

## The Role of Law Schools and Law School Leadership in a Changing World: A Reflection Paper

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Law schools doubtless have multiple functions, but being, or trying to be, everything to everyone all of the time is not one of them. Beyond preparing (or beginning to prepare) law students for legal (and indeed in many cases non-legal) practice and lifelong learning, producing quality (“high-impact”, “critical”) legal research, and dutifully serving various other stakeholders (or “communities”), more and more seems to be demanded of law schools in the early twenty-first century. This is not necessarily a bad thing (to some extent, perhaps, it is inevitable), but it can turn into a most undesirable thing if resources are unable to match expectations. That is a distinct possibility, in my experience.

Each of us seems to be asked to more with less. Choices must of course be made as a consequence, particularly if law schools are to maintain the levels of “excellence” that they each promise in their several mission statements while remaining “resource viable”. Resources invested into educating domestic students for a “global” legal culture might well come at the expense of properly training those for mundane service within their own jurisdiction, and at present most law schools are duty-bound to certify that their students have been suitably trained for competent and ethical domestic legal practice, even if only about half of their graduates will ultimately embark upon that journey. We presently have no choice about that function and so must continue to invest resources into our basic undergraduate curricula, the content of which is controlled to a significant extent by external public agencies (yet another “stakeholder”), the Council of Legal Education in my own country. The choice that each law school must make will naturally vary with the range of factors that affect individual law schools, and there is no reason to think that one size will fit all in that regard, as various factors will influence individual law schools differently.

The fact that law schools have choices available to them differentially — that there is no necessarily “correct” mission applicable to all law schools universally — has created opportunities for market or role differentiation among various law school institutions, whether they exist within the same city, region, nation, or jurisdictiontype. Given the way that universities are currently funded, such differentiation is virtually an imperative — not necessarily a good or a bad thing, just a reality. Law school missions will be driven in part by naked market considerations as well as loftier higher education goals. And to paraphrase

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\* The views expressed in this paper are personal ones and not necessarily representative of my Faculty and/or University. I apologize in advance for the quality of this paper. I became a delegate for my Law School at short notice and have had little time, amidst my other responsibilities, to prepare a well considered paper. Also, I was not aware, until after this paper was written, that authors were to focus on a discrete theme within the conference program. My arrangements memorandum merely stated that “Attendance at the two-day educational program requires a 3–5 page paper *on the subject of the conference*” (emphasis mine). Accordingly, my paper is quite unspecific in its focus, for which I also apologize.

Montesquieu and Mill: the visions, missions, and values of each law school should be adapted in such a manner to the people for whom they are made, as to render it very unlikely for those of one law school to be proper for another. No one is at all capable of determining what is right for a particular law school institution until he or she knows its circumstances.

Therein lies the rub. Reasonable minds can differ wildly over the needs and circumstances of particular law school institutions, not least because “the people for whom they are made” is an essentially contestable phrase/notion/object. Even ignoring the “global” stakeholder community for domestic law schools (of which more below), I imagine that most law school institutions in Australasia would view their broad stakeholder groups as including at least the following (in no particular priority order): students (undergraduate and postgraduate, whose needs and expectations naturally differ), staff, alumni, indigenous communities, regional and community interest groups and organizations, professional groups and accrediting bodies (typically admission boards), industry and business organization and employers, primary and secondary schools, other educational organizations and providers, local and national government, government departments and agencies (including, obviously, courts and tribunals), research funders, and cultural organizations. Given the diversity within this list, it is a small wonder that law schools might at times feel compelled be everything to everyone all of the time (while in fact risking being only some things to some stakeholders some of the time). To the extent that law schools are under pressure to take the interests and/or perspectives of a variety of stakeholders into account, for example when developing or reviewing their curricula, it is no given that all stakeholders will share a common vision for legal education. Still, I think that no law school can currently deny that it is entrusted with making a major contribution — and at a high level — to the training of skilled, ethical, and knowledgeable legal professionals. To that extent, I suppose, law schools have a universal mission, but this is not to imply that universal values or imperatives do or must therefore underlie that particular dimension of their mission or function.

Also, let us not forget that law schools typically are not atomistic entities but rather exist as an integral component of a much larger enterprise: the university that houses and supports them. To some extent, then, law schools are constrained to align with their university’s own mission, vision, and values, which, granted, tend to be so generically expressed and aspirational — “pursue excellence in all that we do”; “act with fairness integrity, and responsibility”; “respect rights and responsibilities of freedom of inquiry and expression”; “serve the local, national, and international communities”; “encourage innovation, creativity, and breadth of knowledge”; etc — that no one could plausibly take issue with them, at least at the abstract level, and every law school can easily locate its own mission, vision, and values somewhere within such statements.<sup>1</sup> I am confident that most law schools would view themselves as aspiring to the creation of a diverse collegial scholarly community in which individuals — whether student or teacher-scholar — are valued and respected, academic freedom is exercised with intellectual rigour and high ethical standards, and critical enquiry is encouraged

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<sup>1</sup> My own Law School’s mission, for example, comprises: “Research and scholarship that contributes to the advancement of knowledge, the betterment of the law and legal institutions, and an understanding and engagement with law as it operates.” “A challenging curriculum that attracts the best students, engages them in the mission of the Law School, and equips them for life-long learning. Service to our various other communities of interest.”

and supported. But whenever we are forced to articulate what each aspiration demands in particular circumstances, given the inevitable constraints (not least ballooning staff–student ratios), consensus is much less likely to be forthcoming, and therein lies the rub for the discussants at this conference. There is unlikely to be a single right answer for everyone all of the time, but that is not to imply that we cannot take valuable insights from one another’s experiences and visions nonetheless.

### **Brief reflections on law and legal education in New Zealand in particular**

Since the late 1980s, law schools in Australasia have (to differing degrees) been moving away from their traditional “trade school” approach, towards what might be described as the “classic, liberal” model of university education. Typically this has been evidenced by an increased commitment to teaching theoretical, critical, and contextual approaches to law, while ensuring that due attention is maintained towards the “core” subject areas required for admission to the legal profession in the relevant jurisdiction. Although the assumption that the dominant purpose of legal education is “preparation for legal practice” has been criticized by some at the forefront of the “scholarly-approach-to-legal-education” movement,<sup>2</sup> it doubtless remains valid as an empirical observation that the vast majority of our students study law in order to satisfy the academic requirements for entry into the profession, even if only approximately half of them ultimately exercise that option.<sup>3</sup> If that is their legitimate expectation, it is critical that the legal academy, in their teaching and learning function at least, must continue to certify that they have so educated them, and as expertly as possible. This dictates that modern legal education must in its learning objectives attempt to combine and balance three curricula:

- *Generic or transferable academic skills* (eg, familiarity with and achievement in attributes such as the scholarship of discovery, integration, and transmission of knowledge, ability to integrate interdisciplinary thinking, effective written and oral communication skills, computer literacy, selfreflection, attitudinal awareness, and teamwork);
- *Legal-academic content* (essentially the transmission of content knowledge, ie, legal rules and doctrine sufficient for an understanding of law and its practice, though especially of the subjects required for admission to the legal profession); and
- *Professional or vocational skills* (such as legal analysis/reasoning and problem-solving, legal research and information-gathering skills, mooting, client interviewing, witness

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<sup>2</sup> Keyes and Johnstone, for example, have lament the fact that vocationalism — the mere preparing of students for work in private legal practice — is (in their view) hindering real progress in legal education in Australia; see M Keyes & R Johnstone, “Changing Legal Education: Rhetoric, Reality, and Prospects for the Future” (2004) 26 Syd LR 538. An interesting counterpoint study (for Canada and the United States, at least) is the Carnegie Foundation’s report, *Educating Lawyers: Preparation for the Profession of Law* (2007).

<sup>3</sup> Cf J Webber, “Legal Research, the Law Schools and the Profession” (2004) 26 Syd LR 565, 571.

examinations, oral presentations, an awareness of ethics, the habits of persistence, flexibility, and attention to detail, etc).

Basically, as we all know, this is an attempt to combine a liberal education with a professional qualification, and getting that balance right will always remain a challenge, or at least a point of contention, for law schools. Again, the balance will be struck differentially across individual law schools according to their own circumstances, (collective?) perception of the role of legal education, and stakeholder expectations, many of which will be shaped by considerations of a “local” nature.

A modern gloss on this fairly uncontroversial model of legal education, however, is the trend toward law and legal education as a “global enterprise”. My own law school, for example, views even domestic legal education as becoming more internationally focused. In our current Strategic Plan (2008–2012) the stage is set by the statement: “The future of law and legal education is ‘global’.” Partly this is a factor of New Zealand being such a small legal system that it must to an extent be “outward looking” in the development of its law. However, the trend to “global law” is also underscored by the fact that the realm of legal ideas is itself international: it is informed by global conversations as sovereign nations engage with similar problems. Many such problems, of course, transcend national borders (consider, for example, the rules for international trade and dispute resolution, climate change, population pressures and scarcity of natural resources, human rights conflicts, terrorism and state security, and transnational crime), and domestic law is dictated or influenced by a variety of international treaties. I think it is fair to say that New Zealand has a reputation as innovative in its legal responses to global challenges, and it certainly has a contribution to make to the world as much in the realm of legal thinking as in other realms. Moreover, as the world is shrunk by technology and ease of travel, legal practice itself routinely involves transactions that span jurisdictions.

Ideally, one might hope that law schools could one day train lawyers capable of practicing in any jurisdiction. However, this is presently unrealistic, if not overly ambitious even in the abstract. It has serious implications for the subjects taught, the way in which they are taught, the recruitment of staff, and the constituency of students to whom legal education is aimed. For the near future, at least, the “globalization” of legal education in New Zealand is likely to develop as it has in the past: through the inclusion of new internationally oriented courses into the curriculum, and through the content of existing courses evolving to engage with the international dimension of law. (The trend to internationalization in legal scholarship seems more straightforward: publication in international periodicals, the forging of international links between the staff of leading law schools, the development of research centres with international specializations, etc.)

Although law and legal education have a new and significant international dimension, it is in my view to the credit of the New Zealand law schools that they have, for the most part, stuck to what has remained the core of modern legal education, which is a robust and critical understanding of foundational principles: the law of obligations, criminal responsibility, property, public and private law, legal ethics, procedure, and legal theory. Although the international dimension has added to this core, it has not displaced it, and is unlikely to do so. For these “foundational principles” are the building blocks for our students mastering other functional categories in the law, including environmental law and international law. They

enable our students to critique the law as it currently stands, with a view to its continuous improvement for the betterment of society. Moreover, most of the foundational principles continue to be taught in subjects that are delivered over the course of an entire academic year in New Zealand law schools; they have not been sacrificed to a mere semester's treatment, as has occurred in many Australian law schools. Patient mastery of the core legal subjects — most of which are prescribed as “compulsory” by the Council of Legal Education in New Zealand — is not simply about enabling our students to become technically adept as potential lawyers; they are also a gateway for allowing learners to understand the role of law in society, the relationship between law and justice, and the professional responsibilities of lawyers.

Just how far law schools can effectively pursue specialist educational goals beyond training their graduates to “think like a lawyer” without risking discharging that vital function less well than they currently do is inscrutable. Perhaps it is easy to overestimate the impact that a law school education can have on the professional and regular lives of law graduates, although doubtless individual teachers encountered within a law school institution can have a direct and massive influence on the future choices and actions of learners. Law schools are, after all, potentially no better than the staff members who comprise them and administer their functions. This is why law schools, if they are to stand any hope of progressing in the early twenty-first century, must continue to try to recruit and retain the best teachers/scholars/administrators available. That is getting increasingly difficult in some “core” areas of the curriculum. Also, it is no given that the best teachers/scholars/administrators available will possess a shared vision for legal education within the institutions that house them, despite the formal mission statements of such institutions. Indeed, the creation of a *diverse* collegial scholarly community is what make many law school's great, but it renders elusive the answers to many questions posed about the role of law schools in a changing world.