LEGAL EDUCATION

Legal education, diversity and the West Committee

While the Committee of Australian Law Deans is understandably concerned that the West Committee address the impact of up-front fees on the discipline of law, it is not the only issue of concern.

A few years ago, James Crawford, a former Dean of Sydney University Law School, criticised Australian legal education for being 'universally of the same shade of grey'. One would have thought that the dramatic increase in the number of law schools that occurred in the wake of the Dawkins reforms (from 11 to 28 at the last count) would have fostered greater diversity in legal education. Of course, there are differences in orientation and perspective, but not nearly as much as one might have expected. The greyness has certainly not been illuminated by many rainbows. Increased diversity in the composition of student and staffing profiles has had some effect on the curriculum in respect of sensitivity to issues of gender, sexuality, race and ethnicity, but new courses tend to be of the less than inspiring 'Law and ...' variety, and are likely to be accorded an uncertain status at the periphery of the curriculum.

Although the Australian State admitting authorities have historically played a 'hands off' role in specifying the content of the law degree which is accepted as a pre-requisite for admission, a number of forces have combined to neutralise the possibility of diversity in legal education:

- *First, the appearance of a 'third wave' of law schools* in the wake of the Dawkins reforms caused at least some admitting authorities to be more vigilant than they had been in the past. For example, in 1991, when La Trobe and Deakin Universities were both about to commence LLB programs, the Victorian Academic Course Appraisal Committee required details not only of the subjects in which the specified areas of knowledge were to appear, but details concerning the topics to be covered, the time to be devoted to them, the mode of pedagogy and the manner of examination. Such detail had never been required of Victoria's 'first wave' law school at Melbourne University, nor its 'second wave' law school at Monash University. The 'third wave' institutions with their somewhat more heterogeneous cultures needed to be kept in check. The possibility of diversity carried with it connotations of disorder.
- *Second, Uniform Admission Rules* now apply to all States. The Rules specify that the same 11 subjects, or areas of knowledge, should be completed by all those wishing to be admitted to legal practice in Australia. They include contract, torts, property, criminal law, constitutional law and company law. While streamlining admission and practice requirements was a positive development, uniformity is conducive to greyness, particularly as the choice of what is important has changed remarkably little since the 19th century.
- *Third, professional law associations* have placed increasing pressure on universities to take responsibility for practical legal training. The associations argue that, as universities are responsible for so many law graduates, more skills should be offered within the law degree, such as advocacy, drafting, court procedures and client interviewing. Even though only about 50% of law students are able to find positions in traditional private practice, law schools are being pressured to adapt their curricular offerings to accord with the private practice model. While completion of skills subjects may not be essential for the degree, there is a subtle pressure on students to complete them 'just in case' or 'to keep their options open'.
- *Fourth, the legal professional market* constitutes another source of pressure on law schools to offer more practice-oriented subjects, particularly those related to property and profits, the staples of corporate law practice. Thus, taxation, securities and trade practices are likely to accompany the specified areas of knowledge. If they are not offered, students will demand that they be offered, pleading that they will otherwise be 'disadvantaged' in the job market. Subjects that deal with the human condition, the social and the affective, such as human rights, discrimination and welfare, may be found to be no longer viable.
- *Fifth, there has been a contraction of the public sphere* and a deference to privatisation. It is not just that the public sector as a notable source of legal employment is fast disappearing, but that the very idea of public service as a social good has been degraded. Thus, teaching students how to serve the interests of corporate clients by circumventing regulatory regimes designed for the common good (such as taxation, trade practices, environmental protection, equal opportunity, etc.) has become a primary purpose of the law degree. The malleability of legal ethics provides scope for repackaging the practice as a 'disinterested serving of the client'.
- *Sixth, the law curriculum* is being shaped by Federal Government higher education funding policies and university responses. The idea of education as a public good is one of the casualties in the demise of the public sector. A policy of privatisation by stealth has been put in train by the Howard Government. Unlike the United States, Australian law firms generally do not have a tradition of altruism with regard to law schools, although a number of named Chairs have emerged in recent years. The possibility of compromising the already parlous commitment to independent and critical thought via endowments from corporate sponsors is obvious. However, the present political climate is compelling law schools to pursue such 'alternative' forms of funding. The imperative to privatise and conservatise has emerged to quell the nascent sparks of diversity in Australian legal education. The change in nomenclature at La Trobe University is probably exemplary. Last year, La Trobe's School of Law and Legal Studies was located in a Faculty of Social Sciences; this year, it is in a newly constituted Faculty of Law and Management.

Mr Roderick West, the head of the Federal Government's review of higher education is quoted as saying that universities should be about 'inspirational learning' rather than 'preparing graduates for the job market' (*Age*, 16.1.97). I do not wish to suggest that the two are mutually exclusive. Indeed it would be disastrous for all professional degrees, including law, if they were. While 'inspirational learning' might have multiple meanings, one can only hope that Chairman West interprets it so that it does not preclude the infusion of a little colour and vitality into the greying landscape of Australian legal education.

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