



Law Council
OF AUSTRALIA

Looking to the future of legal education

Speech delivered by Fiona McLeod SC, President of the Law Council of Australia at the Australian Academy of Law Conference, Sydney.

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The New South Wales Law Society *Future of the Legal Profession Report* chapter on the future of legal education recommends:

In a changing environment, the skills and area of knowledge likely to be of increasing importance for the graduate of the future include: technology; practice related skills; business skills and basic accounting; project management; international and cross border law; interdisciplinary experience; resilience; flexibility and ability to adapt to change.

The Report enticingly concludes:

That the Law Society communicate the report's detailed findings to the Council of Law Deans, Legal Profession Admission Board of New South Wales, and the Admissions Committee of the Legal Services Council as to the further research and consideration that should be given to the seven areas of skills and knowledge identified as necessary for law graduates.

So consider that recommendation fulfilled.

This weekend we have confronted a number of opportunities and challenges concerning the future design of legal education in this country with some inspired suggestions that the study of law should be based in a broad humanities context and take account of values to make us better lawyers and ultimately better citizens.

I recognise that increasingly the voice of the Law Council may be irrelevant in this discussion because, although I represent the 65,000 members in practice, increasingly law graduates are not practicing law but are ending up practicing as in-house counsel or in other occupations.

All the more reason for us to listen to the voice of the students, appropriately represented on this panel today by Dan.

I will make three observations this afternoon.

'The kids are alright'

My first is to recognise that the kids are alright.

While it is true that law students are facing increasingly an enormous financial burden with significant university fees to pay these days and there are many reports signalling great pessimism about the future of work and working hours, stress has always been there for students.

It may seem like we had it easy by comparison. Maybe, like childbirth, over time we have forgotten the pain and remember our university years with a sort of nostalgia largely attributable to the architecture of the old cold stone buildings in which we studied.

But in reality we too were often lost, lonely and a little worried about the future.

The way we teach is also obviously an important aspect of our engagement of students.

Lecturers have always looked for ways to engage the interest of students, sometimes an exercise in futility when combating digital distractions.

I would urge that there is still a place for aural learning in the physical classroom. That by speaking and listening we use different neural pathways imbedding deep memory; deeper memory than by watching or distracted listening.

The real measure of success for the lecturer seeking to engage a student may well be to succeed in having them disconnect from digital distractions.

I am curious to know which type of learning affects long-term memory and which areas of our brains are preferenced by digital multitasking. It may be that the virtual lecturer can generate better learning outcomes, that we are developing a new super race. Or not.

There is a temptation to overfill the curriculum with optional extras. But I urge those present to remember that there also needs to be time to vague out and, to coin a post-feminist deconstructed term – to ‘chase boys’. In my case undertaken back then with enthusiasm.

I also recall spending rather a lot of time in ‘the cafe’ or in various experimental theatre arts productions and must believe that nothing in life is wasted.

Remember that this is a time of transition for young people, a time where they are developing an awareness of their place in the world confronted directly by the comprehension of adult responsibilities looming over them and the need to make life altering choices.

The maturing brain continues to develop in the early 20s, laying down and reinforcing foundational experience.

And I would note that, as with all things in life, failure itself is a great educator.

My reflection is that students are now, as always, capable of being inspired and engaged by stories that resonate with their experience and aspirations.

So they’re fine.

Breadth and Depth of knowledge

My second point is that globally and domestically, increasingly, deep general legal knowledge and improving the ability of many to access this knowledge are both necessary.

The ability of many to access specialist knowledge of the law and navigate legal systems is well beyond the reach of tens of thousands of us every year.

Not just the poor, but also the middle class. 14 per cent of Australians live below the poverty line and only eight per cent of those have the ability to access legal aid.

10,000 people per year do not have access to a lawyer when they need one.

The community legal centres and legal assistance sector generally are turning away 160,000 people every year.

These pressures occur because of the steady erosion of Government funding in this sector.

So when we ask what is the future of legal practice, as a signpost for how we design legal education, we must recognise that some tides are within our control and some are beyond it.

The object of legal education

My third point is that the world is changing faster than our current capacity to keep apace and adapt.

This is not just because of the evolution of technology, including complex computational learning systems, but a result of the impact of global forces.

Climate change, environmental degradation, loss of food and water security, corruption and inequality confront us and our responses are shaped by polls and clickbait self referential news. The erosion of once trusted institutions of church, state and judicial processes compound our current wicked problems.

So a worth enquiry might be – what is the purpose of law? And, should the purpose of law form inform the content of a law degree?

In other words, what are we designing it for? What is our objective?

To maintain our relevance? Is it to create a body of qualified lawyers?

Is to create profit centres?

Is it to help the courts deliver just outcomes by setting standards of professional conduct and competence?

Is it to make individuals who are agents of change?

Is it to foster international trade and or human rights observance?

And in teaching, is our aim to teach a cohort of students how to solve legal problems?

To support a generation of contributors to public debate in support in democracy?

To deliver justice and equality?

To address the wicked problems of our age?

It strikes me, listening to the history of the last 30 years since the Pearce Report, that this has been a contested space. We have not been short on vision, but we have been led to a compromise.

Einstein said *“we can’t solve problems by using the same kind of thinking we use when we created them”*.

He also said *“If I had an hour to solve a problem, I spend 55 minutes thinking about the problem and five minutes thinking about solution.”*

So inspired by this weekend my wish list of fundamentals, the subjects of a course I wish I could study if I had my time over, within my law degree might include:

Discerning legal issues – navigating the multifaceted legal issues of poverty for example, of developing problem solving skills identifying legal solutions and the edge of expertise. There is a continued need for understanding of the basics but also how

problems in real life present themselves to lawyers needing to solve a whole client rather than an individual topic.

Integrated technology – we will need a basic understanding of the operations and language of predictive coding, computational analysis and “learning” and to understand the rules, assumptions and heuristics or bias in programming.

Thinking – rationality, bias, mindfulness and creativity including neurolinguistics and neuroplasticity will be vital tools.

Comparative legal systems – essential to meet the inevitable globalisation of law and the need for a new *lex mercatoria* and emerging international legal frameworks.

Legal innovation and incubation – including experiential justice hacks and application development.

Rational thinking – scientific method compared with other forms of analysis including rights based analysis.

Influence – The study of how good laws and policies are created. What are the components and how do lawyers contribute to the development of good governance?

This last topic might include a focus on civility.

On advocacy within and outside the courtroom.

On the classical tools of persuasion – logos, pathos and ethos complemented by a firm grounding in the principles of interpretation.

And on reframing – requiring lateral thinking. For example, reframing the need for legal aid funding by describing justice as a developing economy protecting our national interests.

In short, we need to harness the accidental skills of lawyers to empower worthy contributions to public debate about best outcomes.

And finally, if we are seeking to create leaders of new democracy, maybe we should be teaching our champions of the future lessons in courage.

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