisely this question that concerns me here.

There is perhaps something almost quaint in the present economic and political climate about discussions of the public interest. Quaint, that is, unless the notion is quickly assimilated under the rhetoric of economic rationalism and corporate managerialism.<sup>2</sup> I want to suggest that while it is possible to consider this question in terms of the nature of law students — whether they more resemble *private consumers* or *public citizens* — there are other pressing considerations such as who can study law, and the extent to which legal educators embrace interests other than simply those of their students and the legal profession. I shall turn to this question of articulating what the public interest in legal education might look like later in the essay.

First however, I want to make some observations about the nature of legal knowledge. Legal knowledge is the currency that links the legal profession and the law schools to many aspects of citizenship. I want to look at how this has been traditionally conceived by law schools, law students and the profession, and to suggest some strange shortcomings in this area. These deficiencies raise questions about the nature and accessibility of legal education in traditional law schools and more generally within universities and higher education. In order to look at these issues, I first examine the idea of a public interest in legal education and suggest how the concept might be understood. Then finally, I make some proposals for how a vision of legal education more reflective of the nature of legal knowledge and the public interest might be put into practice — I call this approach an “integrated legal education environment”.

## LEGAL KNOWLEDGE: TALES FROM TWO CITIES

Legal knowledge is the subject-matter of legal education. It is what gets transmitted to law students by their teachers or that which is the object of student learning within the legal educational setting. What gets taught, and what gets excluded or omitted from the curriculum, are fundamental to the outlook of students and their

ultimate professional and academic orientations. On a personal note, I can divide my early understandings of legal knowledge into two phases, from encounters or “visits” to two quite different sites or “cities” of learning. Those “cities” I will call “University” and “Life”. The sharpness of the contrast between the two sources of instruction and the lessons learnt however is not the point. For me, the interesting points to emerge are the needlessness, at least to some extent, of such a striking separation, and its persistence in the face of increasing evidence of its existence and questionable justification. If the consequences of such a cleavage are connected to the perpetuation of narrow professional interests, whether in the law school, among law students, or within the legal profession, then the need to re-examine the relationship between legal knowledge, legal education, and the wider society becomes pressing.

### *University Tales*

As an undergraduate law student, I was exposed to a traditional legal education for four years. What counted as legal knowledge came almost exclusively in the form of judicial decisions (case law), supplemented by some exposure to the contents of statutes. My stay in “University” city inculcated a conception of law that was highly formal, document-based, and the product of a largely unquestioned and unquestionable set of judicial and legal institutions. The authority of these institutions was assisted by law textbooks that struggled schematically to provide their student readers with a sense of the coherence and comprehensiveness of law as a body of knowledge. This approach was generally aided and abetted by doctrine-oriented exegetical approaches to classroom teaching and assessment. For the most part, assessment took the form of three-and-one-half hour endurance tests in which the capacity to “discuss the right cases” in relation to a highly schematic and uncontroversial set of facts was tested. “Thinking like a lawyer” was the object of the exercise and indeed the entire law school experience.

For the most part, the connections between “thinking like a lawyer” and the rest of human experience were left hanging or left out completely. My vague sense of unease at what was happening to me was not enough to make me challenge what I was being taught, or to seek refuge in another faculty. Instead I meekly and

silently tried to make sense of the messy morass of case law that seemed to be our constant fodder. Much of the time, this seemed like drudgery, and when the spirits got low, even punishment. The student culture played its part in ensuring widespread acceptance of the system.<sup>3</sup> Leaving aside the issue of the subjects required for admission to practice, there was also remarkable student conformity in relation to which other subjects to take. In the corridors, rather than in the classrooms, students, not law teachers, advised other students which electives were advisable for practice or otherwise worth taking. Yet the curious thing was how we seemed to accept things. For myself, and I suspect for the overwhelming majority of my class, the drawbacks of legal education were offset by the (then) quiet promise of something sweet at the end of the road. Legal education's focus upon legal doctrine in "University" city was dry, and indeed remote, but it smelt of power and held the prospect of employment in a potentially highly lucrative profession.

### *Life Tales: Playing "The Game"*

The revelation that in order to practise law, "something else" was required in the way of legal knowledge was however not long in coming. My first vivid introduction to "Life" came in the form of the search for employment as an articulated law clerk. Having managed to obtain an interview with a well-known Adelaide establishment law firm, I found myself being questioned by a senior partner about issues almost exclusively unrelated to the content or experience of my stay in "University". Whereas in approaching the interview, I had felt reasonably competent on questions of law, I quickly found myself floundering for the "right kind" of legal knowledge, or at least, professional preparation. Was my father the well-known member of the stock exchange? He was, and still is, not. Did I play First 18 football at school? I played hockey. What about First 11 cricket? I played tennis. Did I belong to the school rowing team? My high school did not offer rowing. By this stage, I realised things were not going well.

I was therefore hardly surprised by the fact that an offer of articles was not forthcoming. It provided however my first sharp introduction to (what was for me) a new field of legal knowledge, the sociology of the legal profession. Being a lawyer, I learnt

abruptly but very effectively, had only something to do with having a degree in law, and access at least to the more exalted levels of the profession was determined by factors largely unconnected to what went on in the law lecture theatre or library. I had learnt the law, but I hadn't (until now) known about "the rules of the game".

Not deterred however, I persisted in my ambition to practise law, and soon after completion of articles, found myself in a two-solicitor office in a country town. I was about to have my second sharp lesson in "Life" on the nature of legal knowledge. My youthful idealism for the practice of criminal law, and particularly the representation of legal aid clients, came to the fore. I was apparently unusual by local practice standards in the number of trials, rather than pleas of guilty, I would handle in the magistrates' court. While I relished the trial experience, trials clearly meant more work for the local prosecutor and for the visiting magistrates. There was certainly a touch of Perry Mason about my early approaches to criminal law practice, but like Perry, I saw my actions as justified by the values of what American lawyers call due process. After a few months, I was taken aside by a solicitor from another firm in the district for a "friendly word. He had been drinking at the local hotel with the local prosecutor, as it seems was their Friday habit. The prosecutor had been complaining to him that I was taking on "hopeless" or "pointless" cases, and insisting on taking them to trial. It would be far more convenient, and a better use of everybody's time, my colleague-in-law advised me, if I were more "reasonable" about my criminal clients, and persuaded more of them to plead guilty. Then, he reassured me, the prosecutor would be more likely to look upon me with favour.

From this experience I learnt another valuable lesson in legal knowledge — in order to practise criminal law in the courts, you needed to accommodate yourself to the informal demands of the other participants. Your client was very low down the list of claimants. It was not simply a matter of following formal procedures and defending rights. The "unwritten" rules of the situation demanded my compliance.<sup>4</sup> Life Games: Proceed Directly, Don't Digress

The peculiarities of the legal field, and what counts as legal knowledge, were revealed further in a third experience in my first lecturing job at the University of Warwick. By this stage I had completed postgraduate work in criminology as well as law, and

the head of Warwick law school encouraged me in teaching criminal law to use as much criminological material as I wished. Warwick then (and I think still) prided itself on its “law in context” philosophy.<sup>5</sup> This distinguished it very markedly from traditional English law schools, which had not acknowledged for the most part the existence of legally relevant knowledge outside of law reports, statute books, and legal textbooks. What was to shock me however were the reactions of Warwick students towards these two types of knowledge. In lectures, so long as I referred to cases or statutory provisions, the students were models of absorption and transcription. Heads would be down, hands would be scribbling furiously, the class was acting with singularity of focus. But once I dared to stray beyond the smooth, almost frictionless terrain of case law and statute books into the more diverse but comparatively rough territory of criminology, there was a sea-change amongst the students.

My classroom forays into interdisciplinarity were rewarded by pens dropping, restless shifting of body positions, and low murmurings and other signs of distraction. While initially disconcerting for me as a first-time classroom teacher, I soon discovered that this pattern of behaviour could be quickly brought to an end by the simplest of techniques — the mention of the “next” or “latest” case. This was indeed a sobering experience. Students possessed strong, highly conventional conceptions of “relevant” legal knowledge which in turn imposed enormous pressure upon their teachers.<sup>6</sup> Those of us law teachers who aspired in some sense through our professional roles to act as social reformers or critics of even the most gentle and constructive kind needed to be modest about our capacity to shape and mould the next generation of would-be lawyers. Notwithstanding the rhetorical claims made in some law school promotional literature, the agendas for legal education, including what counted as legal knowledge, were strongly determined according to a variety of consumer and professional criteria, and not simply according to academic ones.<sup>7</sup>

From these vignettes and from my subsequent experiences, I draw the lesson that the relationship between traditional legal education and legal knowledge has been, and continues to be in many quarters, strangely perverse. While lawyers in practice operate largely according to a body of shared, informal legal

knowledge, there has been little or no pressure from either the student consumers or the prospective employers of law graduates, in particular the profession, to acknowledge the value of it in law school.<sup>8</sup> The closest to this has been the movement for greater “skills training” and measures of competence in legal education.<sup>9</sup> This is not at all the same kind of legal knowledge I have been describing here; in any event, the “skills movement” in Australia probably owes more to academics and students than to demands from the practising profession.<sup>10</sup>

This perversity clearly owes a lot to student conservatism. Their expectations of legal education, it may be suggested, derive as much if not more from television and the media, their families, and the profession as they do from their teachers.<sup>11</sup> In many law schools, there is evidence of there being “two cultures”, a “student culture” and an “academic” one.<sup>12</sup> Their separateness is marked as much as anything by the disparity between the research and writing interests of academic staff and the content and focus of undergraduate courses.<sup>13</sup> The conventional preference of students for a relatively arcane and limited form of legal knowledge does not sit empirically or responsibly with law’s social location or significance.

The problem in part is that, as students, they do not yet know what it is to practise law, so that they are not well-situated to make judgments of this kind. However they are aided and abetted by the legal profession and, for the most part, law teachers, who are at least constructively complicitous in this strange disjunction. Here the impact of the professional core of the LLB (what has come to be known as the “Priestley 11”<sup>14</sup>) upon curriculum development has been enormous, but the extent of its influence upon a more generalist notion of legal education has arguably been greater than has been necessary.<sup>15</sup> It still seems, for example, that there is a resistance or reluctance among many legal academics towards teaching critically or contextually in these core areas, using materials from other disciplines and perspectives.<sup>16</sup> While some reluctance may arise where academics feel inadequately trained in these other areas, student resistance and its influence upon such choices cannot easily be discounted. In any event the “core’s” palpable influence upon the entire LLB curriculum is indisputable, and lends legitimacy, and some persuasive force, to the pattern of teaching confined to legal exposition leavened perhaps by a little

policy. The relative prestige of this profession-endorsed vision of legal education sits strangely alongside the realities of professional legal practice. The narrowness and high abstraction of this vision also makes it difficult to translate for a wider audience.

The possibilities for challenging and transforming long-established conceptions of legal education are obviously not assisted by the current institutional configurations and range of interests represented in mainstream legal education.

The traditional law school, with its focus upon teaching students to “think like lawyers”, continues largely unmoved by critical legal studies, deconstructionism, law and society, and even law and economics.<sup>17</sup> Feminist theory has been a partial exception to this general resistance.<sup>18</sup> Nothing much is likely to alter without changes in attitudes towards legal education outside as well as inside the academy, including on the issue of accessibility of legal education. A broader range of students and subjects, partly through an expanded range of law-related programs, is needed if the hegemony of the practice-oriented LLB is to be challenged. “Law”, as it has been conceived over the last fifty years, I hope to show, does not adequately address the *public interest* in legal education. A more expansively defined field of legal knowledge generally, and range of educational opportunities within the law school, would be an appropriate corrective to the dominant narrow professionalism of the current legal education arrangements.

## THE PUBLIC INTEREST IN LEGAL EDUCATION

So far I have made two basic points. The *first* has been that what has tended to count in law schools as legally relevant knowledge is often far removed from what it is important to know and understand about how the law works outside law schools, whether it be in lawyers’ offices, magistrates’ and other courts, government departments, private businesses, or the home. Secondly, there is the fact that traditionally, law students, law schools, and the profession have effectively worked together to perpetuate this vision of legal knowledge.<sup>19</sup> This *de facto* collaboration in protecting a highly abstract and remote view of law has undoubtedly contributed to the elevation and mystification of law, adding to, or at least buttressing, its professional standing.<sup>20</sup> For these and other reasons, it is, I suggest, perfectly proper to

inquire whether the interests currently being served by legal education are the appropriate ones, or at least the only ones that should be taken into consideration. After all, what is in issue is the form of professional education for membership of one of the most powerful professions in our society, and one still substantially funded from the public purse.<sup>21</sup>

### *What is “the public interest”?*

To pose a question about legal education and the public interest is to suggest at least a couple of things; first, the need to justify the present form of legal education against a standard of evaluation external to those interests immediately affected by or implicated in legal education, and secondly, the connection between the often immensely personal if not private nature of legal problems, and the broader social interests in justice, equity, and peaceful co-existence. As well as having to be considered in respect to the market and the state, I wish to suggest that the nature and role of legal education needs also to be discussed and justified in the public sphere.<sup>22</sup> The state and civil society, the market as well as personal relations, each has a stake in the preservation, dissemination and extension of legal knowledge.<sup>23</sup>

### *The State’s Public Interest*

The legal profession has a long history of having to justify its privileged position both to the state and to the market.<sup>24</sup> The state’s interest in competition policy and regulatory issues has meant that often these two spheres overlap. A spate of recent Federal and State inquiries into the legal profession points to the strong government interest in the competitiveness and accountability of the legal profession.<sup>25</sup> These are arguably examples of public interest examinations of the legal profession. Another example, but one with a broader “social justice” orientation was the Commonwealth Access to Justice Advisory Committee’s report, *Access to Justice: An Action Plan*.<sup>26</sup>

In relation to legal education, the need for careful justification stems from the power exercised by the profession in society and the fact of public expenditure on all forms of university education, including legal education. A very recent example of a public interest inquiry of the first kind is the Australian Law Reform

Commission's Issues Paper, *Review of the Adversarial System of Litigation: Rethinking Legal Education and Training*.<sup>27</sup> The periodic discipline reviews initiated by the Commonwealth government, the last done of law in 1987 by the Pearce Committee, provide other examples.<sup>28</sup> The need for ongoing or regular public interest examinations of both the legal profession and legal education has been accentuated by the decline in legal aid availability, the worsening access to lawyers' services in the light of this funding downturn<sup>29</sup> and the dramatic increase over the past decade in the number of law students and law schools in Australia.<sup>30</sup> Whether the governmental approaches to date to the public interest aspect in legal professional issues, including education, have taken a sufficiently broad approach should be open to question, and is a matter worthy of debate given the resource implications of funding law places in universities.

### *A Public Interest Conception of Legal Education?*

The idea of a public sphere however points to a non-state, or non-governmental, view of the public interest in legal education.<sup>31</sup> This would conceivably link closely to questions of citizenship, equality of opportunity and justice in liberal democratic societies.<sup>32</sup> Access to higher education in law would presumably arise under this notion. The justness, rather than simply the coherence or principles of operation, of the existing legal arrangements would arguably help define another approach to this question. While the criteria for evaluating the public interest issue will ultimately be determined politically through discussion and argument, different experiences and empirical evidence can play a role. The "assessment of the consequences of policies for the members of the public"<sup>33</sup> ought to be a central aspect of any such inquiry.

Implicit then in such a public interest notion of legal education should be some conception of *other-regardingness*, a positive attempt to take into account others' perspectives on legal education, including a commitment to sensitively and effectively inquiring into the full range of views and interests at stake. In the pursuit of the distinctive and the different, such an approach needs also to take account of the common elements of our predicament as citizens and fellow inhabitants of social space, and hence of shared interests and interdependency. Such an approach:

reject[s] the increasingly prevalent notion that human behaviour is based on self-interest, narrowly conceived. [It] argue[s] for a more complex view of both individual behaviour and social organization — a view that takes into account duty, love, and malevolence. Focusing on the “pro-social” motivations, [it] acknowledge[s] individuals’ commitments to moral principles, concern for others, “we-feeling”, and readiness to cooperate when cooperation does not serve self-interest narrowly conceived. [It] recognize[s] the extent to which existing institutions depend on public standards and a public spirit.<sup>34</sup>

If the notion of public interest in legal education still appears a little fuzzy, we should not worry too much. To some extent, as Bayley has noted, the lack of clarity surrounding its meaning misses the point of raising the public interest question: “its genius lies not in its clarity but in its perverse and persistent moral intrusion upon the internal and external discourse of rulers and ruled alike”.<sup>35</sup> There is no shortage to the ways in which scholars and thinkers have sought to convey the “public interest”.<sup>36</sup>

There is not the space or need here to canvass them all. The language itself (as well as the meaning) used to convey a wider set of concerns than just self-interest varies to some extent. In the field of law, law professor Anthony Kronman’s articulation of his “lawyer-statesman” ideal in his book *The Lost Lawyer* refers to the “simple but potent idea that lawyers have an obligation to serve the public good.”<sup>37</sup> Here, Kronman refers to a duty upon lawyers:

...consciously to promote not only their clients’ private interests but also the integrity of the rules and institutions that form the framework within which these interests exist. On their view, for a lawyer to lead a responsible professional life, he must keep one eye on the legal arrangements that define the broad background of his everyday work. He must take an active interest in the betterment of these arrangements and be prepared to contribute to their improvement and repair. Failing this, the practice of law loses its status as a calling and degenerates into a tool with no more inherent moral dignity than a hammer or a gun.<sup>38</sup>

Kronman’s legal professional ideal suggests the importance of a commitment to the values of the legal system as well as to those of the client. By implication, Kronman is suggesting that legal education should pay closer attention to these concerns.<sup>39</sup> He also refers to the importance of being able to exercise the combination of sympathy and detachment in dealing with others.<sup>40</sup> This requires what he calls deliberative imagination, “the capacity to entertain a point of view defined by interests, attitudes, and values different from one’s own without actually endorsing it”.<sup>41</sup> In a similar vein, Martha Nussbaum has recently used the phrase “poetic justice” to

refer to a judicial sensibility towards decision-making developed through an exposure to literature. In this scheme, the roles of “fancy” and “sympathy” are deemed crucial to “fully rational” judging, through which the judges “educate not only their technical capacities but also their capacity for humanity”.<sup>42</sup>

In ideas such as these, one can start to see a sense of the public interest that is open to different interests, viewpoints and, indeed, feelings. The calls to “imagination” and “fancy” point to the capacity to identify with others in very different personal circumstances and social situations as well as to a capacity to conceive of how things might be different from the present. While neither Kronman nor Nussbaum are suggesting an unbridled expression of different emotions and attitudes as part of the legal process, both are pointing to greater openness, awareness and sensitivity by lawyers and judges towards those with whom they come into contact. Ultimately however, from the diversity of considerations, the person judging must reach a decision-point that is integrative as well as balanced. In the path followed in reaching that decision, the procedural implications suggested by Nussbaum and others<sup>43</sup> point to a more comprehensive sense of public interest than one narrowly drawn in terms of two parties to a particular dispute. A fuller conception of legal knowledge, it can be argued, would provide a stronger information base, as well as a more sufficient set of principles, for acting in this capacity.

So what does the discussion so far signify for a public interest concept of legal education? From Kronman and Nussbaum, we derive a *focus upon the legal system as a whole*, and an *openness to different interests and needs*. There is also the idea of an *expansion of inputs or markets*. The “public interest” method involves questioning the motives and interests currently represented in legal education, and identifying other actual or potential stakeholders. What, for example, are the consequences of present limits upon access to legal education? How adequate are our performance indicators for measuring legal professional commitment to public service? What other interests are being ignored or denied in the present arrangements? Any privileged professional position should be expected to withstand public scrutiny and questioning of this kind. Through such questions, we begin to focus upon “the legal system” more broadly, rather than just “the legal profession”, “current law students”, and “clients”. Rather than seeing just

“clients”, we ought to think about “potential clients”, and “people with legal problems”. Similarly, it makes sense to include not just current law students, but those now or in the future likely to be “interested in legal knowledge”.

The “community of concern”<sup>44</sup> for legal education, I am therefore arguing, can be, and ought to be, defined quite broadly. It is important to realise that this definition need not be driven by particular values or ideologies. If one accepts that a part of a public interest examination involves an *assessment of the consequences of legal educational policy*, we are forced to consider the impact of policy in concrete terms. Any evaluation however would require some ideal standard. We might well think about a comparison between the outcomes of present policy and institutional arrangements (in terms of the present stakeholders), and other conceivable policy outcomes (arising from an examination of a wider or different range of stakeholders and interests, or from an interpretation of relevant values, for example access to justice). We might consider outcomes or consequences in terms of: graduate satisfaction with the course taken, the workplace destination of graduates after different specified periods (for example 2 years, 5 years, 10 years), the involvement of graduates in pro bono legal work and other forms of legal assistance, the participation by graduates in other spheres of community service, the participation of non-law students in law courses, and the socio-economic, racial and gender characteristics of those admitted to law school and of those who graduate. Other measures might conceivably be devised to assist in this kind of assessment exercise. Clarifying the consequences of legal education in these and other ways is crucial to the evaluation process inherent in a public interest focus.

One measure worth developing is the *degree of outreach to other educational programs and community needs*. How accessible are law courses, and indeed legal academics, to the wider community? Such an inquiry could look at the involvement of law teachers in teaching programs outside the professional law degree, but might also explore the range of actual or possible educational courses that would benefit from the inclusion of some legal knowledge. The market should not be presumed only to speak with its present voice; other, new markets for legal education ought also to be explored. The contours of legal education’s “community of concern” should not be taken to be immutable or optimal in their

present form.

## EXPANDING THE CONCEPTION AND AVAILABILITY OF LEGAL EDUCATION

In an age of heightened reflection upon the goals and purposes of law school,<sup>45</sup> William Twining<sup>46</sup> has been a principal contributor to these debates. In a recent essay, Twining reports upon the state of legal education in a mythical country called Xanadu. There, he finds some assumptions and features that will not strike the Australian reader as entirely unfamiliar. There are the following widespread assumptions about legal education in Xanadu:

- 1 That all university law schools have the same mission and should be judged by identical criteria ...*(the football league model)*.
- 2 That the core of that mission is primary legal education and that the term “law student” refers only to someone taking a first degree in law *(the primary school image)*.
- 3 That the main priority need for legal education is basic education and training for intending and newly qualified private practitioners of law, even in contexts where the absorptive capacity of the legal profession exceeds the supply of new lawyers, and most law graduates start their careers in the public service *(the private practitioner image)*.
- 4 That the supply of entrants to the legal profession can be artificially controlled by manpower planning, the pass rate in bar examinations, apprenticeship requirements or other restrictive practices *(the numbers game)*.
- 5 That providing legal educational services for other clients is beneath the dignity of university law schools and that this is reflected in treating such teaching as “outside work” and in the derogatory use of such terms as “service teaching,” “law for non-lawyers,” and (mainly in the United States) “legal studies” and “pre-law courses” *(the professional snob syndrome)*.
- 6 That law, by its nature, has the lowest unit costs of all subjects in higher education *(the cheap subject fallacy)*.<sup>47</sup>

I propose concentrating on assumptions 2, 3 and 5. These reflect directly upon questions of access to legal education by different groups within the community, the domination of law schools by the professional legal education model, and inevitably, the scope of legal knowledge within the university.

### *A Core Professional Commitment?*

In Australia, there can be little doubt that the core mission of

law schools remains to provide primary legal education for those seeking to qualify for the right to practise in the private legal profession. Only really in New South Wales now is there a system for qualifying for practice without the completion of a university law degree.<sup>48</sup> While it is customary for law deans and law school handbooks to allude to the high number of law graduates who will not practise law, and then to extol the value of the LLB in providing a general liberal education, the prospect of a right to private practice continues to dominate law student culture. The strength of this feature, despite the potentially dampening effect of current economic conditions and the huge growth in supply of law graduates over the past five years, is perhaps testimony to the even worse job prospects faced by graduates in other disciplines.<sup>49</sup>

What was once a guaranteed meal ticket now perhaps more accurately resembles a right to apply for legal jobs. Student concerns about their future employment prospects are perfectly understandable and reasonable. They are too quickly ignored by some traditionalists, who would see the concept of a valid academic university course limited to the study of history, literature, philosophy or the classics.<sup>50</sup> Ironically, it may be suggested, these academics ignore some of the lessons of their own disciplines: that values and priorities can change, and that material conditions remain enormously influential in shaping current values and priorities. Inevitably however, as I have suggested earlier, these real world lessons place pressures upon what counts as legal education, and apparently inevitably constrain any reformist and public interest inclinations of students and their teachers alike.<sup>51</sup>

Schlegel has commented on this tough student streak:

Students are intensely practical creatures. If they need a credential, they will sit through unbelievable dreck [sic] to get it. But once the study of law is cut off from the reasonably automatic professional credential, they will want to know that they are learning something “practical”, something that they can use for some purpose in the world. Justifications for the use or non-use of state power by one or another of the cast of characters that comes with the State these days is on the whole not a very useful thing.<sup>52</sup>

Law students are not alone in being practical creatures in this sense. “Knowing-why”, the traditional aspect of the university approach to knowledge, must now contend far more often with “knowing-how” in a wide range of disciplines for the attention of the modern mass university’s increasingly vocation-oriented

students.

### *Something More from Legal Education?*

Whether the high levels of demand for law will continue for much longer cannot be known nor taken for granted at this point. What does seem certain however is the continuation of university law schools as primary providers of professional education leading students to qualify for private practice. If anything, it seems likely to grow further, through university involvement in Professional Legal Training and skills courses.<sup>53</sup> The question really is what else should legal education offer? To what extent will the private practitioner image continue to squeeze out other approaches to legal education, and will the professional snob syndrome persist in university legal education? Even if their grip on legal education is loosened, the claims of “relevance”, if not actual “vocationalism”, seem likely to remain.

In company with Twining, I would argue strongly that legal education has the potential to offer much more, and to more people, than it does at present. However, ways around the current mental and material constraints need to be found. Why, as Twining asks, do we insist on defining legal education, and who constitutes a law student, by reference to the LLB program? The limitations upon access to university places in law, even with the recent expansion in the number of law schools, remain considerable compared to the demand. More law schools or more law places could easily be filled if recent patterns of demand are any indication, and if demand were the sole consideration. However historically, the influence of socio-economic factors upon who gets admitted to law has remained pronounced, and with the increasing move towards student-funded university places, is likely to get worse.<sup>54</sup> The recent move to differential Higher Education Contribution fees, putting law in the highest bracket, of course does nothing to de-emphasise the exclusivity and privilege associated with being a LLB student, nor indeed the virtue of legal careers other than highly remunerative ones. It is unfortunate however that what is effectively a progressive tax on the projected future earnings of lawyers acts also to reinforce the distinctiveness of the LLB student, and to quarantine the study of law further from those already unable to afford or otherwise obtain access to an

undergraduate law degree. It is equally regrettable that this move is likely only to further strengthen the strong claims of corporate and commercial law practice over the vocational imagination and commitments of law students.<sup>55</sup>

## TACKLING THE PROFESSIONAL SNOB SYNDROME

Affordability is merely one aspect of access to legal education. Another way of improving access would be for the barriers currently restricting movement of students between the study of law and other disciplines to be relaxed, so that students from other fields are able to take courses in law-related topics. Why should students in other programs be prevented from taking topics offered as part of the LLB? Obviously, in some cases, the knowledge base acquired by students in earlier years will limit the degree and form of integration possible, but differences of academic background should not justify a lack of imagination about how this might be done. Separate small groups and different assessment methods are two possible responses, though I would argue that quarantining of this kind should only be justified where absolutely necessary.

### *Benefits of Student Diversity*

Given the historical bias in law student selection processes, steps in this direction would facilitate greater exchange between students of different types, some of whom will possess motives for studying law other than to qualify for practice in the private profession. Greater student diversity becomes an obvious consequence. In a sense then under this scheme, legal education ceases to be the prerogative of a relative few, but can be part of the education of a much wider and diverse group of students. The interaction between more diverse types of students is likely to affect not just the students but their teachers. Students will be exposed to a wider variety of contexts for the study of law, while law teachers will have to respond to this diversity in their approach to teaching.

While offering for some teachers the opportunity to bring their scholarly interests (for example gender and racial inequality issues) into stronger and more authentic alignment with the content of the law school curriculum and the biographies of their students,<sup>56</sup> this is at least a challenging, if not actually threatening, scenario for

many law teachers and mainstream law students. Law's customary foundation in tradition and authority has had until now a settling if not exactly anaesthetising effect upon the materials and methods of legal education. To alter admission policies or access to law topics in the direction indicated, and to become innovative and interdisciplinary in one's approach to law teaching, is to invite all involved to "see the settled from the angle of the unsettled".<sup>57</sup>

The questioning of fundamentals clearly poses a threat to much conventional professional legal education, as customary legal knowledge and values are juxtaposed with the materials for effective social criticism.<sup>58</sup> But this should not threaten *good professional legal education*. In the words of former University of Chicago law professor, Edward Levi, "the professional school which sets its course by the current practice of the profession is, in an important sense, a failure."<sup>59</sup>

The question for any school involved in professional education located within a university becomes *just how robust can critical self-examination become in a particular professional school?* It can be ventured here that in the United States at least, the truly great law schools have been inclined to follow, rather than ignore, Levi's advice.<sup>60</sup> The question that has not yet been clearly answered in Australia is whether law schools have sufficient real autonomy from the profession, the state, or the market to be able to undertake this kind of fundamental criticism.<sup>61</sup> Such self-examination, it should be pointed out, is just as vital to a vibrant and healthy profession as it is to the values of the university or indeed to what might be considered the public interest.

Another way of tackling the professional snob syndrome is to proliferate the range of courses and programs taught within legal education institutions. To some extent, this will have been begun through the integration of non-LLB or non practice oriented students into "mainstream" law-related topics. But those students will by definition be pursuing other programs. While these programs might conceivably stretch across the range of disciplines taught in the university (the "service teaching" model), there is obviously plenty of scope for students who wish to pursue either academic or vocationally oriented programs with a substantial legal focus to be accommodated within "legal studies" or paralegal type programs.

This already exists in a variety of institutions including

Southern Cross University (which offers both paralegal and legal studies programs in addition to the LLB), and La Trobe University, where legal studies and law are taught in the same school (the School of Law and Legal Studies). Flinders offers a similar (though more restricted) range of choices, through a combination of programs provided by the School of Law and by Legal Studies within the Department (formerly School) of Cultural Studies.

The stigma attached by some students to such courses by comparison with the LLB (ie “real”) law topics might indeed be reduced by shared teaching arrangements. There is of course the strong possibility that students enrolled in non-LLB courses will seek admission subsequently to the LLB. Of course this already occurs in institutions offering different types of law program. Given current student consumerism, this is hardly surprising. Moreover, it is difficult on academic grounds to find fault with such a progression if the nature of legal education has indeed become more outward- focused and public-spirited. Indeed, the shifts in conception of legal education argued for here would make it a perfectly reasonable, even natural, step for students in the kind of integrated legal education environment I wish now to propose.

## AN INTEGRATED LEGAL EDUCATION ENVIRONMENT

The case for drawing together a variety of different teaching and research functions, united by a commitment to providing wide access to legal knowledge (along the lines I have conceived of it), is one largely made already by Twining. As a consequence, I shall use his work to some extent, but try to go further to sketch out how these functions might be integrated in ways that are largely self-supporting and enable diversity of approach and enhancement of access to law-related teaching and research. My emphasis here is on the reasons for an integration of legal education functions and some possible ways of doing so, rather than an insistence upon a particular administrative structure for doing so; as always, the case for function ought to precede the case for form or structure.<sup>62</sup>

### *The ILC Model*

In Blackstone’s Tower, Twining introduces us to what he calls the academic model of a university law school, represented in a very ambitious form by a model known as the International Legal

Center (ILC) model. It is ambitious precisely because it seeks to meet a range of professional as well as academic objectives, whilst remaining independent of the legal profession:

Law schools, perceived as multi-purpose centres, can develop human resources and idealism needed to strengthen legal systems; they can develop research and intellectual direction; they can address problems in fields ranging from land reform to criminal justice; they can foster the development of indigenous languages as vehicles for the administration of law; they can assist institutions involved in training paraprofessionals; they can help to provide materials and encouragement for civic education about law in schools and more intelligent treatment of law in the media; they can organise, or help organise, advanced specialist legal education for professionals who must acquire particular kinds of skill and expertise.<sup>63</sup>

The discussion of a model developed over twenty years ago, apparently for implementation in a Third World context,<sup>64</sup> should not seem misplaced or irrelevant in the present Australian setting. The range of interests in legal education here is equally broad as those contemplated by the ILC model, and the problems in Australia today of resourcing education and training programs to meet these interests are perhaps more analogous to the situation of Third World countries than when the model was first devised in the mid-1970s.

### *Teaching Across Programs*

A blending of functions within a particular university environment would offer a number of benefits, some of which have already been spelt out. Perhaps most significantly however, the exercise of integrating different types of research and teaching, on academic as well as economic grounds, would help remove what Twining has called the professional snobbery syndrome. Consider some ways in which this might work in practice. Law teachers might well teach their preferred topic areas but in a variety of academic programs. It would be conceivable, for example, for an academic interested in criminal justice to teach criminal law in the LLB program, to offer a course on criminal law and procedure for paralegals working in the legal aid field, and as well, though not necessarily all at the same time, either a postgraduate diploma subject for law and other graduates specialising in criminal law and justice issues, or a criminal procedure course as part of Professional Legal Training offered by the university.

Another academic, say without formal legal qualifications but with interests in women's issues, might teach a course on family violence and child protection for social workers and students majoring in legal studies, contribute to the teaching of family or criminal law in the professional law degree, and play a part in an interdisciplinary MA program on gender. In the commercial field, an academic might offer courses in dispute resolution to law, legal studies, and commerce students doing degrees, while putting on continuing education courses for working professionals and short courses for interested members of the public.

There are clear practical as well as academic advantages arising from this kind of integration. It avoids the artificial divisions that exist around areas of legal knowledge dictated by professional status and program, rather than knowledge or skill affinities. In the era of the modern mass university, boundaries of this kind are increasingly hard to sustain. If they can be removed, it allows the possibilities of considerable economies of scale, as specialist knowledge in particular areas is presented to different audiences in a variety of educational awards. As already indicated, some of this integration can occur where appropriate through joint teaching of students from different programs in the same topics. More imagination and less rigidity on this front will have institutional benefits in terms of efficiency and access, while academically, it will simultaneously allow greater specialisation of teaching staff and more diversity of programs. This last point is significant for both the undergraduate and postgraduate markets. Greater diversity at the postgraduate level will enrich the teaching opportunities of staff who presently have few if any opportunities at this level.

### *Enriched Research Possibilities*

The research function remains a significant and integral component of this ILC model. By admitting a more diverse student body to an enhanced range of legal education programs, there is the promise of identifying a wide range of social problems in need of legal research and problem-solving. Until the strong grip of commercial law practice on legal education and the imagination of many law students is loosened, the value of research looking at social issues will remain diminished and largely irrelevant. The kind of specialisation mentioned in relation to teaching would

contribute to the possibility of research of the “social problem” kind, as a broader range of perspectives from the student body as well as research methods are brought to bear upon key issues. Academics would be encouraged to engage in more active, empirical forms of research, and not simply remain tied to their library desks and offices in the production of legal knowledge. Research then would move away somewhat from the predominant form of legal scholarship (the justification of legal doctrine) towards more empirically and experientially informed forms of scholarship. The humility and healthy scepticism towards vested interests and opinions engendered through work of this kind might serve to lend some realism to some of the more library-driven proposals of traditional legal research and teaching, and to encourage more self-criticism among those pursuing legal careers.

Yet another way of undertaking non-doctrinal legal research would be through interdisciplinary research teams, linking lawyers with academics from other disciplines in the sciences, social sciences and humanities. Academics without formal training in law need not be artificially introduced into the research environment in order to undertake this research, as the greater range of legal education courses offered, and the relative independence from the legal profession offered by a broader variety of programs, would mean that staff with qualifications in other disciplines than law would form part of the teaching of law-related topics and courses. It is already the case that the most academic and, for that matter, prestigious law schools in the United States, have people from other disciplines (philosophy, history, economics, sociology etc) either on full-time staff or as cross-appointments. The appointment of Martha Nussbaum, a philosopher, to teach legal ethics in the University of Chicago law school, of David Luban, another philosopher, to work in the law clinic as well as teach ethics at Georgetown Law Center, and of sociologist Jerome Skolnick, to teach criminal justice at Berkeley, points to the kinds of interdisciplinary possibilities to be found within a university environment committed in imaginative ways to legal education. In this respect, as Twining points out, while clearly not all law schools are born equal, there is something indeed puzzling about the commitment by law schools to pursue near-identical missions and be judged by the same standards. The same argument could be made here in our own backyards.

In an integrated legal environment, there is even more reason and opportunity for acting imaginatively and doing things differently in the field of legal education. Only if we have the courage to do so will legal education cease to be simply training future professionals to “think like lawyers”, and expand to become “thinking about law” by a much wider group. Then perhaps, we will have moved closer toward legal education in the public interest.

## CONCLUSION

Discussion around the notion of a *public interest in legal education* is useful in order to call into question the seemingly natural dominance of the traditional law school model over the fields of legal knowledge and legal education. Without attempting to be definitive about what this notion implies, I have suggested a focus upon recognition of different interests in legal knowledge and ways of incorporating a greater diversity of stakeholders in legal education. By making legal education more accessible and by expanding the realm of legal knowledge, by taking it out of the law library and into the average streets, ordinary homes and businesses of everyday life, the students of law, legal studies and other programs can be exposed to a much more diverse and rich range of materials and opportunities for learning than is currently offered by law schools in most universities.

An integrated legal education environment means closer links with the community, as well as between staff and students in cognate academic programs. The consequences for those involved ought to be useful as well as intrinsically valuable. Opportunities of this kind will provide students with valuable practical aptitudes and orientations relevant to opportunities in the job market as well as with a deeper appreciation of the contribution of law and legal knowledge to questions about justice and fairness. The results for staff come in the form of enriched research and teaching opportunities. For the community, the benefits take the form of greater access to legal knowledge and programs, and the reassurance that legal knowledge more adequately embraces a range of their interests and their collective well-being. An integrated legal education environment, by reason of its championing of this conception of legal knowledge, its

commitment to groups other than the legal profession, and its provision of greater student access and diversity of academic programs, is well-positioned to avoid narrowly conceived academic and professional self-interest. It is one means by which legal education can aspire to serving the public interest.

\* Foundation Professor of Legal Studies, Flinders University, Adelaide.

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- <sup>1</sup> S Hook, Commentary, in D Haber, & J Cohen eds, *The Law School of Tomorrow: The Projection of an Ideal* (New Brunswick: Rutgers University Press, 1968) 41.
- <sup>2</sup> See M Pusey, *Economic Rationalism in Canberra: A Nation-Building State Changes Its Mind* (Cambridge: Cambridge UP, 1991).
- <sup>3</sup> See for example R Granfield, *Making Elite Lawyers* (Cambridge, Mass: Harvard UP, 1992); A Goldsmith, Warning: Law School Can Endanger Your Health (1995) 21 *Monash U LR* 272 on law student socialization and law student culture.
- <sup>4</sup> Years later, I wished I had read some of the relevant literature on this phenomenon while I was a law student. The most obvious piece would have been A Blumberg's *The Practice of Law as a Confidence Game* (1967) 1 *L & Soc'y Rev* 15.
- <sup>5</sup> There is a literature on the establishment of Warwick law school and its achievements. See for example Sherr, & Webb, *infra* note 7; also W Twining, *Law in Context: Enlarging a Discipline* (Oxford: Oxford UP, 1997).
- <sup>6</sup> In the current era of compulsory (compulsive?) student evaluations of subjects, one cannot help wondering about the extent of the pressures to take the "line of least resistance" to student pressure of this kind.
- <sup>7</sup> For an evaluation of the Warwick law school approach, see A Sherr, & J Webb, Law Students, the External Market, and Socialization: Do We Make Them Turn to the City? (1989) 16 *JL & Soc* 225.
- <sup>8</sup> I have suggested that there are clear instrumental arguments for teaching knowledge of this kind in law schools. See A Goldsmith, An Unruly Conjunction? Social Thought and Legal Action in Clinical Legal Education (1993) 43 *J Legal Educ* 415.
- <sup>9</sup> I have commented on this trend in another piece, Heroes or Technicians?: The Moral Capacities of Tomorrow's Lawyers (1996) 14 *J Prof Legal Educ* 1.
- <sup>10</sup> The practising profession's complicity in retaining a "black letter law" approach to legal education can be observed in other areas. For example, the lack of importance attached to clinical legal experience by many large law firms recruiting law graduates by implication underlines the relative value of classroom based subjects for students aspiring to practise in large firms. In the United States however, the American Bar Association's *Legal Education and Professional Development: An Educational Continuum* (the MacCrate Report) (Chicago: ABA, 1992) suggests a stronger professional interest in these aspects of legal education.
- <sup>11</sup> See Granfield, *supra* note 3; Goldsmith, *supra* note 3.
- <sup>12</sup> On different kinds of student culture see BR Clark, *The Higher Education System: Academic Organization in Cross-National Perspective* (Berkeley: University of California Press, 1983).
- <sup>13</sup> See W Twining, *Blackstone's Tower: The English Law School* (London:

Stevens/Sweet and Maxwell, 1994); Twining, *supra* note 5; J Schlegel, Talkin' Dirty: Twining's Tower and Kalman's Strange Career (1996) 21 *L & Soc Inquiry* 981, at 999.

<sup>14</sup> So named after the Chairman of the Consultative Committee of State and Territorial Law Admitting Authorities, the Hon Mr Justice LJ Priestley of the Court of Appeal, Supreme Court of New South Wales. The reports of that committee have been published in Centre for Legal Education, *Uniform Admission in Australia* (Sydney: CLE, nd).

<sup>15</sup> See C Sampford, Rethinking the Core Curriculum in J Goldring, C Sampford, & R Simmonds, *New Foundations in Legal Education* (Sydney: Cavendish, 1998).

<sup>16</sup> Student expectations play their part. However, from conversations I have had with a number of law colleagues, the reticence towards adopting more diverse approaches to the teaching of core legal subjects is surprisingly strong. Apart from the power of student expectations, I am at a loss to adequately explain or understand this.

<sup>17</sup> Law and economics has had a considerable impact upon law school curricula and teaching in the US and Canada, along with feminism. In Australia, it would seem, feminism has been a stronger influence than law and economics. The panic that really quite modest inroads by these "subversive disciplines" have caused in the United States was evident, for example, in the concern expressed by Judge Harry Edwards in *The Growing Disjunction Between Legal Education and the Legal Profession* (1992) 91 *Mich L Rev* 34.

<sup>18</sup> The growing number of women law students and teachers seems likely to be related to this receptivity towards feminist theory in law schools.

<sup>19</sup> See Granfield, *supra* note 3; also D Kennedy, Reproduction for Legal Hierarchy in D Kairys ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982).

<sup>20</sup> A Abbott, *The System of Professions* (Chicago: University of Chicago Press, 1988).

<sup>21</sup> Of course, as the level of student contribution to the cost of legal education rises, there is the real chance that the possibility of such an inquiry, and indeed the pertinence of one, will become more difficult to argue persuasively. In a market driven higher education sector, by definition, the public interest will be defined in terms of the ability to exercise individual consumer or exchange preferences.

<sup>22</sup> This notion is often associated with the work of Jurgen Habermas. It suggests a place for unconstrained discussion, debate and action, distinct from the interests of the state or the logic of the economy, on matters of broad public concern. See D Villa, Postmodernism and the Public Sphere (1992) 86 *Am Pol Sci Rev* 712.

<sup>23</sup> It should be noted that I am not using the term "public interest" in a strictly legal sense. In the latter sense, it often arises in defamation actions. There, a matter of public interest has been taken to refer to one "such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on, or what may happen to others: *London Artists Ltd v Littler* [1968] 1 WLR 607." See *Butterworths Concise Australian Legal Dictionary* (Sydney: Butterworths, 1997) 324.

<sup>24</sup> R Abel, Between Market and State: The Legal Profession in Turmoil (1989) 52 *Mod L Rev* 285.

<sup>25</sup> See for example Australia, Trade Practices Commission, *Study of the Professions – Legal – Final Report* (Canberra: TPC, 1994); Access to Justice Advisory Committee, *Access to Justice: An Action Plan* (Canberra: Access to Justice Advisory Committee, 1994); Victoria, *Reforming the Legal Profession: Report of the Attorney General's Working Party on the Legal Profession* (Melbourne: Department of Justice, 1995).

<sup>26</sup> Access to Justice Advisory Committee, *supra* note 25.

<sup>27</sup> ALRC, *Review of the Adversarial System of Litigation: Rethinking Legal Education and Training* (Sydney: ALRC, 1997).

<sup>28</sup> Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment* (the Pearce Report) (Canberra: AGPS, 1987).

<sup>29</sup> See for instance F Regan, Rolls Royce or Rundown 1970s Kingswood? Australia's Legal Aid in Comparative Perspective (1997) 22 *Alt LJ* 225; Senate

- Legal and Constitutional Legislative Committee, *Inquiry into the Australian Legal Aid System: Report 3* (Canberra: Parliament of Australia, 1998) ch 3.
- <sup>30</sup> In 1996, there were 27 law schools and nearly 21,000 undergraduate law students in Australia (in 1987, there were only 13 law schools): Centre for Legal Education, *The Australasian Legal Education Yearbook 1996* (Sydney: CLE, 1996) 25.
- <sup>31</sup> It would clearly be a conceptual mistake to confuse the political interests of the government of the day with the public interest of the nation or society as a whole.
- <sup>32</sup> Graziano has written that “the public interest has been one of the major normative underpinnings of liberal-democratic thought.” L Graziano, On Special Interests, Public Interests, and Unequal Representation (1996) 17 *Int’l Pol Sci Rev* 307, at 307.
- <sup>33</sup> R Flathman, *The Public Interest: An Essay Concerning the Normative Discourse of Politics* (New York: Wiley, 1966) 8, quoted in V Held, *The Public Interest and Individual Interests* (New York: Basic Books, 1970) 224.
- <sup>34</sup> J Mansbridge ed, *Beyond Self-Interest* (Chicago: University of Chicago Press, 1990) ix.
- <sup>35</sup> Cited in D Martinson, Ethical Public Relations Practitioners Must Not Ignore “Public Interest” (1995) 10 *J Mass Media Ethics* 210, at 211.
- <sup>36</sup> See Held, *supra* note 33; also W Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989) 76-90 and J Chan, Raz on Liberal Rights and Common Goods (1995) 15 *Ox J Legal Stud* 15 (dealing with the “common good”).
- <sup>37</sup> Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge: Harvard UP, 1993) 364. Emphasis added.
- <sup>38</sup> *Id.*
- <sup>39</sup> In fact, Kronman devotes a large chapter of his book to the role of law schools. See *id* at ch 4.
- <sup>40</sup> *Id* at ch 2.
- <sup>41</sup> *Id* at 326.
- <sup>42</sup> M Nussbaum, *Poetic Justice: The Literary Imagination and Public Life* (Boston: Beacon Press, 1995) 121.
- <sup>43</sup> Another writer in this tradition is Martha Minow. See particularly her *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca NY: Cornell UP, 1990).
- <sup>44</sup> I am indebted to the work of Marion Smiley for this notion. See Smiley, *Moral Responsibility and the Boundaries of Community: Power and Accountability from a Pragmatic Point of View* (Chicago: University of Chicago Press, 1992) 195ff.
- <sup>45</sup> See for example P Birks ed, *What are Law Schools For?* (Oxford: Oxford UP, 1996); F Cownie ed, *Law School: Global Issues, Local Challenges* (Dartmouth Publishing, forthcoming).
- <sup>46</sup> Twining, *supra* note 13.
- <sup>47</sup> W Twining, Rethinking Law Schools (1996) 21 *L & Soc Inquiry* 1007, at 1014.
- <sup>48</sup> This is known as the Legal Practitioners’ Admission Board (LPAB).
- <sup>49</sup> For a discussion of relative graduate salaries and employment opportunities see V Morgan & B Guthrie, *Graduate Starting Salaries 1997: A Study of the Earnings of New Graduates in their First Full-time Employment in Australia* (Melbourne: Graduate Careers Council of Australia, 1998).
- <sup>50</sup> Every law academic, I venture to suggest, will have had the experience of meeting someone, usually another academic, who actively questions the academic value of university legal education in comparison to the humanities or some other field of university teaching and research.
- <sup>51</sup> See Granfield, *supra* note 3; also R Stover, *Making It and Breaking It: The Fate of Public Interest Commitment during Law School* (Urbana, IL: University of Illinois Press, 1989).
- <sup>52</sup> JH Schlegel, Talkin’ Dirty: Twining’s Tower and Kalman’s Strange Career (1996) 21 *L & Soc Inquiry* 981, at 999.
- <sup>53</sup> Flinders and Adelaide law schools have both begun to be involved in PLT

teaching in 1999, following the demise of the University of South Australia scheme.

- <sup>54</sup> See for example J Goldring and S Vignaendra, *A Social Profile of New Law Students in the Australian Capital Territory, New South Wales and Victoria* (Sydney: Centre for Legal Education, 1997); also see B Birrell & I Dobson, *Equity and University Attendance: The Monash Experience* (1997) 5 *People and Place* 49.
- <sup>55</sup> See Granfield, *supra* note 3.
- <sup>56</sup> So long as law students continue to be so unrepresentative of the general population, the perception of “lack of relevance” in many areas of contemporary legal scholarship (for example, critical race theory, feminism, critical legal studies) will continue to dog the efforts of their teachers to introduce materials of this kind into the classroom.
- <sup>57</sup> R Unger, *Social Theory: Its Situation and Its Task* (Cambridge: Cambridge UP, 1987) 65.
- <sup>58</sup> In the words of Alan Wolfe “[t]hose who defend tradition, believe in authority and obedience, and assign a relatively low priority to reason and argumentation are not going to find social criticism to their liking”: Wolfe, *Marginalized in the Middle* (Chicago: University of Chicago Press, 1996) 34.
- <sup>59</sup> E Levi, *Point of View: Talks in Education* (Chicago: University of Chicago Press, 1969) 105.
- <sup>60</sup> One of the characteristics of “top” American law schools has been their commitment to pluralism and diversity of scholarly interests and perspectives in their appointments processes. One only has to look at the academic staff of law schools such as Stanford, Berkeley, Harvard, Yale, New York University, and Georgetown to realise this.
- <sup>61</sup> The experience at Macquarie law school in the 1980s (with the threats to close the law school, and concerns about the employability of Macquarie graduates), the University of New South Wales some years earlier, over professional recognition of their “Lawyers and Society” course, and the kerfuffle at Melbourne law school a couple of years ago over the importance attached in the LLB curriculum to feminist legal theory, indicate the strong professional interest in law schools not straying too far from convention.
- <sup>62</sup> Here I share Professor Faith Trent’s view that “[t]he challenge in a changing university ... is to build a way of operating which focuses on function rather than structure, which enables the university to respond and which increases cooperation and respect rather than maintenance of difference and territory. Our internal arrangements need to make us able to respond to challenges, rather than placing obstacles in the way of the development of intellectual pursuits”: Trent, *The University: A View from the Underside*, Inaugural Professorial Lecture, Flinders University, November 1991, 7.
- <sup>63</sup> Twining, *Blackstone’s Tower*, *supra* note 13, at 54.
- <sup>64</sup> Twining, *id.*, does not make the provenance of the report, which I’ve been unable to locate, entirely clear. However, the examples given in the quotation above, and Twining’s longstanding interest in legal education in many different countries, including those of Africa, lead me to this conclusion.