My Law School – Then And Now

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Introduction – A Series Of Fortunate Events

I was 16 when I commenced the first year of my undergraduate degree at my local sandstone law school in the late 1970s. I now recognise that I was a quintessential, first generation university student – an experience all the more acute in its rendering by my complete ignorance of law as both a discipline and a profession. I think that my parents were simultaneously proud and aghast at what I had undertaken and at the unknowable persona that, in their minds, I was proposing to assume.

I was state-school educated (primary and secondary sectors) and proud of it, but acknowledge also that I was fortunate to have lucked into a secondary year cohort with others who offered intellectual challenge and social support at a time when being 'brainy' at school was not all that popular a pursuit. Not for the sake of aggrandisement, but more as a matter of historical curiosity, I record that, at my local state high school, I was the first female dux (co-dux more accurately, with a fellow male student, now an orthopaedic surgeon).

I was tertiary-educated in the free Whitlam years, for which I will be forever grateful – at least in that sense financial status was not an issue (though public or private schooling lineage was a very keen divide amongst my sandstone law school's constituency and another new phenomena for me at the time – my first sense of class divide in a supposedly classless society). Like many of my less well-off peers, I worked (three) jobs on holidays and weekends to buy books, pay rent and have some money left over for fun. These factors apart, my strong recollection is of money as a non-issue – my friends outside law school and I seemed bound together by our student poverty and our

recreational celebration of it at student haunts.

From the start, I lived in a university residential college amidst a cacophonous assortment of disparate disciplines and personalities and within walking distance of my campus classes. Though I would never had admitted it back then, I can see now the compelling paradox of my being simultaneously far too young for the intensity of that quasi-adult world (though concomitantly, my blank-canvas presentiment was absolutely the essence of my becoming).

In sum, 'university' unconditionally and equitably offered me limitless intellectual and social opportunities: my experience of those years on campus and at college was of a community of learners and friends; of skills, values and attitudes gained and refined; of sharing; and of a communal, if often confronting, journey of like minds.

Having said this, however, the precise role that my law school experience *per se* played in this journey is far from unequivocal. Throughout my law school years, I had a very strong sense of being 'other' to my discipline colleagues' evidently native, easy-fit – partly borne of the class or privilege disparity to which I have already referred and partly due (I have now deduced) to the intrinsic insularity of everything about 'The Law', especially as it was offered as a domain of study at that time; in that place.

In this paper I should like to reflect on 'my law school' from that personal, undergraduate student perspective and juxtapose that experience with what I have now more fondly appropriated as 'my law school' some considerable years later, as a teacher in another institution entirely. Specifically, I will consider briefly the complex interaction of factors that play out in the first year of any tertiary experience, and often militate against student retention and success: how have student patterns of engagement changed from the late 1970s of my undergraduate years, to my current students' reality of tertiary study in the 21st Century Nelson Noughties. I will then turn to an examination of how legal education itself has responded to the various sectoral pressures that have impacted upon it since the 1987 *Pearce Report*[1] (which essentially reflected my own higher education experience of law): what is different from then to now, how is it different and is that difference a good thing? How has legal education attended to the challenges of monitoring and maintaining relevance, quality and academic integrity in the face of a range of dynamic internal and external pressures? Is there any justification for, what I sense in some quarters of the profession to be, a hankering for the 'good old days' of my educational epoch?

To answer these broad questions, I will first address a realistic appraisal of 'how it was back then' and then come forward to the 21st

[1] D Pearce, E Campbell and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) ('Pearce Report').

Century to examine 'where we have got to' with the re-conceptualisation of learning and teaching in legal education. In this way, it is hoped that readers might be provided with the basis for an honest assessment of the state of modern Australian legal education. While conceding that the contemporary legal academy is far from perfect, it is my contention that modern legal education as a whole has advanced quite significantly, though admittedly from a fairly low base.[2] At least today legal education is essentially cognisant of modern practice imperatives, has been responsive to graduate needs, aims to be more inclusive in its culture and is finally taking account of educational theory around good learning and teaching practice.

What Was It Like Back Then? Honestly?

A trite response to this enquiry now, to be compared with then, might be: free and relatively carefree; especially when I look to my current students whom I see being crushed by the heavy financial and personal imperatives of subject-to-subject success. But a more helpful analysis is possible if, without being overly nostalgic, we attempt to recreate the 1970s-80s undergraduate law student (or Solicitors' Board or Barristers' Board) experience and ask 'what was it like back then?' Honestly? This can be done reasonably accurately I suggest, either independently through more latterly acquired skills of honest self-reflection, and/or with the assistance of contemporary records like the *Pearce Report*, which dispassionately captured practice at the time.

For my undergraduate self, I can still quite clearly recall the early days or weeks of social and intellectual isolation, the constancy of intellectual self-doubt that pervaded everything I did and the massively ill-conceived problem-based learning exercise my degree seemed to be. From my 16-year-old, first-generation university student perspective, I can still remember:

- How I had no clear sense of overall direction or purpose;
- The lack of understanding about how anything (administratively or academically) fitted together – everything from enrolment to teaching practices seemed to be specifically designed to obfuscate my futile attempts at progression;
- The lack of study, and other necessary academic skills: for example, it took me months to find my way around the law library; problem solving skills were never made explicit, rather, they were held aloft as some 'holy grail' that you either stumbled upon accidentally or intuitively pick up along the way;

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[2] M Keyes and R Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26 *Sydney Law Review* 537, 564.

- That I had no understanding whatsoever of the hierarchy of knowledge; if I knew and understood something that was enough (I thought). It never occurred to me that my cognitive development might be driven towards such higher-order processes as application, analysis, synthesis or evaluation;[3] as for affective development, until more recently in my teaching rendering, I did not know its name;
- That mature age students knew everything (it seemed), while I could barely pronounce the words in the textbook, especially ones that had been abbreviated;
- (What I understand now to be) an extreme lack of any notion of mastery of my chosen discipline;
- That I was scared witless by the fear of failure, though I was never quite sure what it was that I was required to do to ensure non-failure, let alone success.

Most fundamentally, I was completely disengaged from and uncritical about the 'traditional model' of legal education delivery. My experience was much as the *Pearce Report* captured it almost a decade later:

- Long, two hour lectures given by undoubtedly expert practitioners (cf teachers) on dry, discrete, doctrinal subject areas, which at times seemed quite randomly chosen (for example: I learnt a lot in torts about American product liability law, even though that was not examined). I passively took pages and pages of handwritten notes which described detailed legal rules as case upon decided case had refined them. Of necessity, this transmission process went straight from lecturer's mouth to my pen; interposing my brain was problematic because that was when I started losing the automaton-like ability to take good dictation, if and when that was given. (Many of my generation still evidence the middle finger bump from this extreme-writing).
- The only thing which changed between subjects and between semesters in the student's progression through the degree was the substantive rules which formed the content of the subjects. [4]
- One hour tutorials where, if you kept your head down and avoided eye-contact, you also avoided any attempt (in the unlikely event there was one) at interactivity or engagement as between yourself and the tutor (and never with other class members); it helped that there was little to no prospect of the tutor knowing your name (or seeing any need to know it);
- Very little guidance about program and/or subject structure was provided – you got what you got (and were grateful for it) and most of it, possibly

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[3] B Bloom, *A Taxonomy of Educational Objectives Handbook 1: Cognitive Domain*, (2nd ed, 1965) as interpreted by A Bone, *Ensuring Successful Assessment* (1999) 6-7; See also *First Words on Teaching, Relating Learning Outcomes to Level* (2002) Oxford Centre for Staff and Learning Development, Oxford Brookes University <http://www.Brookes.ac.uk/services/ocsd/firstwords/fw33.html> at 28 February 2005.

[4] Keyes and Johnstone, above n 2, 541.

> together with something that had never been mentioned, would be on the end-of-year-100 per cent-closed-book exam. Such assessment practice (there was no other, so not 'practices'), tested little more than robotic recall; it was certainly not a valid assessment of my understanding, let alone of any higher-order cognitive learning outcome, nor a certification of anything other than that I could repeat what I had been told reasonably accurately. I tell my students today (and they don't believe me!) that, at my peak, I could rote learn an A4 page off in 15 minutes.

In sum, my experience was, as John Biggs has named it, a focus on 'what the student is'[5] – a one-way transmission of vast amounts of information, which 'once expounded from the podium [were] "covered."' My job as student-receptor was to 'absorb and to report back accurately' in the exam and then only in that one subject area – making connections was not encouraged. If there was any breakdown in the process, then clearly the failing was in me as student (after all, I had been expounded to by an expert, therefore I should have learnt). If I was unsuccessful, I must have been any or all of 'incapable, unmotivated, foreign or some other non-academic defect'.[6]

> [T]he traditional legal education model has been preoccupied with the study of narrow legal rules...[and] taught the same thing – analysis of legal rules – repeatedly, with little evident recognition of students' intellectual development.[7]

I know that many of my teaching colleagues had similar undergraduate experiences and it is problematic that most 'uncritically replicate the learning experiences that they had when students'.[8]

Transition To Tertiary Study – The First-year Student Experience

What principally underpins my subsequent ambivalence (as a sixteen year-old of my time, I was extremely uncritical) about the efficacy of my prosaic (though not damnable on that count alone) law school education is that it could have been – and should have been – so much more. I have heard Professor David Weisbrot, formerly Dean, University of Sydney and now President of the Australian Law Reform Commission, speak about how we could put our best and brightest students into a dark room

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5 J Biggs, *Teaching for Quality Learning at University* (2nd ed, 2003) 22: cf 'What the Teacher Does' and 'What the Student Does' 22-25.
6 Ibid 22.
7 Keyes and Johnstone, above n 2, 558.
8 Ibid 539.

with law reports and a torch and let them out four years later with much the same educational effect as the traditional model of legal education.[9] Where is the value adding – the teacher-added value – in this process?

It is useful in this context to note the finding from the *UK Law Student 2000* study (as reported by Catley in 2004), that 80 per cent of UK law students reported that 'interest in law' was a very important and distinguishing factor in their decision to go to university to study law.[10] For the sake of our students, then, the university experience should ensure its responsiveness to this pre-existing interest and harness such early motivation for learning engagement. The educational experience offered should be rich and textured; an illuminated journey of character and disposition that promotes intellectual breadth, agility and curiosity.[11] In short, it should offer more than students could achieve for themselves if all we provided was four years in a dark room with some books and a torch.

As a first-year undergraduate, I was not especially motivated by my interest in law – more a disinterest in everything else. I was not familiar with, or was otherwise ill-informed about, what might be encountered in my course of choice, let alone what tertiary study entailed, as are many of our students today.[12] I had some expectations of 'university' (cf law) – particularly, that it would be 'radical' in some sort of free-spirited-hippy way and that I would be 'called into the presence of thinking'[13] – though I was doubtful of my intellectual ability to engage with such opportunities when they presented; uncertainly which compounded upon itself as unfamiliar (legal) words and phrases and unintelligible (academic) practices and procedures amassed against me.

What salvaged my first year of law school experience and saw me retained to progress to second year (if not quite as successfully as I might have liked) was not a brilliant and inspiring legal education, but rather a happenstance of circumstances that resonates with the engagement and transition literature in the body of research that now exists around the first year experience. Throughout my degree my identity was that of 'university student who happened to work' to support my studies – first

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9 S Kift, *Legal Education: More than a Dark Room and a Torch* (2003) Australian Awards for University Teaching <http://www.autc.gov.au/teaching_forum/2003/presentations.htm> at May 2005.

10 P Catley, *Which University? Which Course? Undergraduate Students' Reflections on the Factors that Influenced their Choices* (2004) Brookes e-Journal of Learning and Teaching (BeJLT) <http://www.brookes.ac.uk/publications/bejlt/volume1issue1/!> at May 2005, citing *Law Student 2000*, United Kingdon centre for Legal Education <http://www.ukcle.ac.uk/research/cuthbert.html> at May 2005.

11 D Weisbrot, 'From the Dean's Desk' (1994) 3(1) *Sydney Law School Reports* 1

12 R James, 'Students' Changing Expectations of Higher Education and the Consequences of Mismatches with Reality' (2002) *OECD, Responding to Student Expectations.*

13 Martin Heidegger cited in G MacLennan, 'Understanding Practice Led Research', unpublished paper, QUT, May 2005, 4.

and foremost I was a student. I lived in a residential college on campus in a living learning community of peers and friends from many different disciplines[14] and there was a distinct lack of diversity of cohort, both in my degree course (where we were almost all school-leavers around 16-18 years of age, with a very small minority of mature age students) and in my college community. Significantly also during this era, it seemed to me that there was a generational cohesiveness of student poverty, which resulted in high levels of social, intellectual and study interaction.

The features that I can retrospectively identify as having redeemed my negotiation of my first year experience are reasonably synonymous with the enablers that contemporary students lack: for example, research tells us that students today spend less physical time on campus and more time dealing with a diverse range of priorities (such as paid employment, family and other extra-curricula activities)[15] that compete with their development of a 'student identity'.[16] On the other side of the ledger, the same inhibitors as existed in my day remain for modern-day students,[17] persistent in portending against students developing the sense of academic connectedness that is so crucial to academic success, with the exacerbation of some additional, contemporary complicators (for example, information technology adds a further layer of engagement complexity for a large number of students). As McInnis has pointed out,[18] the contemporary patterns of student engagement augur against students developing a sense of belonging or student identity 'without intervention as might have been the case when small numbers of students studied and played their way through courses together' as we did in my day.

It is interesting to reflect upon the other environmental, social and cognitive factors that can combine in a complex interaction to affect students' sense of first-year belonging and their learning success; many have echoes of both the past and for the present. These risk indicators are well documented both here and overseas[19] and include, for example, situations where:

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14 V Tinto, *Leaving College: Rethinking Causes and Cures of Student Attrition* (2nd ed, 1993).

15 C McInnis and R Hartley, *Managing Study and Work: The Impact of Full-time Study and Paid Work on the Undergraduate Experience in Australian Universities* (2002).

16 C McInnis, R James and R Hartley, *Trends in the First year Experience* (2000) DETYA Higher Education Divisions, Canberra <http://www.dest.gov.au/archive/highered/eippubs2000.htm> at May 2005.

17 Except that, as educators, we are now more aware of them and should seek actively to ameliorate their negative potential, see paragraph immediately following.

18 C McInnis, *Signs of Disengagement? The Changing Undergraduate Experience in Australian Universities* (2001) CSHE: Melbourne <http://www.cshe.unimelb.edu.au/APFYP/research_publications3.html> at May 2005.

19 Eg, G D Kuh and N Vesper, 'A Comparison of Student Experiences with Good Practices in Undergraduate Education between 1990 and 1994' (1997) 21 *The Review of Higher Education* 43-61; McInnis and Hartley, above n 15.

- Motivation to attend university is 'external' (for example, parental wishes[20]);
- Students have doubts about their choice of program;[21]
- Students are not in the course or institution of their first choice, including when they seek to improve their tertiary entrance score;[22]
- Advanced technology delivers flexible online learning and decreases time spent on campus and/or students come onto campus solely for classes and consequently have greater difficulty forming peer and study groups;
- Large classes, high staff : student ratios and increasing academic casualisation make informal interaction between staff and students more difficult;[23]
- Peer interaction in the learning community (as regards both its nature (social and/or academic) and extent) is absent or minimal;[24]
- The quality of teaching staff in the first year, which is critical to student engagement, is not guaranteed;[25] and
- Information overload during Orientation sessions increases the sense of disassociation and alienation.

If permitted to do so, any one of these hurdles can become a self-executing endpoint – especially when the additional complications of diversity[26] or equity group membership[27] are thrown into the mix. In my own case study, I would assess my potential for retention (let alone success) as relatively high-risk given the number of these indicators to coalesce: I was most uncertain about my choice of program; nothing in my background (age, family, social or educational) was entirely apposite; for the reasons to be discussed shortly, the traditional model of legal education to which I was subjected was less than engaging in its

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20 C McInnis and R James, *First year on Campus: Diversity in the Initial Experiences of Australian Undergraduates* (1995); R Pargetter, C McInnis, R James, M Evans, M Peel and I Dobson, *Transition from Secondary to Tertiary: A Performance Study* (1999) DETYA, Higher Education Series <http://www.dest.gov.au/archive/highered/hes/hes36.pdf> at May 2005.

21 McInnis, above n 18; James, above n 12.

22 McInnis, above n 18.

23 E Clark and W Ramsay, 'Problems of Retention in Tertiary Education' (1990) 17(2) *Educational Research and Perspectives* 47-59; S Kift, '*Assuring Quality in the Casualisation of Teaching, Learning and Assessment: Towards Best Practice for the First Year Experience*' (2003) March ultiBASE <http://ultibase.rmit.edu.au/Articles/march03/kift1.htm> at May 2005.

24 Tinto, above n 14; K-L Krause, C McInnis and C Welle, *Student engagement: The Role of Peers in Undergraduate Student Experience* (2002) The University of Melbourne <http://www.cshe.unimelb.edu.au/APFYP/pdfs/KrauseSRHE.pdf> at May 2005.

25 Clark and Ramsey, above n 23; McInnis and James, above n 20.

26 McInnis and James, above n 20; McInnis, above n 18; McInnis *et al*, above n 16: commonly referring to age, gender, social and educational background, engagement in work, family status, ethnicity.

27 R James, G Baldwin, H Coates, K-L Krause and C McInnis, *Analysis of Equity Groups in Higher Education 1991-2002* (2004): commonly re students from low socio-economic backgrounds, from rural or isolated areas, from a non-English speaking background, with a disability, women in non-traditional areas of study and high degrees, also Indigenous students.

approach; information overload was at meltdown point by Week Four (though I cannot recall attending any Orientation activities other than the obligatory toga party and boat trip organised by the College); and I was in a non-traditional area of study, though the latter is now difficult to recall given that current male : female student ratios are consistently in the order of ⅓:⅔ (the reverse was the case amongst my student cohort).

The end point of this, I think, is that while much has changed, and not necessarily for the better, regarding the dynamics of the first year experience for our current students as between my then and their now, much has also remained the same. It is salutary for us as both professionals and as legal educators to be explicit in our acknowledgement of these inhibitors in the new era of Nelson reforms, when legal education is so expensive under the new (2005) differential system of student contribution scheme.[28] I am concerned for the diversity of our student body in this regard and am anxious that the prospects of such high levels of debt will act as a very real disincentive for many students, especially first generation and equity group students. Something of this trend is already being felt in terms of the diversity of graduates entering the profession in the UK.[29]

Has Legal Education Changed From Then To Now?

Despite significant internal and external impediments, legal education and most undergraduate law curricula have undergone significant change since the *1987 Pearce Report.*[30] Just a moment's reflection on the way the world has changed – continuously and dynamically – since the late 1980s suggests that this is no more than as it should be: legal education and the legal services industry are no more immune to change than the higher education sector and the changing world of work of which they are respective microcosms after all.

For two relatively traditional sectors, it is unsurprising also that most of this change has been driven by pressure from (largely common) external factors. Legal practice has been transformed by external drivers such as globalisation, competitiveness and competition reform, information and communications technology and by a determined move away from

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[28] The 'Nelson Reforms' enacted by the *Higher Education Support Act* 2003 (Cth) ('HES Act') further entrenches law as a discipline being funded at the *lowest* cluster level for commonwealth contribution (now at $1,509), but allows that legal education may be charged to students at the *highest* band level (approx $6,427) with an additional allowable impost charged by most universities of a further 25 per cent on the band level.

[29] See, eg, M Cuthbert, 'A Career in the Legal Profession: Worth getting into Debt for?' (Paper presented at the *4th Annual LILI Conference*, University College Northampton, Coventry TechnoCentre (2002) reporting on *Law Student 2000* referred to above n 10).

[30] Pearce Report, above n 1.

the adversarial system as the primary dispute resolution method. The Australian tertiary sector has similarly been subjected to dynamic change from a range of external drivers: particularly competition, information and communications technology and a significant growth in higher education participation, which has contributed to increasing student diversity (in terms of both demographics and preparedness for tertiary study).

However, the pace of change from the traditional model of my 1970s experience and the *Pearce Report's* 1980's cataloguing has been glacially slow. A plethora of reports produced both nationally[31] and internationally (eg, United States,[32] England,[33] Scotland,[34] Canada,[35] Hong Kong[36]) have exhorted a re-orientation of traditional approaches to legal education (from a content focus towards skills and values acquisition and training) and warned that 'good legal education should not be 'highly instrumental' or "anti-intellectual"'.[37] The more recent of these analyses have also directed criticism at the reluctance of many legal educators to embrace change and move away from the 'dominance of doctrine': for example, ALRC 89 exhorted law schools to accommodate the dynamic change in professional practice and to counter the critical and 'relative stasis in legal education, which appeared frozen in time',[38] while similar

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31 C McInnis and S Marginson, *Australian Law Schools after the 1987 Pearce Report* (1994); Australian Law Reform Commission, *Review of the Adversarial System of Litigation: Rethinking Legal Education and Training*, Report No 21 (1997); see also Australian Law Reform Commission, *Review of the Federal Civil Justice System*, Report No 62 (1999); Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000); R Johnstone and S Vignaendra, *Learning Outcomes and Curriculum Development in Law* (2003) <http://www.autc.gov.au/projects/completed/comp_projects_loutcomes_law.htm> at May 2005.

32 Eg, American Bar Association, *Legal Education and Professional Development – An Educational Continuum* (1992). Refer to section on Legal Education and Admissions to the Bar, report of the Task Force on Law Schools and the Profession: Narrowing the Gap (the 'MacCrate Report').

33 Eg, The Lord Chancellor's Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training* (1996).

34 *Scottish Legal Education in the Twenty-first Century: A Report to the Joint Standing Committee on Legal Education in Scotland* (2000).

35 Canadian Bar Association, *Systems of Civil Justice Task Force, Final report* (1996); see also Committee Responding to Recommendation of the Systems of Civil Justice Task Force Report, *Attitudes-skills-knowledge: Proposals for Legal Education to Assist in Implementing a Multi-option Civil Justice System in the 21st Century* (1999).

36 The Steering Committee on the Review of Legal Education and Training in Hong Kong, *Legal Education and Training in Hong Kong: Preliminary Review* (2001) Hong Kong Law Society <http://www.hklawsoc.org.hk/pub_e/news/default.asp> at May 2005 (the 'Hong Kong Report').

37 ALRC 89, above n 31, 2.85 citing the Lord Chancellor's Advisory Committee on Legal Education and Conduct in the United Kingdom.

38 Professor David Weisbrot, 'What Lawyers Need to Know, What Lawyers Need to be Able to Do: An Australian Experience' (Paper presented at the *Erasing Lines: Integrating the law School Curriculum Conference*, University of Minnesota Law School, Minneapolis, 26 July 2001), citing ALRC 89.

concerns were expressed by the *Steering Committee on the Review of Legal Education and Training* in Hong Kong in 2001:[39]

> The pace of change in legal practice (in the range of legal services provided, the mode of delivery and the mode of organisational and structure of the law firm units) is dramatic. What is less clear is the necessary adjustment that needs to be made to thinking about legal education, its foci and methods.

More promisingly, the most recent of the Australian Reports, the 2003 Report on *Learning outcomes and curriculum development in Law,*[40] commissioned in response to a recommendation in ALRC 89 that there should be another national discipline review of legal education, records evidence of some encouraging changes to legal education.

However, as Keyes and Johnstone point out, not much has been said in any of these reports about addressing 'the teaching and learning implications of the traditional model (added emphasis)': 'that is, how students should be taught in law schools.'[41] My new, adopted law school is one of a number that has sought to address this latter issue by reference to educational theory and research, to which I shall turn shortly. But in order to do so, it is first necessary to address the question – was there actually anything wrong with the way I and my generation of lawyers were taught at law school?

The Traditional, Transmission Model Of Legal Education: Obviously Not Contemporary And Just Plain Ineffective

> [T]here is a great deal of evidence about what constitutes good teaching in higher education. Almost every aspect of that evidence is at odds with the traditional model of legal education.[42]

The traditional approach to legal education (as I have described it above based on my own close encounter) is simply no longer appropriate to the task of preparing graduates for the challenges of 21st century legal practice – if it ever was. Nor, more generally, is it suited for the 21st century workforce. As mandatory continuing (legal) education regimes throughout the country are now enshrining, learning in a profession is a lifelong process. In order that our graduates might engage effectively in long-term knowledge management and knowledge generation in their diverse and globalised workplaces, they need to be equipped with

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39 The Hong Kong Report, above n 36.
40 Johnstone and Vignaendra, above n 31.
41 Keys and Johnstone, above n 2, 543, 543-545.
42 Ibid 547.

the skills, values and attitudes necessary to manage their own learning engagement for the future. The traditional teaching-as-transmission model simply cannot inculcate those abilities – for example, it is not possible to teach, and students will not learn, teamwork skills or critical thinking ability in a passive large group lecture on substantive law. Nor does the traditional approach equip students for current professional reality, where research has consistently shown that only 50 per cent to 60 per cent of law graduates will remain in longer term legal practice[43] and that, in any discipline (law being no exception), graduating students will now routinely go through several changes of career in their working lives.[44] Again, a doctrine-heavy education does not equip graduates with many of the necessary generic skills needed to perform effectively in the modern global workplace. To address this challenge effectively and meaningfully requires more than just tinkering with the traditional model of legal education:

> Universities need to carve out a new model for the undergraduate curriculum (conceived broadly so as to embrace what is taught, how it is taught, and how learning is assessed) based on sound educational principles and an understanding of the new realities of the social context for higher education.[45]

Simply put, then, the traditional focus on 'what the student is', which is a very teacher-centred model, will not produce the contemporary range of complex learning outcomes that all employers, including law firms, are now demanding and that our graduates wish to acquire (eg, critical thinking; ethical reasoning; lifelong learning; creative problem solving etc). This alone is a substantial rationale for eschewing the traditional model of legal education. But there is another even more compelling basis on which to rebuff any residual allegiance to this outmoded delivery approach: it is also not effective.

There is a significant amount of educational research (this is what Education Faculties in universities do, amongst other things) that renders quite explicit how people learn. When content is simply transmitted from the lecturer to the student (the latter sometimes described as an empty vessel waiting to be filled)[46] little is learnt. For all my furious scribbling at law school, in the traditional law-teaching model, information was

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43 See, for example, the Hong Kong Report above n 36, 27, citing Scottish Legal Education Report, above n 34, [4]; M Karras and C Roper, *The Career Destination of Australian Law Graduates* (2000): 58 per cent of those who completed their legal education in 1997 in Australia were still working in private legal practice three years later.

44 *General transferable Skills*, United Kingdom centre for Legal Education <http://www.ukcle.ac.uk/resources/ldn/index.html> at February 2003.

45 James, above n 12, 81.

46 P Ramsden, *Learning to Teach in Higher Education* (1992).

being transmitted to me with limited cognitive engagement on my part – from lecturer's mouth to my student pen, with no brain intervention. For my student cohort of yesteryear and for any students still exposed to this way of teaching, the lecture content can be as up-to-date (with today's new case or legislative enactment), as relevant and as beautifully rendered as possible, but unless learning design thought is given to the next stage (of how the students are going to be assisted to learn with this information, or how to process the information) there will be no substantive learning outcome, whatever the teacher does.

The types of questions that an educator (cf a lawyer who lectures) would ask in approaching his/her day job as a 'facilitator of student learning' are 'how do my students interact with the inputs with which they are provided (inputs such as information, lectures, videos, PowerPoints, library resources etc) to construct their own new knowledge?' What is it that they are required to do with those resources and how can I support student knowledge construction by directing utilisation and/or manipulation of the various inputs? How can I design what I deliver to students in my subjects so that they will be challenged by, and engaged in their learning? Importantly, at the end of the learning, I need to be able to report on the outputs of this process (the learning) to certify that learning has been done. Therefore, what integrated, aligned (per Biggs), assessments should be designed to meaningfully assess, not just a regurgitation of the inputs, but that students have acquired the understandings, behaviours, skills and capabilities that they need (for example) to practice effectively in contract law X number of years after graduation?

Educational research tells us that teacher-focused, sage-on-the-stage, didactic transmission of large amounts of content, where students are passive in their learning, is largely ineffective: students will learn best and have higher quality learning outcomes when they are actively (individually) engaged or interacting and collaborating with others. While there are numerous theoretical approaches to teaching and learning, 'constructivism', particularly when the learning occurs through engaging in or doing an experience ('experiential learning' as might occur when you learn to drive or to dance, for example, where the student is instructed and forms ideas about the task, plans how to do it, does it, and then reflects on what they did),[47] seems to be most successful.[48] This is especially so when the learning embeds a process of practice and reflection in reasonably authentic learning environments (i.e., learning

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[47] 'Learning by Doing' in D Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (1984); See, eg, discussion in S Kift, 'Lawyering Skills: Finding their Place in Legal Education' (1997) 8 *Legal Ed Rev* 43, 59-71.

[48] See generally, R Oliver and J Herrington, *Teaching and Learning Online: A Beginner's Guide to e-learning and e-teaching in Higher Education,* Centre for Research in Information Technology and Communications, Edith Cowan University, WA, ch 6.

situations which seek to replicate the real world of professional work).

Diana Laurillard provides us with a simple explanation of constructivism as an educational theory as follows:[49]

> Constructivism is a broad church, encompassing all educators who reject the 'transmission' model of teaching or anything that sounds non-cognitive. A recent overview of current views of constructivism corrals the wide range of ideologies into two common tenets:
>
> (1) Learning is an active process of constructing rather than acquiring knowledge, and
> (2) instruction is a process of supporting that construction rather than communicating knowledge.

In this learning situation, it is what the student does (cf is)[50] with the various resources or inputs they are given (how they construct their own understandings and new knowledge) that is critical. The most educationally aware teachers conceptualise their professional teaching role in this context as that of 'designers of learning environments' in a learning-centred model. They may be the guide-on-the-side or, as my colleague Professor Erica McWilliam has more provocatively put it, 'meddler in the middle'[51]:

> The idea of teacher and student as co-creators of value is compelling. Rather than teachers delivering an information product to be consumed by the student, co-creating value would see the teacher and student mutually involved in assembling and dissembling cultural products. In colloquial terms, this would frame the teacher as neither sage-on-the-stage nor guide-on-the-side but meddler in the middle. The teacher is in there doing and failing alongside students, rather than moving like Florence Nightingale from desk to desk or chat room to chat room, watching over her flock, encouraging and monitoring.

It is in this type of carefully designed learning environment, where the learning is central to the student experience and is carefully structured through strategic, aligned and targeted learning activities, that students are most likely to have 'transformational' learning outcomes and where their understandings and ways of dealing with and interacting with knowledge will have shifted. This is what a number of us in legal

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[49] D Laurillard, *Rethinking University Teaching: A Conversational Framework for the Effective use of Learning Technologies* (2nd ed, 2002) 67, citing T M Duffy and D J Cunningham, 'Constructivism: Implications for the Design and Delivery of Instruction' in D Jonassen (ed), *Handbook of Research for Educational Communications and Technology* (1996) 171.

[50] Biggs, above n 5.

[51] E McWilliam, 'Unlearning Pedagogy' (Paper presented at the *Ideas in Cyberspace Education Symposium*, Higham Hall, Lake District, 23-25 February 2005) 10

education are now striving for, having long-ago recognised that the teacher-centred, transmission model just will not produce significant qualitative change in students' learning or learning outcomes any more complex than short-term memorisation and superficial reporting back.

These reflections represent a vision for my law school now and are also very much a reaction to my law school then. This is not to say that everything that needs to be achieved already has been or that in this brave new world that all legal educators (or even a majority) have embraced these ideals of good learning and teaching practice.

The traditional attitude that university teachers do not need formal qualifications in education, or to engage with the educational literature, seems deeply entrenched in law. Without an understanding of the literature, law teachers will understandably be inclined to retain conventional and established approaches to teaching. Although an increasing number of legal academics possess educational qualifications and are acquainted with the educational literature, they still clearly constitute a minority who find it difficult to pursue substantial change in the face of a disinterested, if not hostile, majority.[52]

However, even in the face of a 'disinterested majority', and admittedly from a fairly low base,[53] it has been possible to embed significant advances at different levels of teaching practice; from policy development through to closing the loop on student evaluations of teaching by reporting lecturer-action on student feedback back to the students. Routinely in my adopted law school, sessional academics are provided with teacher-training (some teaching tips and tricks) before they face their first class. In my adopted law school, we have engaged with the literature on the well-known difficulties that students face in their transition to tertiary study in a new discipline, whatever their background, and now attempt to provide the learning support and other resources these mainly first year students require to be successful in their chosen area of study. We are also grappling with the imperative to embed Indigenous content and perspectives into core law curriculum; quite a challenging task that requires both teachers and students to explore their own position on the universality, invisibility and inherent privilege of whiteness with a view to informing, learning and teaching that will move beyond problematising and essentialising Indigenous people and their experiences.

Most significantly, through careful learning design and embedded quality assurance practice in relation to subject outlines (our 'contract with the students'), systemic improvement has been possible, ensuring that before their learning commences, students are made explicitly aware of teacher expectations for both the individual subjects of study

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52 Keyes and Johnstone, above n 2, 555-6.
53 Ibid 564.

and also for the entire program of study. In 'Eduspeak',[54] we engage in constructive alignment of the curriculum we deliver: students are made aware of what learning outcomes they may expect from a subject; what teaching and learning approaches will be adopted to deliver those outcomes; how they will be assessed; how that assessment relates to the learning outcomes (for example, assessment of oral communication as a learning outcome will not be done invalidly by way of 100 per cent closed-book examination, but rather by tutorial participation, oral presentation or advocacy or negotiation exercise, etc); how they will receive feedback on their assessment tasks in accordance with pre-disclosed criteria, formatively to aid their learning, in addition to the summative grade/ mark allocated.

This last point in relation to aligned assessment is a momentous advance for legal education and a quantum leap for the 100 per cent closed-book end-of-year examination to which my contemporaries were routinely subjected at law school:

> It is now well accepted that assessment is one of the most important elements of subject design (Johnstone, Patterson and Rubenstein, 1998; Hinett and Bone, 2002). Assessment has changed in law schools, partly driven by university requirements, and partly by greater understanding of how good assessment strategies can influence student learning... The view of assessment in the traditional model of law teaching (a single end of year written examination after 'teaching' was completed) no longer dominates law schools as much as it did in the past. This, in part, is due to a more thoughtful approach of some law teaching academics, and in part to the 'top down' influence of university teaching and learning policies.[55]

As intimated above and as also mentioned in the AUTC 2003 Report[56] this more sophisticated approach to assessment has produced other 'notable improvement[s] to law school assessment regimes' including:

- the diversification of assessment methods;
- dissemination of information to students about assessment criteria; and
- greater attention to providing feedback to students on their performance against those criteria.

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54 D Tomazos, *What do university teachers say about improving university teaching?* Learning Support Network <http://lsn.curtin.edu.au/tlf/tlf1997/tomazos.html> at August 2003.

55 Johnstone and Vignaendra, above n 31, 363 citing R Johnstone, J Patterson and K Rubenstein, *Improving Criteria and Feedback in Student Assessment in Law* (1998); K Hinett and A Bone, 'Diversifying Assessment and Developing Judgment in Legal Education' in R Burridge, K Hinett, A Paliwala and T Varnava (eds), *Effective Learning and Teaching in Law* (2002).

56 Johnstone and Vignaendra, above n 31, 390, 390-391.

This is what my law school now aims for, with varying degrees of acceptance by staff and of success for students and staff. But there has been a determined move away from the traditional transmission model of legal education, so dominant at the time of *Pearce*, which was allegedly certified by 100 per cent closed-book examination, and which has now been shown to be ineffective as a learning and teaching model. Slowly, glacially, we are being informed by educational research about how we might best go about our teaching for learning, or more accurately, to design for active learning engagement, because 'Learning takes place through the active behaviour of the student; it is what [s/]he does that [s/]he learns, not what the teacher does.'[57]

CONCLUSION

My two law schools have taught me much and the students and teachers at both influence me on a daily basis as I reflect on experience, practice and theory in that synergistic space where research-led teaching impacts on and sharpens scholarly teaching and learning practice. But it is also equally true of both law schools that I have probably learnt more outside the School and the Law than within either. The defiant and exclusionary insularity that I sensed, but could not then name, at my first law school remains a cultural deficiency that is very much alive and thriving in many aspects of the Law, the legal profession and the legal academy. It is a great challenge for us all to unlearn this facet of our lawyering and learn rather to model a 'healthy legal culture'; for us as legal educators this is especially critical for the long-term benefit of our students as future professionals.

This notion of a 'healthy legal culture' was promoted by the ALRC in its Managing Justice Report (ALRC 89)[58] and was determined to be exemplified by certain indicia, which I have found most helpful in reframing my practice professionally as a legal educator and have sought to use as an influencer in my adopted law school. A healthy legal culture is characterised by its:

- honest, open and self-critical nature;
- respect for, and effective communication among, stakeholders;
- willingness to adapt and to experiment (or, put another way, one that is not resistant to change);

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[57] Biggs, above n 5, 25, citing R W Tyler, *Basic Principles of Curriculum and Instruction* (1949) 63.

[58] Weisbrot, above n 38, 3 citing ALRC 89, above n 31.

- commitment to lifelong learning as an aspect of professionalism; and

- deep ethical sense and commitment to professional responsibility.

I can only hope that any new little sixteen year-old first-generation law student who entered the doors of my adopted law school today would feel at least slightly less 'other' and more 'native'; feel somewhat more supported in feeling that this could be their place for pursuing an intellectual and affective interest in the Law and lawyering; and that their learning environments might motivate and inspire them to engage with their course of choice to be the very best they can be at this time and in this place. I think this is what everyone's law school should offer.