Foreword Special Issue

This special issue comes at a time of expanding scholarship into the impact of contemporary economic and managerial practices on the tertiary sector in Australia. Debates about this subject have been going on over a considerable period of time — beginning, perhaps, with the Dawkins reforms of 1988. However, as the market focus of tertiary education has intensified, workloads have escalated and concerns about changes to governance and impacts on the quality of research, teaching and assessment have become more pervasive. Greater scholarly attention to these issues within law has been triggered in part by conversations which have opened up as a result of Margaret Thornton's generative book *Privatising the Public University: The Case of Law*

In this special issue, six contributions from a range of authors engage with the impact of these processes on the past, present and future of critical legal education.

The first two articles focus on the increasing marketisation of legal education, offering a critique of the ways in which law schools are compelled to be simultaneously the same and yet different to attract students in the international market.[2] In their article, Margaret Thornton and Lucinda Shannon extend Thornton's arguments about the features of legal education as a 'product' within a global marketplace through a detailed analysis of law school web sites. They argue that marketing and branding the law degree as a consumer good filled with prestige and glamour conflicts with both articulating the civic role of law and the public responsibilities of law schools.

Paula Baron writes in direct response to Thornton's analysis of the commodification of legal education as presented in *Privatising the Public University.* Baron adds an important perspective on additional issues including neoliberalism and individual well-being. She analyses the paradox of law schools both deploying the rhetoric of choice and participating in the trend to standardisation, and critiques discourses within the University which Baron argues act both to veil and reinforce dominant ideology.

Kathy Bowrey provides a critical history of journal ranking in law in Australia, offering an insider's perspective on the processes of resistance, negotiation and co-optation that she argues surrounded the implementation of journal ranking in law. She argues that law

Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012) 16.

2 Ibid 37.

was ultimately drawn into a process of research assessment that significantly eroded its autonomy and ran counter to the interests and will of the discipline and its representatives on the Council of Australian Law Deans. She goes on to consider the impacts of law being drawn into this form of audit culture. Her contribution offers a wealth of detail about how the discipline of law and many individual academics were drawn into participating in a system of research assessment that they individually and collectively sought to resist. It therefore offers both a rare insight into the processes by which such changes can be implemented in the face of resistance and a valuable object lesson for those who might wish to resist other forms of audit culture.

Frank Carrigan follows with an historical account of efforts to integrate critical legal education into the teaching of law in Australia and the barriers to the full realisation of this goal. Carrigan argues that law schools have succumbed to the market focus of contemporary tertiary institutions by providing a legal education which is impoverished by its single minded focus on marketable skills at the expense of a wider critical and philosophical approach to understanding law and legal institutions. His focus is on presenting a history of law schools which attempted to implement innovative and critical curricula for the entire law degree. His account sets out the project such schools embarked upon and the internal and external pressures which led to the demise of their integrated programmes of critical study.

In the fifth article, Gabrielle Appleby, Peter Burdon and Alex Reilly map the history of important changes in Australian legal education over the past 20 years, with a focus on the influence of the profession on legal education. Using Thornton's account of contemporary law schools 'jettisoning the critical'[3] in the quest for market success as a stepping off point, they put forward a vision of what a legal education with a rich focus on critical thinking might look like. Their writing is motivated by and describes particular experiences in a particular law school. They ask where spaces for critical pedagogy might be created and argue that even in the context of current constraints it is possible for legal academics to teach in ways that are consonant with their values and pedagogical philosophies. They then set out some of the ways they are seeking to undertake this project in the environments in which they teach, in both elective and compulsory courses.

The sixth and final article in this special issue we have authored ourselves. In our article, we seek to open a conversation about how legal academics might resist undesirable economic and managerial reform. Our article begins with an outline of the literature

[3] Ibid 59–109.

investigating academics' experiences of neoliberal 'reform' as well as the research about academic resistance to neoliberalism, which reveals an extensive degree of discouragement and despair and a limited amount of resistance. We ask whether conceptualising the academic role as fundamentally grounded in integrity and adopting a conception of the academic as an activist might offer one potential place from which resistance might emerge. We go on to consider what strategies might be adopted by legal academics who wish to contest neoliberal approaches in the hope of inviting others to join a wider conversation about how the project of resistance might develop.

Conversations about the future of critical legal education—however this expression is to be interpreted—are very much needed. We hope that this special issue will incite such conversations. Some may begin with debate over the role and realities of the past, since there is no single narrative of the past of legal education in Australia. Historical visions of the role of the University and the law school clearly can operate as sources of resistance to current and future change, but they are open to contention. We might ask whether there was a point in the past which was obviously preferable to the present and, if it was, for whom and to what ends? We believe this special issue will contribute to these debates

Similarly, we believe that this issue is unlikely to lay to rest debates about the relative role of legal skills and critique in legal education. Rather, we hope that readers will continue to think about these issues in fresh ways that are not dictated by the debates of the past. The case studies included in this issue provide the potential for legal academics in other contexts to determine what inspiration they might be able to draw from them for innovation, critique or resistance in their own institutional settings, with their particular values and teaching approaches, responding to the unique constraints and opportunities they confront.

Mary Heath & Peter Burdon