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## Decline in the Reform of Law Teaching? The impact of policy reforms in tertiary education

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Vivienne Brand\*†

*That economics has dictated, and continues to dictate what is "law", what we define as "law", and thus how we teach law cannot be doubted.*<sup>1</sup>

Law as a discipline struggles as much as, or perhaps more than, any other discipline in its attempts to reconcile its close historic connections to professional practice with its current location in a university environment. Should law schools focus on producing graduates who are "practice-ready" or make available a broad, contextual education for their students in line with the academic standards of the wider university? The overarching issue in debates about legal education in Australia has been: "what is the nature of a 'university' legal education?"<sup>2</sup> The key issue is: should law schools be driven by market requirements or by more idealistic educational values?

In posing this question market requirements are thrown into opposition with educational values. This may be a false dichotomy. It might be, and it probably ought to be, possible to both respond to the demands associated with being a service provider in a marketplace and to keep faith with the objectives of a broad and informed educational ideal. This article asks the question, however, whether legal education reform has suffered in the last decade as a result of the challenge inherent in responding to those dual demands.

In his detailed treatment of the effect of economic rationalism on education policy in Australia, Marginson argues

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1 M Le Brun, Curriculum Planning and Development in Law in Australia: why is innovation so rare? (1991) 9 *Law in Context* 27, at 40.

2 C McInnis & S Marginson, *Australian Law Schools After the 1987 Pearce Report* (Canberra: AGPS, 1994) at 48.

that economics, and not educational values, has stolen the central role in the education policy debate in Australia.<sup>3</sup> The progress of Australian law schools through the last turbulent decade since the commencement of the Dawkins reforms is evidence of that trend. This article examines the higher education economic policy reforms of the last decade and their effect on law schools in the context of the development of legal education in Australia. It suggests that tertiary education policy reforms have had a significant impact on the role and direction of education in university law schools, and asks the question whether the current agenda for legal education is returning to market-driven values, as students transform into consumers and law schools become increasingly reliant on private sources of funding. It deals with the way in which legal education in Australia has evolved from a period of focussing on a vocationally-driven degree to an era when reform of legal education achieved a new prominence, before the economic reforms of the higher education sector in the 1980s and 1990s threatened to change the landscape once more.

Writing in this journal in 1997, Clark reviewed legal education in Australia since the Pearce Report<sup>4</sup> and noted the rate of change in Australian law schools in the preceding decade. While many of the issues raised by Clark remain current, the landscape of legal education in Australia continues to evolve at a rapid pace. Particularly, while moves to broaden the university law degree and even to refashion it into “the new Arts degree” represent an important part of the immediate history of legal education’s development in Australia, this article suggests the essentially vocational nature of the law degree may remain. An Australian-wide study published in 1998 provides the most up-to-date evidence available of law graduates’ career destinations, and gives a clear indication of the continued importance of the law degree’s vocational status.

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3 S Marginson, S, *Education and Public Policy in Australia* (Cambridge: Cambridge University Press, 1993).

4 E Clark, Report: Australian Legal Education a Decade After the Pearce Report, (1997) 8 *Legal Education Review* 213. The full title of the Pearce Report is the Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Pearce Report) (Canberra: AGPS, 1987), vols 1-4 signified as Pearce 1987a to 1987d, summary volume signified as Pearce 1987e.

## Historical Context

In considering the status of legal education reform in Australia it is useful to look backwards briefly at the history of legal education in Australia. That history, familiar to most, exhibits an ongoing tension between providing a liberal arts education and preparing students for practice. Legal education in the two original law schools in the common law world (Oxford and Cambridge) focused on the teaching of law as a body of academic knowledge, not as a set of rules to be applied in practice. The law taught at Oxford and Cambridge was in fact Roman Law, itself of no immediate practical use in English legal practice. Students who wished to become lawyers instead undertook training (effectively apprenticeships) at the Inns of Court in London or an equivalent venue. Development of legal education in colonial Australia followed a similar form, with the first law departments in Australian universities not being established until the latter part of the nineteenth century. Even after the establishment of formal law departments within Australian universities, law continued to be a relatively non-academic discipline. Until the 1950s, few law teaching staff in Australia were full-time employees of the university, the majority being practitioners who taught after hours at the end of their day in practice.<sup>5</sup> In contrast to the position in civil law countries, where governments have been more directly involved in both the form and the content of legal education, as well as the funding of education and the accreditation of lawyers, government was only indirectly involved in legal education in Australia through its role in funding university legal education.<sup>6</sup>

By the end of the 1950s an expansion had occurred in the number of full-time teaching staff tenured to the university. The changing profile of law school staff coincided with the recommendations of the Martin Report into legal education in 1964. The most significant outcome of the Martin Report was its recommendation that law students have at least three years of university education, to facilitate the “background intellectual training” it was perceived they would require in future leadership positions. However, since no additional barriers to entry into the profession were placed

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5 *Id.*, 1987a, paragraph 1.9.

6 Australian Law Reform Commission, *Review of the Adversarial System of Litigation* (Issues Paper 21) (Canberra: AGPS, 1997) 17.

in the way of graduates from university law schools (in contrast to the position in many other common law countries, where an additional entry exam was often required), pressure was placed on law schools to provide all or nearly all relevant substantive material. At the same time the profession retained the right to maintain its own training regimes, particularly in certain states. It was not until 1968 that university graduate admittees to practice in New South Wales exceeded the number of non-graduate lawyers being admitted. Even after this date the admission authorities continued to closely monitor subjects offered within university law schools and did not hesitate to take action if they did not agree with curriculum choices. In 1973 the Law Faculty at the University of Adelaide moved the subject Procedure from its list of compulsory subjects to an elective subject. The Supreme Court judges immediately made Procedure an admission requirement, effectively mandating its return to the Law School's compulsory list.<sup>7</sup> The domination of professional requirements was evident throughout Australia: law school curricula in all States have always contained many topics compulsory for admission to the practice, but rarely a single topic compulsory solely for completion of a *university* legal education.<sup>8</sup> One problematic aspect of the profession's mandating of curriculum components is the mechanism by which it communicates its concerns. Traditionally local judges, in combination with the local law society, have been responsible for the setting of admission requirements in each State, yet the collection of judges, senior barristers and individuals who make up this group have typically not been representative of the legal profession as a whole. Major firms in particular, themselves significant employers of legal graduates (particularly in recent years), have not always had input into these decision-making processes.

### *The 1980s – the Pearce Report and Moves to a Broader Degree*

In 1985 the Australian Federal Government commissioned a review of legal education in Australia, as part of a series of discipline reviews of the Australian tertiary education sector. The

7 M Chesterman & D Weisbrot, *Legal Scholarship in Australia* (1987) 50 *Modern Law Review* 709 at 718.

8 C Sampford & D Wood, "Theoretical Dimensions" of Legal Education – A Response to the Pearce Report (1988) 62 *Australian Law Journal* 32 at 37.

Pearce Report, released in 1987, was the first comprehensive review of teaching in Australian law schools, and marked a watershed in the continuing tension between professional and academic requirements in legal education.<sup>9</sup> One of the aspects of the Report which received widest attention and praise was the emphasis the Committee put upon the broadening of law students' education.<sup>10</sup> The Committee noted that the approach to teaching law in the majority of Australian law schools was focussed on a narrow transmission of legal rules and principles, often without adequate consideration of the social context in which those rules operated. The Report suggested that "all law schools should examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other social forces".<sup>11</sup>

Its sentiments reflected the movement which was already taking place in the teaching of law in Australia, and which was to become more apparent in the years immediately following the Pearce Report. While Pearce noted that there had "been little written in Australia about legal education",<sup>12</sup> this was about to change, and to some extent had changed already. In 1987 Chesterman & Weisbrot, in an influential article in *Modern Law Review*, pointed to the early domination of black-letter law formalism in Australian law schools, but argued there was evidence of the development of wider approaches. They suggested that a clear move had been made "away from the "trade school" aspirations which wholly dominated the field until the 1960s, and towards the classic, liberal model of university education".<sup>13</sup>

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9 Pearce, *supra* note 4.

10 For examples of early positive reaction, see for instance, Schlegel, J, *Legal Education: More Theory, More Practice*, (1988) 13 *Legal Service Bulletin* 71, at 71; R McQueen, *Is There a Critical Legal Studies Movement in Australia? Innovation in Australian legal education after the Pearce Report* (1990) 2 *Culture and Policy* 3, at 11-12 and Sampford and Wood, *supra* note 8. For later commentary suggesting the Pearce Report's emphasis on a "broader" legal education had a real impact, see for example McInnis and Marginson who suggested, in their 1994 review of Australian law schools, that the growth in interdisciplinarity and combined degrees was one area in which the influence of the Pearce Committee could be "readily discerned" (*supra*, note 2, at 245). Other commentators agreed: see Sampford, C, *Pearce Revisited*, (1/1995) *Australian Universities' Review* 70 at 70.

11 Pearce, 1987e, *supra* note 4, at 27.

12 *Id* at 34.

13 Chesterman & Weisbrot, *supra* note 7, at 718.

This promotion of educational values reflected the growing strength of moves for reform of legal education in Australia. Debate on the form and content of legal education in Australia continued to intensify during the late 1980s and the early 1990s, with the launch of the first refereed journal devoted to these issues, *Legal Education Review*, increased publication of articles in the area and the appearance of a text dealing with the improvement of teaching in law in Australia (*The Quiet Revolution*<sup>14</sup>). Many critics of existing models of legal education found themselves gravitating to the “new” law schools.<sup>15</sup> Law educators began to challenge more openly the assumption that a law degree was little more than a passport to practice and that professional requirements must therefore dictate both curriculum and methods.

By the mid-1990s a shift in focus from narrow transmission of “black-letter law” to a more broadly-based legal education was apparent. A 1994 review of Australian Law Schools after the Pearce Report, commissioned by the Department of Employment, Education and Training, noted that by contrast with the position described by Pearce seven years earlier, the aims and objectives of the then current law schools in Australia did not indicate any of them were “rule-oriented”, and that all had “embraced aspects of theory, critical reflection, and the law in action”.<sup>16</sup> Combined with these developments was a move to incorporate skills teaching into law degrees, consistent with an increased emphasis on general skills acquisition across university courses. While some of the skills included in this movement reflected the particular context of law schools (eg drafting of legal documents) others were of more generic relevance and were aimed at improving students’ general education (eg written and oral communication skills). Enthusiasm for skills teaching in law schools in the 1990s has been strong,<sup>17</sup> and the development of curricula aimed at fostering the development of a wide range of skills as well as substantive legal knowledge (often through the mechanism of skills acquisition) has driven a diverse range of curriculum reforms.

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14 M Le Brun & R Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (Sydney: Law Book Company, 1994).

15 McQueen, *supra* note 10, at 3–5.

16 McInnis & Marginson, *supra* note 2, at 155.

17 S Toddington, “The Emperor’s New Skills: The Academy, The Profession and the Idea of Legal Education”, in P Birks (ed) *What Are Law Schools For?* (Oxford: Oxford University Press, 1996), at 69.

At the same time as these shifts in legal education became apparent, other more wide-spread changes were flowing through the tertiary education sector in Australia. Government at the federal level was making a play to reform the way in which universities operated in Australia. This shift in government policy was to have a dramatic impact on the way legal education unfolded in the 1990s.

### Government Policy and Legal Education Reform

Radical changes to government policy in higher education in the last 10 to 15 years have irreversibly altered the relationship between law schools and government, and between law schools and the Commonwealth in particular.

In retrospect this shift can be seen to have begun with the Pearce Report, carried out as part of the Commonwealth Tertiary Education Commission's project to develop a system of reviews which would provide the government and the broader community with an assessment of the needs of higher education and the benefits of providing funding to the tertiary sector. While predating the commencement of the Dawkins reforms (which are discussed further below, and which occurred with such rapidity and thoroughness that many of the recommendations of the Pearce Report became largely irrelevant almost immediately), the aims of the Pearce review evidence the critical shift taking place in the relationship between legal education and government. Law schools were no longer to be left largely to self-regulation, but were to be viewed as instruments of economic policy, to be assessed against benchmarks of community expectation and fiscal responsibility. Thus even as the profession's influence on the legal curriculum began to be impacted by the trend to a broader law education in keeping with university expectations, the rise of government intervention in the tertiary sector ensured that market concerns would continue to be important. Pearce's ambit of investigation extended to issues such as the "quality and economic efficiency of each institution",<sup>18</sup> and the Report began with the following introduction:

[t]he Commonwealth Tertiary Education Commission believes that the justification of appropriate levels of public funding for higher education carries with it an obligation

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18 Pearce, 1987e, *supra* note 4, Terms of Reference.



on higher education institutions to demonstrate that their teaching and research is being carried out at suitable standards, *avoiding waste and unnecessary duplication and in a manner that is responsive to community needs* ... [i]n terms of effectiveness of resource utilisation, [the Pearce Committee] will view their task not only as a matter of addressing inadequacies but also as a means of *accounting for how savings could be made through redistribution of current resources*.<sup>19</sup>

Unlike earlier investigations which had included law schools in their ambit – such as the Committee of Inquiry on the Future of Tertiary Education in Australia, 1964 (the Martin Report) and the Committee of Inquiry into Legal Education in New South Wales, 1979 (the Bowen Report) – the Pearce Committee placed emphasis on seeking information from interested parties. In particular, the Pearce Report consulted with the consumers of law school services, including graduates and employers of those graduates.<sup>20</sup> Recent graduates were surveyed, members of the profession approached for comments and students interviewed. An entire chapter of the summary report was devoted to “Legal Education: the consumers’ perspective”.<sup>21</sup> This move to a consumer-focused review evidenced an underlying policy shift to a more economically-rationalist framework within tertiary education in general and within law schools in particular.

### *Commercialisation*

A further key factor in the altered relationship between government and law schools was the changes initiated by John Dawkins as federal education minister in the mid-to-late 1980s. These shifts in government policy heralded a new era of accountability to the consumers of legal education (including students, and ultimately employers and government), with consequential effects on curriculum.

The Dawkins reforms aimed at aligning the higher education sector with broader economic aims and to move universities to a more market footing. Universities made a

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19 *Id* at 3, emphasis supplied.

20 J Lancaster, *The Modernisation of Legal Education: A Critique of the Martin, Bowen and Pearce Reports* (Sydney: Centre for Legal Education, 1993) at 48.

21 Pearce, 1987e, *supra* note 4, chapter 4.

fundamental transition from universities as public funded institutions towards universities as service providers to a range of clients including government, students and industry (a process occurring elsewhere in the public sector at the same time and which has come to be known as “commercialisation”). The federal government instigated a period of rapid growth in the sector, centralised public research funding, decentralised the ability to engage in market-based activities, and re-introduced student fees. In addition to exercising its power over funding (the federal government’s key tool of economic reform in the university sector), the Commonwealth strengthened its policy reach in education in other ways. Growing cooperation between the States and Commonwealth in the early 1990s, through the auspices of organisations such as the Australian Education Council (AEC) and the Ministers of Vocational Employment, Education and Training (MOVEET), had the effect of raising the Commonwealth’s role in education policy and hence its ability to increase the influence of economic perspectives. The presence of economists at senior levels within the Department of Employment, Education and Training (as it then was) facilitated the economic imperatives driving the policy reforms.<sup>22</sup> These reforms survived subsequent transitions of power within federal government, being generally supported by both the federal Coalition and Labor parties.

### *Resourcing of Law Schools*

Resourcing of higher education entered a fourth distinct phase with the implementation of the Dawkins reforms. Originally, in the first stage of tertiary funding, the initial universities in Australia (the Universities of Sydney and Melbourne) had relied entirely on funding from the States, student fees and bequests. This funding model shifted in the post Second World War period to one in which Commonwealth funding became important, a stage characterised by rapid growth and by rapid expansion in demand on public resources for tertiary institutions. By the mid-1970s State involvement in tertiary funding had declined and in this third period the Commonwealth assumed virtual responsibility for the higher education sector. Student fees were abolished. Universities, and hence law schools, now looked almost entirely to the Commonwealth for income. The Commonwealth

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<sup>22</sup> Marginson, *supra* note 3, at 26–27.

was granted no role at all in education in the Constitution formulated at the end of the 19th century,<sup>23</sup> but by the mid-1980s had assumed virtual complete dominance of the tertiary sector. In the post-1988 period, Dawkins' economic reforms reduced the Commonwealth's commitment to provide 100 per cent funding to universities, and institutions were forced to become more entrepreneurial, to attract corporate sponsorship, to compete for research funds and to attract students.<sup>24</sup>

There are direct connections between these transitions in tertiary funding regimes and the development of law school curricula. Early State-based funding coincided with a small number of law schools principally concerned with producing practitioners for the local profession. As law schools formalised in the post-War period, improved funding from the Commonwealth reflected the increased nationalisation of the tertiary sector. Law lecturers tended increasingly to be professional academics rather than practitioners, and a national market for professional academic services developed. By the mid-1970s this transition was complete. Abolition of fees and a complete reliance on centralised government funding created a sense of law schools as arms of the public service rather than as providers of services to the profession. The natural extension of this progression was the questioning of purpose within the law schools which was apparent by the mid-to-late 1980s, as the notion that law schools should be providing a narrowly vocational program of study came under assault. The environment was conducive to reform of legal education. This development coincided with the fourth stage of evolution in higher education funding, the move to universities as increasingly self-funding entities viewing the Commonwealth as a large client within a varied client group. For law schools this has meant that students have had increasing say in what law schools teach and how it is taught, and law schools have had to look beyond the government for funds. It is likely that both of these developments have had implications for the progress of legal education reform in Australia.

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23 G Harman, *The Politics of Education*, in J Keeves & K Marjoribanks eds, *Australian Education: Review of Research* (Camberwell, Vic: The Australian Council for Educational Research, 1998) at 40.

24 Department of Employment, Education and Training, *National Report on Australia's Higher Education Sector* (Canberra: AGPS, 1993) chapter 4.

### *Law School Growth in the 1990s*

Key amongst the Dawkins reforms for the legal education sector was the creation of immediate rapid growth. Many of the statistics on this growth are by now well known. By 1995, law had become the third fastest growing discipline after health and business.<sup>25</sup> In a peak growth period between 1988 and 1992, growth in law and legal studies places (60.7 per cent) exceeded both business (50.4 per cent) and health (49.3 per cent), against a base in all disciplines of 33.9 per cent.<sup>26</sup> As funding became tighter, few universities without a law school were able to afford to overlook the logic of including one, and those universities with law schools could not ignore the advantages of an even bigger law school. Demand from students for law school places has always been high and exceeds supply (a position which continues<sup>27</sup>). The demand comes from high-performing students (who are perceived by universities as being attributes in any event), and in addition law schools are cheap institutions to fund compared with the other faculties within the university (eg medicine) which can attract top-performing students. Law schools need expensive libraries, but at least until recently technological requirements were low, keeping costs down. Staff-student ratios in law schools have always been high and teaching methods have usually been in the traditional model of large lecture classes supported by tutorials. Despite the Pearce Committee's favourable comments on small-group teaching, this more expensive approach to law school teaching appears to have lost ground in the wake of post-Dawkins expansionism.

In an environment where universities had become dependent on undergraduate student numbers for a large part of their funding, the ability to attract undergraduates was critical. Law schools offered a "cash-cow" opportunity to vice-chancellors. Funding to universities was increasingly untied, leaving universities to decide for themselves what projects to finance, and law schools could be developed without the need to seek specialist capital funding from centralised government. Legal education became "captive to the

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25 S Vignaendra, Centre for Legal Education, *Australian Law Graduates' Career Destinations* (Canberra: Department of Employment, Education, Training and Youth Affairs, 1998).

26 McInnis & Marginson, *supra* note 2, at 15.

27 D Ashenden & S Milligan, Law Still in Demand *The Australian* (Higher Education Supplement), 27 January 1999, at 38.

higher demands of an education policy which made the expansion of law very attractive to the universities".<sup>28</sup> In this environment, it seems likely that the issue of what law schools should teach became secondary to the need to increase student places in law, whether or not the resources were there to teach law in the way Pearce and others had suggested it should be taught.

Law schools were also encouraged by commercialisation policy to look to alternative sources of funding. Corporate and alumni funding became important and overseas student fees together with fees from postgraduate courses have helped supplement law school budgets.<sup>29</sup> In 1991 the Sydney Law School secured \$500,000 from Sydney law firm Allen, Allen & Hemsley in return for naming rights for the School's law library; also on offer were rights to name lecture halls and professorial chairs.<sup>30</sup> Similar steps were taken by law schools elsewhere across the country. The establishment of Flinders University of South Australia's new law school library in the early nineties relied heavily on support from the local legal profession. By 1994 all Australian law schools received some form of commercial sponsorship.<sup>31</sup> Law schools also increasingly looked to full-fee paying overseas students to increase income, although inter-jurisdictional differences in law limit this potential market.<sup>32</sup> Implicit in these developments was a closer link between law schools and the profession, a partial return to the close reliance that had been in place until the 1960s. For a part of the higher education sector which had been slowly moving away from dependence on connections with the profession and which had begun to debate in earnest the most appropriate model of education, this represented something of an about-face. It also represented a marked increase in the direct impact of government policy on law school culture.

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28 C Parker & A Goldsmith, "Failed Sociologists" in the Market Place: Law Schools in Australia (1998) 25 *Journal of Law and Society* 33 at 36-37.

29 McInnis & Marginson, *supra* note 2, at 21.

30 Marginson, *supra* note 3, at 189-190.

31 T Tarr, The Funding and Sponsorship of Legal Education (1994) 12 *Journal of Professional Legal Education* 17, at 17.

32 E Clark, Australian Legal Education a Decade After the Pearce Report: a review of McInnis, C and Marginson, S, Australian law schools after the 1987 Pearce Report (1997) *Legal Education Review* 213 at 224-25.

## Law School Responses to Economic Policy Reforms

What then was the response of law schools to government policy shifts in the tertiary sector and how did these shifts impact on moves to reform legal education in Australia? Two key, and apparently contradictory, themes emerge in reviewing law school responses to economic policy changes in the higher education sector over the last 10 to 15 years. The Dawkins and post-Dawkins shifts in tertiary education policy had the effect of both pressuring law schools to return to (some would say to retain) a more "legal practice" focus in the delivery of curriculum, and at the same time of focusing law schools on the need to broaden the curriculum to accommodate a wider range of students with presumed diversified career interests.<sup>33</sup>

Implicit in each of these themes (practice orientation and a liberal-arts focus) is the need to cater to student career intentions, and with it a recognition of both the vocationalism emphasised by the Dawkins reforms and the critical importance of students (and numbers of students) to law schools. Between 1983 and 1993 the government share of funding to universities fell from 91 per cent to 60 per cent, and student charges (HECS and student fees) constituted a fifth of income by 1993. Before 1987 the contribution from student charges had been close to zero.<sup>34</sup> A fundamental shift in the attitude of universities (and hence of law schools) to students flowed from this change in relative funding. Students became consumers of law school services, and gained increased power in the debate about what law schools should teach.

The federal government had identified the expansion of the higher education system as a tool by which their economic policies could be implemented. At the same time finance to support this growth was not forthcoming, as government encouraged universities to instead widen their resource base. Historically an inexpensive exercise, legal education has always struggled to lift its funding from a low

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33 Goldsmith has commented similarly on the development in the early 1990s of two parallel, yet apparently contradictory trends – the one for renewed focus on vocationalism, the other for increased theory: A Goldsmith, *An Unruly Conjunction? Social Thought and Legal Action in Clinical Legal Education (1993)* 43 *Journal of Legal Education* 415 at 416.

34 S Marginson, *Markets in Education* (Sydney: Allen & Unwin, 1997) at 246.

base. Faced with greater numbers of students but relatively fewer resources, law schools could be expected to resile from a commitment to the more innovative, broadly-based law degree which had been evident post-Pearce. More innovative teaching often placed increased demand on resources. Small-group teaching and increased contact between staff and students of the kind experimented with at the University of New South Wales and commended by the Pearce Report required far more funding than traditional models. The Pearce Committee's recommended student:staff ratio of 15:1 has often not been achievable. In the five years after the Pearce Report until 1992, Adelaide Law School's ratio blew out from 16.6 to 21.8 students for every staff member; other universities suffered similar increases in ratios.<sup>35</sup> At the same time as staff faced increased student loads, staff salaries decreased in real terms, making it even more difficult for law schools to compete with the private sector in attracting talented law graduates to academia.<sup>36</sup> Law schools' need for dramatically improved resources therefore coincided with economic factors which placed added pressures on the schools.<sup>37</sup> Emphasis seems to have been put in recent years upon surviving in the face of waves of funding reductions, over-enrolment by cash-strapped central administrations, and increased reliance on part-time and casual staff.

### *The Pressure to Focus on a Vocational Degree*

In this environment, the pressure on universities in general and on law schools as part of those universities to accommodate to the market became considerable.<sup>38</sup> By the early 1990s the place of employers as legitimate stakeholders in the education enterprise was accepted, and the necessity of taking into account their expressed needs recognised.<sup>39</sup> Students found themselves in a similar position. The move to charging students fees in the form of a HECS payment altered law student consciousness towards a consumer orientation.<sup>40</sup>

35 McInnis & Marginson, *supra* note 2, at 214.

36 See for instance Clark, *supra* note 32.

37 Clark, *supra* note 32 at 222.

38 "The market" may of course be comprised of a number of stakeholders, including students, employers and the government, whose interests will not always be homogenous. When those interests are in conflict, "market forces" may have the effect of simultaneously pulling higher education in multiple directions, illustrating the risks of a single definition of the market.

39 McInnis & Marginson, *supra* note 2, at 26.

40 McInnis & Marginson, *supra* note 2, Parker & Goldsmith, *supra* note 28.

This position was exacerbated by the placement of law at the top of the HECS payments bands upon introduction of a sliding scale of fees in the late 1990s, despite law's historically low cost of delivery. Law students are charged in part according to their perceived likely future incomes rather than the cost of delivery of their degree.<sup>41</sup> While government has traditionally paid law graduates at a higher rate in their early years of employment, within a few years of graduation it is usually privately employed graduates who enjoy the highest incomes.<sup>42</sup> These high private sector incomes are much more likely to be attainable in private (especially commercial) practice than elsewhere, and students might well be expected to call for increased teaching of subjects appropriate to that segment of the profession.

Anecdotal evidence suggests this has been the case. Enrolments in electives with a non-commercial, non-practice focus seem often to be small, compared with enrolments in subjects suited to practice in a large commercial law firm (though of course this may always have been something of a tendency). Small electives become marginal propositions and may not be offered (or may not be offered as frequently) when teaching resources are stretched. As new law schools during the 1990s fought to establish their marketability in an already competitive environment, curriculum orientation to professional demands was often seen as the most effective pathway to securing market share (presumably to accommodate students' perceived demand for a law degree which would prepare them for legal practice). Law schools such as Bond, Flinders and Deakin have taken this route.<sup>43</sup> In an environment in which students-as-consumers

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41 Three factors were identified by the Federal Government as having influenced a law's classification in Band 3 of HECS; actual cost of course undertaken, the likely future benefits to the individual, and student demand. On the issue of why law was placed in the Band 3 discipline group when it is a relatively inexpensive to fund a law course, the Government stated "[w]hile the Government recognises that Law courses are relatively cheaper than other courses in the Band 3 discipline group, average income for Law graduates places them amongst the highest paid professions in the workforce. In addition this is a very high demand course. Therefore it is more equitable that they pay a higher contribution toward the cost of their course.": Senator Amanda Vanstone, Minister for Employment, Education, Training and Youth Affairs, *Higher Education Budget Statement, 9 August 1996*, "Questions and Answers"; Australian Government Publishing Service, Canberra, 1996, at 8.

42 A fact confirmed by Vignaendra's recent survey of law graduates: *supra* note 25 at 30.

43 McInnis & Marginson, *supra* note 2, at 245.



have significant power, it has become difficult to resist student curriculum preferences. Added to these pressures, academics are told that if students pay for their studies, they expect they should have better prospects of employment.<sup>44</sup> Increased use of course evaluation questionnaires, stronger reliance on student evaluation of teaching scores for promotion and tenure purposes, as well as measures such as the Federal Government's infamous "Dob in a Teacher" scheme of the late 1990s, have all contributed to reinforcing a climate of student consumerism in the law school classroom. There has of course always been some student resistance to innovative curriculum. Writing over a decade ago, and before the impact of the federal government's policy reforms, Sampford and Wood suggested that law school staff had become attuned to "the sounds of pens dropping and the silent but perceptible click of minds switching off when some theoretical or critical question is raised and sometimes even a hostility or impatience that time is being 'wasted'".<sup>45</sup> But it seems possible that this resistance has been exacerbated by the shift in focus towards law students as consumers.

Even in relation to apparently strongly entrenched changes relating to combined degrees and access equity, responses to perceived student demand can be seen. Monash and Flinders law schools have relaxed the common requirement for students to combine their law degree with some other degree,<sup>46</sup> while the University of Adelaide has amended the entry requirements which were imposed in the 1980s in an effort to increase equity and broaden the profile of students entering the law school. In recent years the University has set aside places for high performing secondary students, rather than requiring all students to compete for entry on the basis of their performance in another degree (a move likely to favour students from high-performing secondary schools, and to stem a potential flow of those students to other law schools not imposing broader entry requirements). Meanwhile students show less regard for good teaching than for employment prospects; there is evidence that prospective students continue to favour the established law schools, despite their less impressive performance in reforming

44 P Coaldrake & L Stedman, *On the Brink: Australia's Universities Confronting Their Future* (St Lucia, Qld: University of Queensland Press, 1998) at 3.

45 Sampford & Wood, *supra* note 8, at 35.

46 Flinders did not institute a combined degree policy, and Monash removed its policy: Parker & Goldsmith, *supra* note 28, at 45.

their curricula.<sup>47</sup> Authors of the Good Universities Guide for 1999, Ashenden & Milligan, have suggested that “[l]aw makes a good case study for anyone wanting to be gloomy about the prospects for educational reform. Legal academics have difficulty in producing it and prospective students don’t demand it”.<sup>48</sup>

### *The Role of the Profession*

At the same time as law schools responded to the changing economic environment within which they found themselves, the private legal profession, or at least certain components of it, have moved to reassert or increase their influence on the law degree. In the first half of the 1990s the development by state admitting authorities of a set of “compulsory subject areas” required for admission to practice and uniform throughout Australia (the “Priestley 11”) effectively mandated the inclusion of those areas in all law school curricula.

In 1994 the Law Council of Australia released a Blueprint for the Structure of the Legal Profession which proposed an accreditation scheme, and which incorporated the agreement reached between the Committee of Australian Law Deans and the Law Council to set up a National Appraisal Committee. Concerns were expressed that law schools would maintain “less than adequate controls” over this accreditation scheme.<sup>49</sup> However the Law Council argued the need for such a body, referring to the requirement to ensure the development and application of national standards for (amongst other things) “appraising the suitability of subjects offered by Australian tertiary courses in law, in order to satisfy the national academic and practical training requirements developed by the Council”.<sup>50</sup> This proposal was rejected by the Standing Committee of Attorneys-General in 1998, but the Law Council has signalled that it remains committed to establishment of a national body, and argues it “is essential that a national body undertakes some form of accreditation of tertiary law school courses in a consistent and objective

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47 Ashenden & Milligan, *supra* note 27.

48 *Id.*

49 E Clark and M Tsamenyi, “Legal Education in the Twenty-First Century: A Time of Challenge”, in P Birks, (ed), *What are Law Schools For?* (Oxford: Oxford University Press, 1996), at 37 (n133) and 39.

50 Law Council of Australia, *Submission to the Australian Law Reform Commission on Discussion Paper 62: Review of the Federal Civil Justice System*, October 1999, <http://www.lawcouncil.asn.au/dp62.htm>.

manner". The Council has stressed the need for the central body to be able to "set and enforce rules", and not merely advise.<sup>51</sup>

By contrast, the Australian Law Reform Commission, in its recently released Discussion Paper 62 ("Review of the Federal Civil Justice System") has proposed the establishment of a "broadly constituted advisory body known as the Australian Council on Legal Education", to develop model standards for legal education. The Commission stressed it did not see it as appropriate that there be "a monolithic body engaged in central planning and enforcing a single vision of what is required for the education and training of the Australian legal profession".<sup>52</sup> The Law Council has expressed its displeasure with the Commission's proposal, and indicated that the "Law Council does not support the establishment of an *advisory body* .... [t]he Law Council does support the establishment of a *determinative body* on legal education and training".<sup>53</sup>

### *PLT Developments*

In recent years a number of law schools have moved to integrate practical legal training into their degrees. Despite the essentially practical nature of PLT material, a significant number of law schools are now moving to include the practical legal component of their students' education in their undergraduate degrees, and have sought and obtained accreditation from admitting authorities. At least nine law schools are seeking to offer PLT within their degrees.<sup>54</sup> Graduates of these new degrees will be able to apply for admission immediately on completion of their degrees, without any further pre-admission training. This provides universities with an additional marketing point for their law programs, since students can complete their qualifications to practice-ready stage more quickly and within one institution. There is also the incentive of retaining students for longer (and hence receiving more fees income per student) rather than students being lost to a separate institution for this component of their qualifications (in South Australia, for instance, the PLT course was located in the University of

51 *Id.*

52 Australian Law Reform Commission, *Review of the Federal Civil Justice System*, (Discussion Paper 62), (Canberra: AGPS, 1999), at 57, 56.

53 Law Council of Australia, *supra* note 50. Emphasis original.

54 Australian Law Reform Commission, *supra* note 6, at 60, n5.

South Australia, formerly the South Australian Institute of Technology, an institution with no law degree of its own; this course has now closed down). Economic efficiency has not been the sole determinant of the shift to include PLT courses in university law degrees, with equity and access issues also of concern. Nonetheless, the practical effect of these moves is to significantly increase the vocational element of the law degree being offered, as a function of both what is taught and by whom it is taught.

As to *what* is taught, practical legal training subjects will be in addition to (or form expanded parts of) the eleven subject areas prescribed by the Law Admissions Consultative Committee as necessary for admission to practice in Australia (the "Priestley 11"). Students may have the option to complete a law degree without undertaking the additional subjects (this is the case at Flinders University for instance) but many students are likely to "hedge their bets" and undertake the additional qualification in case it later proves useful to them. As to *who* does the teaching of these new university-based practical subjects, the increased focus on practical legal skills teaching is likely to generate greater reliance on use of part-time teaching staff drawn from practice or on full-time staff recruited from a background as practising lawyers. At least in the case of the two South Australian universities offering this combined program, the Law Society will assist in the teaching of certain subjects. The shifting of ground back to a more heavily profession-dominated degree is immediately apparent, with implications for the relationship between reform in teaching and the satisfaction of employer-body demands.<sup>55</sup>

### The New Arts Degree – Urban Myth?

The dramatic increase over the last 10 years in student places in law inevitably led to speculation that not all students could join the practising profession and that the profession would not have enough places to offer graduates.<sup>56</sup>

55 This move to incorporate practical legal skills training in law degrees operates separately from the increasing focus being given to generic skills training in law schools and in universities generally. Vignaendra's study emphasised the importance for law graduates of generic skills such as oral and written communication, regardless of vocational direction: *supra* note 25 at 33.

56 See for example C Roper, *Career Intentions of Australian Law Students* (Canberra: AGPS, 1995) at 91.

The right of law students to expect to be prepared for a wider range of careers was discussed. An oversupply of law graduates in the early 1990s was widely acknowledged, at least anecdotally.<sup>57</sup> The fact that not all graduates wished to become practising lawyers was given greater recognition. It became difficult for law schools to defend a traditional doctrinally-based education on the ground that it was a necessary step on the path to legal practice. The right of the profession to dictate curriculum was questioned.<sup>58</sup> By the mid-1990s the law degree began to be talked of as “the new Arts degree”, a generalist degree beneficial to students entering a broad range of careers where analytical skills and high-level oral and written language ability would be valued.<sup>59</sup>

Suggestions were made that the undergraduate law degree was likely to become a more generalist qualification, with specialisation moving to a graduate level, followed by professional registration. Recognition began to be given to the limitations of the traditional view that all graduates were destined to become solicitors or barristers, and calls were made for a lessening of the “disproportionate” emphasis on black-letter or “core” legal subjects.<sup>60</sup> In this respect the growth of law schools arising out of the federal government’s economic reforms appeared to have had the paradoxical effect of influencing the curriculum away from narrow concerns with the requirements of the professional legal market and towards a broader idea of the law degree consistent with the traditional conception of a university. However, a recent empirical study suggests we may have to question whether repeated references to law as “the new Arts degree” during the 1990s have concealed the continuing close connection between a law degree and practice as a professional lawyer.<sup>61</sup>

### *Recent Data on Law Graduates in Australia*

Discussion about the need for, and the risks of, reform of the law degree has in the past often been undertaken in the

57 C McInnis, *Graduate Education in Australian Law Schools: some recent developments*, Centre for the Study of Higher Education Research Working Papers, No. 93:10 (Melbourne: University of Melbourne, 1993) at 3; McInnis & Marginson, *supra* note 2, at 233; Clark, *supra* note 32, at 216.

58 Roper, *supra* note 56, at 81.

59 See for instance Clark, *supra* note 32, at 216.

60 McInnis, *supra* note 57, at 13.

61 Vignaendra, *supra* note 25.

absence of empirical information. Until the Pearce Report in 1987, little comprehensive data was available on law schools in Australia or their students and graduates. Some studies of Australian law students' career destinations had been conducted, but these were rare and usually limited in their scope to students from a single university.<sup>62</sup> However, a national survey of recent law graduates was carried out as part of the Pearce Report, and since that time two national studies have been conducted which have attempted to capture information on the career destinations of law students in Australia. The first of these was an investigation of career intentions of first and final year law students for the Department of Employment, Education and Training in 1994.<sup>63</sup> A further study was carried out for that department's successor, the Department of Employment, Education, Training and Youth Affairs and its findings published in 1998.<sup>64</sup> While a follow-up study to the 1994 investigation, this second survey focussed predominantly on law graduates' career destinations rather than their career intentions. This later study provides the most up-to-date evidence available of what is actually happening to law graduates around the country once they leave law school, and it challenges the idea that the 1990s have seen a metamorphosis of law into the "new Arts degree".

Despite the phenomenal growth in the number of law places being offered at Australian universities in the last decade, the 1998 study by Vignaendra suggests by far the largest percentage of graduates gain legal work of some kind, rather than becoming involved in employment in one of the broader fields for which law is often thought to be an appropriate training ground: 74 per cent and 77 per cent of the two cohorts of students surveyed were engaged in legal work (representing a 1995 graduating group and a 1991 graduating group respectively).<sup>65</sup> Since the survey covered 1991 and 1995

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62 A national study of recent law graduates was conducted as part of the 1987 Pearce Report (*supra* note 4); a national review of law students' career intentions was carried out in the mid-1990s by Roper (*supra* note 56); and smaller studies have been carried out at individual institutions (the University of Western Australia in 1985, University of Melbourne Law School in 1990, Flinders University of South Australia in 1992, and University of Sydney Law School in 1992): Roper, *supra* note 56 at 143-46. Some generic data is also available from the Graduate Careers content of Australia's annual surveys.

63 Roper, *supra* note 56.

64 Vignaendra, *supra* note 25. A further study of law graduates by the Centre for Legal Education is due in 2000.

65 *Id* at 24.

cohorts, it drew on responses from some of the first students to experience the tumultuous impact of expansion and commercialisation of law schools in the period from the late 1980s through to the mid-1990s. The survey is the first to include graduates from the newest law schools, where more innovative curriculum design had often been trialed. In particular, the 1995 cohort could be expected to include a number of students who entered law schools after the expansionary push of the immediate post-Dawkins reforms period, the period during which revisioning of law as the new Arts degree intensified. It might therefore be expected that if evidence was to be found of interest in a broader range of professional activities on graduation amongst students, this study would show that interest.

It may of course be that given the initially low intakes at the newer law schools in the early 1990s and the length of the now common combined degree, the full impact of the expansionary push of the early 1990s will not be evidenced in even a 1995 graduating group. In addition, law school alumni lists (relied upon for the mail-out of the survey) might be more complete for those graduates engaged in legal practice (since law society practice lists and bar member lists are available). These factors might suggest a weighting in the 1998 study towards graduates involved in more traditional occupations and in legal practice in particular. Measured against these potential limitations, however, is the evidence that the alumni lists of the newer law schools tended to be more complete than those from the older universities and that lists for the 1995 cohort tended to be more complete than those for the 1991 cohort. In addition, a number of the 100 non-participants (sample size: 2346) for whom reasons for non-participation were obtained were working overseas (many as legal practitioners in London) or had returned to their home country (often associated with taking up private practice in the home country), suggesting a number of non-responding graduates were involved in legal practice.<sup>66</sup> Overall, therefore, it might be expected that the sample would not be overly biased towards legal practitioners and some early indications at least of a changing trend in law graduate destinations would be apparent.

The study found strong evidence of a commitment amongst law graduates to a career in law, and little evidence was

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<sup>66</sup> *Id* at 15-17.

gained of a large number of graduates being engaged in alternative non-legal work. Vignaendra, the author of the study, highlights the finding that only 11 per cent of the 1995 graduates and 12 per cent of the 1991 graduates “were known to be in non-legal positions”.<sup>67</sup>

More than half of each cohort indicated they required a practising certificate to carry out their job, suggesting the work they were involved in did not simply call on generic skills gained in undertaking their law degrees.<sup>68</sup> The evidence also suggested that having gained a position which made use of their legal skills, many graduates continued in legal work for at least several years, countering anecdotal evidence of high levels of graduates exiting legal positions within a year or two of graduation. Seventy-seven per cent of the 1991 cohort surveyed by Vignaendra remained in legal work.<sup>69</sup> Nor did the survey provide evidence of declining interest in professional legal practice amongst students. Of the 1995 cohort (the only cohort to be asked questions about their preferred areas of work) 68 per cent indicated a preference for work in the private legal profession.<sup>70</sup>

Although Vignaendra does conjecture as to differences between the 1991 and 1995 cohorts (noting that any comparison is fraught with difficulty as many factors could lead to differences in results between the two groups) and suggests that the study may hint that “law students are now less intent on choosing to study law purely to enter private legal practice and are more open to considering a wide range of

67 *Id* at xii. Curiously, while the Vignaendra report states a clear finding of only 11 per cent and 12 per cent of graduates being “known to be in non-legal positions” (1995 and 1991 respectively), the tabular representations of the career outcomes appearing in the report show a total of only 74 per cent and 77 per cent *known* to be in legal positions (1995, 1991 respectively). The variation between the two statistics appears to be connected to ambiguities in the data in relation, for instance, to the legal component of categories such as “policy work”: *Id* at 24.

68 Sixty four per cent of the 1991 cohort and 55 per cent of the 1995 cohort: *id* at xii.

69 *Id* at 24.

70 *Id* at 65. Direct comparison of this figure with Roper’s data on final year respondents’ preferences is not possible, however, as Roper’s questionnaire asked students to *rank* their order of preferences. While Vignaendra’s report suggests “68 per cent of graduates in the 95 cohort indicat[ed] that it was their preferred option” (at 65), the questionnaire used in Vignaendra’s study did not require students to rank preferences. Hence a significant number of students in that 68 per cent may not necessarily have considered private legal practice their *first* option.



careers on leaving law school than previously",<sup>71</sup> this suggestion seems to be based on the finding that most 1995 graduates had more than one preferred area of work, and that there was an anticipated drop in interest in the private legal profession amongst the 1995 cohort (when asked about their career intentions for three years time).<sup>72</sup> However, since the 1991 cohort were not questioned on career preferences (as to the first of those factors), and the 1995 cohort were at a much earlier stage of their career than the 1991 cohort (as to the second of those factors), the suggestion does not seem strongly founded in the data.

### *Comparison with Earlier Data on Law Graduates*

Little comparative data exists which would enable us to identify clear trends in the direction of law students. It may be, for instance, that it has always been the case that a significant proportion of law students have intended to enter careers outside the practice of law, or outside of private legal practice at least. The most useful comparison studies are the study carried out as part of the Pearce Report in 1987, and the 1995 Report by Christopher Roper of the Centre for Legal Education. While an extensive comparison of the studies is beyond the scope of this article, some interesting observations are still possible.

The Pearce Report's survey considered recent law graduates' work since graduation and views on legal education. Similarly to Vignaendra's survey, graduates were quizzed on factors including the type of work they had been employed in since graduation and the work skills they had required. However, graduates were also asked what their expectations of career direction had been when they were students. The Roper report looked at law students rather than graduates, and asked what type of work those students hoped to be engaged in after graduation. The Roper survey is therefore not as directly comparable with Vignaendra's work as is the Pearce Report's survey. However, these three studies represent the only detailed national investigations available in relation to law student/graduate direction over the last decade or so, and some attempt to compare the data seems worthwhile.

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71 *Id* at xxvii.

72 *Id* at 65 and 83.

One of Vignaendra's key findings was that only 11 per cent of the 1995 graduates and 12 per cent of the 1991 graduates "were known to be in non-legal positions". The Pearce Report nearly 10 years earlier also found that 12 per cent of recent graduates surveyed for the Report were employed in work of a non-legal nature.<sup>73</sup> In contrast to Vignaendra's incorporation of graduates from some of the newest law courses (albeit in their early stages), the Pearce survey, by virtue of the year in which it was carried out (1985), could cover only the original law schools and some "second wave" institutions. In all the survey dealt with graduates from only nine institutions.<sup>74</sup> The similarity of findings in relation to the number of recent graduates engaged in non-legal work is therefore interesting. While the Vignaendra survey and the Pearce Report survey asked graduates to nominate their current work in a slightly different ways, some comparability of the results can be assumed as the questions were essentially similar. And while the full impact of expanded enrolments in the existing law schools and increased offerings of law courses at new institutions will not be demonstrated in Vignaendra's study (given it was carried out on 1991 and 1995 graduates), it might be expected that greater differentiation would be apparent than seems to be the case. The graduates surveyed for the Pearce Report had graduated in 1979, 1980, 1982 or 1983, well before calls for a broader conception of the law degree's purpose had achieved wide prominence.

Key findings of Roper's study were that 55 per cent of first year respondents intended to be admitted within two years of graduation;<sup>75</sup> that two in three final year respondents who planned to be admitted within two or five years wanted to work in the private legal profession;<sup>76</sup> and that 48 per cent of final year respondents overall had a first preference of work in private legal practice.<sup>77</sup> These figures (for

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73 Pearce 1987d, *supra* note 4, at 74. The Report noted that in view of the greater ease with which contact details are available for practitioners "it seems reasonable to suppose that those now working in essentially legal areas are likely to be, if anything, somewhat over-represented among the survey respondents" (at 12 & 74), suggesting that if anything these figures are conservative in their estimate of the percentage of graduates involved in non-legal work.

74 The Universities of Sydney, New South Wales, Melbourne, Adelaide, and Western Australia, as well as Macquarie University, NSW Institute of Technology, Monash University and Australian National University.

75 Roper, *supra* note 56 at 59.

76 *Id* at xv.

77 *Id* at 75.

law students) are similar to the figures obtained by Vignaendra a few years later in relation to law graduates. The percentage of graduates in private legal practice in each of Vignaendra's 1991 and 1995 cohorts was 48 per cent and 55 per cent respectively.<sup>78</sup> The figure for the more recent 1995 graduates is therefore slightly higher than the percentage of final year respondents in Roper's survey who listed private legal practice as a first preference (55 per cent cf 48 per cent). By contrast, 58 per cent of the graduates who responded to the Pearce Report's survey indicated that when they had been law students they had expected to gain work in private legal practice.<sup>79</sup>

Of course, Roper's study considered students, not graduates, focusing on career intentions rather than career outcomes, and care must therefore be taken in comparing it with Vignaendra's study in particular (career intentions may not, for instance, equate to ultimate career location although there is presumably a close relationship — in fact, Roper's 1994 final year students may have been surveyed by Vignaendra in that study's 1995 graduating cohort). It does not seem however that Vignaendra's findings provide much support for the proposition that there is a trend for law students to embrace an increasingly diverse range of careers, particularly when compared with the Pearce Report's 1985 survey, or even when compared with intentions of final year law students surveyed a few years earlier by Roper.

A comparison between the discussion of the findings in each of the Roper and Vignaendra studies is also interesting. A strong emphasis is placed in Roper's report on the fact that fewer law students than might have been expected intended to enter private legal practice. A focus of Vignaendra's report, by contrast, is the high number of law graduates who are involved in legal work of some kind. The discussion in the relevant sections of Roper's report describes as "dramatic" the finding that "only 71 per cent of final year students planned to be admitted within two years of finishing their law degree",<sup>80</sup> and suggests that it needs to be emphasised that "[l]ess than half of the final year respondents planned to be admitted within two years *and* work in the private legal profession".<sup>81</sup> Roper found that

78 Vignaendra, *supra* note 25 at xii (but see the tabulated figures at page 24 which seem to show 54 per cent and a little under 50 per cent).

79 Pearce, 1987d, *supra* note 4 at 66.

80 Roper, *supra* note 56 at 57.

81 *Id* at 75; Roper's emphasis.

82 *Id* at 75 and 91.

48 per cent of final year respondents' first preference was to work in private legal practice. However, after analysing respondents' preferences and noting that a large percentage of students who wished to work in private legal practice stated they would be just about as satisfied with their second preference, Roper concluded that "[i]n effect, only 28 per cent of final year respondents are intent on working in the private legal profession" (that is, only 28 per cent were intent on working in the private legal profession alone and in no other area), shedding "a rather different light" on the matter.<sup>82</sup> Roper went on to suggest that the fact that less than half of the final year respondents wished to work in the private legal profession as a first preference could have ramifications for "the extent of influence which the private profession, through the professional bodies, should be able to exert on law schools' curricula, in virtue of their capacity as representatives of the dominant vocational destination of the students".<sup>83</sup>

By contrast, Vignaendra's report gives more emphasis to issues such as the fact that "[o]nly 11 per cent of graduates in the 95 cohort, and 12 per cent of graduates in the 91 cohort, were known to be in non-legal positions";<sup>84</sup> to the finding that "[b]y far the most popular area [for the 1995 cohort] was the private legal profession"; and suggests that "[o]verall, the private legal profession and legal work in the public sector were also seen to be the two best fallback areas".<sup>85</sup> Vignaendra draws attention to the:

interesting and revealing finding ... that only a small group of graduates showed any interest in, or were engaged in, non-legal work. That is, while there were multiple career destinations, the nature of the work in which most graduates were engaged tended to be legal. Therefore, while the law degree was used for a wide variety of legal careers, to call it the "new Arts degree" is a little premature.<sup>86</sup>

While these extracts are selective, and each report also produces and discusses contrary data, distinct and contrasting themes appear clear in the writing up of the two studies. The emphasis placed by Roper on the small number of

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83 *Id* at 81.

84 Vignaendra, *supra* note 25 at xii.

85 *Id* at xiv.

86 *Id* at xxii.

87 *Id* at xiv.

students who were wedded to the idea of private legal practice contrasts with Vignaendra's focus on identifying the number of law graduates who were interested in, or who were, pursuing a practical legal career. Vignaendra's report was of course written in the context of Roper's existing findings. Therefore while Roper's report clearly established for the first time that not all law students become lawyers, by the time of Vignaendra's study, this issue probably did not need to be emphasised. Perhaps this shift in awareness in the legal education community explains the different emphasis given by Vignaendra's report.

One potential explanation for the high number of graduates involved in legal work in Vignaendra's study is that having obtained a qualification for law, graduates find themselves unable to obtain non-legal work easily, whether they in fact wished to work in a lawyer role or not. However sixty-eight percent of graduates indicated that the private legal profession was one of their preferred areas of work.<sup>87</sup> Similar evidence of an interest in the practice of mainstream law is available in the figures on graduates' entry into pre-admission practical training courses ("PLT" or articles). Eighty-five percent of 1995 graduates and 88 per cent of 1991 graduates had either completed a PLT course or articles, or were intending to.<sup>88</sup> Vignaendra was unable to identify any discernible difference between the career destinations of graduates from newer law schools and those from older, more established law schools.<sup>89</sup> However, other empirical work has suggested that graduates from the newer law schools give far higher satisfaction ratings in the nationally administered Course Experience Questionnaire than do graduates of the older law schools.<sup>90</sup> Since many of the newer law schools have attempted to create curricula which prepare students for a range of careers and not just practice in the private legal profession, these results are significant.

This data in Vignaendra's study provides little evidence that law graduates' career destinations have moved significantly away from legal work in the 1990s, or even away from legal practice. While the exact destinations of law graduates varied, most graduates were interested in, and ultimately pursued, legal careers.

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88 *Id* at xviii.

89 *Id* at 92.

90 Ashenden & Milligan, *supra* note 27.

91 Vignaendra, *supra* note 25 at 35.

Many of the graduates surveyed may, of course, discover after some experience of legal work (whether in private legal practice or some other form) that they wish to move to a non-law career. There is indeed some evidence of this in Vignaendra's findings. However, the large number of law graduates from both the 1991 and 1995 cohorts who remained in legal work of some kind at the time of the DEETYA survey suggests involvement in legal work is not a temporary activity for the majority of law graduates. The survey lists five key knowledge types as essential to the discipline of law (knowledge of substantive law, legal practice and procedure, the policy underlying the law, legal professional and ethical standards and the social context of law), and notes that these five elements were requirements for the majority of work undertaken by graduates in the survey. While several of these elements reflect a broader notion of the law degree (the social context of law and the policy underlying the law), three of the five retain a distinctively vocational character (knowledge of substantive law, legal practice and procedure, legal professional and ethical standards), and these three rated as the most commonly used knowledge types. Over 80 per cent of both the 1991 and 1995 cohorts used substantive law skills, and between 70 per cent and 80 per cent of each cohort used legal professional and ethical standards skills.<sup>91</sup> It seems a law degree remains predominantly a professional degree, preparing graduates for some form of legal work, at least for several years after graduation.

### *Implications of the Vignaendra DEETYA Study*

Vignaendra's study is significant for the on-going debate on the reconciliation of the needs of the profession for the teaching of specific legal knowledge with consideration of reform in the law degree. It suggests any shift to a broadly-based degree at the cost of treatment of substantive legal material (at least without adequate provision being made for treatment of that material in a separate pre-admission course) could have negative consequences for law schools competing for students. The shift to a consumer-focus has sensitised the student body to the need for training in skills employers look for. The majority of graduates in both the 1991 and 1995 cohorts of Vignaendra's study claimed they were required to have a knowledge not just of generic communication skills

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<sup>91</sup> Between 70 per cent and 85 per cent in each case – *Id.*

but of substantive law, legal practice and procedure in order to carry out their work.<sup>92</sup> This was despite the fact that the skills these graduates used *most frequently* were more general skills such as oral communication and report or letter writing. The report stops short of suggesting law schools have a mandate to refocus (or continue to focus) on the transmission of a narrow base of legal skills at the expense of the broader education that might be called for in “a new Arts degree”, pointing out that the question of whether law schools should modify their curricula to match the use to which the law degree is put is an issue of legal education policy.<sup>93</sup> For law schools reliant on the income associated with student demand for places, however, this choice may appear illusory. It seems the implication of Vignaendra’s findings may be that law schools ignore black-letter law and vocationally-oriented subjects at their cost.

Current cuts in operational grants to universities combined with increases in Higher Education Contribution Scheme (HECS) charges may well exacerbate this consumer-pays environment. The shift to place degrees within varied bands, with law ranked amongst the most expensive degrees in Band 3, has further increased law students’ awareness that they are “paying for a service”. Pressure on universities in general and law schools in particular to attract, and retain, students in a competitive environment will continue to contribute to a perceived need to cater to student requirements.

The data on law graduates’ career destinations and skill requirements in Vignaendra’s study suggest that legal education reform may be at a crossroads. Much has been achieved, including the growth of the combined degree (the majority of law students in Australia now combine their law studies with a second, often less vocational degree<sup>94</sup>) an increased emphasis on skills teaching, an emphasis on attempting small group teaching where funds allow,<sup>95</sup> and, perhaps most importantly of all, a generally higher regard for the importance of good teaching in law. However, attempts to broaden the degree, to introduce wider non-law perspectives, and to generally improve teaching may be at risk of being negatively impacted by a student-as-consumer market in which preparation for high-paying work is given high importance.

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93 *Id* at xxiv.

94 *Id*, at 84–86.

95 McInnis & Marginson, *supra* note 2 at 170; Clark, *supra* note 32 at 219.

## Conclusion

In the late 1990s Australian law schools occupy a precarious position between profession, state, and market<sup>96</sup>

Until the implementation of the Dawkins reforms, higher education cutbacks and the impact of commercialisation policies on the sector, a clear move was evident in law schools in Australia towards a liberal arts model of a law degree. The Pearce Report gave definition to this movement, suggesting law schools should (without ignoring black letter approaches), give more significance to critical and theoretical approaches. Chesterman and Weisbrot, writing in 1987, confidently asserted that Australian law schools had made the shift away from black letter trade school approaches.<sup>97</sup> The massification of legal education in the early 1990s suggested this trend may be extended, as students poured into law courses around Australia and the purpose of a law degree was increasingly questioned. It seemed that law was racing to become the new Arts degree.

But there is a second side to the impact of the last decade's education policy reforms on law schools in Australia. That side shows reinstitution of close connections between the profession and academics, the Law Council of Australia proposal for accreditation of law courses, and the increasing integration of practical legal training into degree programs. It shows students as consumers, paying for their education and who, it sometimes seems, do not want to hear anything but black letter law. This side of the policy shifts of the last 10 years shows reduced or insufficient funds to maintain or attain small class sizes, with classes getting bigger, and it shows less resources to develop innovative teaching. It shows law schools offering chair naming rights, library naming rights and other sponsorships in return for support by the profession. The availability of recent empirical data showing that students predominantly still want to do legal work on graduation, and that they are not just hoping to do so but are achieving their goal,<sup>98</sup> is important evidence of student attitudes.

It is over 10 years since widespread commitment to reform in Australian legal education became apparent. At the time Le Brun suggested economic factors were the dominant arbiters of what law schools taught and how they taught it.

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96 Parker & Goldsmith, *supra* note 28, at 33.

97 *Supra*, note 7.

98 Vignaendra, *supra* note 25.



Since then debate on legal education issues has intensified, but the profession has retained much of its early influence on the subject matter and form of legal teaching in Australia, and federal government policy has increased its influence on law schools. Despite clear progress in reforming law teaching, law school curricula appear to be as much or more dominated by economic forces than ever, and reform favouring broader educational ideals is at risk of becoming secondary to economic imperatives. Have the moves for change in legal education apparent at the end of the 1980s failed?

If so, where does this leave law schools in Australia as they enter the next decade? The forces of economic reform which it seems may increasingly dictate that law schools teach what students want, and what the profession is presumed to want, show no signs of diminishing. Any maintenance of, or resurgence in, earlier attempts at reform in law teaching will need to take into account the dominance of government economic policy which is now so apparent in the sector. Reform which does not accommodate itself to (or which cannot subvert) economic imperatives imposed by government or vice-chancellorial fiat will have little chance of success. New ideas for teaching methods, subject material or varied curriculum will inevitably have to be considered in light of restrictive resource allocations and student demand. If legal education in Australia is to continue to improve and innovate, it will need to find a way of living within the economic environment in which it now finds itself.