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Decline in the Reform of Law Teaching?

The impact of policy reforms in tertiary education

Vivienne Brand[*†]

That economics has dictated, and continues to dictate what is "law", what we define as "law", and thus how we teach law cannot be doubted.[1]

Law as a discipline struggles as much as, or perhaps more than, any other discipline in its attempts to reconcile its close historic connections to professional practice with its current location in a university environment. Should law schools focus on producing graduates who are "practice-ready" or make available a broad, contextual education for their students in line with the academic standards of the wider university? The overarching issue in debates about legal education in Australia has been: "what is the nature of a 'university' legal education?"[2] The key issue is: should law schools be driven by market requirements or by more idealistic educational values?

In posing this question market requirements are thrown into opposition with educational values. This may be a false dichotomy. It might be, and it probably ought to be, possible to both respond to the demands associated with being a service provider in a marketplace and to keep faith with the objectives of a broad and informed educational ideal. This article asks the question, however, whether legal education reform has suffered in the last decade as a result of the challenge inherent in responding to those dual demands.

In his detailed treatment of the effect of economic rationalism on education policy in Australia, Marginson argues

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† I am indebted to the two anonymous reviewers of this paper for their helpful comments.

1 M Le Brun, Curriculum Planning and Development in Law in Australia: why is innovation so rare? (1991) 9 *Law in Context* 27, at 40.

2 C McInnis & S Marginson, *Australian Law Schools After the 1987 Pearce Report* (Canberra: AGPS, 1994) at 48.

that economics, and not educational values, has stolen the central role in the education policy debate in Australia.[3] The progress of Australian law schools through the last turbulent decade since the commencement of the Dawkins reforms is evidence of that trend. This article examines the higher education economic policy reforms of the last decade and their effect on law schools in the context of the development of legal education in Australia. It suggests that tertiary education policy reforms have had a significant impact on the role and direction of education in university law schools, and asks the question whether the current agenda for legal education is returning to market-driven values, as students transform into consumers and law schools become increasingly reliant on private sources of funding. It deals with the way in which legal education in Australia has evolved from a period of focussing on a vocationally-driven degree to an era when reform of legal education achieved a new prominence, before the economic reforms of the higher education sector in the 1980s and 1990s threatened to change the landscape once more.

Writing in this journal in 1997, Clark reviewed legal education in Australia since the Pearce Report[4] and noted the rate of change in Australian law schools in the preceding decade. While many of the issues raised by Clark remain current, the landscape of legal education in Australia continues to evolve at a rapid pace. Particularly, while moves to broaden the university law degree and even to refashion it into "the new Arts degree" represent an important part of the immediate history of legal education's development in Australia, this article suggests the essentially vocational nature of the law degree may remain. An Australian-wide study published in 1998 provides the most up-to-date evidence available of law graduates' career destinations, and gives a clear indication of the continued importance of the law degree's vocational status.

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3 S Marginson, S, *Education and Public Policy in Australia* (Cambridge: Cambridge University Press, 1993).

4 E Clark, Report: Australian Legal Education a Decade After the Pearce Report, (1997) 8 *Legal Education Review* 213. The full title of the Pearce Report is the Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Pearce Report) (Canberra: AGPS, 1987), vols 1–4 signified as Pearce 1987a to 1987d, summary volume signified as Pearce 1987e.

Historical Context

In considering the status of legal education reform in Australia it is useful to look backwards briefly at the history of legal education in Australia. That history, familiar to most, exhibits an ongoing tension between providing a liberal arts education and preparing students for practice. Legal education in the two original law schools in the common law world (Oxford and Cambridge) focused on the teaching of law as a body of academic knowledge, not as a set of rules to be applied in practice. The law taught at Oxford and Cambridge was in fact Roman Law, itself of no immediate practical use in English legal practice. Students who wished to become lawyers instead undertook training (effectively apprenticeships) at the Inns of Court in London or an equivalent venue. Development of legal education in colonial Australia followed a similar form, with the first law departments in Australian universities not being established until the latter part of the nineteenth century. Even after the establishment of formal law departments within Australian universities, law continued to be a relatively non-academic discipline. Until the 1950s, few law teaching staff in Australia were full-time employees of the university, the majority being practitioners who taught after hours at the end of their day in practice.[5] In contrast to the position in civil law countries, where governments have been more directly involved in both the form and the content of legal education, as well as the funding of education and the accreditation of lawyers, government was only indirectly involved in legal education in Australia through its role in funding university legal education.[6]

By the end of the 1950s an expansion had occurred in the number of full-time teaching staff tenured to the university. The changing profile of law school staff coincided with the recommendations of the Martin Report into legal education in 1964. The most significant outcome of the Martin Report was its recommendation that law students have at least three years of university education, to facilitate the "background intellectual training" it was perceived they would require in future leadership positions. However, since no additional barriers to entry into the profession were placed

5 *Id*, 1987a, paragraph 1.9.

6 Australian Law Reform Commission, *Review of the Adversarial System of Litigation* (Issues Paper 21) (Canberra: AGPS, 1997) 17.

in the way of graduates from university law schools (in contrast to the position in many other common law countries, where an additional entry exam was often required), pressure was placed on law schools to provide all or nearly all relevant substantive material. At the same time the profession retained the right to maintain its own training regimes, particularly in certain states. It was not until 1968 that university graduate admittees to practice in New South Wales exceeded the number of non-graduate lawyers being admitted. Even after this date the admission authorities continued to closely monitor subjects offered within university law schools and did not hesitate to take action if they did not agree with curriculum choices. In 1973 the Law Faculty at the University of Adelaide moved the subject Procedure from its list of compulsory subjects to an elective subject. The Supreme Court judges immediately made Procedure an admission requirement, effectively mandating its return to the Law School's compulsory list.[7] The domination of professional requirements was evident throughout Australia: law school curricula in all States have always contained many topics compulsory for admission to the practice, but rarely a single topic compulsory solely for completion of a *university* legal education.[8] One problematic aspect of the profession's mandating of curriculum components is the mechanism by which it communicates its concerns. Traditionally local judges, in combination with the local law society, have been responsible for the setting of admission requirements in each State, yet the collection of judges, senior barristers and individuals who make up this group have typically not been representative of the legal profession as a whole. Major firms in particular, themselves significant employers of legal graduates (particularly in recent years), have not always had input into these decision-making processes.

The 1980s — the Pearce Report and Moves to a Broader Degree

In 1985 the Australian Federal Government commissioned a review of legal education in Australia, as part of a series of discipline reviews of the Australian tertiary education sector. The

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7 M Chesterman & D Weisbrot, Legal Scholarship in Australia (1987) 50 *Modern Law Review* 709 at 718.

8 C Sampford & D Wood, "Theoretical Dimensions" of Legal Education — A Response to the Pearce Report (1988) 62 *Australian Law Journal* 32 at 37.

Pearce Report, released in 1987, was the first comprehensive review of teaching in Australian law schools, and marked a watershed in the continuing tension between professional and academic requirements in legal education.[9] One of the aspects of the Report which received widest attention and praise was the emphasis the Committee put upon the broadening of law students' education.[10] The Committee noted that the approach to teaching law in the majority of Australian law schools was focussed on a narrow transmission of legal rules and principles, often without adequate consideration of the social context in which those rules operated. The Report suggested that "all law schools should examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other social forces".[11]

Its sentiments reflected the movement which was already taking place in the teaching of law in Australia, and which was to become more apparent in the years immediately following the Pearce Report. While Pearce noted that there had "been little written in Australia about legal education",[12] this was about to change, and to some extent had changed already. In 1987 Chesterman & Weisbrot, in an influential article in *Modern Law Review*, pointed to the early domination of black-letter law formalism in Australian law schools, but argued there was evidence of the development of wider approaches. They suggested that a clear move had been made "away from the "trade school" aspirations which wholly dominated the field until the 1960s, and towards the classic, liberal model of university education".[13]

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9 Pearce, *supra* note 4.

10 For examples of early positive reaction, see for instance, Schlegel, J, Legal Education: More Theory, More Practice, (1988) 13 *Legal Service Bulletin* 71, at 71; R McQueen, Is There a Critical Legal Studies Movement in Australia? Innovation in Australian legal education after the Pearce Report (1990) 2 *Culture and Policy* 3, at 11–12 and Sampford and Wood, *supra* note 8. For later commentary suggesting the Pearce Report's emphasis on a "broader" legal education had a real impact, see for example McInnis and Marginson who suggested, in their 1994 review of Australian law schools, that the growth in interdisciplinarity and combined degrees was one area in which the influence of the Pearce Committee could be "readily discerned" (*supra*, note 2, at 245). Other commentators agreed: see Sampford, C, Pearce Revisited, (1/1995) *Australian Universities' Review* 70 at 70.

11 Pearce, 1987e, *supra* note 4, at 27.

12 *Id* at 34.

13 Chesterman & Weisbrot, *supra* note 7, at 718.

This promotion of educational values reflected the growing strength of moves for reform of legal education in Australia. Debate on the form and content of legal education in Australia continued to intensify during the late 1980s and the early 1990s, with the launch of the first refereed journal devoted to these issues, *Legal Education Review,* increased publication of articles in the area and the appearance of a text dealing with the improvement of teaching in law in Australia (*The Quiet Revolution*[14]). Many critics of existing models of legal education found themselves gravitating to the "new" law schools.[15] Law educators began to challenge more openly the assumption that a law degree was little more than a passport to practice and that professional requirements must therefore dictate both curriculum and methods.

By the mid-1990s a shift in focus from narrow transmission of "black-letter law" to a more broadly-based legal education was apparent. A 1994 review of Australian Law Schools after the Pearce Report, commissioned by the Department of Employment, Education and Training, noted that by contrast with the position described by Pearce seven years earlier, the aims and objectives of the then current law schools in Australia did not indicate any of them were "rule-oriented", and that all had "embraced aspects of theory, critical reflection, and the law in action".[16] Combined with these developments was a move to incorporate skills teaching into law degrees, consistent with an increased emphasis on general skills acquisition across university courses. While some of the skills included in this movement reflected the particular context of law schools (eg drafting of legal documents) others were of more generic relevance and were aimed at improving students' general education (eg written and oral communication skills). Enthusiasm for skills teaching in law schools in the 1990s has been strong,[17] and the development of curricula aimed at fostering the development of a wide range of skills as well as substantive legal knowledge (often through the mechanism of skills acquisition) has driven a diverse range of curriculum reforms.

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14 M Le Brun & R Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (Sydney: Law Book Company, 1994).

15 McQueen, *supra* note 10, at 3–5.

16 McInnis & Marginson, *supra* note 2, at 155.

17 S Toddington, "The Emperor's New Skills: The Academy, The Profession and the Idea of Legal Education", in P Birks (ed) *What Are Law Schools For?* (Oxford: Oxford University Press, 1996), at 69.

At the same time as these shifts in legal education became apparent, other more wide-spread changes were flowing through the tertiary education sector in Australia. Government at the federal level was making a play to reform the way in which universities operated in Australia. This shift in government policy was to have a dramatic impact on the way legal education unfolded in the 1990s.

Government Policy and Legal Education Reform

Radical changes to government policy in higher education in the last 10 to 15 years have irreversibly altered the relationship between law schools and government, and between law schools and the Commonwealth in particular.

In retrospect this shift can be seen to have begun with the Pearce Report, carried out as part of the Commonwealth Tertiary Education Commission's project to develop a system of reviews which would provide the government and the broader community with an assessment of the needs of higher education and the benefits of providing funding to the tertiary sector. While predating the commencement of the Dawkins reforms (which are discussed further below, and which occurred with such rapidity and thoroughness that many of the recommendations of the Pearce Report became largely irrelevant almost immediately), the aims of the Pearce review evidence the critical shift taking place in the relationship between legal education and government. Law schools were no longer to be left largely to self-regulation, but were to be viewed as instruments of economic policy, to be assessed against benchmarks of community expectation and fiscal responsibility. Thus even as the profession's influence on the legal curriculum began to be impacted by the trend to a broader law education in keeping with university expectations, the rise of government intervention in the tertiary sector ensured that market concerns would continue to be important. Pearce's ambit of investigation extended to issues such as the "quality and economic efficiency of each institution",[18] and the Report began with the following introduction:

> [t]he Commonwealth Tertiary Education Commission believes that the justification of appropriate levels of public funding for higher education carries with it an obligation

18 Pearce, 1987e, *supra* note 4, Terms of Reference.

> on higher education institutions to demonstrate that their teaching and research is being carried out at suitable standards, *avoiding waste and unnecessary duplication and in a manner that is responsive to community needs* … [i]n terms of effectiveness of resource utilisation, [the Pearce Committee] will view their task not only as a matter of addressing inadequacies but also as a means of *accounting for how savings could be made through redistribution of current resources*.[19]

Unlike earlier investigations which had included law schools in their ambit — such as the Committee of Inquiry on the Future of Tertiary Education in Australia, 1964 (the Martin Report) and the Committee of Inquiry into Legal Education in New South Wales, 1979 (the Bowen Report) — the Pearce Committee placed emphasis on seeking information from interested parties. In particular, the Pearce Report consulted with the consumers of law school services, including graduates and employers of those graduates.[20] Recent graduates were surveyed, members of the profession approached for comments and students interviewed. An entire chapter of the summary report was devoted to "Legal Education: the consumers' perspective".[21] This move to a consumer-focused review evidenced an underlying policy shift to a more economically-rationalist framework within tertiary education in general and within law schools in particular.

Commercialisation

A further key factor in the altered relationship between government and law schools was the changes initiated by John Dawkins as federal education minister in the mid-to-late 1980s. These shifts in government policy heralded a new era of accountability to the consumers of legal education (including students, and ultimately employers and government), with consequential effects on curriculum.

The Dawkins reforms aimed at aligning the higher education sector with broader economic aims and to move universities to a more market footing. Universities made a

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19 *Id* at 3, emphasis supplied.

20 J Lancaster, *The Modernisation of Legal Education: A Critique of the Martin, Bowen and Pearce Reports* (Sydney: Centre for Legal Education, 1993) at 48.

21 Pearce, 1987e, *supra* note 4, chapter 4.

fundamental transition from universities as public funded institutions towards universities as service providers to a range of clients including government, students and industry (a process occurring elsewhere in the public sector at the same time and which has come to be known as "commercialisation"). The federal government instigated a period of rapid growth in the sector, centralised public research funding, decentralised the ability to engage in market-based activities, and reintroduced student fees. In addition to exercising its power over funding (the federal government's key tool of economic reform in the university sector), the Commonwealth strengthened its policy reach in education in other ways. Growing cooperation between the States and Commonwealth in the early 1990s, through the auspices of organisations such as the Australian Education Council (AEC) and the Ministers of Vocational Employment, Education and Training (MOVEET), had the effect of raising the Commonwealth's role in education policy and hence its ability to increase the influence of economic perspectives. The presence of economists at senior levels within the Department of Employment, Education and Training (as it then was) facilitated the economic imperatives driving the policy reforms.[22] These reforms survived subsequent transitions of power within federal government, being generally supported by both the federal Coalition and Labor parties.

Resourcing of Law Schools

Resourcing of higher education entered a fourth distinct phase with the implementation of the Dawkins reforms. Originally, in the first stage of tertiary funding, the initial universities in Australia (the Universities of Sydney and Melbourne) had relied entirely on funding from the States, student fees and bequests. This funding model shifted in the post Second World War period to one in which Commonwealth funding became important, a stage characterised by rapid growth and by rapid expansion in demand on public resources for tertiary institutions. By the mid-1970s State involvement in tertiary funding had declined and in this third period the Commonwealth assumed virtual responsibility for the higher education sector. Student fees were abolished. Universities, and hence law schools, now looked almost entirely to the Commonwealth for income. The Commonwealth

22 Marginson, *supra* note 3, at 26–27.

was granted no role at all in education in the Constitution formulated at the end of the 19th century,[23] but by the mid-1980s had assumed virtual complete dominance of the tertiary sector. In the post-1988 period, Dawkins' economic reforms reduced the Commonwealth's commitment to provide 100 per cent funding to universities, and institutions were forced to become more entrepreneurial, to attract corporate sponsorship, to compete for research funds and to attract students.[24]

There are direct connections between these transitions in tertiary funding regimes and the development of law school curricula. Early State-based funding coincided with a small number of law schools principally concerned with producing practitioners for the local profession. As law schools formalised in the post-War period, improved funding from the Commonwealth reflected the increased nationalisation of the tertiary sector. Law lecturers tended increasingly to be professional academics rather than practitioners, and a national market for professional academic services developed. By the mid-1970s this transition was complete. Abolition of fees and a complete reliance on centralised government funding created a sense of law schools as arms of the public service rather than as providers of services to the profession. The natural extension of this progression was the questioning of purpose within the law schools which was apparent by the mid-to-late 1980s, as the notion that law schools should be providing a narrowly vocational program of study came under assault. The environment was conducive to reform of legal education. This development coincided with the fourth stage of evolution in higher education funding, the move to universities as increasingly self-funding entities viewing the Commonwealth as a large client within a varied client group. For law schools this has meant that students have had increasing say in what law schools teach and how it is taught, and law schools have had to look beyond the government for funds. It is likely that both of these developments have had implications for the progress of legal education reform in Australia.

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23 G Harman, The Politics of Education, in J Keeves & K Marjoribanks eds, *Australian Education: Review of Research* (Camberwell, Vic: The Australian Council for Educational Research, 1998) at 40.

24 Department of Employment, Education and Training, *National Report on Australia's Higher Education Sector* (Canberra: AGPS, 1993) chapter 4.

Law School Growth in the 1990s

Key amongst the Dawkins reforms for the legal education sector was the creation of immediate rapid growth. Many of the statistics on this growth are by now well known. By 1995, law had become the third fastest growing discipline after health and business.[25] In a peak growth period between 1988 and 1992, growth in law and legal studies places (60.7 per cent) exceeded both business (50.4 per cent) and health (49.3 per cent), against a base in all disciplines of 33.9 per cent.[26] As funding became tighter, few universities without a law school were able to afford to overlook the logic of including one, and those universities with law schools could not ignore the advantages of an even bigger law school. Demand from students for law school places has always been high and exceeds supply (a position which continues[27]). The demand comes from high-performing students (who are perceived by universities as being attributes in any event), and in addition law schools are cheap institutions to fund compared with the other faculties within the university (eg medicine) which can attract top-performing students. Law schools need expensive libraries, but at least until recently technological requirements were low, keeping costs down. Staff-student ratios in law schools have always been high and teaching methods have usually been in the traditional model of large lecture classes supported by tutorials. Despite the Pearce Committee's favourable comments on small-group teaching, this more expensive approach to law school teaching appears to have lost ground in the wake of post-Dawkins expansionism.

In an environment where universities had become dependent on undergraduate student numbers for a large part of their funding, the ability to attract undergraduates was critical. Law schools offered a "cash-cow" opportunity to vice-chancellors. Funding to universities was increasingly untied, leaving universities to decide for themselves what projects to finance, and law schools could be developed without the need to seek specialist capital funding from centralised government. Legal education became "captive to the

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25 S Vignaendra, Centre for Legal Education, *Australian Law Graduates' Career Destinations* (Canberra: Department of Employment, Education, Training and Youth Affairs, 1998).

26 McInnis & Marginson, *supra* note 2, at 15.

27 D Ashenden & S Milligan, Law Still in Demand *The Australian* (Higher Education Supplement), 27 January 1999, at 38.

higher demands of an education policy which made the expansion of law very attractive to the universities".[28] In this environment, it seems likely that the issue of what law schools should teach became secondary to the need to increase student places in law, whether or not the resources were there to teach law in the way Pearce and others had suggested it should be taught.

Law schools were also encouraged by commercialisation policy to look to alternative sources of funding. Corporate and alumni funding became important and overseas student fees together with fees from postgraduate courses have helped supplement law school budgets.[29] In 1991 the Sydney Law School secured $500,000 from Sydney law firm Allen, Allen & Hemsley in return for naming rights for the School's law library; also on offer were rights to name lecture halls and professorial chairs.[30] Similar steps were taken by law schools elsewhere across the country. The establishment of Flinders University of South Australia's new law school library in the early nineties relied heavily on support from the local legal profession. By 1994 all Australian law schools received some form of commercial sponsorship.[31] Law schools also increasingly looked to full-fee paying overseas students to increase income, although inter-jurisdictional differences in law limit this potential market.[32] Implicit in these developments was a closer link between law schools and the profession, a partial return to the close reliance that had been in place until the 1960s. For a part of the higher education sector which had been slowly moving away from dependence on connections with the profession and which had begun to debate in earnest the most appropriate model of education, this represented something of an about-face. It also represented a marked increase in the direct impact of government policy on law school culture.

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28 C Parker & A Goldsmith, "Failed Sociologists" in the Market Place: Law Schools in Australia (1998) 25 *Journal of Law and Society* 33 at 36–37.

29 McInnis & Marginson, *supra* note 2, at 21.

30 Marginson, *supra* note 3, at 189–190.

31 T Tarr, The Funding and Sponsorship of Legal Education (1994) 12 *Journal of Professional Legal Education* 17, at 17.

32 E Clark, Australian Legal Education a Decade After the Pearce Report: a review of McInnis, C and Marginson, S, Australian law schools after the 1987 Pearce Report (1997) *Legal Education Review* 213 at 224–25.

Law School Responses to Economic Policy Reforms

What then was the response of law schools to government policy shifts in the tertiary sector and how did these shifts impact on moves to reform legal education in Australia? Two key, and apparently contradictory, themes emerge in reviewing law school responses to economic policy changes in the higher education sector over the last 10 to 15 years. The Dawkins and post-Dawkins shifts in tertiary education policy had the effect of both pressuring law schools to return to (some would say to retain) a more "legal practice" focus in the delivery of curriculum, and at the same time of focusing law schools on the need to broaden the curriculum to accommodate a wider range of students with presumed diversified career interests.[33]

Implicit in each of these themes (practice orientation and a liberal-arts focus) is the need to cater to student career intentions, and with it a recognition of both the vocationalism emphasised by the Dawkins reforms and the critical importance of students (and numbers of students) to law schools. Between 1983 and 1993 the government share of funding to universities fell from 91 per cent to 60 per cent, and student charges (HECS and student fees) constituted a fifth of income by 1993. Before 1987 the contribution from student charges had been close to zero.[34] A fundamental shift in the attitude of universities (and hence of law schools) to students flowed from this change in relative funding. Students became consumers of law school services, and gained increased power in the debate about what law schools should teach.

The federal government had identified the expansion of the higher education system as a tool by which their economic policies could be implemented. At the same time finance to support this growth was not forthcoming, as government encouraged universities to instead widen their resource base. Historically an inexpensive exercise, legal education has always struggled to lift its funding from a low

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33 Goldsmith has commented similarly on the development in the early 1990s of two parallel, yet apparently contradictory trends — the one for renewed focus on vocationalism, the other for increased theory: A Goldsmith, An Unruly Conjunction? Social Thought and Legal Action in Clinical Legal Education (1993) 43 *Journal of Legal Education* 415 at 416.

34 S Marginson, *Markets in Education* (Sydney: Allen & Unwin, 1997) at 246.

base. Faced with greater numbers of students but relatively fewer resources, law schools could be expected to resile from a commitment to the more innovative, broadly-based law degree which had been evident post-Pearce. More innovative teaching often placed increased demand on resources. Small-group teaching and increased contact between staff and students of the kind experimented with at the University of New South Wales and commended by the Pearce Report required far more funding than traditional models. The Pearce Committee's recommended student:staff ratio of 15:1 has often not been achievable. In the five years after the Pearce Report until 1992, Adelaide Law School's ratio blew out from 16.6 to 21.8 students for every staff member; other universities suffered similar increases in ratios.[35] At the same time as staff faced increased student loads, staff salaries decreased in real terms, making it even more difficult for law schools to compete with the private sector in attracting talented law graduates to academia.[36] Law schools' need for dramatically improved resources therefore coincided with economic factors which placed added pressures on the schools.[37] Emphasis seems to have been put in recent years upon surviving in the face of waves of funding reductions, over-enrolment by cash-strapped central administrations, and increased reliance on part-time and casual staff.

The Pressure to Focus on a Vocational Degree

In this environment, the pressure on universities in general and on law schools as part of those universities to accommodate to the market became considerable.[38] By the early 1990s the place of employers as legitimate stakeholders in the education enterprise was accepted, and the necessity of taking into account their expressed needs recognised.[39] Students found themselves in a similar position. The move to charging students fees in the form of a HECS payment altered law student consciousness towards a consumer orientation.[40]

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35 McInnis & Marginson, *supra* note 2, at 214.

36 See for instance Clark, *supra* note 32.

37 Clark, *supra* note 32 at 222.

38 "The market" may of course be comprised of a number of stakeholders, including students, employers and the government, whose interests will not always be homogenous. When those interests are in conflict, "market forces" may have the effect of simultaneously pulling higher education in multiple directions, illustrating the risks of a single definition of the market.

39 McInnis & Marginson, *supra* note 2, at 26.

40 McInnis & Marginson, *supra* note 2, Parker & Goldsmith, *supra* note 28.

This position was exacerbated by the placement of law at the top of the HECS payments bands upon introduction of a sliding scale of fees in the late 1990s, despite law's historically low cost of delivery. Law students are charged in part according to their perceived likely future incomes rather than the cost of delivery of their degree.[41] While government has traditionally paid law graduates at a higher rate in their early years of employment, within a few years of graduation it is usually privately employed graduates who enjoy the highest incomes.[42] These high private sector incomes are much more likely to be attainable in private (especially commercial) practice than elsewhere, and students might well be expected to call for increased teaching of subjects appropriate to that segment of the profession.

Anecdotal evidence suggests this has been the case. Enrolments in electives with a non-commercial, non-practice focus seem often to be small, compared with enrolments in subjects suited to practice in a large commercial law firm (though of course this may always have been something of a tendency). Small electives become marginal propositions and may not be offered (or may not be offered as frequently) when teaching resources are stretched. As new law schools during the 1990s fought to establish their marketability in an already competitive environment, curriculum orientation to professional demands was often seen as the most effective pathway to securing market share (presumably to accommodate students' perceived demand for a law degree which would prepare them for legal practice). Law schools such as Bond, Flinders and Deakin have taken this route.[43] In an environment in which students-as-consumers

41 Three factors were identified by the Federal Government as having influenced a law's classification in Band 3 of HECS; actual cost of course undertaken, the likely future benefits to the individual, and student demand. On the issue of why law was placed in the Band 3 discipline group when it is a relatively inexpensive to fund a law course, the Government stated "[w]hile the Government recognises that Law courses are relatively cheaper than other courses in the Band 3 discipline group, average income for Law graduates places them amongst the highest paid professions in the workforce. In addition this is a very high demand course. Therefore it is more equitable that they pay a higher contribution toward the cost of their course.": Senator Amanda Vanstone, Minister for Employment, Education, Training and Youth Affairs, *Higher Education Budget Statement, 9 August 1996*, "Questions and Answers"; Australian Government Publishing Service, Canberra, 1996, at 8.

42 A fact confirmed by Vignaendra's recent survey of law graduates: *supra* note 25 at 30.

43 McInnis & Marginson, *supra* note 2, at 245.

have significant power, it has become difficult to resist student curriculum preferences. Added to these pressures, academics are told that if students pay for their studies, they expect they should have better prospects of employment.[44] Increased use of course evaluation questionnaires, stronger reliance on student evaluation of teaching scores for promotion and tenure purposes, as well as measures such as the Federal Government's infamous "Dob in a Teacher" scheme of the late 1990s, have all contributed to reinforcing a climate of student consumerism in the law school classroom. There has of course always been some student resistance to innovative curriculum. Writing over a decade ago, and before the impact of the federal government's policy reforms, Sampford and Wood suggested that law school staff had become attuned to "the sounds of pens dropping and the silent but perceptible click of minds switching off when some theoretical or critical question is raised and sometimes even a hostility or impatience that time is being 'wasted'".[45] But it seems possible that this resistance has been exacerbated by the shift in focus towards law students as consumers.

Even in relation to apparently strongly entrenched changes relating to combined degrees and access equity, responses to perceived student demand can be seen. Monash and Flinders law schools have relaxed the common requirement for students to combine their law degree with some other degree,[46] while the University of Adelaide has amended the entry requirements which were imposed in the 1980s in an effort to increase equity and broaden the profile of students entering the law school. In recent years the University has set aside places for high performing secondary students, rather than requiring all students to compete for entry on the basis of their performance in another degree (a move likely to favour students from high-performing secondary schools, and to stem a potential flow of those students to other law schools not imposing broader entry requirements). Meanwhile students show less regard for good teaching than for employment prospects; there is evidence that prospective students continue to favour the established law schools, despite their less impressive performance in reforming

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44 P Coaldrake & L Stedman, *On the Brink: Australia's Universities Confronting Their Future* (St Lucia, Qld: University of Queensland Press, 1998) at 3.

45 Sampford & Wood, *supra* note 8, at 35.

46 Flinders did not institute a combined degree policy, and Monash removed its policy: Parker & Goldsmith, supra note 28, at 45.

their curricula.[47] Authors of the Good Universities Guide for 1999, Ashenden & Milligan, have suggested that "[l]aw makes a good case study for anyone wanting to be gloomy about the prospects for educational reform. Legal academics have difficulty in producing it and prospective students don't demand it".[48]

The Role of the Profession

At the same time as law schools responded to the changing economic environment within which they found themselves, the private legal profession, or at least certain components of it, have moved to reassert or increase their influence on the law degree. In the first half of the 1990s the development by state admitting authorities of a set of "compulsory subject areas" required for admission to practice and uniform throughout Australia (the "Priestley 11") effectively mandated the inclusion of those areas in all law school curricula.

In 1994 the Law Council of Australia released a Blueprint for the Structure of the Legal Profession which proposed an accreditation scheme, and which incorporated the agreement reached between the Committee of Australian Law Deans and the Law Council to set up a National Appraisal Committee. Concerns were expressed that law schools would maintain "less than adequate controls" over this accreditation scheme.[49] However the Law Council argued the need for such a body, referring to the requirement to ensure the development and application of national standards for (amongst other things) "appraising the suitability of subjects offered by Australian tertiary courses in law, in order to satisfy the national academic and practical training requirements developed by the Council".[50] This proposal was rejected by the Standing Committee of Attorneys-General in 1998, but the Law Council has signalled that it remains committed to establishment of a national body, and argues it "is essential that a national body undertakes some form of accreditation of tertiary law school courses in a consistent and objective

47 Ashenden & Milligan, *supra* note 27.

48 *Id*.

49 E Clark and M Tsamenyi, "Legal Education in the Twenty-First Century: A Time of Challenge", in P Birks, (ed), *What are Law Schools For?* (Oxford: Oxford University Press, 1996), at 37 (n133) and 39.

50 Law Council of Australia, *Submission to the Australian Law Reform Commission on Discussion Paper 62: Review of the Federal Civil Justice System*, October 1999, *http://www.lawcouncil.asn.au/dp62.htm*.

manner". The Council has stressed the need for the central body to be able to "set and enforce rules", and not merely advise.[51]

By contrast, the Australian Law Reform Commission, in its recently released Discussion Paper 62 ("Review of the Federal Civil Justice System") has proposed the establishment of a "broadly constituted advisory body known as the Australian Council on Legal Education", to develop model standards for legal education. The Commission stressed it did not see it as appropriate that there be "a monolithic body engaged in central planning and enforcing a single vision of what is required for the education and training of the Australian legal profession".[52] The Law Council has expressed its displeasure with the Commission's proposal, and indicated that the "Law Council does not support the establishment of an *advisory body* …. [t]he Law Council does support the establishment of a *determinative body* on legal education and training".[53]

PLT Developments

In recent years a number of law schools have moved to integrate practical legal training into their degrees. Despite the essentially practical nature of PLT material, a significant number of law schools are now moving to include the practical legal component of their students' education in their undergraduate degrees, and have sought and obtained accreditation from admitting authorities. At least nine law schools are seeking to offer PLT within their degrees.[54] Graduates of these new degrees will be able to apply for admission immediately on completion of their degrees, without any further pre-admission training. This provides universities with an additional marketing point for their law programs, since students can complete their qualifications to practice-ready stage more quickly and within one institution. There is also the incentive of retaining students for longer (and hence receiving more fees income per student) rather than students being lost to a separate institution for this component of their qualifications (in South Australia, for instance, the PLT course was located in the University of

51 *Id.*

52 Australian Law Reform Commission, *Review of the Federal Civil Justice System*, (Discussion Paper 62), (Canberra: AGPS, 1999), at 57, 56.

53 Law Council of Australia, *supra* note 50. Emphasis original.

54 Australian Law Reform Commission, *supra* note 6, at 60, n5.

South Australia, formerly the South Australian Institute of Technology, an institution with no law degree of its own; this course has now closed down). Economic efficiency has not been the sole determinant of the shift to include PLT courses in university law degrees, with equity and access issues also of concern. Nonetheless, the practical effect of these moves is to significantly increase the vocational element of the law degree being offered, as a function of both what is taught and by whom it is taught.

As to *what* is taught, practical legal training subjects will be in addition to (or form expanded parts of) the eleven subject areas prescribed by the Law Admissions Consultative Committee as necessary for admission to practice in Australia (the "Priestley 11"). Students may have the option to complete a law degree without undertaking the additional subjects (this is the case at Flinders University for instance) but many students are likely to "hedge their bets" and undertake the additional qualification in case it later proves useful to them. As to *who* does the teaching of these new university-based practical subjects, the increased focus on practical legal skills teaching is likely to generate greater reliance on use of part-time teaching staff drawn from practice or on full-time staff recruited from a background as practising lawyers. At least in the case of the two South Australian universities offering this combined program, the Law Society will assist in the teaching of certain subjects. The shifting of ground back to a more heavily profession-dominated degree is immediately apparent, with implications for the relationship between reform in teaching and the satisfaction of employer-body demands.[55]

The New Arts Degree — Urban Myth?

The dramatic increase over the last 10 years in student places in law inevitably led to speculation that not all students could join the practising profession and that the profession would not have enough places to offer graduates.[56]

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55 This move to incorporate practical legal skills training in law degrees operates separately from the increasing focus being given to generic skills training in law schools and in universities generally. Vignaendra's study emphasised the importance for law graduates of generic skills such as oral and written communication, regardless of vocational direction: *supra* note 25 at 33.

56 See for example C Roper, *Career Intentions of Australian Law Students* (Canberra: AGPS, 1995) at 91.

The right of law students to expect to be prepared for a wider range of careers was discussed. An oversupply of law graduates in the early 1990s was widely acknowledged, at least anecdotally.[57] The fact that not all graduates wished to become practising lawyers was given greater recognition. It became difficult for law schools to defend a traditional doctrinally-based education on the ground that it was a necessary step on the path to legal practice. The right of the profession to dictate curriculum was questioned.[58] By the mid-1990s the law degree began to be talked of as "the new Arts degree", a generalist degree beneficial to students entering a broad range of careers where analytical skills and high-level oral and written language ability would be valued.[59]

Suggestions were made that the undergraduate law degree was likely to become a more generalist qualification, with specialisation moving to a graduate level, followed by professional registration. Recognition began to be given to the limitations of the traditional view that all graduates were destined to become solicitors or barristers, and calls were made for a lessening of the "disproportionate" emphasis on black-letter or "core" legal subjects.[60] In this respect the growth of law schools arising out of the federal government's economic reforms appeared to have had the paradoxical effect of influencing the curriculum away from narrow concerns with the requirements of the professional legal market and towards a broader idea of the law degree consistent with the traditional conception of a university. However, a recent empirical study suggests we may have to question whether repeated references to law as "the new Arts degree" during the 1990s have concealed the continuing close connection between a law degree and practice as a professional lawyer.[61]

Recent Data on Law Graduates in Australia

Discussion about the need for, and the risks of, reform of the law degree has in the past often been undertaken in the

57 C McInnis, *Graduate Education in Australian Law Schools: some recent developments,* Centre for the Study of Higher Education Research Working Papers, No. 93:10 (Melbourne: University of Melbourne, 1993) at 3; McInnis & Marginson, *supra* note 2, at 233; Clark, *supra* note 32, at 216.

58 Roper, *supra* note 56, at 81.

59 See for instance Clark, *supra* note 32, at 216.

60 McInnis, *supra* note 57, at 13.

61 Vignaendra, *supra* note 25.

absence of empirical information. Until the Pearce Report in 1987, little comprehensive data was available on law schools in Australia or their students and graduates. Some studies of Australian law students' career destinations had been conducted, but these were rare and usually limited in their scope to students from a single university.[62] However, a national survey of recent law graduates was carried out as part of the Pearce Report, and since that time two national studies have been conducted which have attempted to capture information on the career destinations of law students in Australia. The first of these was an investigation of career intentions of first and final year law students for the Department of Employment, Education and Training in 1994.[63] A further study was carried out for that department's successor, the Department of Employment, Education, Training and Youth Affairs and its findings published in 1998.[64] While a follow-up study to the 1994 investigation, this second survey focussed predominantly on law graduates' career destinations rather than their career intentions. This later study provides the most up-to-date evidence available of what is actually happening to law graduates around the country once they leave law school, and it challenges the idea that the 1990s have seen a metamorphosis of law into the "new Arts degree".

Despite the phenomenal growth in the number of law places being offered at Australian universities in the last decade, the 1998 study by Vignaendra suggests by far the largest percentage of graduates gain legal work of some kind, rather than becoming involved in employment in one of the broader fields for which law is often thought to be an appropriate training ground: 74 per cent and 77 per cent of the two cohorts of students surveyed were engaged in legal work (representing a 1995 graduating group and a 1991 graduating group respectively).[65] Since the survey covered 1991 and 1995

62 A national study of recent law graduates was conducted as part of the 1987 Pearce Report (*supra* note 4); a national review of law students' career intentions was carried out in the mid-1990s by Roper (*supra* note 56); and smaller studies have been carried out at individual institutions (the University of Western Australia in 1985, University of Melbourne Law School in 1990, Flinders University of South Australia in 1992, and University of Sydney Law School in 1992): Roper, *supra* note 56 at 143–46. Some generic data is also available from the Graduate Careers content of Australia's annual surveys.

63 Roper, *supra* note 56.

64 Vignaendra, *supra* note 25. A further study of law graduates by the Centre for Legal Education is due in 2000.

65 *Id* at 24.

cohorts, it drew on responses from some of the first students to experience the tumultuous impact of expansion and commercialisation of law schools in the period from the late 1980s through to the mid-1990s. The survey is the first to include graduates from the newest law schools, where more innovative curriculum design had often been trialed. In particular, the 1995 cohort could be expected to include a number of students who entered law schools after the expansionary push of the immediate post-Dawkins reforms period, the period during which revisioning of law as the new Arts degree intensified. It might therefore be expected that if evidence was to be found of interest in a broader range of professional activities on graduation amongst students, this study would show that interest.

It may of course be that given the initially low intakes at the newer law schools in the early 1990s and the length of the now common combined degree, the full impact of the expansionary push of the early 1990s will not be evidenced in even a 1995 graduating group. In addition, law school alumni lists (relied upon for the mail-out of the survey) might be more complete for those graduates engaged in legal practice (since law society practice lists and bar member lists are available). These factors might suggest a weighting in the 1998 study towards graduates involved in more traditional occupations and in legal practice in particular. Measured against these potential limitations, however, is the evidence that the alumni lists of the newer law schools tended to be more complete than those from the older universities and that lists for the 1995 cohort tended to be more complete than those for the 1991 cohort. In addition, a number of the 100 non-participants (sample size: 2346) for whom reasons for non-participation were obtained were working overseas (many as legal practitioners in London) or had returned to their home country (often associated with taking up private practice in the home country), suggesting a number of non-responding graduates were involved in legal practice.[66] Overall, therefore, it might be expected that the sample would not be overly biased towards legal practitioners and some early indications at least of a changing trend in law graduate destinations would be apparent.

The study found strong evidence of a commitment amongst law graduates to a career in law, and little evidence was

66 *Id* at 15–17.

gained of a large number of graduates being engaged in alternative non-legal work. Vignaendra, the author of the study, highlights the finding that only 11 per cent of the 1995 graduates and 12 per cent of the 1991 graduates "were known to be in non-legal positions".[67]

More than half of each cohort indicated they required a practising certificate to carry out their job, suggesting the work they were involved in did not simply call on generic skills gained in undertaking their law degrees.[68] The evidence also suggested that having gained a position which made use of their legal skills, many graduates continued in legal work for at least several years, countering anecdotal evidence of high levels of graduates exiting legal positions within a year or two of graduation. Seventy-seven per cent of the 1991 cohort surveyed by Vignaendra remained in legal work.[69] Nor did the survey provide evidence of declining interest in professional legal practice amongst students. Of the 1995 cohort (the only cohort to be asked questions about their preferred areas of work) 68 per cent indicated a preference for work in the private legal profession.[70]

Although Vignaendra does conjecture as to differences between the 1991 and 1995 cohorts (noting that any comparison is fraught with difficulty as many factors could lead to differences in results between the two groups) and suggests that the study may hint that "law students are now less intent on choosing to study law purely to enter private legal practice and are more open to considering a wide range of

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67 *Id* at xii. Curiously, while the Vignaendra report states a clear finding of only 11 per cent and 12 per cent of graduates being "known to be in non-legal positions" (1995 and 1991 respectively), the tabular representations of the career outcomes appearing in the report show a total of only 74 per cent and 77 per cent *known* to be in legal positions (1995, 1991 respectively). The variation between the two statistics appears to be connected to ambiguities in the data in relation, for instance, to the legal component of categories such as "policy work": *Id* at 24.

68 Sixty four per cent of the 1991 cohort and 55 per cent of the 1995 cohort: *id* at xii.

69 *Id* at 24.

70 *Id* at 65. Direct comparison of this figure with Roper's data on final year respondents' preferences is not possible, however, as Roper's questionnaire asked students to *rank* their order of preferences. While Vignaendra's report suggests "68 per cent of graduates in the 95 cohort indicat[ed] that it was their preferred option" (at 65), the questionnaire used in Vignaendra's study did not require students to rank preferences. Hence a significant number of students in that 68 per cent may not necessarily have considered private legal practice their *first* option.

careers on leaving law school than previously",[71] this suggestion seems to be based on the finding that most 1995 graduates had more than one preferred area of work, and that there was an anticipated drop in interest in the private legal profession amongst the 1995 cohort (when asked about their career intentions for three years time).[72] However, since the 1991 cohort were not questioned on career preferences (as to the first of those factors), and the 1995 cohort were at a much earlier stage of their career than the 1991 cohort (as to the second of those factors), the suggestion does not seem strongly founded in the data.

Comparison with Earlier Data on Law Graduates

Little comparative data exists which would enable us to identify clear trends in the direction of law students. It may be, for instance, that it has always been the case that a significant proportion of law students have intended to enter careers outside the practice of law, or outside of private legal practice at least. The most useful comparison studies are the study carried out as part of the Pearce Report in 1987, and the 1995 Report by Christopher Roper of the Centre for Legal Education. While an extensive comparison of the studies is beyond the scope of this article, some interesting observations are still possible.

The Pearce Report's survey considered recent law graduates' work since graduation and views on legal education. Similarly to Vignaendra's survey, graduates were quizzed on factors including the type of work they had been employed in since graduation and the work skills they had required. However, graduates were also asked what their expectations of career direction had been when they were students. The Roper report looked at law students rather than graduates, and asked what type of work those students hoped to be engaged in after graduation. The Roper survey is therefore not as directly comparable with Vignaendra's work as is the Pearce Report's survey. However, these three studies represent the only detailed national investigations available in relation to law student/graduate direction over the last decade or so, and some attempt to compare the data seems worthwhile.

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71 *Id* at xxvii.
72 *Id* at 65 and 83.

One of Vignaendra's key findings was that only 11 per cent of the 1995 graduates and 12 per cent of the 1991 graduates "were known to be in non-legal positions". The Pearce Report nearly 10 years earlier also found that 12 per cent of recent graduates surveyed for the Report were employed in work of a non-legal nature.[73] In contrast to Vignaendra's incorporation of graduates from some of the newest law courses (albeit in their early stages), the Pearce survey, by virtue of the year in which it was carried out (1985), could cover only the original law schools and some "second wave" institutions. In all the survey dealt with graduates from only nine institutions.[74] The similarity of findings in relation to the number of recent graduates engaged in non-legal work is therefore interesting. While the Vignaendra survey and the Pearce Report survey asked graduates to nominate their current work in a slightly different ways, some comparability of the results can be assumed as the questions were essentially similar. And while the full impact of expanded enrolments in the existing law schools and increased offerings of law courses at new institutions will not be demonstrated in Vignaendra's study (given it was carried out on 1991 and 1995 graduates), it might be expected that greater differentiation would be apparent than seems to be the case. The graduates surveyed for the Pearce Report had graduated in 1979, 1980, 1982 or 1983, well before calls for a broader conception of the law degree's purpose had achieved wide prominence.

Key findings of Roper's study were that 55 per cent of first year respondents intended to be admitted within two years of graduation;[75] that two in three final year respondents who planned to be admitted within two or five years wanted to work in the private legal profession;[76] and that 48 per cent of final year respondents overall had a first preference of work in private legal practice.[77] These figures (for

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73 Pearce 1987d, *supra* note 4, at 74. The Report noted that in view of the greater ease with which contact details are available for practitioners "it seems reasonable to suppose that those now working in essentially legal areas are likely to be, if anything, somewhat over-represented among the survey respondents" (at 12 & 74), suggesting that if anything these figures are conservative in their estimate of the percentage of graduates involved in non-legal work.

74 The Universities of Sydney, New South Wales, Melbourne, Adelaide, and Western Australia, as well as Macquarie University, NSW Institute of Technology, Monash University and Australian National University.

75 Roper, *supra* note 56 at 59.

76 *Id* at xv.

77 *Id* at 75.

law students) are similar to the figures obtained by Vignaendra a few years later in relation to law graduates. The percentage of graduates in private legal practice in each of Vignaendra's 1991 and 1995 cohorts was 48 per cent and 55 per cent respectively.[78] The figure for the more recent 1995 graduates is therefore slightly higher than the percentage of final year respondents in Roper's survey who listed private legal practice as a first preference (55 per cent cf 48 per cent). By contrast, 58 per cent of the graduates who responded to the Pearce Report's survey indicated that when they had been law students they had expected to gain work in private legal practice.[79]

Of course, Roper's study considered students, not graduates, focusing on career intentions rather than career outcomes, and care must therefore be taken in comparing it with Vignaendra's study in particular (career intentions may not, for instance, equate to ultimate career location although there is presumably a close relationship — in fact, Roper's 1994 final year students may have been surveyed by Vignaendra in that study's 1995 graduating cohort). It does not seem however that Vignaendra's findings provide much support for the proposition that there is a trend for law students to embrace an increasingly diverse range of careers, particularly when compared with the Pearce Report's 1985 survey, or even when compared with intentions of final year law students surveyed a few years earlier by Roper.

A comparison between the discussion of the findings in each of the Roper and Vignaendra studies is also interesting. A strong emphasis is placed in Roper's report on the fact that fewer law students than might have been expected intended to enter private legal practice. A focus of Vignaendra's report, by contrast, is the high number of law graduates who are involved in legal work of some kind. The discussion in the relevant sections of Roper's report describes as "dramatic" the finding that "only 71 per cent of final year students planned to be admitted within two years of finishing their law degree",[80] and suggests that it needs to be emphasised that "[l]ess than half of the final year respondents planned to be admitted within two years *and* work in the private legal profession".[81] Roper found that

78 Vignaendra, *supra* note 25 at xii (but see the tabulated figures at page 24 which seem to show 54 per cent and a little under 50 per cent).
79 Pearce, 1987d, *supra* note 4 at 66.
80 Roper, *supra* note 56 at 57.
81 *Id* at 75; Roper's emphasis.
82 *Id* at 75 and 91.

48 per cent of final year respondents' first preference was to work in private legal practice. However, after analysing respondents' preferences and noting that a large percentage of students who wished to work in private legal practice stated they would be just about as satisfied with their second preference, Roper concluded that "[i]n effect, only 28 per cent of final year respondents are intent on working in the private legal profession" (that is, only 28 per cent were intent on working in the private legal profession alone and in no other area), shedding "a rather different light" on the matter.[82] Roper went on to suggest that the fact that less than half of the final year respondents wished to work in the private legal profession as a first preference could have ramifications for "the extent of influence which the private profession, through the professional bodies, should be able to exert on law schools' curricula, in virtue of their capacity as representatives of the dominant vocational destination of the students".[83]

By contrast, Vignaendra's report gives more emphasis to issues such as the fact that "[o]nly 11 per cent of graduates in the 95 cohort, and 12 per cent of graduates in the 91 cohort, were known to be in non-legal positions";[84] to the finding that "[b]y far the most popular area [for the 1995 cohort] was the private legal profession"; and suggests that "[o]verall, the private legal profession and legal work in the public sector were also seen to be the two best fallback areas".[85] Vignaendra draws attention to the:

> interesting and revealing finding … that only a small group of graduates showed any interest in, or were engaged in, non-legal work. That is, while there were multiple career destinations, the nature of the work in which most graduates were engaged tended to be legal. Therefore, while the law degree was used for a wide variety of legal careers, to call it the "new Arts degree" is a little premature.[86]

While these extracts are selective, and each report also produces and discusses contrary data, distinct and contrasting themes appear clear in the writing up of the two studies. The emphasis placed by Roper on the small number of

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83 *Id* at 81.
84 Vignaendra, *supra* note 25 at xii.
85 *Id* at xiv.
86 *Id* at xxii.
87 *Id* at xiv.

students who were wedded to the idea of private legal practice contrasts with Vignaendra's focus on identifying the number of law graduates who were interested in, or who were, pursuing a practical legal career. Vignaendra's report was of course written in the context of Roper's existing findings. Therefore while Roper's report clearly established for the first time that not all law students become lawyers, by the time of Vignaendra's study, this issue probably did not need to be emphasised. Perhaps this shift in awareness in the legal education community explains the different emphasis given by Vignaendra's report.

One potential explanation for the high number of graduates involved in legal work in Vignaendra's study is that having obtained a qualification for law, graduates find themselves unable to obtain non-legal work easily, whether they in fact wished to work in a lawyer role or not. However sixty-eight percent of graduates indicated that the private legal profession was one of their preferred areas of work.[87] Similar evidence of an interest in the practice of mainstream law is available in the figures on graduates' entry into pre-admission practical training courses ("PLT" or articles). Eighty-five percent of 1995 graduates and 88 per cent of 1991 graduates had either completed a PLT course or articles, or were intending to.[88] Vignaendra was unable to identify any discernible difference between the career destinations of graduates from newer law schools and those from older, more established law schools.[89] However, other empirical work has suggested that graduates from the newer law schools give far higher satisfaction ratings in the nationally administered Course Experience Questionnaire than do graduates of the older law schools.[90] Since many of the newer law schools have attempted to create curricula which prepare students for a range of careers and not just practice in the private legal profession, these results are significant.

This data in Vignaendra's study provides little evidence that law graduates' career destinations have moved significantly away from legal work in the 1990s, or even away from legal practice. While the exact destinations of law graduates varied, most graduates were interested in, and ultimately pursued, legal careers.

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88 *Id* at xviii.
89 *Id* at 92.
90 Ashenden & Milligan, *supra* note 27.
91 Vignaendra, *supra* note 25 at 35.

Many of the graduates surveyed may, of course, discover after some experience of legal work (whether in private legal practice or some other form) that they wish to move to a non-law career. There is indeed some evidence of this in Vignaendra's findings. However, the large number of law graduates from both the 1991 and 1995 cohorts who remained in legal work of some kind at the time of the DEETYA survey suggests involvement in legal work is not a temporary activity for the majority of law graduates. The survey lists five key knowledge types as essential to the discipline of law (knowledge of substantive law, legal practice and procedure, the policy underlying the law, legal professional and ethical standards and the social context of law), and notes that these five elements were requirements for the majority of work undertaken by graduates in the survey. While several of these elements reflect a broader notion of the law degree (the social context of law and the policy underlying the law), three of the five retain a distinctively vocational character (knowledge of substantive law, legal practice and procedure, legal professional and ethical standards), and these three rated as the most commonly used knowledge types. Over 80 per cent of both the 1991 and 1995 cohorts used substantive law skills, and between 70 per cent and 80 per cent of each cohort used legal professional and ethical standards skills.[91] It seems a law degree remains predominantly a professional degree, preparing graduates for some form of legal work, at least for several years after graduation.

Implications of the Vignaendra DEETYA Study

Vignaendra's study is significant for the on-going debate on the reconciliation of the needs of the profession for the teaching of specific legal knowledge with consideration of reform in the law degree. It suggests any shift to a broadly-based degree at the cost of treatment of substantive legal material (at least without adequate provision being made for treatment of that material in a separate pre-admission course) could have negative consequences for law schools competing for students. The shift to a consumer-focus has sensitised the student body to the need for training in skills employers look for. The majority of graduates in both the 1991 and 1995 cohorts of Vignaendra's study claimed they were required to have a knowledge not just of generic communication skills

92 Between 70 per cent and 85 per cent in each case — *Id*.

but of substantive law, legal practice and procedure in order to carry out their work.[92] This was despite the fact that the skills these graduates used *most frequently* were more general skills such as oral communication and report or letter writing. The report stops short of suggesting law schools have a mandate to refocus (or continue to focus) on the transmission of a narrow base of legal skills at the expense of the broader education that might be called for in "a new Arts degree", pointing out that the question of whether law schools should modify their curricula to match the use to which the law degree is put is an issue of legal education policy.[93] For law schools reliant on the income associated with student demand for places, however, this choice may appear illusory. It seems the implication of Vignaendra's findings may be that law schools ignore black-letter law and vocationally-oriented subjects at their cost.

Current cuts in operational grants to universities combined with increases in Higher Education Contribution Scheme (HECS) charges may well exacerbate this consumer-pays environment. The shift to place degrees within varied bands, with law ranked amongst the most expensive degrees in Band 3, has further increased law students' awareness that they are "paying for a service". Pressure on universities in general and law schools in particular to attract, and retain, students in a competitive environment will continue to contribute to a perceived need to cater to student requirements.

The data on law graduates' career destinations and skill requirements in Vignaendra's study suggest that legal education reform may be at a crossroads. Much has been achieved, including the growth of the combined degree (the majority of law students in Australia now combine their law studies with a second, often less vocational degree[94]) an increased emphasis on skills teaching, an emphasis on attempting small group teaching where funds allow,[95] and, perhaps most importantly of all, a generally higher regard for the importance of good teaching in law. However, attempts to broaden the degree, to introduce wider non-law perspectives, and to generally improve teaching may be at risk of being negatively impacted by a student-as-consumer market in which preparation for high-paying work is given high importance.

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93 *Id* at xxiv.

94 *Id*, at 84–86.

95 McInnis & Marginson, *supra* note 2 at 170; Clark, *supra* note 32 at 219.

Conclusion

> In the late 1990s Australian law schools occupy a precarious position between profession, state, and market[96]

Until the implementation of the Dawkins reforms, higher education cutbacks and the impact of commercialisation policies on the sector, a clear move was evident in law schools in Australia towards a liberal arts model of a law degree. The Pearce Report gave definition to this movement, suggesting law schools should (without ignoring black letter approaches), give more significance to critical and theoretical approaches. Chesterman and Weisbrot, writing in 1987, confidently asserted that Australian law schools had made the shift away from black letter trade school approaches.[97] The massification of legal education in the early 1990s suggested this trend may be extended, as students poured into law courses around Australia and the purpose of a law degree was increasingly questioned. It seemed that law was racing to become the new Arts degree.

But there is a second side to the impact of the last decade's education policy reforms on law schools in Australia. That side shows reinstitution of close connections between the profession and academics, the Law Council of Australia proposal for accreditation of law courses, and the increasing integration of practical legal training into degree programs. It shows students as consumers, paying for their education and who, it sometimes seems, do not want to hear anything but black letter law. This side of the policy shifts of the last 10 years shows reduced or insufficient funds to maintain or attain small class sizes, with classes getting bigger, and it shows less resources to develop innovative teaching. It shows law schools offering chair naming rights, library naming rights and other sponsorships in return for support by the profession. The availability of recent empirical data showing that students predominantly still want to do legal work on graduation, and that they are not just hoping to do so but are achieving their goal,[98] is important evidence of student attitudes.

It is over 10 years since widespread commitment to reform in Australian legal education became apparent. At the time Le Brun suggested economic factors were the dominant arbiters of what law schools taught and how they taught it.

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96 Parker & Goldsmith, supra note 28, at 33.
97 *Supra*, note 7.
98 Vignaendra, *supra* note 25.

Since then debate on legal education issues has intensified, but the profession has retained much of its early influence on the subject matter and form of legal teaching in Australia, and federal government policy has increased its influence on law schools. Despite clear progress in reforming law teaching, law school curricula appear to be as much or more dominated by economic forces than ever, and reform favouring broader educational ideals is at risk of becoming secondary to economic imperatives. Have the moves for change in legal education apparent at the end of the 1980s failed?

If so, where does this leave law schools in Australia as they enter the next decade? The forces of economic reform which it seems may increasingly dictate that law schools teach what students want, and what the profession is presumed to want, show no signs of diminishing. Any maintenance of, or resurgence in, earlier attempts at reform in law teaching will need to take into account the dominance of government economic policy which is now so apparent in the sector. Reform which does not accommodate itself to (or which cannot subvert) economic imperatives imposed by government or vice-chancellorial fiat will have little chance of success. New ideas for teaching methods, subject material or varied curriculum will inevitably have to be considered in light of restrictive resource allocations and student demand. If legal education in Australia is to continue to improve and innovate, it will need to find a way of living within the economic environment in which it now finds itself.

Women in the Law School Curriculum: Equity is About More Than Just Access

*Rachael Field**

Introduction

In an article highlighting a number of problems with regard to the way in which centralised equity policy has been implemented in Australian universities, Eleanor Ramsey has noted the lack of equity programs directed at participation-based issues. In particular she comments that programs which target the content of courses, and the pedagogy of those who teach them, are rare.[1]

The rarity of such programs is connected with the fact that much of the focus of analyses of equity in curriculum has centred on secondary and primary education.[2] As Thomas comments, "what *is* surprising is that so few feminist researchers in the sociology of education have chosen to look at higher education."[3] It has been left to the radical feminists

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 (1999) 10 *Legal Educ Rev* 141.

1 E Ramsey, Managing Equity in Higher Education, (1994) 2 *The Australian Universities' Review* 13, at 16. See also, M Bowen, Mainstreaming Equity Activities in Universities: The Next Challenge, (1994) 2 *The Australian Universities' Review* 19, at 22.

2 See for example the chapter entitled "Social Justice in Education and Gender Equity" in A Sturman, *Social Justice in Education*, Australian Education Review No.40 (Melbourne: ACER Press, 1997) at 81, and the references there. See also the Commonwealth Schools Commission, *National Policy for the Education of Girls* (Canberra: Commonwealth Schools Commission, 1987), L Jenkins "Gender Equity in Curriculum Reform Project", (1992) 12(2) *Curriculum Perspectives* 28, Australian Education Council, *National Action Plan for the Education of Girls 1993-1997* (Melbourne: Curriculum Corporation, 1993) and A Allard, M Cooper, G Hildebrand and E Wealands, *STAGES: Steps Towards Addressing Gender in Educational Settings* (Melbourne: Curriculum Corporation, 1995). See also, for example, D Spender, *Invisible Women: The Schooling Scandal* (London: Writers and Readers, 1982). For a United Kingdom perspective see G Weiner, *Feminism in Education* (Buckingham: Open University Press, 1994).

3 K Thomas, *Gender and Subject in Higher Education* (Buckingham and Bristol: The Society for Research into Higher Education and Open University Press, 1990) at 10. At 18 Thomas acknowledges some attention

to argue, for example, "that higher education curricula are as biased towards male experience as secondary education curricula."[4]

Participation-based equity issues, such as curriculum issues, have also been overshadowed to date by concerns about access.[5] In the context of tertiary legal education, however, access for women (at least white, middle-class, English speaking, city-dwelling women) is no longer a significant equity issue.[6] Women students of law are not included, for example, in the table of targets for enrolled students in equity groups in the Equity Plan of the Queensland University of Technology.[7]

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has been paid to women in higher education and curriculum issues — but that these issues generally relate to the non-traditional areas of study for women such as science, engineering, architecture and information technology.

4 *Id* at 20. See also for example, D Spender (ed), *Men's Studies Modified* (Oxford: Pergamon, 1981), and G Bowles and R Duelli-Klein (eds), *Theories of Women's Studies* (London: Routledge & Kegan Paul, 1983). Note also Griffiths' comment that "there is a prevailing sexism in and out of formal educational institutions: schools, universities, local authorities, governing bodies, government departments, educational publishing and voluntary pressure groups … [which] distorts educational practices and educational outcomes. This is precisely the concern of feminist epistemology: how to improve knowledge and remove sexist distortions.": M Griffiths, *Making the Difference: Feminism, Postmodernism and the Methodology of Educational Research, Papers Presented to the ESRC Seminar, Methodology and Epistemology in Educational Research*, Liverpool University, June 1992 at 3. See also, L Rowan, The Importance of the Act of Going: Towards Gender Inclusive Education (1997) 19(2) *Studies in Continuing Education* 124.

5 For a discussion of recent equity policy foci and issues in higher education in Australia see the feature entitled *Equity and Diversity* in (1994) 2 *The Australian Universities' Review*.

6 Studies by the World Bank reflect that world-wide access to higher education in general is no longer the concern for women that it was in the past: K Subbarao, L Raney, H Dundar, J Haworth, *Women in Higher Education: Progress, Constraints and Promising Initiatives*, World Bank Discussion Paper 244 (Washington DC: The World Bank, 1994). However, even as recently as the 1980s access to legal education has been noted as an international issue for women. For example, on this issue see Consultative Group on Research and Education in Law, *Report to the Social Sciences and Humanities Research Council of Canada: Law and Learning* (Ottawa, 1983) at 19, and the comments on this matter in note 47 below. In Australia, equity in higher education (particularly in terms of access) has been a central concern for universities since the release of the Department of Education, Employment and Training's *Higher Education: A Policy Statement*, (Canberra: AGPS, 1988).

7 QUT Equity Plan: Table 1 at http://www.qut.edu.au/pubs/equity/plan/equityplan.html. The table reflects that women who continue to be targeted in terms of enrolments include women students of engineering, computer science/information systems, architecture, science and postgraduate research.

Five years ago women represented approximately 50% of students studying law in Australian universities.[8] This continues to be the case at the Queensland University of Technology Faculty of Law.[9]

Equality of access to law schools for women has not levelled the law school playing field, however. The temptation to see women who have made it to law school as "successful", and to consider that equity concerns are better focused elsewhere, must be resisted.[10] This is because despite the apparent equality of access for women students of law, the reality of women's experience of learning at law school continues to be unequal to that of men.[11] That is, women do not yet have equity of participation in tertiary legal education.

One of the most important reasons as to why women's experience of tertiary legal education is inequitable relates to the content of the law school curriculum. In 1993, the Australian Law Reform Commission's (ALRC) Equality Before the Law Inquiry devoted an entire chapter of its report to the issue of gender bias in legal education and looked in particular at the issue of the law school curriculum. The

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8 The figures for 1993 are documented in C McInnis and S Marginson, *Australian Law Schools after the 1987 Pearce Report,* DEET Higher Education Division, Evaluations and Investigations Program (Canberra: AGPS, 1994, Table A5.20, 448). These figures can be compared with the following: 1984 — 41%, 1980 33.3% and 1974 21.1%: D Pearce, E Campbell and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission Volume 2* (Canberra: AGPS, 1987) para 11.7.

9 Statistics provided by a Senior Administration Officer at the Law Faculty on 2 November 1998 via http://www.qut.edu.au/chan/pb/planbudg/facultie/law/tables/lawenrg.htm. Since 1995 women have made up 49.5% of the QUT law student body.

10 Thomas, *supra* note 3, at 20, posits the view that one reason why there is comparatively little analysis of women in higher education is that women who have reached higher education are considered successful.

11 For example, women reported to the Australian Law Reform Commission's Inquiry into Equality Before the Law concerns in relation to the lack of availability of part-time courses, the lack of availability of child-care facilities, difficulties posed by the time-tabling of classes after 5pm, the time-tabling of exams during the school holidays period, and the difficulties women students have in getting involved as student representatives or on student bodies as a result of family responsibilities: The Australian Law Reform Commission, *Equality Before the Law: Women's Equality*, Report No.69 Part II (Canberra: AGPS, 1994) at 140. See also for example, DL Rhode, The 'Women's Point of View' (1988) 38 *Journal of Legal Education* 39, at 40 and T Lovell Banks, Gender Bias in the Classroom (1988) 38 *Journal of Legal Education* 137. See

ALRC reported that "the experiences and perspectives of women are lacking in course materials and textbooks,"[12] and recommended a two part reform strategy: first, that feminist legal theory be introduced into the curriculum and secondly, that women's experiences and perspectives be integrated into the content of courses, generally.

This article aims to highlight the importance of equity in terms of the curriculum content of tertiary legal education. It considers the issue of gender equity in the law school curriculum, five years after the release of the ALRC's report, and assesses how law schools have responded to some of the Commission's recommendations.[13] The first part looks at why the content of the law school curriculum is an equity issue for women. The second section assesses the current elective curricula of Australian law schools in the light of the ALRC's recommendation that feminist theory be introduced as a subject.[14] Thirdly, I consider the importance of the incorporation of women's

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also, L Guinier, M Fine and J Balin, Becoming Gentlemen: Women's Experiences at One Ivy League Law School (1994) 143(1) *University of Pennsylvania Law Review* 1 which details a comprehensive study of law students over a 5 year period and concluded that "the law school experience of women in the aggregate differs markedly from that of their male peers" (at 2).

12 ALRC, *supra* note 11, at 137. It is also interesting to note, however, the report's reference to other submissions commenting "that they perceive little direct discrimination in law schools and that most academic staff are sensitive to gender issues and attempt to use gender-inclusive language. One submission suggests that the situation experienced by women is far worse in the profession itself than at law school.": *Id*.

13 The full list of recommendations on legal education is as follows: "Tertiary legal education: 1. Law schools should ensure that the curriculum includes content on how each area of the law in substance and operation affects women and reflects their experiences. The curriculum includes the core curriculum and elective curriculum. 2. Law schools should ensure that feminist legal theory is offered in separate elective subjects or in elective subjects that deal with legal theory. 3. The Department of Employment, Education and Training should assess the incorporation of the experiences and perspectives of women in the law school curriculum as part of its annual quality evaluation of universities. 4. All law schools should encourage staff members to exchange information and advice on the incorporation of the experiences and perspectives of women in the content of all subjects. 5. All law schools should ensure that in recruiting new staff selection criteria assess an applicant's awareness of gender issues as applicable to the subject area to be taught. 6. Law schools should ensure that all aspects of tertiary legal education, including assessment tasks and course material, employ gender inclusive language and avoid sexist stereotypes of the roles of women and men in society.": *Id* at 156.

14 *Id* at 140.

perspectives into the core curriculum in the context of the ALRC's recommendation to this effect.[15]

Part 1 — Curriculum as an Issue of Gender Equity in Law Schools

In the context of Australian law schools, it is only since the mid-1980s, and arguably with the introduction of Regina Graycar's "Gender and the Law" unit at the University of New South Wales in 1987,[16] that the inclusion of women's perspectives in the law school curriculum has been considered a serious issue. The treatment of this issue by, and the conclusions of, the ALRC's inquiry into Equality Before the Law, referred to above, were an important advance in 1993. Then, in 1995, the Feminist Law Academics' Workshop held a conference entitled "Gender in Legal Education";[17] and a 1995 edition of the *Legal Education Review* was largely devoted to papers on this issue.[18]

Nevertheless debate has been sporadic and, outside of the ALRC Report, seemingly confined to discussions amongst those who understand the importance of the inclusion of gendered perspectives in law curricula. In terms of the broader legal academy in Australia, this issue has remained relatively low on its list of priorities. For example, there was virtually no discussion of gender in the law curriculum in the Pearce Report of 1987;[19] a 1990 Colloquium on Legal Education in NSW which looked at "the problems and challenges within the existing education processes that relate to the transforming of law students into legal practitioners",[20] did not concern itself with the implications of gender bias in the law school curriculum; and in a recent long article on the present status and future prospects of Australian legal education, the

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15 *Id*.

16 For a discussion of this unit see, K Rosser, The Feminist Project in Action (1988) 13(6) *Legal Service Bulletin* 233 where the unit is described as "an important contribution to legal education in Australia."

17 23-24 February at the Australian National University.

18 (1995) 6(2) *Legal Education Review* at 117–251. See also, J Grbich, Feminist Jurisprudence as Women's Studies in Law: Australian Dialogues, in AJ Arnaud and E Kingdom (eds), *Women's Rights and the Rights of Man* (Aberdeen: Aberdeen University Press, 1990) and V Kerruish, Barefoot in the Kitchen: A Response to Jack Goldring (1988) 18 *University of Western Australia Law Review* 167.

19 Pearce, Campbell, and Harding, *supra* note 8.

20 Law Foundation of NSW, *Colloquium on Legal Education — Background Papers*, 22-24 June 1990, at 2.

authors devote only one paragraph to the issue of 'feminism'.[21] In contrast, the United States legal academy has long acknowledged the need to include women's perspectives in the law school curriculum,[22] and the debate that has emerged on the issue in that country has been thorough and scholarly.[23]

21 The scant and inadequate treatment of the issue reads: "Another major force for change in the traditional aims of legal education is feminism. The patriarchal bias of the modern legal systems is now well recognised. The emergence of feminist liberation movements in the western world in the 1970s led to the establishment of women's studies programmes in Australian higher education institutions. However, these developments have not altered in any radical way the situation in Australian law schools. Given the central role of the law as mechanism "for transmitting and legitimating societal values" much pressure has been placed on the law and law schools to lead the change towards a recognition of female equality." There are only two footnotes neither of which provides a sufficient reference to the Australian writing in this area. There is no reference to the ALRC report: M Tsamenyi and E Clark, An Overview of the Present Status and Future Prospects of Australian Legal Education (1995) 29 *Journal of the Association of Law Teachers* 1. Further, Bird comments that "in the last twenty years there have been some important changes in legal education. … There has not however been any major assault on the content of the 'mainstream' or core curriculum.": G Bird, Race, Ethnicity, Class and Gender: Integral Issues for a Law Curriculum, in C Hedrick & R Holton (eds) *Crosscultural Communication and Professional Education*, Centre for Multicultural Studies, The Flinders University of South Australia, Adelaide, 1990, at 11. Debate about the law curriculum has rather been focused on matters such as which units should be compulsory for admission to legal practice. For example, the Pearce Report states that: "The gap in law school curricula most frequently identified in submissions to the Committee was the teaching of legislation": *supra* note 19 at 30. There is no mention in the relevant chapter of the summary of the report regarding integration of women's perspectives into the law school curricula, the only matter that comes close is a reference to the importance of paying attention in curricula to functions of law in society and to underlying policy and ethical issues: *Id* at 90. Note also that McInnes and Marginson refer little to these issues in their assessment of law schools after the Pearce Report, *supra* note 8.

22 The first US conference on gender bias in legal education was an American Association of Law Schools (AALS) sponsored Symposium on the Law School Curriculum and the Legal Rights of Women, held on October 20-21, 1972. The focus of that symposium was "on the need to integrate issues concerning women within the basic structure of American legal education, rather than simply relying on the Women and the Law courses that were then developing to remedy serious omissions in the curriculum as a whole.": EM Schneider, Task Force Reports on Women in the Courts: The Challenge for Legal Education (1988) *Journal of Legal Education* 87, at 90. Note also that the Women and the Law Project at American University's Washington College of Law has convened annual workshops on the treatment of women's rights in the law school curriculum: A Shalleck, Report of the Women and the Law Project: Gender Bias and the Law School Curriculum (1988) 38 *Journal of Legal Education* 97.

23 See for example, the symposium in (1988) 38 *Journal of Legal Education*, and KC Worden, Overshooting the Target: A Feminist Deconstruction

Why then is the content of the law school curriculum an equity issue for women? The answer calls for consideration from two perspectives. First, from the perspective of women law students, it is important that issues pertaining to their gender are recognised, included, and responded to, if women are not to feel silenced, marginalised and isolated in their legal studies. Secondly, from the perspective of women consumers of legal services, it is important that their needs and perspectives are properly understood through legal education if they are to be adequately served by the legal profession. These matters are discussed in turn below.

Equity in the Law School Curriculum: The Perspective of Women Students of Law

Traditionally, the law school curriculum has ignored the specific perspectives of women, because, according to well-established liberal legal ideological approaches to understanding the law, the law is something which is objective, neutral and value-free.[24] Outside of feminist critiques, there is little or no recognition in either the law itself or the teaching of law that our legal system rests on an androcentric vision of reality and human nature which makes it inherently flawed; the reasonable

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of Legal Education (1985) 34 *American University Law Review* 1141. Note also that in J Morgan, Feminist Theory as Legal Theory (1988) 16(4) *Melbourne University Law Review* 743 the centrality of the feminist legal project to law and legal education in America is acknowledged.

24 For a comprehensive discussion of the existence of gender bias in the substance of legal principles and in the decisions of courts see Chapter 2 of the ALRC's Report, *supra* note 11. For the work of feminist legal theorists that has helped reveal the systemic gender bias of the law see, for example, R Graycar and J Morgan, *The Hidden Gender of Law* (Sydney: Federation Press, 1990), C MacKinnon *Feminism Unmodified: Discourse on Life and Law* (Cambridge MA: Harvard University Press, 1987), LM Finley, Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning (1989) 64 *Notre Dame Law Review* 886, N Naffine *Law and the Sexes: Explorations in Feminist Jurisprudence* (Sydney: Allen and Unwin, 1990), and M Davies, *Asking the Law Question* (Sydney: The Law Book Company Limited, 1994) at Chapter 6. See also R Morgan, Legal Education Watershed (1992) 17 *Alternative Law Journal* 140, M Thornton, Portia Lost In the Groves of Academe Wondering What to do about Legal Education (1991) 34 *The Australian Universities' Review* 26, CA MacKinnon, Feminism in Legal Education (1989) 1 *Legal Education Review* 85, BA Hocking, Feminist Jurisprudence: The New Legal Education (1992) 18 *Melbourne University Law Review* 727, E Jackson, Contradictions and Coherence in Feminist Responses to Law (1993) 20 *Journal of Law and Society* 398, and M Thornton, Women and Legal Hierarchy (1989) 1 *Legal Education Review* 97.

person standard, for example.[25] Nor is there sufficient acknowledgment that legal scholarship rests on androcentric primary and secondary materials; judgments written predominantly by men, legislation devised, drafted and enacted predominantly by men, for example.[26]

Although feminist legal theory has questioned the claim of the law to be rational, objective and neutral,[27] it has not yet foiled the perpetuation of male biases in the law and the law school curriculum. And whilst, in some law courses, "there have been efforts to present material about the law's differential impact on men and women, and to analyse the 'maleness' of legal standards and values",[28] such efforts are said to be often "piecemeal and *ad hoc*, and they are often considered to be — by both students and faculty — peripheral to the main focus of the curriculum."[29] Without, therefore, the introduction of a specific focus on women's perspectives on law, the curriculum will continue to reflect the persistent androcentric state of legal "knowledge"[30] and, importantly, from the perspective of women students of law, women will continue to be cast as "other" by the law and the law school curriculum.[31]

The challenge for feminists in curriculum reform in law schools is "to transform the normative tradition of law so

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25 L Bender, A Lawyer's Primer on Feminist Theory and Tort (1988) 38 *Journal of Legal Education* 3. We have a "curriculum designed, in the main, by male, middle class, 'Anglos' and reflecting their perceptions of the reality of the legal order.": Bird, *supra* note 21, at 30.

26 M Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations (1987) 22 *Harvard CR — CL Law Review* 323 at 344

27 KT Bartlett, Feminist Legal Methods (1990) 103 *Harvard Law Review* 829, at 831.

28 MJ Mossman, 'Otherness' and the Law School: A Comment on Teaching Gender Equality (1985) 1 *Canadian Journal of Women and the Law* 213, at 214. Mossman also refers to Katherine O'Donovan, Before and After: The Impact of Feminism on the Academic Discipline of Law in D Spender (ed), *Men's Studies Modified* (New York: Pergamon Press, 1981). See also the discussion of gender electives offered in Australia in Part 2 below.

29 Mossman, *supra* note 28, at 214.

30 *Id*.

31 "Now what particularly signalises the situation of woman is that she — a free and autonomous being like all human creatures — nevertheless finds herself living in a world where men compel her to assume the status of Other." Simone de Beauvoir, *The Second Sex*, trans HM Parshley 1953, reprint (New York: Random House, Vintage Press, 1974) at xxxiii. Mossman has commented that this statement of de Beauvoir, written in 1949, still applied in 1985 as an apt characterisation of women in most Canadian law schools: Mossman, *supra* note 28, at 214. It could be said that 13 years on it still applies in most Australian law schools, notwithstanding some improvements to the curriculum.

that what law now recognises as 'otherness' is seen as central to an understanding of law and society."[32] Or in other words to challenge dominant assumptions held by law and to develop alternative "conventions which take better account of women's experiences and needs."[33] Until that is achieved, however, women will continue to study law in a virtual contextual vacuum as far as gender issues are concerned.[34] Work to date on the impact of this learning environment on women students has focused on issues arising in the classroom and the methodologies of legal pedagogy.[35] Of particular concern has been the silencing, alienation and marginalisation of women at law school as a result of the designation of women's issues and perspectives as irrelevant.[36] I have not uncovered any research, however, which links experiences such as these with decisions by women to discontinue their legal studies, or with decisions of women to opt out of the private practice of law[37]

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32 Mossman, *supra* note 28, at 218. Feminist legal theorists are seeking "not just to tinker with the legal system, but to fundamentally change it.": *Id*.

33 See Bartlett, *supra* note 27. Some of the different feminist approaches include: C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge MA: Harvard University Press, 1982), CA MacKinnon, *Feminism Unmodified: Discourse on Life and Law*, *supra* note 24, R West, The Difference in Women's Hedonic Lives: a Phenomenological Critique of Feminist Legal Theory (1987) 3 *Wisconsin Women's Law Journal* 81, A Harris, Race and Essentialism in Feminist Legal Theory (1990) 42 *Stanford Law Review* 581, N Duclos, Lessons of Difference: Feminist Theory on Cultural Diversity (1990) 38 *Buffalo Law Review* 325.

34 Bird, *supra* note 21, at 2. Bird argues "for a contextualisation of law school curriculum to bring the teaching of law closer to the reality of Australia's pluralist democracy": *Id* at 20. Bird also states that "Curriculum development must always take account of the curriculum producers (staff on faculty) and the curriculum consumers (the students).": *Id*.

35 See, for example, the following papers in (1988) 38 *Journal of Legal Education*: T Lovell Banks, Gender Bias in the Classroom, *supra* note 11, PA Cain, Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections, at 165 and DL Rhode, The Women's Point of View, *supra* note 11; and MJ Mossman, Gender Issues in Teaching Methods: Reflections on Shifting the Paradigm, (1995) 6 *Legal Education Review* 129.

36 See for example, LM Finley, Women's Experience in Legal Education: Silencing and Alienation (1989) 1 *Legal Education Review* 101, SM Wildman, The Question of Silence: Techniques to Ensure Full Class Participation (1988) 38 *Journal of Legal Education* 147, LM Finley, Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning, *supra* note 24. R Graycar, "to transform the normative tradition of law …" a comment on the feminist project in the law school, (1986) 58(4) *Australian Quarterly* 366 at 368 also notes that women are becoming more vocal about being marginalised by the content (and method) of their legal education.

37 See M Thornton, *Dissonance and Distrust – Women in the Legal Profession* (Melbourne: Oxford University Press, 1996).

and to direct their working preferences towards government or community legal organisations, for example.[38] Further research is warranted on these matters.

Equity in the Law School Curriculum: The Perspective of Women Consumers of Legal Services

Not only do "law schools play a critical role in shaping and socializing our attitudes toward the law, the legal profession generally, and appropriate styles of lawyering,"[39] but the content of Australian undergraduate law courses satisfies the academic requirements for admission to practice.[40] It is fair to say, then, that "legal education is the foundation of every lawyer's function and performance in the legal system."[41] And to the extent that the law school curriculum ignores gender issues, it legitimises and perpetuates the existing biases in the legal system and the practice of law.[42]

For example, submissions to the ALRC indicated that women are dissatisfied with the service they receive from many lawyers. They refer to lawyers' lack of expertise in the kinds of problems women present and to a failure to see how a woman's perspective may not be properly represented in traditional legal thinking and practice. They describe this as

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38 Women are "far more likely to plan to work in a community legal service organisation", and are "somewhat more likely to be interested in working in the public sector.": C Roper, *Career Intentions of Australian Law Students*, The Centre for Legal Education (Canberra: AGPS, 1995) at 97 (see also Table 8.2) and at 109 (see also Table 9.2).

39 Schneider, *supra* note 22, at 88. The ALRC comments that "law school provides the foundation of knowledge a student will use to practise as a lawyer. To some degree, it will also mould the attitudes of a student towards the law. For this reason the law school environment contributes to the training of lawyers.": ALRC, *supra* note 11, at 136.

40 Pearce et al, *supra* note 19, at 30. This has resulted in the legal profession having a considerable influence over law school curricula and is, in my view, linked to the lack of prioritisation of women's issues in legal education, that is, because of the patriarchal nature of the profession. Until recently some people qualified for practice via means such as Solicitor's Board courses but these are now uncommon, and most lawyers complete their degree at a university.

41 ALRC, *supra* note 11, at 134. Further, whilst the law school curriculum is important it should also be noted that "legal education is a life long process, involving formal education, the actual performance of legal work, the example of fellow practitioners and self instruction.": *Id* at 135. See also J Goldring, Better Legal Education: An Essential Element for All, *Convention Papers Volume 1, Day 2*, 28th Australian Legal Convention, Hobart 26-30 September 1993, at 36, and also W Twining, Developments in Legal Education: Beyond the Primary School Model (1990) 2 *Legal Education Review* 35.

42 Bird, *supra* note 21, at 7.

an issue in court cases and in legal practice generally.[43] And in relation to the operation of the court system it has been said that "the judiciary, the profession and all who work in the courts need to be aware of and understand the hidden or unconscious gender bias in the law and the administration of justice so that it can be consciously dealt with and consciously eliminated and avoided."[44]

It is also important to note, however, that "in Australia more than a third of graduates with law degrees do not practise law."[45] That is, notwithstanding the fact that "in Australia law schools see their primary task as training lawyers for legal practice",[46] many legally trained people are not working "in practice" but rather in contexts such as government, the community sector, academia or jobs in which a knowledge of the law is useful but not essential, for example, business or accounting.

The impact of the biased nature of the content of legal education is not therefore confined to those women who use the services of private legal practitioners, but rather extends to women as consumers of all forms of legal services, from government policy development and law reform to the provision of community legal services.

In terms then of the general calibre of lawyers who graduate from our law schools every year, the equity-based content of the law school curriculum is extremely important[47] if they are

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43 ALRC, *supra* note 11, at 134.

44 Chief Justice Malcolm, Women and The Law: Proposed Judicial Education Programme on Gender Equality and Taskforce on Gender Bias in Western Australia (1993) 1 *Australian Feminist Law Journal* 139, at 144. See also para 1.14 of the Commonwealth Government's *Access to Justice Report – An Action Plan* (Canberra: AGPS, 1994). Consider also the following submission to the ALRC: "The gender bias present in Australia's legal system can, in part, be attributed to the sexist perspectives entrenched in our legal education. Gender bias in legal education breeds gender bias in lawyers and judges." ALRC, *supra* note 11, at 134 quoting J Jago (ed) Submission 160.

45 Committee of Australian Law Deans, *Studying Law in Australia* (Canberra: AGPS, 1994) at 10.

46 ALRC, *supra* note 11, at 136. See also S Bottomley, N Cunningham and S Parker, *Law in Context* (Sydney: Federation Press, 1991) at 118.

47 The form and content of the law school curricula have been identified as perhaps the most frequently debated topics in law schools: Pearce at al, *supra* note 19, at 29. In America a Report of the American Bar Association of 1987 said that "the curriculum is the heart of the law school education program. As such, it requires constant attention to ensure that it meets the present and, to the extent determinable, the future needs of students released into a constantly changing profession.": Council of the American Bar Association Section of Legal Education and Admissions to the Bar, *Long-Range Planning for Legal Education in*

to be able to serve "women as well as men".[48] Lawyers, therefore, whether practising or non-practising and irrespective of their gender,[49] need their legal education to include content relevant to women. Lawyers need an understanding of the way the law excludes, silences and disadvantages women. They need to know how women are affected by the law, what perspectives women might have on the application of laws. They need to understand issues such as the historical and contemporary position of women in society and vis-a-vis the law, what rights women have gained and have yet to attain, and the invisibility of women and their concerns. This is because the law is a real discipline, involving people and their lives, and the study of law, if it is to be equitable, must also therefore be real.[50] For this to be achieved the discordance in the curriculum between the reality of the legal order as it is taught, and the reality as it is experienced by women, must be rectified.[51]

The strength of the influence of law schools and their curricula on the future characteristics of Australia's legal profession should not be underestimated. Indeed legal education has the power either to create and perpetuate inequality in

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the United States, July 1987 at 28. However, it is worth mention that the report identifies (at 11) recent "significant but scarcely revolutionary" changes to the curriculum as being issues such as methods of instruction, professional skills training, ethics education and the introduction of Alternative Dispute Resolution subjects (at 11–12). There is no mention of women's issues in the curriculum notwithstanding the work that had been done by groups such as the AALS since 1972. Interestingly, where women are mentioned in the report it is in relation to access issues to legal education. For example, the report mentions affirmative action programs in the US to give women access to legal education and the section of the American Bar Association which authored the report sponsored a Conference on Legal Education in the 1980 (Nov 12-14, 1981 in New York) at which issues of access were a feature.

48 ALRC, *supra* note 11, at 134. Desired goals for legal education and the legal profession as outlined by the ALRC "are that all people who administer the legal system, magistrates, judges, solicitors, barristers and court staff, take account of the needs of women and that the perspectives of women are included in the shaping of legal concepts and doctrines.": *Id* at 135. See also Australian Law Reform Commission, *Equality Before the Law*, Discussion Paper 54 (Sydney: ALRC, 1993) particularly at para 7.2.

49 ALRC, *supra* note 11, at 135.

50 As Bird puts it: "The image of the plaintiff or defendant in a civil or criminal action stripped of attributes of race ethnicity, gender and class appearing naked and equal before the law can be seen … as a fairytale." Bird, *supra* note 21, at 16.

51 *Id* at 12.

the practice of the law, or to redress it. As a submission to the ALRC put it: "If students are exposed to the importance of equality before the law in its various forms, the legal profession is likely to benefit from educated individuals who have an understanding of gender politics and the means to put this knowledge into constructive use in practice as legal professionals …".[52]

The reform of the Australian law school curricula to include women's issues and perspectives is, however, no easy task. There are already many published accounts of the problems women academic staff and students have encountered in the endeavour to date.[53] The following part of this article discusses the introduction of feminist legal theory into the elective curriculum of law schools in Australia and the issues this move raises in terms of equity reform of law school curricula.

Part 2 — Feminist Legal Theory and Women and the Law Units: Women's Perspectives in the Elective Curriculum

Before discussing the inclusion of women's perspectives in the law curriculum's elective stream it is necessary first to introduce in general terms the structure of the law school curriculum.

The basic Bachelor of Laws (LLB) course is offered by 27 of the 38 Australian universities.[54] The course is divided into the core curriculum and elective curriculum. The content of the core curriculum is compulsory and includes units which satisfy the profession's requirements for admission to practice.[55] Courses offered in the elective curriculum generally

52 ALRC, *supra* note 11, at 141 quoting J Jago (ed) Submission 160.

53 For example, LG Espinoza, Constructing a Professional Ethic: Law School Lessons and Lesions (1989–90) 4 *Berkeley Women's Law Journal* 215, M Torrey (et al), Teaching Law in a Feminist Manner: A Commentary from Experience (1990) 13 *Harvard Women's Law Journal* 87, LM Finley, Women's Experience in Legal Education: Silencing and Alienation, *supra* note 36, KB Czapanskiy and JB Singer, Women in the Law School: It's Time for More Change (1988) 7 *Law and Inequality* 135, M Stewart, Conflict and Connection at Sydney University Law School: Twelve Women Speak of Our Legal Education (1992) 18 *Melbourne University Law Review* 828. These writings are referred to at p 137 of the ALRC Report, *supra* note 11.

54 Australia's universities are listed on the AVCC Australian Universities WWW Servers page (http://www.avcc/uniwebs.htm).

55 The Hon. Mr. Justice R McGarvie, The Function of a Degree: Core Subjects, *Law Council of Australia Legal Education Conference Papers,* Bond University, Queensland, 13–16 February 1991. C Sampford, Rethinking

involve "a more detailed examination of a subject or part of a subject offered in the core curriculum or an area of study not taught in the core curriculum."[56] Whilst the admission subjects in the core curriculum[57] are uniform throughout law schools, other subjects in that curriculum, and the elective subjects offered, vary according to the policies and priorities of individual Law Faculties, and according to the skills and talents of those on staff at each respective law school. This diversity is something which is said to be valued and fostered by law schools.[58]

The ALRC recommended in 1993 that feminist legal theory be offered "in separate elective subjects or in elective subjects that deal with legal theory."[59] This was an important step forward for equity-based curriculum reform. Since the recommendation was made, how many of Australia's law schools have introduced feminist legal theory units into the elective curriculum? A study of the elective curriculum subject lists of all 27 of Australia's law schools revealed that currently only eight universities[60] offer a specific elective subject entitled "feminist legal theory" (or "feminist jurisprudence" or "feminist theories of law"). A further seven universities offer elective units with titles not restricted to a theoretical analysis of issues for women and the law. For example at Monash University, two electives are available entitled "Crime and Gender" and "Law, Gender and Feminism"; Sydney University offers "Gender, Injury and Compensation", "Law and Gender" and "Women, Law and Family"; and the

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the Core Curriculum (1989) 12 *Adelaide Law Review* 38. See also note 57 below.

56 ALRC, *supra* note 11, at 141–42.

57 See discussions at *Id* para 8.15 and 8.16 (at 142–3). The eleven subjects are: criminal law and procedure, torts, contracts, property (including torrens title), equity (including trusts), administrative law, federal and state constitutional law, civil procedure, evidence, professional conduct and company law. See also Consultative Committee of State and Territorial Law Admitting Authorities, *Uniform Admission Requirements: Discussion Paper and Recommendations*, April 1992, Appendix A. See also *Uniform Admission Rules*, rule 3(b).

58 ALRC, *supra* note 11, at 141–42.

59 *Id* at 156: Recommendation 8.1 at para 2.

60 The lists were accessed through the internet home pages for each university via the AVCC Australian Universities WWW Servers page (*supra* note 54) and the details are current as at second semester 1998. The 8 universities are: University of Queensland, University of Melbourne, University of Adelaide, Murdoch University, University of NSW, Northern Territory University, University of Tasmania and the Australian National University.

University of Western Australia offers "A Feminist Analysis of Law".[61]

Fifty-six percent (56%) of Australia's law schools, then, offer a feminist legal theory elective, or another gender based elective subject or subjects. Importantly, however, the results of this study, when compared with the claim in the ALRC report itself that as at 1993, 17 Australian law schools offered a feminist legal theory elective subject,[62] indicate that there has been virtually no progress since that time in terms of the overt inclusion of subjects addressing issues for women and the law in the elective curriculum. In fact we seem to have gone backwards as the ALRC's study identified two more institutions offering a feminist legal theory elective than this study.[63] One of these two is my own institution, the Queensland University of Technology, which has never offered a separate feminist perspectives elective, but which had stated in its response to the ALRC's *Law school questionnaire*[64] that such an elective was proposed for introduction in 1996.[65]

It should be noted, however, that feminist legal theory may be included in the general legal theory units of the remaining 44% of law schools (and also that this was an alternative offered in the ALRC's recommendation).[66] It was not

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61 The other universities offering such electives are The Flinders University of South Australia, Bond University, University of Wollongong and the University of Technology, Sydney. Further, a number of universities offer discrimination based electives which link closely with gender issues, for example the University of Melbourne offers "Law and Discrimination"; "Anti-Discrimination Law" is available for study at the University of Wollongong, the University of Tasmania and the Queensland University of Technology; and the University of Western Sydney and the University of NSW offer "Discrimination and the Law" electives. Further, The Flinders University of South Australia offers a subject entitled "Women's Rights and International Human Rights".

62 ALRC, *supra* note 11, at 148. See the lists of universities at nn 88, 89 on that page.

63 *Id* at n 89.

64 The Commission did a survey of law schools to gauge "the extent to which feminist legal theory and women's perspectives were incorporated into their curricula.": *Id* at 136.

65 In 1999 a Women, Children and the Law Research Concentration was initiated at the Queensland University of Technology.

66 It should be noted in relation to this study that: 1. Only law courses were canvassed. Other justice related courses may include content relevant to women. For example, it is a founding principle of the School of Justice Studies at QUT that issues of race, gender, class and ethnicity are incorporated into teaching. 2. The search was conducted by unit name only — so where women's perspectives have been integrated

within the scope of the present study, however, to review the content of each university's jurisprudence unit. Nevertheless, it is disappointing that five years after the release of the Equality Before the Law Report, the status quo has been maintained and still only a bare majority of law schools in Australia expressly offer a gender-based elective subject. The implication of this is that the ALRC's recommendation on this matter has made little or no impact on law school curricula. This in turn means that women and their perspectives continue to be cast as "other" in the law school, and still only an insufficient percentage of our future lawyers are given the possibility of access to a critique of laws and the legal process from a feminist perspective.

Importantly also, it should be noted that the introduction of a gender and the law unit in the elective curriculum is no panacea for women students of law, nor for women consumers of legal services.[67] Indeed a number of problems have been identified with this strategy for equity-based curriculum reform. For example, it is a danger that law faculties will substitute offering a feminist law elective for dealing with these issues in the core curriculum.[68] Also, the elective curriculum is generally limited to the final years of a law degree, and elective subjects are self-selected by students.[69] This means that not only will feminist issues dealt with in elective units not be encountered by all students,[70] but also those who choose to do the units are often what might be termed "the converted".[71] Further, the marginalisation[72]

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in other ways this is not apparent. 3. Some electives may have been offered in the past but don't appear now, for example, La Trobe University is listed in the ALRC report (*supra* note 11, 148 at n 89) as offering a feminist legal theory unit, but has no such unit listed currently. 4. Also, most universities offer jurisprudence as an elective and some make it compulsory and this may be one area where issues are integrated. For example, at the Queensland University of Technology 1 week of the Theories of Law unit is devoted to feminist jurisprudence.

67 For a contrary, extremely optimistic view see, for example, L Spender, Women and the Law (1990) 15(1) *Legal Service Bulletin* 38.

68 ALRC, *supra* note 11, at 147. "It is possible that the existence of a specialised course in law and feminism can lead an institution to think that it now has 'gender equality' and thereby ignore the implications of feminism on the rest of what is taught.": *Id* quoting a submission from C MacDonald (et al) Submission 333. Mossman, *supra* note 28, at 214.

69 ALRC, *supra* note 11, at 147.

70 Mossman has noted the issue of limited enrolments, *supra* note 28, at 214.

71 ALRC, *supra* note 11, at 147 and Graycar, *supra* note 36, at 370.

72 Graycar, *supra* note 36, at 369 and ALRC, *supra* note 11, at 147.

of feminist perspectives on law that accompanies their relegation or hiving off to the elective curriculum brings with it a stigmatisation of those students, usually women, who enrol in such units.[73]

In short, although inclusion of gender and the law type electives is an important part of an equitable approach to reform of the law curriculum it cannot be considered the end of the matter. This is because if the feminist content of an elective unit is bypassed by a student, then it is possible that they may never be exposed to information about the experiences and perspectives of women, and may never have an opportunity to experience a critical challenge to the androcentric, liberal legal ideology.

Part 3 — The Integration of Women's Perspectives in the Core Curriculum

The development of feminist electives in the law curricula of a relatively small number of Australia's law schools is not sufficient progress for gender equity in the law school. It is too little spread too thin. The real answer, the ALRC has asserted, is to integrate the experiences of women into the content of courses throughout the entire curriculum, including importantly, the core curriculum.[74] On this issue a 1972 statement by the Association of American Law Schools is an effective summary of the situation in Australia at the end of 1998:

> Basic substantive courses in the law school curriculum traditionally have omitted materials respecting the legal status of women. … It is not surprising that many students erroneously assume that men and women are treated equally by the law. [Women and the law courses] reach only a small minority of law students. Unless information on the legal rights and disabilities of women is included in the most basic law school courses, the nation's law school graduates will continue to have scant understanding

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73 Mossman, *supra* note 28, at 214. Also Erickson has commented that "[s]ometimes a law school does not omit subjects of special interest to women but treats them as 'fringe' courses. For example, such courses may be offered only rarely or less often than the demand for them would call for.": NS Erickson, Sex Bias in Law School Courses: Some Common Issues (1988) 38 *Journal of Legal Education* 101, at 103.

74 ALRC, *supra* note 11, at Recommendation 8.1, para 1 at 156 and see also comments at 140.

of the legal restrictions under which 53% of the population lives.[75]

It is well beyond the scope of the study for this article to assess whether any feminist content has been integrated into core curriculum subjects across Australia's law schools. Such an assessment would be a massive task. It is, however, a matter deserving future detailed study, and this section highlights the importance of continuing research in this area for achieving a better integration of women's issues into law courses, and as a consequence, attaining true gender equity in the law school curriculum.

As discussed in Part One, above, the integration of women's issues into the law curriculum, including the core curriculum, is crucial for gender equity in legal education both from the perspective of women law students, and from the perspective of women consumers of legal services.

Submissions to the ALRC on this issue included statements such as: "If feminist jurisprudence is taught in all stages of a law degree lawyers cannot go on to build a career in ignorance without the knowledge of women's valuable contribution to society."[76] "The integration of feminist jurisprudence into core subjects would heighten awareness of the issues affecting women amongst all law students."[77] And "it is not asking for a lot for … students to learn more about half the population, surely this will make them better lawyers."[78] Further, Regina Graycar has said of equity-based curriculum reform in law schools that our aim should be "to reach a situation such as obtains in Norway at the University of Oslo, where in addition to there being a separate department of women's law, it is required of each compulsory course that there be a feminist component."[79]

The process of attempting to integrate women's issues into the traditionally androcentric core law curriculum is, however, one which is extremely challenging and confronting for legal academics. This is because integration would

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75 American Association of Law Schools Symposium on the Law School Curriculum and the Legal Rights of Women, Advance Notice (1972), quoted by Erickson, *supra* note 73, 101 at n 1. See also, A Wallach, Book Review: Women and the Law (1975) 10 *Harvard CR-CL Review* 252.

76 ALRC, *supra* note 11, at 144 quoting T Jowett Submission 544.

77 *Id* quoting C MacDonald (et al) Submission 333.

78 *Id* at 145 quoting T Jowett Submission 544.

79 Graycar, *supra* note 36, at 370.

require all legal academics to "rethink the structure, content and process of their course."[80] As a result, reasons for resistance to integration are many. For example, some believe that making materials compulsory that have a 'strong ideological perspective' is inappropriate in the 'neutral' world of law and legal education.[81] Others consider that inclusion of feminist perspectives in the core curriculum will perpetuate and entrench gender differences.[82]

Further reasons for resistance have also come to light through a cross-discipline curriculum integration project conducted by MacCorquodale and Lensink at the University of Arizona.[83] That project identified at least 6 further modes of resistance to integration.

First, academics in that project found it difficult to integrate perspectives and materials relating to women because they have been traditionally and culturally devalued.[84] Second, academics struggled with the question of what to cut from a course in order to include new materials on women, and this was used as an excuse for not including women's perspectives.[85] Third, many academics found the imperative to integrate women's perspectives to be an encroachment on academic freedom. They considered that "women's studies is now telling us what to teach."[86]

Fourth, some academics simply rejected feminist scholarship as lacking academic value because of its inclusion of issues which are considered to be irrational and unscientific,

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80 P MacCorquodale and J Lensink, Integration Women into the Curriculum: Multiple Motives and Mixed Emotions in GP Kelly and S Slaughter (eds), *Women's Higher Education in Comparative Perspective* (Kluwer Academic Publishers: Netherlands, 1991) at 305.

81 ALRC, *supra* note 11, at 147 referring to the Queensland Law Society Submission 324.

82 For example, in a survey conducted by students at the University of Tasmania, 75% of students took this view on the inclusion of feminist legal theory in the core curriculum. The survey was conducted of third year women students and received 40 responses in total: *Id* referring to submission 258.

83 The project worked with tenured academics over a number of years to encourage the incorporation of materials concerning women in the general curriculum.

84 MacCorquodale and Lensink at 302. That is, "[t]he new scholarship on women asks its readers to re-examine assumptions, values, and practices from a new perspective that challenges taken-for-granted viewpoints." This can be compared with Catharine MacKinnon's analysis of the point-of-viewlessness of liberal legal ideological notions of law: see MacKinnon, *supra* note 24.

85 MacCorquodale and Lensink, *supra* note 80, at 303.

86 *Id*.

such as emotion.[87] Fifth, some academics resisted the integration of women's perspectives into their courses on the basis of the argument that women are only one group of many that are oppressed.[88] And sixth, others effectively resisted integration by defining their area so narrowly so as to say that women's scholarship is not applicable.

The potential excuses for avoiding integration are, therefore, many. It is for this reason that diligence is required in assessing the progress and approaches of law schools on this issue. First further research is required on what integration has occurred to date. For example, in each subject, and across every law school in Australia, there needs to be a gendered assessment of the content of course lectures and tutorials, as well as materials, such as case books, text books, reading lists and handouts.[89] Secondly, even currently, there is no shortage of material available for use in core curriculum units which would assist with the integration of women's perspectives, and these need to be more widely promoted and disseminated. Examples of such materials include texts such as Jocelynne Scutt's *Women and the Law*[90] and Regina Graycar and Jenny Morgan's *The Hidden Gender of Law*.[91] There are also numerous articles regarding the integration of women's perspectives into core curriculum subjects.[92] Finally

87 *Id*.

88 *Id*. "The uniqueness of women's position and experience was obscured by deflecting the discussion to other groups who experience discrimination (eg blacks, the impoverished, the untenured, even 'the ugly')."*Id*.

89 For example, in the US Erickson and Taub set up a criminal law project where they reviewed all the common criminal law texts, reviewed the sex bias in cases and legal doctrines in the criminal law, and looked at ways (until case books are improved) that teachers can remove sex-bias from courses even whilst using materials that contain sex bias. The Criminal Law project found that 15 years after the 1972 Symposium the goal of integration had not been accomplished: Erickson, *supra* note 73.

90 J Scutt, *Women and the Law – Commentary and Materials* (Sydney: The Law Book Company Limited, 1990).

91 R Graycar and J Morgan, *The Hidden Gender of Law*, *supra* note 24.

92 KA Lahey and SW Salter, Corporate Law in Legal Theory and Legal Scholarship: From Classicism to Feminism (1985) 23 *Osgoode Hall Law Journal* 543, M Maloney, Women and the Income Tax Act (1989) 3 *Canadian Journal of Women and the Law* 182, E Inguili, Transforming the Curriculum: What Does the Pedagogy of Inclusion Mean for Business Law? (1991) 28 *American Business Law Journal* 605, MJ Frug, Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law (1992) 140 *University of Pennsylvania Law Review* 1029, S Wright, A Feminist Exploration of the Legal Protection of Art (1994) 7 *Canadian Journal of Women and the Law* 59. See also, Graycar and Morgan's, *The*

and importantly, in response to the ALRC's recommendation, the government provided funding for the development of gender-sensitive teaching materials on the themes of citizenship, work and violence. These materials are available on the internet through Uniserve Law.[93]

Helping academics with the content of materials that integrate women's perspectives into the core curriculum is important. But legal academics may also need assistance and encouragement with process. The third point then is that programs on specific strategies for integrating feminist perspectives into the core law school curriculum need to be developed. A starting point is perhaps to encourage academics to view each small step as important, even ideas as basic as including readings with a feminist perspective, inviting guest lecturers from Women's Legal Services or other feminist organisations, and re-designing assessment from a feminist perspective.[94]

Conclusion

Feminist scholarship has placed issues for women and the law on the agenda for reform and debate, and has forced the recognition that gender is relevant in legal education.[95] To date the greatest advance in equity curriculum reform has been the instigation of feminist electives in some Australian law schools. But this is not sufficient progress in terms of the recognised need to overcome the androcentric nature of tertiary legal studies. For the sake of future women students of law and future women consumers of legal

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Hidden Gender of Law, *supra* note 24, at 8 n 33. See also the following papers in (1995) 6 (2) *Legal Education Review*: N Seuffert, Feminist Epistemologies and a Law-in-Context Jurisprudence Course: A New Zealand Experience at 153, L Behrendt, Women's Work: The Inclusion of the Voice of Aboriginal Women at 169, L Bennett, Gender in the Labour Law and Occupational Health and Safety Law Curriculum at 175, RJ Owens, Work and Gender in the Law Curriculum at 183, P Spender, Women and the Epistemology of Corporations Law at 195, L Sarmas, Uncovering Issues of Sexual Violence in Equity and Trusts Law at 207, D Otto, Integrating Questions of Gender into Discussion of 'the Use of Force' in the International Law Curriculum, at 219, J Stubbs, Teaching About Violence Against Women: An Interdisciplinary Project at 229 and K Rubenstein, Citizenship and Gender in the Public Law Curriculum: Reclaiming Political Stories and Context at 241.

93 See http://www.anu.edu.au/law/pub/teaching_material/wem_index.html

94 Bird, *supra* note 21, at 31.

95 Graycar, *supra* note 36, at 371.

services a comprehensive equity program for all Australian law schools focused on participation-based issues should be developed with the aim of re-igniting the push for elective as well as core curriculum reforms. This is because equity reform of tertiary legal education at the beginning of the twenty first century is about much more than simply access, it is about the future of legal education and ultimately also of the law itself.

TEACHING NOTE

Legal Education in the Technology Revolution

The evolutionary nature of computer-assisted learning

Maree Chetwin & Cally Edgar***

Introduction

The wider community's rapid assimilation of computer-based tools in the 1990s has given rise to calls by students for parallel integration of these innovations into their education.[1] This call has been intensified by the provision of computer hardware infrastructure and of Computer-Assisted Learning (CAL) programs[2] such as Iolis. The United Kingdom's Law Courseware Consortium's (LCC) homepage[3] describes Iolis CD-ROM as follows:

> Iolis is a collection of learning materials for undergraduate law students. It contains interactive exercises, charts, diagrams photographs and more, covering most of the subject areas taught in a typical UK undergraduate degree. It also contains a large full-text library of over 2,000 cases, statutes and articles.

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 (1999) 10 *Legal Educ Rev* 163.

1 See T Suwardy and P De Lange, Delivery of Accounting Subjects via the Internet: Student Perceptions (1998) 11 *Accounting Research Journal* 327, at 335 in which the authors report the findings of an empirical study into attitudes of students towards the Internet. They note that "94% of respondents believed that the Internet would be used increasingly as an educational tool and that this would be beneficial to their careers" and that the "vast majority (90%) of respondents felt that the Internet would be "a significant part of their (future) work environment".

But see also R Jones and J Scully, Hypertext within Legal Education (1996) 2 *The Journal of Information Law and Technology* <http://elj.warwick.ac.uk/jilt/cal/2jones/> where they cite evidence that approaches used in some electronic workbooks act to "demotivate and discourage" students.

2 See Students' Comments, *infra* Appendix A, in which a call is made for further computer tutorials on other subjects offered in the AFIS 253 course.

3 <http://www.law.warwick.ac.uk/lcc/>

The features of Iolis have been described in detail elsewhere.[4] The features are summarised by Grantham:[5]

(a) an easy to use and powerful navigation system

(b) self-test questions with feedback

(c) excellent resource books with leading case reports and some leading articles

(d) self-paced learning

(e) an increasingly wide range of subjects or modules

(f) a scrapbook and copying/printing facility

(g) annotation facility

(h) twice yearly updates

(i) recently introduced direct link with some Web resources.

As students have become increasingly familiar with, and dependent on, computer technology, the boundaries of what constitutes a comfortable, stimulating, flexible and varied learning environment have altered. This inevitably adds to the demands placed on those individuals who have painstakingly developed, programmed, tested, and refined unique computer packages for student learning. Keeping materials updated is of particular importance in legal education, and this maintenance function alone can consume substantial resources.[6] The task of adapting an existing program to incorporate textual changes and new technologies on an ongoing basis, while concurrently developing new programs, is a particularly overwhelming one. Indeed, the task may be beyond individuals or even institutions. For the program author who wishes to capitalise on work already completed

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4 R Widdison, Law Courseware: Big Bang or Damp Squib? (1995) 4 *Web JCLI* <http://webjcli.ncl.ac.uk/articles4/widdis4.html>; P Moodie, Law Courseware and Iolis: Assessing and Constructing the Future (1997) 1 *The Journal of Information Law and Technology* (*JILT*) <http://elj.warwick.ac.uk/jilt/cal/97_1mood/>; A Paliwala, Co-operative Development of CAL Materials: A Case Study of Iolis (1998) 3 *The Journal of Information, Law and Technology* <http://www.law.warwick.ac.uk/jilt/98-3/paliwala.html>

5 D Grantham, IOLISplus — Extending the Electronic Learning Environment (1999) 1 *The Journal of Information, Law and Technology* <http://www.law.warwick.ac.uk/jilt/99-1/grantham.html>

6 For a discussion of development issues related to CAL, see J Dale, The Money Pit: Why is CAL So Expensive? Paper presented at the Australian Conference on Assisted Legal Instruction, Brisbane, 1996. In explaining his contention that "developers are frequently in the position of being able to develop only a single module or lesson because it takes all their time and resources to create the *first* electronic lesson", Dale uses the "Development Triangle" model showing the interdependence amongst time, resources, and program features.

and to enhance the benefits gained thereby, a different approach to future development is clearly required.

This Note describes the development of a small-scale CAL lesson and compares the benefits gained from it with those obtained from some major collaborative endeavours, in particular, the LCC Iolis program. The economies of scale and scope achieved by the LCC coupled with the benefits of flexibility and familiarity of generic CAL authoring systems provide a compelling argument in favour of the collaborative approach. Australian Law Courseware (ALC) is licensed by LCC to use Iolis to produce electronic teaching/learning materials in Australia for distribution in the Asia-Pacific Region. The production of workbooks has begun in Australia and is being considered for New Zealand. For countries such as New Zealand which are not currently developing CAL under the auspices of a broader national or trans-national education technology framework, the task of catching up to countries like Britain appears daunting. Careful analysis of the research, however, yields an insight into how that goal might be attained. Collaborative planning, development and resourcing of Australasian CAL programs for legal education is necessary to achieve widespread support and acceptance by students, faculty and the legal profession. In addition, a balance of technological advancements, flexibility and standardisation using Iolis as the *de facto* standard[7] will allow fast-tracking of development without undue back-tracking over individual initiatives.

The Evolution of Partnership Computer Seminars (PCS)

The original DOS version of Partnership Computer Tutorials (as it was then named) was the result of a joint effort between one of the current authors, Maree Chetwin, and Ian Wilson (Senior Lecturer, Faculty of Law) of the Queensland University of Technology. The programming was, of necessity, performed by an expert programmer. The package was intended to supplement lectures and be a substitute for the three traditional tutorials required in the running of the partnership module of a second-year level Accountancy course, AFIS 253 Law of Organisations. It should be noted

7 Moodie states "the other major attraction of IolisAuthor is that it must now be seen as the *de facto* standard for the production of law courseware in England and Wales": P Moodie, Law Courseware and Iolis: Assessing the Present and Constructing the Future (1997) 1 *The Journal of Information Law and Technology* <http://elj.warwick.ac.uk/jilt/cal/97_1mood/>

that this module constituted only a small part of the entire course, typically at the University of Canterbury, consuming eight out of 50 lecture hours. Most of the students enrolled in the course intended to become chartered accountants and were required to do the course or its equivalent by the Institute of Chartered Accountants of New Zealand.

It is a simple program designed to provide an opportunity for students to review certain key aspects of partnership law. There are three question types:

- problems that require a yes or no answer;
- multichoice format;
- problems that require a brief typed answer.

The program contains cross-references to two texts, and students are advised they should have a copy of the relevant Partnership Act with them for reference during the four lessons. In addition to the revision questions and text references, the program provides introductory notes, expansions of answers in the form of explanatory text, and where appropriate, passages from text that include some of the more important sections of the relevant Partnership Act.

The 1992 pilot program was initially run in a campus networked computer laboratory. The partnership lecture component was delivered in the traditional oral manner, and students were assigned to tutorial groups for the computer module. Attendance at tutorials was recommended but not compulsory, and approximately half of the 114 students in AFIS 253 attended the three laboratory sessions. The methodological problems in testing have been referred to by others including Clark,[8] Teich,[9] and Mason.[10] Like Shapiro,[11] it was decided not to experiment on what was, first and foremost, a class. For this reason, control groups were not implemented. However, at the completion of the partnership unit, participating students were requested to complete a questionnaire prepared by the University's Educational Research and Advisory Unit (ERAU). The survey comprised 11 questions for which students rated their response on a five-point Likert scale. In addition, respondents were invited to provide open

8 R C Clark, The Rationale for Computer-Aided Instruction (1983) 33 *J Legal Educ* 459, at 468.

9 P F Teich, How Effective is Computer-Assisted Instruction? An Evaluation for Legal Educators (1991) 41 *J Legal Educ* 489, at 489.

10 R Mason, Where does Computer Aided Learning Fit in the Tertiary Education Equation? (1996) 7 *JLIS* 105, at 112.

11 S J Shapiro, The Use and Effectiveness of Various Learning Materials in an Evidence Class (1996) 46 *J Legal Educ* 101, at 109.

comment. The questionnaire, summary data, and students' comments are set out in full in the Appendix.

The survey results were used to gauge the general level of interest in CAL by Accountancy students and to assess the potential for further development of the package. Summary data provided the view that between 92 per cent and 100 per cent of surveyed students considered the program to be of average or above average value to them in the learning and revision processes. Further positive indications were noted regarding the availability, content coverage, and organisation of the package; and a surprisingly large percentage (92) of students called for other course topics to include a similar approach. As encouraging as these results were, it may be of significance that all the students surveyed had chosen to attend the computer labs; and as such, were more likely than non-attendants to have perceived tutorials in general to be of value. These students were also more likely to have been comfortable in a computer laboratory environment. The data was, nonetheless, useful in assessing the potential for further development of Partnership Computer Tutorials and for gauging interest in CAL in general. The students' comments highlighted technical areas needing improvement: notably, access to computer facilities, and occasional program errors. The lack of immediate feedback as per a traditional tutorial appeared to be of moment to at least half of the respondents and this was of significant concern.

Subsequently in response to the questionnaire, an optional traditional face-to-face tutorial has been held. On average, approximately a fifth of the students attended this tutorial in 1993 and 1994. However, in the last four years this percentage reduced (no data was kept). This decline may be attributed to several factors. Substantial investment in technology infrastructure and training by our department in recent years has raised the general level of student computer skills and has allowed realistic access to 24-hour networked computing facilities. Further the publication of the corrected and updated program on floppy disk by The Law Book Company in 1994 (renamed Partnership Computorials) enabled students to access the materials at home where that was a desired option. In 1998, the package was reprogrammed for use within the web browser environment and renamed Partnership Computer Seminars. As with previous updates, these primarily aesthetic changes consumed all available resources but offered no significant improvements in interactivity.

A further factor influencing the decline in attendance at the traditional tutorial was the provision of an online email feedback facility. Whilst up to 20 per cent of students typically use email to contact the module lecturer at least once, lack of time and financial resources have restricted development of this facility. Email is not an integral part of the program and this form of feedback cannot be provided in real time. For the lecturer, this system has made forecasting and controlling the allocation of time for the module increasingly difficult as compared with fixed traditional tutorial times. The importance of student and teacher interaction in CAL has been well documented and is reflected in our own student feedback.[12] Experience to date demonstrates, however, that major improvements in PCS are not feasible on the current level of resourcing, commitment, and support. Funding of future efforts is limited to small research committee grants, while commitment is restricted to the spare time of a busy lecturer in an environment in which there is no national or local guidance or support. Clearly, the repeated requests from students for further CAL programs in other law subjects are also likely to remain unfulfilled unless a development system can be devised that addresses these deficiencies while retaining the many benefits provided by PCS.

The Continuing Evolution of Sustainable CAL Development

To what extent do other CAL experiences provide a new direction, and what are the critical steps that must be taken? A study of other small-to-medium scale CAL projects initiated by individuals or individual institutions reveals several obstacles. One of the most common and manifest observations is the extent to which available time and money restrict initial and future developments. Kelman's successful virtual tutorial experiment at the London School of Economics revealed a need for substantial future investment by the lecturers to produce workbooks and to develop the administrative support structure.[13] Migdal and Cartwright cautioned that the "personal commitment demanded … cannot be overemphasised" and remarked that the number of staff hours required to produce their CD-ROM exceeded their "wildest nightmares"! In this instance, the program authors sought

12 See *infra* Appendix A.

13 A Kelman, Distance Learning at the LSE with Virtual Tutorials, IT Review (1997) 1 *The Journal of Information Law and Technology* <http://elj.warwick. ac.uk/ jilt/sw/97_1lse/>

economy of scale through the sharing of centralised programming resources with two similar CAL projects proceeding at their University. However, after some trial and error, a software package was produced "which operates as a program template enabling anyone who has word processing skills to author electronic teaching packages".[14] The benefits of this approach are clear. Use of a template drastically reduces the time and cost of initial programming. Furthermore, significant efficiencies are gained, as program authors need few (if any) programming skills in order to produce a series of consistently formatted programs.

Standardisation of CAL authoring tools has been an important feature in what must be acknowledged as the ongoing success of Iolis.[15] In the same year that we began work on PCS, the LCC commenced centralised development of the Iolis CAL authoring templates for use directly by their authors. At the time of writing, there were over 100 Iolis-based lessons on CD-ROM available for UK law students[16] and a similar number produced by The Center for Computer-Assisted Legal Instruction (CALI) under licence for their US counterparts.[17] In addition to largely solving the authoring problems experienced by Migdal and Cartwright and others, the widely used templates have provided a single, consistent, and familiar-looking program interface within a reasonably flexible framework.[18] These economies of scale can dramatically reduce the time required for students and teachers to master program navigation and feel comfortable with the CAL components across their courses. Where an authoring tool such as Iolis is used across institutions nationally, or even internationally, even greater economies of this nature are plainly attainable. Clearly, major collaborative endeavours are superior in terms of cost, time, and output than individual stand-alone efforts with PCS.

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14 S Migdal and M Cartwright, Pure Electronic Delivery of Law Modules — Dream or Reality? (1997) 2 *The Journal of Information Law and Technology* <http://elj.warwick.ac.uk/jilt/cal/97_2migd/>

15 See, for example, A Paliwala, Co-operative Development of CAL Materials: A Case Study of Iolis (1998) 3 *The Journal of Information Law and Technology* <http://www.law.warwick.ac.uk/jilt/98-3/paliwala.html/> for an overview of Iolis and a commentary on progress.

16 See Subject Coverage in Iolis <http://www.law.warwick.ac.uk/lcc/subjects.html> for an updated list of Iolis lessons for UK law students.

17 See The CALI Catalog <http://www.cali.org/calitech/catalog.html> for an updated index of links to the CALI Library of Computer-based Legal Exercises, based on the licensed Iolis templates, for use by students in the US.

18 Moodie, *supra* note 7.

Nevertheless, as compelling as the argument for standardisation is, the "mass-production" approach inherently implies restrictions on program control. Indeed, Migdal and Cartwright's decision to develop their own CAL template was motivated by a policy decision to include a substantial human element on video, as such a facility was not available within the Iolis framework.[19]

The importance of pedagogical goals as the starting point for CAL development has been well documented.[20] When planning a CAL program, establishing whether pedagogical aims are attainable using a standardised package is obviously a precursor to using such a template. For those of us considering converting an existing program into a standard form, the extent to which both systems are likely to achieve pedagogical goals must be reviewed and compared. Quoting the 1995 edition of Iolis, Paliwala notes that "the design of the courseware was deeply influenced by the need to ensure respect for pluralism as well as the need to enhance existing educational values."[21] However, in his generally favourable assessment of Iolis, Moodie highlights several current features that may limit its potential application:

- no integrated real-time email or conferencing facilities;
- no facility allowing students to bypass topic text for quick revision;
- limited potential for direct customisation — annotations, for example, cannot incorporate interactive elements and cannot be inserted in precise locations within a page;
- no integrated communications function to ensure automatic updating of stand-alone CD-ROM versions;
- linear rather than branching structures are promoted;
- no automated assessment and scoring of students' answers;
- the resource book is limited to material selected by individual workbook authors;
- no provisions are made to support collaborative learning or small group teaching.[22]

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19 Migdal and Cartwright, *supra* note 14.

20 See, for example, R Warner, S D Sowle and W Sadler, Teaching Law With Computers (1998) 24 *Rutgers Computer and Technology Law Journal* 107, at 170. See also R Jones and J Scully, Hypertext within Legal Education (1996) 2 *The Journal of Information Law and Technology* <http://elj.warwick.ac.uk/jilt/cal/2jones/>

21 A Paliwala, Preserving Educational Values (1995) 4 *Law Technology Journal* 3, at 4.

22 Moodie, *supra* note 7.

23 See Dale, *supra* note 6.

The very nature of CAL development is evolutionary. Whilst every case will be determined according to the required balance between time, resources, and program features,[23] the speed of development of technology requires CAL program designers to factor anticipated changes into their planning. That is, the sacrificing of desirable program features such as integrated email and conferencing can be considered temporary and should not necessarily be used to reject adoption of a standard template. Indeed, the increasingly integrated nature of global telecommunications is likely to render CAL standards almost universally portable, further augmenting their economies of scale and their scope and popularity. Following their experiment exploring the potential of email technology (in conjunction with Iolis courseware), Widdison and Schutte predicted that "the most likely end result will be an electronic communication medium that is infinitely plastic …"[24]

Catching Up to the Collaborators — How Do We Do It?

If we accept that CAL has a continuing role to play in legal education in the new millennium, countries such as New Zealand which do not take a coordinated approach to development, are in danger of becoming increasingly isolated backwaters. The Iolis and CALI research suggests that many programs can be delivered via standard templates, and many more will become feasible as technology advances. Furthermore, the resource and time constraints associated with individual CAL attempts plainly prevent sufficient programs from being developed at all. It is therefore imperative that New Zealand legal educators investigate utilising Iolis as a national de facto CAL standard in order that program development time be reduced dramatically and quality program output be increased substantially. More importantly, the current levels of maturity and stability made possible by Iolis provide timely opportunity for the analysis of the successful collaborative CAL integration model applied by the LCC. By borrowing experience and leasing technology from the forerunners, it is anticipated that the development of a

24 R Widdison and J Schutte, Quarts into Pint Pots? Electronic Law Tutorials Revisited (1998) 1 *The Journal of Information Law and Technology* <http://elj.warwick.ac.uk/jilt/cal/98_1widd/>

sustainable and effective national (or intra-national) CAL structure appropriate to Australasian conditions can be accelerated considerably.

In addressing the issue of the high cost of CAL development, Dale observes that:

> The techniques which might usefully be applied to make it cheaper — large-scale development and distribution, efficient reuse of components, licensing content from other publishers — are by their very nature techniques which are most effective when utilised within a large-scale project. Yet bringing about the creation of such projects requires initial large-scale funding and collaboration between institutions, which is itself difficult to achieve.[25]

Despite this inherent difficulty, the need to overcome these obstacles is clear. In 1993, Laurillard produced a comprehensive and detailed blueprint for embracing educational technology in which she advanced the concept that "quality is best established through organisational infrastructure and collaboration".[26] Paliwala, in a recent review of the LCC's progress, corroborated this view, and summarised the key ingredients in their success:

1 commitment to sound educational values;
2 commitment and enthusiasm of academics;
3 the production of a critical mass of material;
4 sound management;
5 the development of a technical environment which supported the above values;
6 institutional support from … other law schools; and
7 infrastructural and financial support at the national level.[27]

These essential components — in addition to serving as a useful starting-point checklist for developing a more comprehensive national CAL plan — highlight the importance of commitment. In terms of Dale's Development Triangle,[28] commitment from academics, technical people, and national policymakers appear to form congruent triangles of interdependence in which a change in one component alters the balance of the other two components. The superimposition

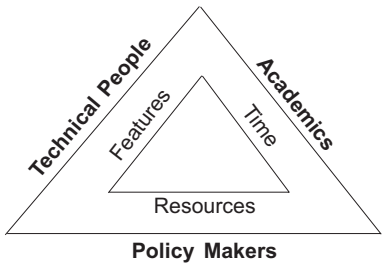
25 Dale, *supra* note 6, at 6.

26 D Laurillard, *Rethinking University Teaching: A Framework for the Effective Use of Technology* (London: Routledge, 1993) 224.

27 Paliwala, *supra* note 15.

28 Dale, *supra* note 6.

of this commitment relationship on Dale's development interdependence model can be graphically represented thus:



Just as a change in development time alters the balance of features produced and resources required, a lack of commitment and funding from policy makers, for example, will necessitate greater commitment from academics and technical people. Given this interdependence, it is of paramount importance that a feasible and sustainable balance of commitment from these parties at the outset is established.

One common denominator in all successful CAL programs has been the commitment of development time by the academics driving the project. The greatest progress, however, has been achieved when this enthusiasm and vision — coupled with commitment to sound educational values — has been aggregated and centrally coordinated.[29] Currently there is no national effort being directed at CAL development in New Zealand. The Victoria Law Foundation[30] in Australia, however, has recognised the importance of collaboration through its funding and support of the Australian Law Courseware (ALC). Although not yet a national institution, the ALC is licensed to use Iolis software for production of workbooks in the Australasian region and comprises authors from several Australian states. The ALC has spent approximately 12 months modifying the UK workbooks and, at the time of writing, has produced 30 workbooks for use by Australian law students. It is too early to assess the value or impact of the ALC's efforts in the classroom, however, their application of the UK collaborative development model and

29 For example, the British and Irish Legal Education Technology Association (BILETA), the National Centre for Legal Education (NCLE), the Computer Teaching Initiative (CTI) Technology Centres, and the LCC in the UK; and the Center for Computer-Assisted Learning (CALI) collaboration between the University of Minnesota Law School and Harvard Law School in the US.

30 See <http://www.viclf.asn.au/html/> for an overview of the Victoria Law Foundation's law courseware project.

technology has clearly brought about the economies of scale and time-savings required for sustainable CAL.

Conclusion

United Kingdom enthusiasts,[31] meanwhile, are at the stage of looking beyond Iolis. Widdison, for example, foresees legal education fully embracing computer-based simulation games and using "virtual law tutors … as managers of the learning process". Clearly the long-term future of Iolis is secured[32] and will continue to improve in quantity and quality.

Technology has an important role to play in campus-based legal education. The centralised process of producing workbooks has begun in Australia and is receiving increasing support. As we head into the next millennium, it is critical that New Zealand law lecturers and tutors recognise the current opportunity to commit, collaborate, and capitalise on existing achievements and technical expertise. We must lobby the policy makers and legal profession for their commitment to support CAL and embrace a full-scale mass production to catch up. The adoption of the tried and tested Iolis model will accelerate the process.

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31 See, for example, Grantham, *supra* note 5; R Widdison, Computerising Legal Education: What Next? 14th BILETA Annual Conference, York, 1999: http://www.bileta.ac.uk/99papers/papers99.html

32 See LCC website, *supra* note 3: heading 'Our sponsors'.

Appendix

Questionnaire and Summary Data

1 How valuable to do you think this computer assisted learning package has been for you?

1	Not at all valuable	0%
2		0%
3		40%
4		47%
5	extremely valuable	13%

2 How much do you think you have learned from this package?

1	Very little	0%
2		1%
3		46%
4		48%
5	A great deal	5%

3 Has the package improved your understanding of the concepts and principles of partnership?

1	No, not at all	0%
2		8%
3		40%
4		40%
5	Yes, greatly	12%

4 Would you like other course topics treated in this way in other years?

1	No, not really	0%
2		2%
3		6%
4		31%
5	Yes, please!	61%

5 How often did you use the package?

1	One time only	50%
2		27%
3		18%
4		5%
5	Five or more times	0%

6 Would you have preferred a traditional series of tutorials covering the partnership topics?

1	No, not really	33%
2		14%
3		25%
4		16%
5	Yes please!	12%

7 Would you appreciate further traditional tutorials covering the partnership topics?

1	No, not really	14%
2		25%
3		20%
4		25%
5	Yes please!	16%

8 In my view, the package has attempted to cover:

1	Much too little	0%
2		0%
3		94%
4		6%
5	Much too much	0%

9 The package seemed:

1	Very disorganised	0%
2		0%
3		18%
4		56%
5	Very well organised	26%

10 How available was the package for you to use?

1	Very inaccessible	0%
2		7%
3		20%
4		33%
5	Very accessible	40%

11 How useful was the package in helping with your revision?

1	Useless	0%
2		4%
3		20%
4		45%
5	Very useful	31%

Students' Comments

- "Difficult to get into the program to start with, maybe a handout would be of use."
- "Unclear instructions as to how to actually start the program made it inaccessible."
- "How to get into the system, ie instructions for this."
- "Too hard to get a computer when other classes have regular tutorials in the computer lab every week — could perhaps set aside some computers for it."
  (Author comment — set computer lab times were available.)

- "Hope those errors have now been resolved."
- "At times if you got the answer wrong then at times the package would not accept the correct answer when it was correctly entered in Stage 3 especially."
- "I felt that some of the answers required a Yes/No answer and a True/False answer was required or vice versa. I will use the tutorials again in the future for part of my revision for mid-years."
- "When you get a question right (which you may have guessed) there is nothing to say why the writer gave it as right. If you answer it wrong you get the info. Why not give the same info either way."
- "Cool."
- "Great, fab."
- "I really enjoyed the experience."
- "Useful in confirming topics learnt."
- "Only had one session on this. It would have been better to do this questionnaire after, using the package a lot more. And when I had done enough study on it, to answer it properly."
- "Appreciated the fact that it was interactive but not in a stressful environment (eg you didn't feel a fool, if you got something wrong but it told you where you went wrong.) Much more interesting than simply sitting down and studying."
- "Only used it once but intend to use it again."
- "Even though I have only used the package once, I plan to go back to it for revision purposes."
- "I intend to use the tutorial a few more times as I haven't been right through it yet. Access in the evenings would be good for those who are working."
- "I found the most valuable aspect of the package was that it indicated to me the areas in which I did not know as much as I thought I knew. I thought I knew the material reasonably well, but I found a few areas in which I did not know the answer. It was much better to find out in this way than in an exam!"
- "Could we have ones for the other 253 topics."

TEACHING NOTE

Client Group Activism and Student Moral Development in Clinical Legal Education

*Adrian Evans**

Introduction

At its best, clinical legal education exposes law teachers and students to the complexity of responding to clients' legal issues. The development of holistic, skilled and ethical student responses to clients' casework issues is of course an appropriate objective of a law school clinical program. Beyond this, it is also possible to look behind individual clients' problems at the common social factors contributing to their difficulties. Students who examine these "systemic" issues in their clients' lives seem to develop a more comprehensive understanding of the legal issues confronting their clients individually and as members of a group. Some clients who are encouraged to see their problems as a part of a wider social context also become active in the political process in order to try and improve their own circumstances and those of others. Law teachers who facilitate the exposure of their students and clients to the relationship between individual and collective social problems also benefit. They mature in the depth of their appreciation of substantive law reform.

While exposure by students, clients and teachers to real as opposed to simulated problems can catalyse a policy debate, resulting in better law reform and better administration of justice, these results are unlikely without close management by the clinical teacher. Law teachers need to help students and clients move from individual reflection to group reflection upon the underlying social injustices which diminish an equitable society. *Group* reflection is the key process in enabling policy change and it is this process which is at the core of the

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 (1999) 10 *Legal Educ Rev* 179.

1 A process of collective social and community growth first systematically expounded by Paulo Freire. See P Freire, *Pedagogy of the Oppressed*

concept of Community Development (CD).[1] CD is the generic term used to describe various strategies designed to bring about the recognition that collective action can be effective. It has been practiced by groups as diverse as the National Farmers Federation and the National Union of Students,[2] but is less understood and less practiced among clients and consumers who are under-educated, unemployed and therefore impoverished. When the energy of some law students' commitment to social justice is applied to the CD process, the resources available to impoverished groups are increased dramatically.

This mobilisation begins with the teacher's appreciation of the core personal values which individual students bring to the clinical experience. Competing personal values often become apparent in the process of developing student and client consciousness with the use of clinical methods, because the confrontation with individual clients' poverty and (often) self-destructive behaviour tends to polarise responses. Some students react with empathy and then anger, recognising root causes readily. Others place more emphasis on choice, valuing personal autonomy and responsibility. The conflict of values, which typically exposes left and right wing conceptions on many policy issues, can fragment the student/student, teacher/student relationships and degrade communication with clients if it is not identified and addressed positively by the clinical supervisor. The teacher ought not to shrink from affirming his/her own values — ideally these will reflect a broad social tolerance — and in so doing affirm by example the diversity of values among

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(London: Penguin Books, 1972). The process of client group development has suffered from the criticism that it promotes social instability rather than social growth. The criticism may be accurate but it is of limited use because social growth and instability inevitably go hand in hand. Another criticism of this process (derided as "morally active" lawyering) is that it overrides the autonomy of individual clients. David Luban has convincingly argued that this criticism is of little significance because the goal of client autonomy in this context is only a means to the end of "responsibility, creativity or authenticity". In essence, Luban gives priority to the interests of the client group when the latter includes a "morally active" approach to the practice of law. See D Luban, Partisanship, Betrayal and Autonomy in the Lawyer-Client Relationship: A Reply to Stephen Ellmann (1990) 90 *Colum L Rev* 1004, at 1037.

2 Both of these groups have been active in recent years on specific issues. Under Rick Farley as Chief Executive Officer, the National Farmers Federation helped to lobby the Federal Government in support of land rights for indigenous Australians during the 1980s. The National Union of Students has used student strikes and marches to influence public opinion for decades.

students and clients. Where the supervisory atmosphere opens up values conflicts, those students with attitudes which may be considered "anti-social" are often challenged by their peers in a manner which raises awareness effectively. It is often taken more seriously by students because of peer, rather than teacher, challenge.

Clinical supervision which is participative in this sense (in the context of CD experience) is a powerful but underused tool in the moral development of future lawyers. This teaching note explores a methodology for developing students' values awareness in the clinical context. This methodology intends to maintain client autonomy and promote client activism within the political process.

In this Note there are a number of issues which are treated simultaneously: the nature of community development; students' awareness of their own values; the role of supervision; the client group process and the links between student and client autonomy.

Insofar as interactions between teachers and students are concerned, it is suggested that the competing values emerging within a clinical-CD framework provide an opportunity for social policy reflection which ought to be embraced rather than avoided. Supervisors who can stimulate a respectful argument among their students[3] about competing moral viewpoints will lay an essential foundation for this methodology. It is unnecessary that the argument be resolved — it is enough if the argument is in the open. In the final analysis students are entitled to criticise and, if they deem it necessary, disagree with a definite stance by their peers and/or the clinical supervisor as to the values which they think are important in any particular CD initiative. Having said that, it is necessary to emphasise that student debate about their own values is a preliminary stage only in the methodology and that the focus does shift to clients and the client group process with which students engage. While the "community" of students develops diversity of values, they do so alongside the (controlling) client group. If the CD model is to have integrity, a decision on policy issues and the consequential political strategy must in the end be made by the group of clients who have been (it is hoped) catalysed by the CD process.

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3 And among themselves as supervisors.

Justice-Focused Law Schools: Quality and Clinical Experience in Collaboration

The genesis of the CD approach to client group activism and student moral development lies in the basic attraction to students of the clinical method. Anecdotal evidence suggests that law school graduates with clinical experience, having had close contact with clients in poverty, enter legal practice with attitudes, energies and techniques that are different in some way to those who do not choose this option within their undergraduate studies. My observation is that clinical graduates are, at the least, open to the notion that "justice" is as important as "law". Self-selection may play a role, but it is possible that students who encounter only the varieties of Socratic method within conventional lecture environments learn mainly how to argue. While the techniques of argument are, naturally, key legal skills they are not the only skills. They are perhaps no longer the most important skills. As the "why" and not just the "how" of the lawyering task gains increasing attention within law schools, there is greater recognition that the technical "how" questions asked by students are, on their own, barren enquiries. More frequently, credence is given to the view that "to be ready and able to argue the case for either side of a controversy [underemphasises] consideration of legal ethics and the rights and wrongs of the situation".[4]

The probability is that, for those students whose first significant workplace experience is a clinical program, development of personal values, social awareness and motivation are all enhanced because students are under the control of legal educators rather than "the market".[5] If "experience best promotes movement toward the highest levels of [moral] development",[6] the controlled experience of clinical process is ideal for that development.

There are a number of examples internationally of law school/community legal centre/law centre connections that have sought to develop student motivation, over decades in

4 RC Reuben, Change of Course Needed: Elder Statesman Says Acceptance of Law as Business Will Break the Profession (1994) 80 *ABA J* 99.

5 Myers considers that "values education is essentially experiential and must be embedded in context to be meaningful": EW Myers, "Simple Truths" About Moral Education (1996) 45 *Am U L Rev* 823, at 832 (note 45).

6 *Id* at 836 (note 57) referring to PT Wangerin, Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education (1988) 62 *Tul L Rev* 1237, at 1282–83 (note 171).

some cases.[7] Each of these law centres place students in responsible relationships with their clients: students come to understand they have an obligation to empathise, to gather facts carefully, to research and to advocate on behalf of their clients. They know (or come to know) that if they do not accept these responsibilities their clients will suffer. The sense of responsibility they discover is — for them — both daunting and exciting, and it is (at bottom) only because of this process of identification that their values are developed.[8]

The Client Group Process

Over the last 10 years at Monash University the CD process has become more reflective for students with the addition of a client-group process in partnership with Springvale Legal Service Inc (SLS). In addition to the traditional one-to-one clinical caseload, the student task groups at SLS have concentrated upon the CD issues which that caseload highlights.

The issues have been diverse, ranging, for example, from the over-charging of particular ethnic groups by private lawyers from their own community, to residents affected by toxic paint discharge, to the review of offensive cemetery practices, and to state exploitation of addicted gamblers. Client group facilitation has been chosen because it seems to offer the best opportunity for social reform. The prospect of achievable social reform also appears to be particularly attractive to students who are energised by clinical method.

While the mobilisation of client groups, especially in class actions, has an impressive history,[9] it has not generally included a law student dimension. Sessions in which student task groups reflect on values have been a part of clinical supervision at SLS. This reflection appears to be useful in changing students beliefs/attitudes as to the interests that call out for responsible lawyering. The process involves encouraging students to talk about their developing insights.[10]

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7 Notably Parkdale Legal Service / Osgoode Hall Law School in Toronto, Juss-Buss / University of Oslo in Oslo and Springvale Legal Service / Monash University in Melbourne.

8 The process is intricately described in H Brayne, N Duncan and R Grimes, *Clinical Legal Education: Active Learning in Your Law School* (London: Blackstone Press, 1998).

9 See, for example, S Ellmann, Client-Centredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers Representation of Groups (1992) 78 *Va L Rev* 1103.

10 This note is not intended to describe client group development process in detail: see above note 1. It is worth commenting, however,

Although dependent on insightful supervision that is not always available, values reflection seems to be effective because it is constructive in emphasis and case derivative; that is, personal interactions with clients' cases convince students that the policy discussion and the policy change process are legitimate avenues of endeavour.

One task group was set up in response to the large number of clients who had complained of their lawyers' insensitivity and level of fees. Clients were frustrated at what they saw as their inability to get the professional regulator to take their complaints seriously. The law students gradually accepted that their clients had a case for systemic reform of the regulatory structure. Significantly, this acceptance only occurred when students experienced, in their dealings with the regulator on behalf of those clients, the same frustration.

It is the task group discussion about clients' interests, and their right as clients to decide upon their own approach to change, that inevitably raises (for those students in the task group) the issue of their own autonomy. When they realise that they are free to disagree with each other and their supervisor — since that is the process that the putative client group is entitled to use — they begin to formulate their own views in relation to the task group problem. At that point, the insightful facilitator can draw out students' underlying values and acknowledge them respectfully. Student acceptance of their own autonomy is the first step in the process of developing their own values.

The second step is the teacher's recognition of those diverse values and the facilitation of students' own challenges to each other's values. Often there are choices for the task group to make which have an essential ethical quality. In one recent example a series of student task groups developed a "self exclusion" kit to allow addicted gamblers to legally exclude themselves from the local casino.[11] The kit is intended as a tool for a fledgling group of relatives of self-destroyed gamblers who, we hope, will emerge to lobby government on the links between their own misery and that government's sponsorship of large-scale gaming. Development of the kit necessarily involved seeking a sponsor to

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that, from the perspective of the law teacher, the crucial issues are teacher / student ratios, delineation of individual student tasks, the frequency of supervision meetings and the methodology of values reflection in those meetings.

11 Crown Casino in Melbourne, the largest in the Southern Hemisphere, with 350 tables.

cover the costs of publication. The suggestion was made in the task group that the casino's own revenues be used to cover the cost from its Community Support Fund[12] and the suggestion was justified by students on an "end justifies the means" basis. The resulting debate among students and with their supervisor went to the essence of the students' values in that setting. Most were very happy to take the casino's money to publish the kit. Some felt the money was tainted. Collectively, they had to make a choice as to which ethic would prevail — accept the casino's money and refrain from criticism of the social effect of the fund itself, or reject it and preserve the ability to comment on that issue publicly. It may have been difficult to highlight the relationship between the casino's profits and the exploitation of vulnerable patrons if the money were accepted. In the end, the students were prepared to insist on an autonomy that rejected the views of their supervisor.[13]

Transcending Issues of Client Autonomy

Just as students must be able to exercise their own autonomy, so also, of course, must clients. Indeed, in the context of the lawyer/client relationship, client autonomy has been lionised.[14] The recognition that a client is fundamentally "in charge" underlies nearly everything in modern clinical practice and needs no extensive restatement. A very serious debate has however emerged over client autonomy in reference to the concept of "moral activism".[15] This debate has a number of foci, notably the merit or otherwise of ignoring an individual client's rights of confidentiality if the interests of others (that is, their "autonomy") require it. Lawyers who are prepared to act for the greater good by sacrificing an individual client's autonomy are said to be "morally active"

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12 The Community Support Fund comes from and is in fact a small percentage of the casino's profits. The casino and the former Victorian State government maintained that the principal purpose of the fund was to ensure that victims of "problem" gambling were counselled. The casino was in fact willing to assist in publication with its own funds until it discovered that the students would have the final say on the contents and wording of the kit. The offer then lapsed and publication was supported by the Myer Foundation.

13 The supervisor preferred to avoid casino support.

14 See, for example, B Garth, Rethinking The Legal Profession's Approach to Collective Self-Improvement: Competence and the Consumer Perspective [1983] *Wis L Rev* 639–87, at 659.

15 See generally Luban, *supra* note 1.

16 *Id* at 1035.

and therefore acting appropriately.[16] It is a debate which revives older notions of the "end justifying the means", expressed in traditional moral philosophical terms as the choice between teleological and deontological decision making.[17]

Neither approach is entirely satisfactory. The teleological "end justifies the means" approach has been used to legitimise atrocities and many abuses of human rights in this century and may have fewer adherents amongst lawyers and jurists than in the general population. Similarly, deontological "moral justification" (that is, choosing what is "right" without regard to consequences) is said by many to lead to social evil.[18]

The community development process transcends the lawyer law student involvement in the "end justifies the means" conundrum by transferring the decision as to any particular strategy or policy from the lawyer to the client group. Community development is about client *group* empowerment rather than individual *versus* group interests. It is client group development (in community work) that truly "values" our clients because it is respectful of where the power to decide should lie. If practiced properly, client group development preserves client autonomy in the true sense because it is the "moral activism" of the group rather than of the facilitating lawyer or law student which prevails.

A Methodology for Promoting Values of Students and Client Groups

In the table below, a methodology for promoting values of both students and client groups over a period of approximately 16 weeks is briefly outlined. The time period in which each task is to be performed is broadly indicated. The clients

17 In contemporary language, teleology is the view that final outcomes are critical in making moral choices, and "outcomes" are defined as "the greatest good for the greatest number" (otherwise known as "utilitarianism"). In contrast , deontological decision making focuses upon what is "right" rather than upon what the outcome or consequences may be. The latter approach is defined by Kant as the "categorical imperative". See I Kant, *Fundamental Principles of The Metaphysic of Ethics* 10th ed (London: Longmans Green, 1929).

18 A common example is the abortion debate, which may be said to have bad or undesirable consequences whichever way a decision is made. In the conventional debate on this issue the "right" (deontological) choice is to deliver the child alive and avoid "murder". The teleological approach justifies termination of the pregnancy in order to protect both the mother and to avoid a probable low quality of life for the child.

are from a community legal centre who share a common (hypothetical) legal problem: the lack of compulsory property damage insurance for private vehicles. Where this type of insurance cover remains optional (and is not taken out), motor vehicle collisions of high dollar value often result in the loss of transport, employment, assets and credit ratings. As a result, in some western societies (including Australia) it is a common route to bankruptcy for the working poor.

Initially, the student task group will seek to facilitate the formation of a client group, where the pool of potential members is accessible from a client database maintained by a community legal centre. The database records the details of all low asset/low income drivers (most without optional insurance) who have suffered from the high dollar value claims of other drivers. Attention is given within the student task group to facilitating the autonomy of the group at all stages even if it means that both the student task group and the client group develop in unexpected directions. Autonomy for individuals within each group, and for each group in relationship to the other, is otherwise a meaningless concept.

In the first two weeks, the clinical supervisor is in control of the student learning process. Each student is set an initial familiarising task upon which they are asked to report to the task group. As time goes by, however, the model involves task group control shifting to the student members (away from the supervisor) in the same way as the client group ought to develop independently of the task group in the period beyond the initial 16 weeks. The role of the supervisor/law teacher is to model relinquishment of control in order that the task group in due course may see the need to relinquish control (of the campaign to change insurance laws) to the client group.

Towards the end of the 16 week period the supervisor explicitly encourages reflection amongst students on the values issues arising for them from the transfer of control to the client group, and upon the justification for that transfer. This process of values reflection, which ought to occur as a part of the normal task group meeting, is intended as the occasion for profound growth in students' understanding of the links between justice and autonomy for lawyers and clients. It is also the forum for developing law students' awareness of value choices which they can carry with them into their professional lives.

A MODEL FOR CLINICAL SUPERVISION OF COMMUNITY DEVELOPMENT TASK GROUPS

PERCEIVED PROBLEM — LACK OF COMPULSORY PROPERTY INSURANCE FOR MOTOR VEHICLE COLLISIONS

WEEKS 1–2	*CLINICAL SUPERVISOR AND TASK GROUP OF FOUR STUDENTS:* They meet to define: • Problem: clients financially destroyed by lack of motor vehicle property cover. • Objective: to discover what affected clients want/need in this issue. • Approach: consult (via database) clients known to share concern. *SUPERVISORS:* They need to be aware of: • long timeline to develop client group • student knowledge • achievable goals • student 1:1 cases • individual task definition
WEEKS 3–6	*STUDENTS*: • search client database to determine number of clients affected • search files to identify potentially suitable cases • compile list of clients who may be interested. *STUDENTS AND CLINICAL SUPERVISOR:* They meet to: • review list of clients compiled • review text of letter to client • determine allocation of tasks in preparation for the initial client meeting. *STUDENTS:* They send letters to clients inviting them to a meeting to discuss the issue.
WEEKS 7–10	*STUDENTS AND CLINICAL SUPERVISOR:* Planning meeting to discuss the process at the pending clients' meeting (see below): • role of facilitator • agenda • ground rules Values discussion begins.

WEEKS 11–12	*CLIENT MEETING:* To ensure clients decide what happens, the process includes: • introductions: to share power in the meeting • facilitator backgrounds the issues • clients tell their stories • frustrations are aired • brainstorming. Suggestions made for further meetings. *STUDENTS:* Follow up telephone calls to clients.
WEEKS 13–16	*FURTHER CLIENT MEETING:* It is held 3 weeks after initial client meeting. *CLINICAL SUPERVISOR AND STUDENTS:* They meet to evaluate process; "values" discussion continues.

Conclusion: Law Schools and Legal Centres in Collaboration

Law schools can enhance the development of students' values and hence their legal education in thoughtful partnerships with community legal centres.[19] Through a community development process, they can provide the opportunity to ensure that the first workplace experience of law students involves a partnership between the law school and the community. Partnerships of this nature are energetic contributors not just to quality legal education, but also to justice and the Rule of Law. The attraction to legal centres is the assistance in dealing with centre caseload. Small groups of students can be placed with appropriate centre supervisors and handle ongoing files as well as the systemic issues described in this note.

American experience suggests that, because of the limited exposure to clinical experience in law schools, the first workplace experience (that is, the private law firm) usually determines the values expressed in practice.[20] Monash experience

19 It is perhaps worth following the example of South African law schools, which are all to introduce a law degree with an agreed core curriculum, including a period of work in community settings. See D McQuoid-Mason, Single New Degree for All Law Graduates in South Africa 77 *Commonwealth Legal Education: Newsletter of the Commonwealth Legal Education Association* 27–29 (January 1998).

20 Myers, *supra* note 5, at 836, referring to S Hartwell, Promoting Moral Development Through Experiential Teaching (1995) 1 *Clinical L Rev* 505, at 531–35.

suggests that, providing the reflective element of supervision is addressed within a community development model, students' motivation to subsequently act in the interests of justice is enhanced. This motivation also encourages and enables greater commitment amongst students to achieve higher standards of proficiency in their undergraduate studies. If valuing our clients in community settings is, with student proficiency and the promotion of justice, a primary goal of legal education, reflective student placements in a community development environment are an invaluable tool.

TEACHING NOTE

Teaching Practical Legal Problem Solving Skills: Preparing Law Students for the Realities of Legal Life

*Celia Hammond**

Introduction

In 1998 the Law Society of Western Australia banded together with Women Lawyers of Western Australia to commission a consultant to "better understand the reasons for the apparently high rate of people leaving the legal profession" in Western Australia. A Final Report was published the following year.[1] The Report investigates why young lawyers, particularly women lawyers, were exiting legal practice within the 3–7 year post admission stage.[2] The Report's findings are not altogether surprising. They show that lack of fulfilment, stress, onerous working conditions and general quality of life issues are the key factors behind the migration from legal practice.

The Report contains 27 recommendations for improvement directed to the legal profession, law schools and legal firms. The recommendations fall into the categories of "Professional Growth and Development", "Career Improvement", "Quality of Life" and "Organisational Culture".[3] Four of the recommendations (recommendations 2-5) listed under the Professional Growth and Development category are pertinent to university law schools. These recommendations are that —

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 (1999) 10 *Legal Educ Rev* 191.

1 Law Society of Western Australia & Women Lawyers of Western Australia, *Report on the Retention of Legal Practitioners* Final Report (1999) 5.

2 *Id* at 8.

3 *Id* at 35–41.

the legal profession, through the Law Society:

2. work with law schools to:
   (a) broaden the selection process and criteria for law students; and
   (b) consider the practicality of making the law degree a post graduate qualification;
3. work with the law schools to market a legal qualification to students as a generalist qualification useful for a range of career choices in addition to legal practice;
4. discuss with the law schools the possibility of combining articles with the final year of study over a 2 year period;
5. develop a more comprehensive range of structured work experiences for law students during holiday periods.

The recommendations largely target three key critical concerns of traditional law school education: (a) the selection processes for entering law school; (b) the "gap" between traditional legal education and the realities of legal practice; and (c) the need for a law degree to provide a liberal education, rather than be seen simply as leading to life in a legal practice. As between (b) and (c), there is an element of incompatibility. As pointed out by Mack, there is a need to "recognise and reconcile these apparently diverse goals".[4]

The criticism that legal education fails to prepare law graduates for legal practice is not new.[5] As Mack notes,[6] the Pearce Report of 1987[7] stated that most Australian law schools teach neither theory nor practice, but doctrine. The traditional approach depended upon an "exposition of substantive doctrine" with little or no "practical or critical perspective".[8] One consequence of such an approach was a "sharp contrast" between "university law" and "real life law".[9] Slowly, legal education has changed and is still changing.[10] There are more skills-based units, such as Clinical Legal Education courses, more practical and professional ties, and more critique-style

4 K Mack, Integrating Procedure, ADR and Skills: New Teaching and Learning for New Dispute Resolution Processes (1998) 9 *Legal Educ Rev* 83, at 84.

5 See comments and references provided by MJ Le Brun & R Johnstone in *The Quiet (R)evolution: Improving Student Learning in Law* (Sydney: LBC Ltd, 1994) esp at 12.

6 Mack, *supra* note 4, at 85.

7 D Pearce, E Campbell & D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (The Pearce Report) (Canberra: AGPS, 1987).

8 Mack, *supra* note 4, at 85.

9 See the discussion of this contrast in A Goldsmith, Legal Education and the Public Interest (1998) 9 *Legal Educ Rev* 143, at 144–51.

10 See comments by Le Brun & Johnstone, *supra* note 5, at 10–40.

units. All this provides for a more rounded educational experience.[11]

When drafting the Notre Dame College of Law curriculum in 1995 and 1996, the College of Law Advisory Board recognised the competing goals of providing a liberal education, and training professional lawyers. Compulsory core units in Philosophy, Ethics and Theology were incorporated within the curriculum to provide an element of liberal education. To achieve the goal of training professional lawyers and narrowing the gap between legal education and legal practice, the curriculum drafters emphasised the inclusion of "practical" skills and ethics throughout the substantive units of the degree,[12] and included a compulsory, third year, one semester subject called "Legal Problem Solving". This course was designed to be an integrated and practical course where students could learn legal skills such as client interaction and problem solving. To achieve these goals, it was decided that the course should be structured as closely as possible to a "simulation" of the real life world of private legal practice. While the pressures and strains of legal practice are difficult to emulate, it was decided that strict time limitations, group work, and time accountability could assist in the simulation.

In converting the course from theory to reality, there were a number of concerns which had to be addressed. First, the course had to have clear objectives — which were attainable within the time frame and environment. Simulated real life experiences can work up to a point — but there are limitations on what can be achieved where there is no "real" law firm and there is no "real" client. Second, the course was designed to run as an intensive one week experience for the students; this required planning and consideration as to what could and should be expected within that time period. Finally, as with all law subjects, the skills and materials covered had to be "assessable" — and the assessment criteria had to be open to scrutiny and discussion.

With all of these in mind, the key objectives or goals of the course were identified and articulated to the students at the start of the course as being:

- to introduce students to effective and professional interview techniques and to develop client interaction skills;

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11 See comments and references provided by Le Brun & Johnstone, *supra* note 5, at 26–29.

12 In addition to separate Ethics, and Commercial Practice and Procedure courses.

- to develop students' abilities to elicit and identify relevant factual material from clients;
- to develop students' problem solving skills within the context of a multi-dimensional factual situation (problems involving multiple legal categories);
- to develop a "self learning" approach to learning substantive law by the incorporation of legal issues not yet studied by students;
- to develop general communication skills, both written and oral;
- to develop students' abilities to work in a group situation and take on different roles;
- to encourage students to think laterally when solving a legal problem and framing their advice, so as to take into account the needs of the client.

In addition to these stated objectives, students were reminded of the ethical and professional responsibilities which lawyers owe to their clients and the profession in general.

The Structure

The subject was designed to work as a one week intensive course, with compulsory attendance between the hours of 8 am to 5 pm daily. Students were given the option of living in residentially during this time period, and library hours were increased to enable greater access to resources.

Two weeks prior to the commencement of the course, students were given the course outline and a "reader" containing materials covering interview techniques, the lawyer-client relationship, communication skills — oral and written. No text books were prescribed, however students were referred to certain texts as useful and helpful source books.[13] Students were strongly urged to do some pre-reading for the course, so that the course could commence and proceed within the time frame.

Given the intensive nature of the course and the fact that the students were to be self driven for the most part, it was necessary to formulate a well structured approach to the

13 R Hyams, S Campbell & A Evans, *Practical Legal Skills* (Melbourne: OUP, 1998); P Keyzer, *Legal Problem Solving: A Guide for Law Students* (Sydney: Butterworths, 1994); K Lauchland and MJ Le Brun, *Legal Interviewing: Theory, Tactics and Techniques* (Sydney: Butterworths, 1996); GD Lewis and EJ Kyrou, *Handy Hints on Legal Practice* 2nd ed (Sydney: LBC Ltd, 1993); SD Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* 2nd ed (Sydney: Butterworths, 1998) esp at Part 3.

week. This was done by the provision of a day to day breakdown of activities. The five days were organised as described below.

Day One

This day was divided into morning and afternoon sessions. The morning session was structured as a large lecture and discussion format, and was intended to set the scene for the remaining week's work. After an introductory session identifying the expectations and goals of the course, half an hour was spent discussing "problem based learning". Much of the material for this discussion was taken from an article by Blunden.[14]

Following the introduction to problem based learning, the rest of the morning was divided into four sessions. The material covered in these sessions covered:

- the nature of the lawyer/client relationship
- how to conduct a client interview
- how to communicate with clients — oral and written
- problem solving skills and research technique.

All of these topics had been previously incorporated into the assessment regime of other compulsory units, such as evidence, property law, legal ethics, and communications.

Students had been given pre-reading on each of these topics,[15] so the sessions were designed to discuss the information and build on it if necessary.

The afternoon session commenced with a large lecture and discussion of "working in a group". During this session, students were required to identify their concerns with "group work" and different strategies were discussed for overcoming group problems. There was also discussion of group "plans of action" and the allocation of tasks within the groups.

Following the general discussion of group work, students were allocated their groups and "offices" for the week. Each group was entitled to the use of a room within the law school for their general discussion and meeting sessions. The allocation of the groups, done before the course started, took a considerable amount of time. The temptation to allocate arbitrarily, and in some respects reflect the real life

14 A Blunden, Problem-Based Learning and its Application to In-House Law Firm Training (1990) 8 *J Prof Legal Educ* 115.

15 Most pre reading was extracted from Hyams, Campbell & Evans, *supra* note 13, and Lauchland & Le Brun, *supra* note 13.

work environment, was great. But the overriding concern was that the groups had to be allocated in such a way as to minimise complete breakdown. In this respect, the text by Le Brun and Johnstone[16] and a report by Webb[17] provided some useful commentary and discussion on the nature of group work.

The groups were eventually allocated (and reallocated several times prior to commencement) taking into account the following factors:

- every group had to have at least one, if not two, previously high achieving students;
- every group had to have at least one student who had displayed leadership qualities over the previous two and a half years of studies;
- no group was to contain any combination of students where there had been previous, obvious clashes of personality;
- each group was to have, as far as possible, a combination of gender and age;
- there would be a maximum of six students per group.

Having taught the student group several times previously, the course co-ordinator was able to accommodate most of these factors. Discussion with other staff members helped with this process.

During the first meeting of the group, the group was required to discuss their views on how they were going to tackle the week's work, draw up a draft plan of action, and work out the various strengths within their groups. During this time, each group was required to nominate two members of the group to conduct the client interview on the following morning. While all students were required to attend the interviews, only two were permitted to interact with their assigned client.

During the afternoon session, groups were also given their client files. Essentially, the client file was a lever arch file containing information informing them of their client's name, the time and location of the interview and their individual timesheets. These files had to be submitted at the end of the week, with all of the information required (see "Assessment" below).

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16 *Supra* note 5, at 291ff.

17 N Webb, *Group Collaboration in Assessment: Competing Objectives, Processes, and Outcomes* CSE Technical Report 386 (Los Angeles: National Centre for Research on Evaluation, Standards, and Student Testing, 1994) <http://cresst96/cse.ucla.edu/CRESST/Reports/Tech386.PDF>.

Day Two

During the morning session, the groups were required to conduct their client interviews. There were seven groups and three clients, so two of the clients were interviewed twice, and one three times. The interviews were conducted at 8.15, 9.15 and 10.15, and the groups were required to come and collect their client from a general waiting area. Each interview was permitted to run for a maximum of 45 minutes — which proved to be adequate time for all except one of the groups, which took approximately 55 minutes.

As noted earlier, only two members of the group were permitted to conduct the interview. The remaining three or four members of the group were allowed to sit in as "flies on the wall" — although they were permitted to make notes during the interview. Although some groups discussed taping the interview, most felt that the presence of a tape recorder might intimidate their client in the first meeting, so they chose to take written notes instead.

Two of the objectives of the course were to introduce students to multi-dimensional problems and to require students to research areas not studied by them within their degree at that point in time. The rationale behind both of these objectives was to overcome two inherent problems with legal education: namely, that units such as contract, equity and property are taught as "isolated" compartments regardless of the fact that they are often entwined in legal practice, and that lawyers are often faced with problems raising legal issues not studied in their law curriculum, or studied and since forgotten.

The development of "client problems" incorporating both objectives proved to be the most time consuming aspect of the course preparation. In the end, three problem scenarios were developed for the seven groups to cover. Problem A incorporated corporations law and succession; problem B incorporated a road traffic offence, sexual harassment and unfair dismissal; and problem C incorporated negligence, franchising law and commercial leasing.

Three people were engaged to be clients for the interview simulation. The three actor clients were unknown to the students, in an effort to simulate the first meeting between lawyer and client. The three actors were fully briefed on their factual scenarios — but were not fully briefed on the law. Once again, the lack of knowledge of the law was seen as essential to a good simulation. At the completion of each interview, the clients were required to fill in detailed

client feedback forms. These were not part of the formal assessment, but were very useful in gauging how the interview was conducted and the performance of the interviewers.

For the remainder of the morning, the groups met together and consolidated the information they had obtained from their client. One member of the group was to be responsible for typing up a consolidated record of the interview — not a transcript — which was part of the assessment. During this time, the groups were required to consider what further information they required from either their client or other sources before they could adequately address their client's problems. They were permitted to write a further letter to their clients obtaining this information, and make any necessary searches and requests. Any such correspondence was to be left at a central post office, which was cleared by the course co-ordinator twice a day for days two, three and four of the course, at 10.30am and 4.30pm. Copies of correspondence and search requests had to be included within the client file.

The afternoon session was intended to provide further time for group discussion and consideration of the client's problem. The groups were required to identify the legal issues which arose on the set of facts gleaned from their clients, and begin the process of dividing up the work and planning time limits and general areas of responsibility.

The groups were given the option of all members researching the entire problem and consolidating the research at the end of the week, or dividing the problem into components — with individual students dealing with separate components. Given the nature of the problems and the time frame imposed, all groups chose the latter option of dividing up the issues.

Day Three

This day was designed to be a research and discussion day in the library and offices. Each group had a set time during the day when they were required to meet the course co-ordinator in their allocated offices. Each of these meetings was for 30 minutes and proved to be invaluable for both students and course co-ordinator for the purpose of confirming that each group was "on track" with their issues and problems. In addition to this fixed meeting, the groups could meet with the course co-ordinator at any stage during the week, although no substantive law could be discussed at these meetings.

Given that the problems were duplicated to some extent amongst the groups, some general materials were placed in closed reserve so that all students could have equal access to the materials. In addition, there was a library protocol in place, requiring students to return materials after two hour access, enabling other groups access to the same information.

The library was open until 9pm on day three to enable additional access for those students requiring it.

Day Four

This day was designed to be essentially similar to day three. In addition to research and discussion, groups were encouraged to start writing up their memorandums and letters which were required to be submitted on the following day.

The library was once again open until 9pm. Some groups chose to stay up part of the evening working in the laboratories to compile all of their information.

Day Five

During the morning, students were required to work in their groups and ensure that their client file was ready for submission at 12.30 pm. Students were advised that no extensions would be granted on their client files and that strict penalties for late submission of client files would be imposed.

Following a long lunch session, the students were required to regather as a large group. During this afternoon session there was general discussion of the week's program, of whether the objectives were met, and of the general problems encountered by the groups. Most students were completely exhausted by this stage, and some tempers frayed and relationships tarnished, however the discussion was an essential part of the week's activities.

Assessment

Assessment of the unit was divided into two components:

(1) Client file (group assessment): 60%

(2) Final examination (individual assessment): 40%

Client File

Each group was required to submit at the end of the intensive week a "file" on the client (the "Client File"). The items and their assessment value are set out below.

Item	Per cent of mark
Consolidated record of interview with the client	8
Plan of action with respect to tackling the problem; division of responsibility amongst group members and general group interaction.	7
Memorandum to "Partner" re research done on problem and "solution" of problem.	20
Draft letter of advice to client.	20
Any other correspondence entered into by the group with respect to the client.*	3
Time sheet — showing exactly what each group member did and how long the member spent on each activity for days three, four and five of the course. Each student was required to record a minimum of 14 hours of "recordable work".** While these time sheets were not divided into "six minute" units, students were required to provide sufficient detail of the work that they had done.	2

* If there was no other correspondence, the main draft letter of advice was worth 23 per cent.

** Recordable work was defined as including discussion time, research time and writing time.

Each group was allocated a mark out of 60, and each member of the group received the same mark. There were three exceptions to this.

(i) Individual students were penalised for non attendance at any time during the week. The roll was called at various times, and if any student was absent without an acceptable excuse, they lost 10 per cent of their mark. This deduction would occur every time a student was absent without excuse.

(ii) Groups were permitted to make written submissions at the time of submitting the client file requesting that an individual or individuals within their group receive a lesser mark. It was stressed to the students that it was the responsibility of all group members to participate equally in the exercise and resolve any group dynamics or problems which arose. However, failing resolution of conflict, groups could resort to the extreme position of requesting a deduction in marks. The written submissions had to contain the following:

- the nature of the complaint against the offending member, for example, complete lack of participation in the exercise
- an assessment (in percentage terms) of what the offending member deserved to be awarded as their grade (for example, 50 per cent of the mark which the group received)
- the signatures of all of the complainants.

The offending member would be asked by the course co-ordinator to respond to the written submissions. In the absence of any adequate explanations by the offending member, the assessment agreed upon by the complainants as to the offending member's participation would be recorded by the course co- ordinator as the offending member's mark for the Client File.

(iii) If an individual's time sheet did not meet the course requirement of 14 hours of recordable work over days three and four and the morning of day five, the individual student's mark would be penalised 10 per cent for every hour the time sheet fell below the required amount. As noted earlier, recordable work included the following:

- research time (library)
- writing time (individual)
- writing time (group)
- group discussion time.

Examination

During the end of term examination week the students were given a two and a half hour examination. Each student was given a set of brief instructions from their "partner" as to the nature of the client's problem and what was required from the student. The main aim of the examination was to assess whether students had developed the skill of being able to approach an unseen legal problem on an unfamiliar legal area within a tight time frame. An example of an examination question is as follows:

Your Instructions:

Tarantellas Pty Ltd has just been placed into receivership (privately appointed by creditors). The receiver wants to know if (i) the employees' contracts of employment are terminated by the receivership and (ii) whether the receiver will be personally liable on any of the employment contracts if the employees continue to work for the company.

You are to spend 2.5 hours researching the above point in the library. At the end of the 2.5 hour period, I want a hand-written report from you containing the following information:

1. Identification of the key legal words/principles/phrases arising from these instructions. **(4 marks)**
2. A proposed plan of action for dealing with the problem (that is, the steps you would take to "solve" the problem/a research checklist). **(12 marks)**
3. A list of specific resources you would anticipate using. They must be relevant to the legal issues raised. Suggested inclusions would be relevant texts (and page references); relevant journal articles (fully referenced); relevant case law and relevant legislation (including specific sections of legislation). Exercise some restraint and consideration when drafting your list, and maybe divide your list into "essential resources" and "related or subsidiary resources". **(12 marks)**
4. A draft report back to me, in note form, of what you have managed to come up with in the time allocated. You might want to jot down within this any further information which may be required so we may be able to fully advise our client. **(12 marks)**

Each student was required to submit his or her own answer and received an individual mark for the examination.

Outcomes and Reflection

Structure of the Course

Upon reflection, there are no substantial changes required with respect to the structure of the week as a whole. There are two possible exceptions. The first concerns the first morning, which comprised four and a half hours of lectures. Consideration is being given to the addition of an extra morning session prior to the commencement of the week to enable more interactive discussion and consideration of the lecture topics. The second, concerning the examination, is discussed below.

The length of time allocated to the research and group work on the client problems proved to be sufficient, given that every group managed to comply with the strict deadline imposed on the submission of the Client Files. Similarly, the 14 hour recordable work requirement over days three, four and five proved to be manageable as every student recorded in excess of the required 14 hours.

Of some concern was the fact that a few students recorded in excess of 40 hours on their time sheets for the two and a half day time period. After discussion with the students involved, it became apparent that the excessive time recording was due more to external factors, such as computer failure and the students' own self expectations, than the nature of the client problems presented. While this absolves the course co-ordinator from any allegation that excessive demands were made on the students, it raises the far more significant and troubling problem of encouraging a more holistic and balanced approach by students to their legal studies and future careers.

Factual Scenarios and the Clients

All three of the multi-dimensional factual problems worked well, as evidenced by the fact that all groups managed to piece together the relevant law in an intelligent and acceptable way. It is anticipated however, that the ongoing problem with the course will be the development of problems crossing traditional legal compartments which are challenging and yet manageable. To this end, it is considered necessary to develop some professional ties with the course, whereby "real world" client problems can be used. Repetition of problems from year to year will be avoided, to avoid any reuse or resubmission of previous years' client files.

The Mailbox

The mailbox proved to be the biggest administrative hurdle for the first two days, largely because of the greater than expected volume of correspondence and the daily response time which had been promised. While some of the requests had been anticipated, others required more consideration and showed some very lateral thinking by the students. Amongst the myriad of correspondence received were Department of Land Administration title searches, Australian Securities and Investment Commission searches and searches of births, death and marriages.

Despite the administrative headache it caused, the inclusion of the mailbox was an extremely important part of the course. It encouraged students to isolate and refine the information they required to deal with their client's problem. The correspondence sent through the mailbox was generally relevant, however some correspondence was not replied to on the basis that it was either inappropriate at that point (as in the giving of initial advice) or on the basis that it would

take longer than three days for a reply to be received. Only one piece of correspondence was considered completely inappropriate, and upon consideration of the letter and their client's position, the group in question withdrew the letter from the mailbox. This itself proved to be a valuable learning experience for the particular group.

Group Dynamics

The allocation of groups and the notion of "group work" was the students' biggest concern at the outset of the week. Most were reluctant to work in groups, particularly in groups not of their choosing. For some, it was the fear of having to rely on other people; for others, it was the fear of working with people outside their particular friendship groups.

Despite the time spent in dividing up the groups (detailed above), group problems did arise, particularly on days four and five, the "crunch" days of the program. From general observations, and the feedback from students, the problems arose not because of the differing skill levels, but because of the differing expectations of the various students. While some students were prepared and willing to pull "all nighters", other students were happy to work the 8am to 5pm day and leave the work at "the office". There were some very visible frictions occurring on days four and five; however, no groups exercised the previously outlined option of reducing a group member's marks for non performance.

Client Files

With the day five deadline came the submission of seven fully documented client files. Without exception, each submitted file was presented clearly and logically, with documentation divided into categories including correspondence, research, draft memorandum and additional materials. Given that no instruction had been given as to the manner of presentation of the files, the quality and professionalism of the files evidenced initiative and considered thought by the students.

As noted above, the main pieces of assessment within the file were the draft letters of initial advice to the client and the memorandum of advice to the partner. As to be expected, the most lengthy document was the memorandum to the partner — in most cases comprising 20–30 single spaced pages. Generally speaking, these memorandums were presented in a very logical format, with full use of headings and summaries. Most memorandums contained

adequate details of where the information was obtained, and some included photocopies of the relevant legislation. In most cases, the letters of advice were written clearly and in a manner appropriate to the client and the client's requests. No letters were over three pages long, and they were all formatted in a clear manner — using headings and bullet points where needed.

At the completion of the course, some students expressed concern that the "letter to the client" was weighted as much as the lengthier memorandum of advice, the implication being that size somehow mattered. However, the justification from the outset, which remains unchanged, is that the draft letter, since it is the prime piece of correspondence with the client, is of equal if not greater importance than the lengthy advice to the partner.

The Examination

As noted earlier, the main aim of the examination was to assess whether students had developed the skill of being able to approach an unseen legal problem on an unfamiliar legal area within a tight time frame. To this end, the requirement of producing a "plan of action" for approaching the problem was incorporated and assessed. In retrospect, this component of the examination should have been weighted more heavily, thereby emphasising the "skill" component of the course. To offset the increase in marks to the "plan of action", the mark allocation of the draft report should have been substantially reduced, thereby diminishing the frantic nature of the examination period.

An alternative "examination" is under consideration for future courses. This modified version of the examination would still seek to assess the skill of problem solving, but would be presented in a different manner. Under the modified examination, students would be given a transcript of a short client interview and asked to identify (i) the nature of the client's legal problem; (ii) what the client wants the lawyer to do; (iii) how the lawyer will go about doing it and (iv) any ethical concerns which might be raised by the client's request. In changing the examination to this format, it is hoped that the skill component of the course will be further emphasised.

Student Feedback

As noted earlier, a reflection session was held on the afternoon of the fifth day. Students were required to give both oral and written feedback on the course and their experiences within it. The questions in the written survey form were divided into two categories: questions concerned with group work, and questions directed at the overall unit evaluation. The responses to the group work questions reflected what had been observed during the week. Specifically, some groups encountered no problems at all, while other groups found the group dynamics frustrating, challenging and, by the end of the week, extremely difficult. At the same time, the majority of students indicated that the group work experience was "realistic" and "rewarding".

With respect to the overall unit evaluation, the feedback from the students was, with one or two exceptions, positive. The emphasis on skills and self regulated/directed learning were generally viewed by the students as being an integral part of their legal education.

Students were also asked whether they had any suggestions for changing the course. Several students suggested that smaller groups be allocated, one student suggested larger groups, and one student indicated no group work at all. A few students thought that running the unit over a longer time period might reduce the stress and pressure somewhat, while other students saw the one week "intensive" nature of the course as an integral and positive part of it.

Conclusion

Law schools should endeavour to appropriately reconcile the competing goals of providing a liberal education and providing professional training within a context of embracing the "public interest" of legal education.[18] Such reconciliation involves, amongst other things, consideration of the range and type of units on offer and the manner in which they are taught and assessed.

The Legal Problem Solving course outlined in this paper was designed to achieve but one goal: namely, bridging the wide gap between university legal education and "real life" law. The feedback received so far is generally positive, but the extent to which the goal has been achieved will only be truly assessable with the passing of time and the graduation

18 For discussion of the "public interest", see Goldsmith, *supra* note 9.

of the students involved from university to legal practice. While there is only so much that "real life" simulation can achieve, the incorporation into the course of group work and time limits, coupled with the emphasis on skills and self directed learning should help to prepare the ground in some respects for law students intending to practice, if only to raise their awareness as to the expectations, pressures and strains which exist. At the same time, however, changes need to be made to the profession, and the recommendations contained in *The Report on the Retention of Legal Practitioners*[19] should be considered by both the profession and law schools. The need to prepare students for the practice of law should not be emphasised to the exclusion of actually making changes to the profession. Graduates need workplaces which offer a "more diverse, more inclusive, more supportive and more flexible"[20] environment.

19 *Supra* note 1.
20 *Id* at 41.

BOOK REVIEW

Legal Education and People

Jeremy Cooper and Louise G Trubek, editors, *Educating for Justice: Social Values and Legal Education*, Aldershot, Hants, England, Ashgate Publishing Company, Brookfield Vt USA and Dartmouth Publishing Company Limited, 1997, pages x + 311. Price $127. ISBN 1 85521 967 0.

*Judge John Goldring**

"Absence of a Larger Vision"

Tan Le, 1998 Young Australian of the Year, wrote in the *Sydney Morning Herald* on 3 March 1999:

> Let me illustrate from my experience. I have just completed a law degree. One reason why I (and many others) chose law was because I believed a law degree would enable me to contribute in a special way — to do what I could to make a better world.
>
> But nothing in the entire law curriculum addressed the issue in a serious and engaging way …
>
> Young people are not being educated to take their place in society. They are being trained in a narrow body of knowledge and skills that is taught in isolation from larger, vital questions about who we are and what we might become.
>
> There is, in other words, a complete absence of a larger vision, and many young people who enter the university in the hope of learning how to make a better world find out that this is not a consideration. This lack of vision prevails not just in tertiary education. Our society has replaced vision with what might be called a rationale. A rationale is more pragmatic, smaller in scope, less daring and does not fire the heart or capture the imagination …

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* A Judge of the District Court of New South Wales since February 1998. Formerly, a full-time member of the Law Reform Commission of New South Wales and before that Foundation Dean of Law and Professor of Law at the University of Wollongong.
 (1999) 10 *Legal Educ Review* 209.

Some years ago, Sir Anthony Mason, then Chief Justice of Australia, said:

> Law schools must resist the temptation to become business schools, deferring to the demands of large commercial practices and ignoring consideration of intellectually demanding questions posed by the traditional subjects as well as the large and enduring jurisprudential issues relating both to the structure of legal systems and to the law's role in society.[1]

Ms Le clearly feels she attended a law school that may have ignored Sir Anthony's advice. The pressures on law schools to defer exclusively to demands of large commercial firms and the students who aspire to work in them (as well as the students' families) have increased in the decade since Sir Anthony spoke. Professors Cooper and Trubek, however, have edited a book that proves some law teachers still share the same concerns as Ms Le and Sir Anthony Mason. Whether or not such law teachers will remain in law schools for much longer is open to question.

In most countries, including the United Kingdom and Australia, reduction of government funding of Universities has put two kinds of pressure on law schools. First, they are recruiting relatively few new staff. Secondly, their scarce resources are concentrated on teaching the compulsory core of traditional subjects in the least costly way. In addition, as some of the contributions to this book point out, the pressures on students have changed in ways that influence their career choices and, at least indirectly, possibly their values as well.

What Ms Le observes may be universal. One essay in this collection, Kim Economides' "Cynical Legal Studies", suggests that the pressures on both law students and law teachers reduce legal education to training in cynicism. He identifies the preoccupation of law firms and universities with "market forces" as one factor. Students are under pressure to find virtually any employment; they can no longer choose. In any event, as a result of "market-oriented" government policies, there is now far less employment available in the public sector and in what at one time was called "poverty law". The author also holds the "nihilistic" element of the Critical Legal Studies approach to legal studies responsible for developing

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1 A Mason, Universities and the Role of Law in Society in J Goldring et al, *New Foundations in Legal Education* (Sydney & London: Cavendish Publishing (Australia) Pty Limited, 1998) x.

a degree of cynicism in law students, especially because its more radical approach to law and society led to isolation from some of the more radical elements of legal practice. If this is true, what room is there left for an approach to the study of law which takes account of social values? One could go further: where, in the course of most legal education, do students encounter the "human" element in law?

The study of business and property law rarely exposes students to the fact that law arises out of and affects the actions of individual people who have appetites, moods, likes and dislikes. The Aristotelian or scholastic tradition that influences so much of higher education (including legal education) in the western culture is obsessed with systematisation and rationalisation. Human individuals at times need systematic thought and rationality, but essentially they are anarchic and irrational. A starting point for legal studies might be that lawyers need to accommodate human individuals to the demands and opportunities presented by laws. This approach, however, is relatively rare, and for that reason law students may not be exposed to the sort of social values which interest the contributors to this book. When law is "personalised" or "humanised" in some of the ways described by the contributors, the outcome is very different, no matter whether that process takes place in New York City, Sri Lanka or Bangladesh.

This collection of essays follows the formation, by a group of law teachers in several countries, of an international working group on social values in law in 1992. As the editors state in their introductory essay,

> By social values in law we mean the belief that the primary function of law is to uphold the values of a humane and civilised society as expressed in the internationally accepted canon of fundamental human rights and aspirations. Maintenance of social values in law may, therefore, require lawyers to use law proactively to bring about social change in the interests of justice. It undoubtedly requires law teachers to develop amongst students an appropriate spirit of enquiry that is vigilant to the questions generated by this concept. (1)

This, of course equates, "justice" with "the belief that the primary function of law is to uphold the values of a humane and civilised society", and by doing so may invite philosophical or political disagreement. And law teachers who wish to educate for social values will find the avenues available to them for doing so extremely limited. But there are still opportunities,

and those who might otherwise despair might take heart from such essays as Professor Phillip Iya's description of what is happening at the University of Fort Hare in South Africa.

The Clinical Experience

Many essays in this collection describe attempts to integrate student learning with "real-life experience". They describe several types of "clinical legal education". In the context of "educating for social values" several of the authors seem to emphasise that the clinical experience of the law students should be of a special type.

Until the years 1920–1960, even in the United States, most lawyers were trained, at least in part, by apprenticeship or articles of clerkship. Law study in a university was regarded by the professional authorities as a minor part of legal training. Then, in the United States, credentialism and the desire of law schools to dominate legal education finally prevailed, and students were often admitted or licensed to practice with no experience at all of legal practice.[2] When suggestions were made that "clinical" experience might assist students to understand both the nature and content of professional responsibility and the nature of law in action, the professional authorities were receptive. The analogy of the medical schools, with students and recent graduates treating real patients, especially the more indigent patients, in the public teaching hospitals, was also useful. The legal profession (eagerly) and the law schools (with some reluctance) accepted that clinical legal education could be justified, even in the context of a scholarly institution.

Ideally, in this form of clinical legal education students practise "poverty law", under the supervision of experienced practitioners who have a primarily teaching role. The legal centre is controlled by local communities, so that their job, as well as including the traditional tasks of advice, representation and negotiation, is to empower less privileged members of the community. Indeed, some of the authors in this collection seem at pains to emphasise that while clinical legal education can and should train students in various relevant skills (especially skills of communication, advocacy, negotiation and research), that should not be the primary aim of clinical legal education in "educating for justice".

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2 R Stevens, *Law School: Legal Education in America from the 1950s to the 1980s* (Chapel Hill and London: University of North Carolina Press, 1983).

The proponents of clinical programs, for the most part, had an additional agenda, usually hidden carelessly, if at all. The civil rights activism that swept the United States in the late 1950s and 1960s engaged some law students, who assisted civil rights litigation in various ways — and changed or deepened their commitment to law and lawyering. These lawyers, and law teachers who observed them, considered that engaging law students in the provision of legal services to a group of clients who were not businesses might not only give those clients access to legal services that would otherwise be out of reach, but might also educate law students by exposing them to a range of human predicaments quite often totally alien to the middle classes from which most law students were drawn.

Clearly there are tensions between the objectives of, on the one hand, service delivery to, and empowerment of, communities and, on the other hand, those of legal education. Resolving these tensions is one of the challenges to those seeking to educate law students for social values through some form of clinical experience. The essays presented here are evidence that that type of experience is not the only means of educating students for social values, though a common theme is that students who study and are exposed to the "law in action" as opposed to "law in the books" are more likely to develop the spirit of inquiry that the contributors consider desirable. As the editors say, "legal education matters". Legal education, particularly clinical legal education, has frequently been the source of innovations that improve both the experience of students and the welfare of communities. Several essays question the perception that law — and law schools — exist primarily to serve the business community. Clinical programs and social action research may develop students' critical awareness and make them aware of constituencies of law beyond business. While there were links between the "critical" (ie radical) and clinical legal studies movement, they were by no means congruent.

Integrating Social Values in Legal Education

The case studies presented here examine a broad range of legal education. They span a new approach at the beginning of law school studies to the teaching of legal research and writing through a range of clinical programs, as well as examples of community legal education — the demystification of law and empowerment of disadvantaged groups in Bangladesh, Slovenia and the United Kingdom. It is intended

that the materials presented can be used as a "tool kit" for people interested in using legal education as a base for integrating social values into law.

The editors see two major approaches to integrating social values in legal education: clinical education, and through the curriculum.

Clinical Education

Clinical education seems to dominate the book, probably because it has been extremely successful in humanising the law for those who participate in it. In the United States clinical programs are part of the offering in most law schools. In the United Kingdom the law schools have been conservative in setting their curricula, and the community law centres movement is part of a more general radical community action movement and is not so closely linked with the law schools. Canada and Australia fall somewhere on the continuum between the United States and the United Kingdom, and possibly for that reason have experienced more closely the special tension that arises between the thrust for community control of the law centres that serve a special community, and the need to accommodate educational objectives and requirements. This is a question explored sensitively and thoughtfully in the collection by Mary Anne Noone.

Some academic activities mesh well with community needs, though the projects may at the time they are initiated appear to have more academic value than community value. Bernard K Freamon describes an "action research" program conducted at the law school of Seton Hall University in Newark, New Jersey. Seton Hall is a rather conservative, Catholic university. Newark is an urban area with huge numbers of homeless people, largely as a result of archaic and discriminatory tenancy practices. This is despite the existence of "fair" housing laws that prohibited racial discrimination. Students were encouraged to work in a "Fair Housing Clinic" and, in the course of enforcing the law, were obliged to work with social scientists to collect empirical data to support the cases. In addition, the law school initiated an "Affordable Housing Colloquium" which would function outside the clinic proper but would engage in "action research". As Freamon states (at 177–78)

> Lawyers are notoriously unscientific in their analysis and use of research and data and much of what lawyers call "research" is not worthy of the name — it is little more

> than anecdotal storytelling — and it sometimes leads to terrible discrimination by judges and legislators. So we determined that the research endeavour … would be conducted by well established and experienced scholars, policymakers, and researchers, all from universities, governments and agencies, with a good track record in the community and solid experience in the world of litigation and legislation. This research would accurately inform faculty concerning the empirical data and other forms of knowledge needed to educate students and make good decisions on the legal needs …

The information generated was fed back into the teaching program of the law school as well as being used in administrative and legal proceedings and in lobbying activity. This was particularly important, as judges had been asking for empirical evidence of the results of legislation and litigation. The process took more than five years. The results reflected not only in concrete results for law and policy, but also in understanding by members of various disciplines.

Freamon identifies political and ideological difficulties within the law school and the University. This would appear to be universal wherever either accepted practices are challenged, or academics adopt and advocate particular viewpoints based on social values. There are examples of this in Gary Blasi's account of the creation of an academic program in Public Law and Policy at the UCLA Law School. More familiarly to Australian readers, Noone gives an account of one of the two major obstacles to the introduction of clinical programs in Australia (and, from my observation, in the United Kingdom and Canada): the view among academic lawyers that they are primarily scholars in academic, research-biased institutions, which should not be involved in practical training, or as some put it, "technical training". The other obstacle has, of course, been the relative cost of clinical programs.

That argument is quite different from the argument whether the objectives of clinical programs should be those primarily of community service or of education. The contributors to Cooper and Trubek's collection, however, emphasise *education* which informs students of social values, rather than the *inculcation* of those values. There appears to be an appreciation among several contributors that the values inherent in much legal education, indeed, much law, are those of business and property. Duncan Kennedy articulated this in "Legal Education and the Reproduction of

Hierarchy"[3] many years ago. This alienates some students who already have developed their own social values and ideas which may differ from those of traditional law teachers.

Minna Kotkin, who had been teaching litigation skills and employment discrimination at Brooklyn Law School in New York, recounts the experience of the Violence Against Women Act Project, which grew out of a course which had, for many years, involved students in selected employment discrimination cases in the United States Federal Court. A new statute provided an opportunity to overcome what Minna Kotkin saw as shortcomings in the existing course. The students not only worked on the drafting of court documents, but became involved in community education about the new law. Despite the fears of students and staff that this would produce a flood of clients, relatively few emerged. Some potential litigation was considered, but none resulted, and this disappointed some students. The major outcome, however, appeared to be the process of critical reflection on the process of litigation which the course evoked in many of the students. This, in turn, influenced their career choice to some extent.

Maresh provides evidence that students who participate in clinical education programs are more likely than other students to engage in various forms of "public interest" legal practice after completing their studies. These results speak for themselves. Maresh comments on the reason for the change in attitudes:

> [T]hey acknowledged a "personalisation" of the plight of the poor, a realisation that many of their clients needed representation through no fault of their own, a recognition that the integrity of the judicial system is dependent on equal access to representation regardless of individual resources … (164)

Any educational experience which does not "personalise" social differences and differences in attitudes and experiences of different social classes is unlikely to change students' perceptions of social phenomena, and therefore their attitudes and social values. Students are unlikely to comprehend social difference in any concrete way unless they experience such differences. Maresh is able to express in a rational way what was immediately obvious to the early law teachers

3 (1982) 32 *Journal of Legal Education* 591.

and students who were engaged in and by the civil rights movement in the United States and (to a lesser extent because the numbers were smaller) the anti-Vietnam war and early community legal centres movements in Australia.

Curriculum

Traditional curriculums and the pressure to get law studies over and done with, so that students can get on with the serious business of earning money and repaying their student loans, directly impede the development of social values in individual students. Clinical programs are one way to counter this. But they are expensive, and many students may see them as involving unnecessary work without corresponding benefits.

The essay by Adrienne Stone is particularly significant for Australian law schools in this regard. Her essay, and that of Kim Economides mentioned above, may be seen too to reflect the opening remarks of Ms Tan Le. Ms Stone has been both teacher and student in Australia and at Columbia Law School in the United States. Her observations focus on the women who are now a significant majority of students in most law schools in both countries. Many women students aspire to public interest practice when they commence their studies, but the *process* of a traditional legal education can easily dissipate these aspirations or instil the type of cynicism that Economides discusses. This is because they are "dehumanised".

On the other hand, Amy Ruth Tobol's essay on integrating critical awareness in a course on legal research and writing — typically offered to law students in their first semester — demonstrates that law schools themselves can equip law students to perceive the "hidden agendas" and underlying values of the traditional law school curriculum by demonstrating that the substance and the practice of law embody (and are the result of) particular social pressures and reflect particular values. By introducing students to the practice of working cooperatively rather than as competitive individuals, they can learn a good deal about the power relationships reflected in law. Forewarned and armed in this way, students may be able to avoid some of the cynicism and disillusionment that might otherwise be the end result of their education.

Conclusion

"Social values", however defined, recognise that human beings are the raw material of society. Law affects people. They are the subjects and frequently victims of a legal system. Many

law students are kept ignorant of this fact. Although the formalism that characterised law and legal education 20 or 30 years ago may no longer be so dominant, the human element in law is still somewhat lacking. Attempts to portray the law as rational or systematic are misleading, and approaches to law such as "Law and Economics" are particularly pernicious because, if they consider individual humans at all, it is as an abstracted mass of people, not idiosyncratic individuals who are essentially irrational.

Teaching law so that students are exposed to questions of values may occur in any type of legal education, whether the learners are members of the community seeking information about their rights as domestic violence victims, tenants, people who have to work with the law (social workers, rural development workers, police etc) or law students. Law students risk avoiding questions of value more than others, because of the nature and tradition of law teaching, and the widespread expectation that they will proceed to work in commercial law or business. Many will, but if a society based on the rule of law is to survive, many must work in other areas such as criminal, welfare and housing law, where legal skills are needed.

As Stone points out, *every* law student needs much of what students in traditional law schools receive: a knowledge of the substantive rules and practices that make up law. Clinical experience is not a substitute for fundamental core material, though in some situations it may be a vehicle for learning such matters. What clinical experience adds, though, in ways that seem highly desirable, is the *humanising* element. This would seem the case wherever students are exposed to real human clients. But clinical learning may, and perhaps should, have wider objectives. It allows students to gain the ability to comprehend "law in action", and that law is more than rules and books, but a living system. The human element is a vital part of this understanding, but there are others. That is why some questions which the contributors do not answer are important if one's concern is specifically community legal education or clinical legal education. But these essays stress the important link between the development of social values and the fact, often ignored in traditional legal education, that law is fundamentally about *people,* and often people who are particularly vulnerable and powerless.