

Educating Lawyers for What? Reshaping the Idea of Law School

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I have the great honour of being both the Chair of the Planning Committee for this IALS conference, and the Dean of the host institution, the Australian National University College of Law. I was also privileged to have had my suggestion for the conference theme accepted by the IALS Governing Board, of which it has been an honour and a pleasure to be a member. So in the now familiar, perhaps even iconic, task for participants in IALS educational programs, I propose to devote my 3-5 page paper to articulating a little of what I had in mind — though the broad outlines of those ideas, as massaged and augmented by a wonderfully diverse international committee,² are readily apparent from the draft program.³ I speak, inevitably, from a Western, common law perspective, with a distinctly Australian twist (conditioned, even more narrowly, by the particular experience of my own law school), but I hope progressively to liberate myself from these chains, and to begin the search for universals in our great collective endeavour as law schools and legal educators around the world.

The three roles of law schools today

Law schools today, I believe, have three major roles: inducting students into the discipline of law (the educational role); pushing back the frontiers of legal knowledge (the research role); and sharing that knowledge with our relevant communities (the outreach role). The first two roles tend to predominate, and I suspect that the educational role in particular will be the chief focus of our conference; the third role — community outreach — is largely seen, I think, as subsidiary, though I would like to see it enjoy a parity of esteem with (indeed, a seamless integration into) the other two.

Historically, we have shared all three roles with the legal profession. In education, university training gradually took over from apprenticeship, but the idea of learning by exposure to real clients and real practitioners refuses to die, as we see, for example, in the ongoing debate about clinical legal education. In research, we continue to see major contributions to legal scholarship by practitioners and judges, whose intellectual acuity is complemented by their professional experience, if not by access to working conditions enjoyed by academic researchers embedded in (and perhaps sometimes burdened by) the scholarly output expectations of a university research culture. In outreach, we see universities increasingly

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² Representing Australia, Canada, Chile, the Czech Republic, Israel, Nigeria, Singapore, the United Arab Emirates, and the US — with assistance from the Governing Board, thus bringing in further perspectives from Argentina, Bahrain, Belgium, Brazil, China, Germany, India, Italy, Kuwait, Malaysia, Mexico, Senegal, South Africa, and the UK.

³ See <http://www.ialsnet.org/meetings/role/index.html>.

cognisant of a need, even an obligation, to contribute their skills and knowledge to the wider community, yet here again this role is very much shared with the legal profession, whether in relation to *pro bono* practice, membership of outside bodies, involvement in public inquiries, media commentary, or a myriad of community activities external to the university.⁴

These three roles, however, while not exclusive to law schools in the modern era, and whatever the balance between them from time to time and from place to place, combine to give us a distinctive mission, and a starting point for thinking about universals in an increasingly globalised world.

The educational role

The traditional role of law schools on the educational front is to prepare lawyers for legal practice. But behind this simple statement lies a plethora of contested issues and fast flowing cross-currents. In Australia, there is a palpable tension between preparing students for legal practice and educating students in the intellectual discipline of law. This tension manifests itself in many ways, from the diverse aspirations of the students⁵ to the question of who controls the curriculum.⁶

False dichotomy

In my view, however, this tension can be much overplayed. A deep understanding of the law — its historical evolution, its philosophical and theoretical foundations, its role in society, and its interaction with the other disciplines of the humanities and the social sciences — is as valuable in producing an informed, aware, creative, successful and satisfied practitioner as it is in producing in the abstract a graduate who is truly educated in the law. I cannot prove it, but I have the strong belief that the best practitioners, including the best judges, are those who are the most intellectually curious and the most sensitive to the role they play in society.

Educating lawyers for what?

In my view, it is not so much the tension between educating lawyers for practice and educating lawyers in the intellectual discipline of law that requires attention, as it is the nature of the role of lawyers and lawyering that requires clarification. This brings me directly to one of our key conference questions: educating lawyers for what?

In Australia, and, I suspect, in many other countries, the traditional answer has been that we are educating lawyers for a passive kind of legal practice, based on the traditional lawyerly competencies and focused on the local jurisdiction. Three things have challenged that conception of lawyering.

Problem solving

⁴ Clinical programs may be seen to serve both educational and outreach purposes.

⁵ See http://www.cald.asn.au/legal_educ.html and draft report due for release soon.

⁶ In Australia, a large role is played in relation to curriculum content by the legal profession and judiciary through the Law Admissions Consultative Committee: see <http://www.lawcouncil.asn.au/lacc.cfm>.

First, lawyers these days are much more involved in proactive problem solving, and legal education is correspondingly more focused — whether by way of cause or effect — on imparting the skills that assist this problem solving, rather than merely transmitting a body of knowledge that is frozen in time.

Globalisation

Secondly, the growth of commerce and communications, fuelled by the march of new technologies, has broken down the boundaries of local jurisdictions, and, correspondingly, lawyers must be trained, as we have discussed in previous IALS conferences, for transnational and international practice — and trained by reference to a curriculum that needs to acknowledge and embrace the pervasiveness of international and comparative perspectives.⁷

Service to the community

Thirdly, and in my view most importantly, it is my strong belief that we should be educating lawyers today, not merely for a life of material personal success, but for a life of service to the community, in the best, but sometimes forgotten, traditions of what it means to be a member of an honourable profession.⁸

It should be acknowledged immediately that lawyers perform an essential service to the community merely by the competent discharge of their core functions of advising clients, assisting people to vindicate their legal rights, and facilitating the orderly conduct of business and personal affairs.⁹ This work requires the highest standard of technical legal skills and the lawyer's craft. This high standard of technical competence also underpins any broader contribution that lawyers may make; nothing undermines a case for reforming the law more than a shoddy or unconvincing analysis of the status quo. But the core business of lawyering, and the lawyer's craft that underpins it, are, in my view, necessary, but not sufficient, to the identity and role of lawyers today. The notion of professional responsibility should be understood, in my view, to go far beyond the ethical obligations that govern interpersonal relations, the conduct of business, and the management of litigation, to the broader, active use of legal knowledge and legal skills in the service of society.

This might play out in a number of ways. I have written elsewhere about how it plays out at my law school, with its distinct ethos of law reform and social justice, that is, of harnessing legal skills and legal knowledge to work for the improvement of the law and the operation of the legal system.¹⁰ It might play out in the promotion of *pro bono* practice, and *pro bono* opportunities for students.¹¹ It might play out in the form of a responsibility to explain and defend the rule of law and the protection of human rights, nationally and internationally.

⁷ For some Australian initiatives, see <http://www.ilsac.gov.au/>.

⁸ Michael Coper, 'In the Service of Society...', at <http://www.academyoflaw.org.au/events/sym07.html>.

⁹ See <http://law.anu.edu.au/deansMessage.asp>.

¹⁰ Michael Coper, *Law Reform and Legal Education: Uniting Separate Worlds*, in THE PROMISE OF LAW REFORM (Brian Opeskin & David Weisbrot eds, The Federation Press 2005), republished in 39 U. TOL. L. REV. (2008) 233; see <http://law.utoledo.edu/students/lawreview/volumes/V39n2/index.htm>.

¹¹ See <http://www.nationalprobono.org.au/home.asp>.

The challenge: from rhetoric to action

The challenge, I think, is this. It is easy to support noble ideals like law reform, social justice, *pro bono* practice, the rule of law, and the protection of human rights. But how do we move our support from the level of rhetoric and pious hope to embedding these concepts in the way we educate our students? How do we ensure that these concepts enjoy a parity of esteem and importance with acquiring the technical skills that underpin the lawyer's craft? How do we transform concepts that are currently the icing on the cake to being an essential ingredient? How do we ensure that we produce lawyers who are pivotal to social progress because of their legal education rather than in spite of it?

The research role

I mentioned at the outset that education was but one of the three great roles that a law school might play, together with research and outreach. A similar analysis might be applied to the research role as I applied above to education. In particular, if I am right about elevating the importance in legal education of producing graduates with a critical mindset and a sense of professional responsibility — indeed a determination — to leave the legal system better than they found it, then one might apply the same standard to our own research and scholarship.

One need not be too prescriptively instrumentalist here — there will always be a place for 'pure' research, and who in any event can foretell its possible applications? — but to urge scholarship directed to law reform, social justice, defence of the rule of law, and protection of human rights, is no more than to harness some of the shared deep values that drive us and underpin our legal systems, and to be consistent with our teachings. In neither our teaching nor our scholarship does this overarching framework dictate particular answers to contested questions.

I should add that, by noting the research function of law schools separately from their educational function, I would not want to suggest that these functions operate in totally different spheres. Legal practice cannot proceed without research and finely honed research skills. Our research informs our teaching, and may provide opportunities for direct involvement by our students. Again, in an ideal world, a law school might achieve a seamless integration between its educational and research functions.

The outreach role

It is but a small step from acknowledgement of the educational and research roles of a modern law school to acceptance of the importance of the dissemination and application of the special skills and knowledge embodied in the law school's staff and students. In a sense, the outreach function is no more than this, whether it be lending one's expertise to a tribunal or investigation, making a submission to an enquiry, writing an opinion piece for the media, sharing one's knowledge with lay audiences such as high school students, and so on. Different law schools will encourage and reward these activities in different ways, but, to my mind, they sit very comfortably as a logical extension of the educational and research roles of the modern law school, at least as I have conceptualised and described those roles. I would urge that they

be seen not as peripheral to education and research, but as equally central to a law school's mission.

Conclusion

I was very much struck by an off-the-cuff remark some three years ago by Yale Law School Dean Harold Koh in answer to a question following his luncheon address to the American Law Institute on the topic of law and globalisation. Dean Koh said:

I do not believe it is our job to simply bless the status quo. We stand for principles about what the rule of law ought to be. As a law dean, I think that law schools are not just professional schools. They are institutions of moral purpose.¹²

That is one way to characterise and support the argument I have made in this paper, that our educational, research and outreach roles coalesce to present a unified model of a law school today that sees its mission as promotion not merely of technical competence but also of the values of leadership, citizenship, and service, so far as those values can be given expression through the discipline of law. The argument may be supported in other ways as well. It assists in seeing the lawyer as a highly ethical professional, with overarching social and community responsibilities, rather than merely as a hired gun, and may help to combat some of the familiar negative (and disturbingly age-old) stereotypes about lawyers. It also potentially brings a greater sense of purpose and satisfaction to the work of lawyering — especially in point in Australia, where recent studies reveal disproportionately high levels of depression amongst lawyers and law students.¹³

One of the joys of my participation to date in the educational programs of the IALS — Suzhou in 2007 and Montreal in 2008 — has been the theme of 'learning from each other', whether in relation to the essential characteristics of other legal systems (Suzhou) or effective techniques for teaching about them (Montreal). Without diminishing the importance of this theme, which of necessity remains a critical starting point, and without denying the richness of diversity, I am hoping in Canberra in 2009 to push a little beyond merely learning from each other, to embark on the search for universals. I hope that this will not be thought to be unduly optimistic, naïve, or even pompous. I am not unaware of the challenge that a universal concept of lawyers and lawyering, and the role of law schools in promoting such a concept, faces from the character that the function of lawyers may take on in legal systems with underpinnings that are authoritarian rather than democratic. Yet with the collapse of democracy in countries like Fiji,¹⁴ we do not abandon our commitment to the rule of law and the independence of the judiciary — we call for it all the more strongly. If we can find universals in these abstract values, then it should not be beyond our capacity to translate that into how we characterise ourselves, our role and our mission, as law schools around the world: what is it that, as a global community of legal educators and legal scholars, we have in common?

¹² Quoted in Michael Coper, *Legal Knowledge, the Responsibilities of Lawyers, and the Task of Law Schools*, 39 U. TOL. L. REV. 251, 260 (2008); see <http://law.utoledo.edu/students/lawreview/volumes/V39n2/index.htm>.

¹³ See http://www.unsw.edu.au/news/pad/articles/2008/sep/Jepson_release.html.

¹⁴ See <http://www.abc.net.au/news/stories/2009/04/10/2540548.htm?site=local>.

At its most basic, I have suggested that we have in common the proposition that our shared task as law schools around the world somehow goes beyond the mere production of lawyers with technical legal competence. I look forward very much to engaging with you on whether I can sustain this basic proposition, and, if so, whether my attempt to identify that 'something more', as outlined in this brief paper, can also be sustained.