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PUTTING JUSTICE BACK INTO LEGAL EDUCATION

TAMARA WALSH*

I INTRODUCTION

The influence of legal education on the attitudes, values and career aspirations of law students is well-documented.¹ Since lawyers are amongst the most powerful players in our society,² it is incumbent upon legal academics to ensure that we are graduating students committed to using their degrees to enhance social justice and equality, and who are dedicated to upholding the rule of law. As Max Radin opined, ‘the lawyer’s task is ultimately concerned with justice and ... any legal teaching that ignores justice has missed most of its point’.³

Clearly, ‘[e]verything we do as law teachers suggests something about justice’.⁴ It is of concern, therefore, that accounts of legal education are increasingly reporting it to be adversarial, competitive, ‘mystified’, and seemingly objective and value-neutral.⁵ Commentators note that students are taught to view the law as ‘something separate

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¹ Paul D. Carrington and James J. Conley, ‘Negative Attitudes of Law Students: A Replication of the Alienation and Dissatisfaction Factors’ (1978) 75 *Michigan Law Review* 1036. I have drawn heavily on relevant American literature in this article, some of it from many decades ago. Whilst I acknowledge that there may well be differences between American and Australian legal and student cultures, and between these cultures over time, the American literature has only been applied here where it reflects, explains and illuminates the Australian situation.

² See eg, Audrey James Schwartz, ‘Law, Lawyers and Law School: Perspectives From the First-Year Class’ (1979/80) 30 *Journal of Legal Education* 437.

³ Max Radin, ‘The Education of a Lawyer’ (1937) 25 *California Law Review* 676, 688. It should be noted that this article does not aim to provide a general critique of legal education; nor does it seek to discuss the programs or courses of any law school in particular. It merely provides a framework within which the relationships between social justice, public interest practice and legal education might be examined and discussed. Further research will be required if these general observations are to be related to specific programs within any law school(s).

⁴ Jane Harris Aiken, ‘Striving to Teach Justice, Fairness and Morality’, (1997) 4 *Clinical Law Review* 1, 1.

⁵ See eg, Schwartz, above n 2.

⁶ Stephen C. Halpern, ‘On the Politics and Pathology of Legal Education (or Whatever Happened to that Blind-Folded Lady with the Scales?)’ (1982) 32 *Journal of Legal Education* 383, 385.

and apart from the rest of the goings-on in society'.⁶ They are trained in the art of 'studied detachment',⁷ forced to 'leave their sense of compassion at the door'⁸ and have their 'curiosity and genuine intellectual interest' inhibited.⁹ They eventually emerge from this 'intellectual myopia'¹⁰ or 'moral abyss'¹¹ with a 'deadened' sense of social consciousness, and in its place is one which is 'properly professional' and 'largely apolitical'.¹² Legal education, it is said, has become 'universally the same shade of grey'.¹³

Empirical research supports these observations. Numerous studies have found that law students' commitment to social justice principles and public interest practice¹⁴ diminishes over the course of their studies.¹⁵ This paper examines the possible causes of and solutions to this. It reports on the results of an empirical study undertaken at the University of Queensland, which investigated the extent to which law students demonstrated a commitment to social justice principles and public interest practice. It concludes that the discussion of socio-political issues and the development of 'alternative' legal skills is generally supported by law students, and makes some suggestions on how this might be achieved in legal education in practice.

II SOCIAL JUSTICE IN LEGAL EDUCATION

'Social justice' is, of course, a contested term. For the purpose of the arguments advanced here, the term 'social justice' will be

⁷ Aiken, above n 4, 7.

⁸ Ibid. 8.

⁹ Halpern, above n 6, 389.

¹⁰ Margaret Thornton, 'Portia Lost in the Groves of Academe Wondering What To Do About Legal Education' (1991) 9(2) *Law in Context* 9, 19.

¹¹ Adrian Evans, 'Lawyers' Perceptions of Their Values: An Empirical Assessment of Monash University Graduates in Law 1980–1998' (2001) 12 *Legal Education Review* 209, 222.

¹² Halpern, above n 6, 387.

¹³ Crawford, cited in Thornton, above n 10, 18.

¹⁴ Defined here as representing a point of view that would otherwise go without an advocate; that is, 'doing powerful things for the powerless'; see Jan C. Costello, 'Training Lawyers for the Powerless: What Law Schools Should Do to Develop Public Interest Lawyers' (1985/86) 10 *Nova Law Journal* 431, 433, 435.

¹⁵ See eg, E. Gordon Gee and Donald W. Jackson, 'Current Studies of Legal Education: Findings and Recommendations' (1982) 32 *Journal of Legal Education* 471; Howard S. Erlanger and Douglas A. Kleagon, 'Socialisation Effects of Professional School: The Law School Experience and Student Orientations to Public Interest Concerns' (1978) 13 *Law and Society Review* 11; Gregory J. Rathjen, 'The Impact of Legal Education on the Beliefs, Attitudes and Values of Law Students' (1976/77) 44 *Tennessee Law Review* 85; James M. Hedegard, 'The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes and Personality Traits Amongst First-Year Law Students' (1979) *American Bar Foundation Research Journal* 791; Evans, above n 11; Schwartz, above n 2. Although it should be noted that at least one study has found an opposite effect; see Irene Styles and Archie Zariski, 'Law clinics and the Promotion of Public Interest Lawyering' (2001) 19 *Law in Context* 65.

used to denote the ideal of affording all persons fair treatment with a view to achieving truly equitable outcomes, regardless of situation or status. It is related to, but not synonymous with, notions related to public service and public interest practice. 'Social justice' is the overarching goal towards which public interest legal practice strives: equality before the law and access to justice for all, including those who are disadvantaged within society.

The literature advances four key reasons for including social justice elements in legal education. First, it is argued that true 'professionalism' necessarily embodies notions of service, duty and altruism.¹⁶ It is well known that 'the professions' find their roots in notions of 'public service', and that it was this element that historically set them apart from other occupations.¹⁷ Lawyers were no exception to this; the very genesis of the legal profession lay in the provision of advocacy assistance to poor litigants for no fee.¹⁸ Indeed, it was lawyers' commitment to public service that assisted in the development of their identity as professionals in and around the 13th century.¹⁹ The responsibilities of self-regulation, autonomy and lawyer-client privilege are generally considered to flow from this dedication to service; it is said that a 'moral compact' exists between lawyers and the community such that if the public service ideal is seen to be lost, these privileges will be lost also.²⁰

Law schools are commonly referred to as 'agents of socialisation' whose role, at least in part, is to instil the 'culture' of the legal profession into students so that they can successfully undertake a professional role upon graduation.²¹ If public service is indeed a key

¹⁶ Jill Chaifetz, 'The Value of Public Service: A Model for Instilling a Pro Bono Ethic in Law School' (1993) 45 *Stanford Law Review* 1695; Andrew Goldsmith, 'Legal Education and the Public Interest' (1998) 9 *Legal Education Review* 143; Stephen Parker, 'Why Lawyers Should Do Pro Bono Work' (2001) 19 *Law in Context* 5.

¹⁷ Halpern, above n 6; Donald Robertson, 'Pro Bono as a Professional Legacy' (2001) 19 *Law in Context* 97; John Western, Toni Makkai and Kristin Natalier, 'Professions and the Public Good' (2001) 19 *Law in Context* 21; Erlanger and Kleagon, above n 15.

¹⁸ Robertson, *ibid*.

¹⁹ *Ibid*.

²⁰ Jerold S Auerbach, 'What Has the Teaching of Law to do with Justice?' (1978) 53 *New York University Law Review* 457; Steven H Goldberg, 'Bringing "The Practice" to the Classroom' (2000) 50 *Journal of Legal Education* 414; Costello, above n 14; Christopher Arup, 'Pro Bono in the Post-Professional Spectrum of Legal Services' (2001) 19 *Law in Context* 190; Parker, above n 16; Les A. McCrimmon, 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' (2003/04) 14 *Legal Education Review* 53.

²¹ James L. Baillie and Judith Bernstein-Baker, 'In the Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education' (1994/95) 13 *Law and Inequality* 51; Rathjen, above n 15; Halpern, above n 6; Elliott S. Milstein, 'Clinical Legal Education in the United States: In-House Clinics, Externships and Simulations' (2001) 51 *Journal of Legal Education* 375; Goldberg, above n 20; Styles and Zariski, above n 15; Tracy Booth, 'Student Pro Bono: Developing a Public Service Ethos in the Contemporary Australian Law School' (2004) 29 *Alternative Law Journal* 280; McCrimmon, *ibid*.

element of professionalism, then it follows that this is a value we should be encouraging our students to display.²²

Second, and further to this, it is asserted that social justice principles are inherent in those professional values that lawyers in particular are expected to uphold. Traditionally, lawyers acknowledged and acted upon the belief that giving the poor a voice was one of the fundamental aspects of the justice system.²³ Protecting individuals' rights, administering justice and ensuring the maintenance of legal order have been considered key tasks of lawyers since the profession was born.²⁴ The 'mystical' nature of the law, the high price of legal services and the privileged position of lawyers in society has rendered lawyers duty-bound to render assistance to those in need.²⁵ Lawyers have been charged with the roles of 'officer of the court', 'upholder of the rule of law' and 'guardians of the legal system' on the basis that if access to justice is denied to some, the whole system is implicated, and suffers as a result.²⁶ As Halpern has stated:

The law is the single most powerful social force preserving and legitimating the prevailing distribution of power in our society. The lawyer... is an invaluable intermediary in and handmaiden of that process.²⁷

Yet many commentators have argued that those entering the legal profession do not unproblematically accept the idea that these public interest functions are part of their role as lawyers.²⁸ Indeed, one survey of doctors and lawyers in Australia found that doctors were more likely to rate service to the community and having the

²² Stephen Wizner, 'Beyond Skills Training' (2001) 7 *Clinical Law Review* 327; Styles and Zariski, above n 15. It is arguable that this marriage of professionalism and public service is no longer accepted in or relevant to our contemporary society. Many occupations have been 'professionalised' in recent times, perhaps as a result of 'abuse' of the term, or rather due to confusion about its meaning; See Ysaiah Ross, *Ethics in Law* (1998). Either way, it seems that, at least in relation to the legal profession, what Auerbach, above n 20, 473 said in 1978 is still true: that this idea of professionalism embodying an ideal of public service 'seems too strong to die but too weak to prevail'.

²³ Robertson, above n 17.

²⁴ Western et al, above n 17.

²⁵ See eg, Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labour* (1988); Ysaiah Ross and Peter MacFarlane, *Lawyers Responsibility and Accountability: Cases, Problems and Commentary* (1997) 33–34, 40.

²⁶ Lucie E. White, 'Pro Bono or Partnership? Rethinking Lawyers' Public Service Obligations for a New Millennium' (2000) 50 *Journal of Legal Education* 143; Chaifetz, above n 16; Liz Curran, 'Innovations in an Australian Clinical Legal Education Program: Students Making a Difference in Generating Positive Change' (2004) 6 *International Journal of Clinical Legal Education* 162; Western et al, above n 17; Fiona McLeay, 'Pro Bono Lawyering in the 21st Century' (2001) 19 *Law in Context* 16; Ian Duncanson, 'Legal Education, Social Justice and the Study of Legality' (1990) 10 *University of Tasmania Law Review* 16; Jenni Clark, Louise Formosa, Paula Rogers, Ben Cochrane, Kate Fitzgerald and Craig Pratt, 'Students as Public Interest Advocates: Novel Approaches to Traditional Paradigms' (2003) 28 *Alternative Law Journal* 22; Booth, above n 21.

²⁷ Halpern, above n 6, 391.

²⁸ Western et al, above n 17.

opportunity to help people as important to them than lawyers.²⁹ Law schools have also been blamed for not creating a culture of service within which students might be inculcated with lawyerly values.³⁰ On this basis, it has been argued that legal education should reassert the public nature of a lawyer's role, reminding students that lawyers hold an office rather than merely doing a job.³¹

Third, and perhaps more relevant in modern times, it is said that, having crossed over into the realm of 'business',³² lawyers (particularly those working in medium to large sized firms) should endeavour to become good 'corporate citizens'.³³ Corporate social responsibility has been described as a pact between reformers and business whereby the former agrees not to censure the latter if they, in turn, 'demonstrate some genuine social conscience' and act like a 'citizen rather than a plunderer'.³⁴ In the context of legal practice, it has been argued that the increased characterisation of law as a business has resulted in a dissociation of the profession from their clients, and the community.³⁵ As a result, firms are re-examining their corporate culture, and beginning to form social partnerships; such expressions of corporate citizenship include the provision of pro bono services to disadvantaged people and community organisations and the provision of in-kind services to community organisations and community law centres.³⁶ Students require an understanding of and appreciation for social justice principles if they are to follow and support this trend towards 'lawyers as corporate citizens'.

Fourth, it is recognised that a corporatised or positivist approach to the study of law does not cater to the needs of all students. It has been demonstrated in numerous studies that many students enter into law school with a desire to use the law as an instrument for social change.³⁷ Certain students are more likely to exhibit such desires

²⁹ Ibid.

³⁰ Deborah Maranhão, 'Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning' (2001) 5 *Journal of Legal Education* 51; Halpern, above n 6; Josephine Palermo and Adrian Evans, 'Australian Law Students' Values: How They Impact on Ethical Behaviour' (2005) 15 *Legal Education Review* 1; Clark et al, above n 26.

³¹ Parker, above n 16; Chaifetz, above n 16; The Hon Justice Michael Kirby, 'Law in Australia: A Case of Pride, Source of Dreams' (2005) 8(2) *Federal Law Review* 151.

³² For a thorough discussion of the corporatisation of the legal profession, see Richard L. Abel, 'The Decline of Professionalism' (1986) 49 *Modern Law Review* 1; Russell Pearce, 'The Professional Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar' (1995) 70 *New York University Law Review* 1229; Sir Daryl Dawson, 'The Legal Services Market' (1996) 5 *Journal of Judicial Administration* 147.

³³ McLeay, above n 26.

³⁴ Michael Bittman, 'Lawyers as social entrepreneurs' (2001) 19 *Law in Context* 13, 14.

³⁵ Ibid.

³⁶ Ibid; Arup, above n 20.

³⁷ Milstein, above n 21.

than others. For example, it has been established in a number of empirical studies that female students, students from lower socio-economic backgrounds, and younger students, are more likely to report optimism regarding the capacity of the law to act as an agent for social change, and are more likely to demonstrate a commitment to social justice principles.³⁸ If our courses do not cater to the interests of these students, clearly we are failing to meet their needs.

Other students enter law school for the intellectual challenge; we need to feed these students' passion for deeper knowledge and developing skill.³⁹ Still others are struggling to find meaning in their studies and are unable to see themselves as legal professionals. Instilling a sense of social justice commitment can provide them with the nourishment that they need to find satisfaction in their studies and the law as a profession:⁴⁰ as Maranville has said, '[p]assion provides motivation for learning and provides a foundation for a satisfying life in the law'.⁴¹

Further, it is well-established that a large proportion of law students, perhaps as many as 50 per cent, will not enter into private practice, let alone a large corporate law firm, upon graduation.⁴² Many will enter into government employment, politics, accountancy or the academy. Others will work as in-house lawyers or community lawyers. Regardless, the generalist legal education on offer in most law schools will not equip those that do enter into corporate law firms with the requisite degree of specialisation required.⁴³

Thus, exposure to social justice principles and instilling dedication to public interest practice should be a key feature of legal education for a number of reasons, related to both students' future role as lawyers (as professionals, administrators of justice and corporate citizens), and their needs as individuals.

³⁸ Schwartz, above n 2; Gee and Jackson, above n 15; Evans, above n 11; Palermo and Evans, above n 30; J.D. Droddy and C. Scott Peters, 'The Effect of Law School on Political Attitudes: Some Evidence from the Class of 2000' (2003) 53(1) *Journal of Legal Education* 33.

³⁹ Maranville, above n 30; Auerbach, above n 20.

⁴⁰ Maranville, *ibid*; Wizner, above n 22.

⁴¹ Maranville, *ibid* 52; Wizner, *ibid*.

⁴² Thornton, above n 10; Goldsmith, above n 16.

⁴³ Thornton, *ibid*.

III INSTILLING A SOCIAL JUSTICE ORIENTATION IN LAW STUDENTS: CAN/SHOULD IT BE DONE?

A Can a Social Justice Orientation be Instilled in Students by the Law School?

The law school experience has been found to be crucial to the development of professional values in young lawyers.⁴⁴ A number of empirical studies have demonstrated that legal education has a significant influence on students' professional values, attitudes and beliefs.⁴⁵ Law schools have been identified as 'the single most notable part of the socialisation process that distinguishes lawyers from other participants in the political process',⁴⁶ and law schools have been specifically blamed for the decline in altruistic concerns that occurs in law students throughout the course of their studies.⁴⁷ A curriculum biased towards corporate legal concerns and teaching methods that remove appellate cases from their social context, it is said, promote the study of law in an 'intellectual vacuum'.⁴⁸

Empirical studies have certainly demonstrated that, over time, law students become more analytical, more confident, more theoretical and more tolerant of ambiguity.⁴⁹ This may in part be attributed to the mental 'shutdown' that occurs after the first year of law school as identified in many studies.⁵⁰ It is not clear from the research just what occurs during this first year to make so many students disengage from their studies. Some commentators blame the competitive, adversarial or combative nature of legal education, deducing that it encourages students to become hardened and 'aloof'.⁵¹ Others claim the content of the first year course is too rational, narrowly intellectual, and excessively compartmentalised into a taxonomy of legal areas and principles, without sufficient attention to the law's purposes, or humanitarian concerns, and it is this fact that results in students' disconnection.⁵²

It has also been argued that as long as the traditional law subjects of torts, contract, property, equity, trusts, corporate law and evidence⁵³

⁴⁴ Carrington and Conley, above n 1; Booth, above n 21.

⁴⁵ See eg, Carrington and Conley, *ibid*; Erlanger and Kleagon, above n 15; Costello, above n 14.

⁴⁶ Rathjen, above n 15, 86. See also Baillie and Bernstein-Baker, above n 21; Styles and Zariski, above n 15.

⁴⁷ Styles and Zariski, *ibid*; Western et al, above n 17; Erlanger and Kleagon, above n 15; Clark et al, above n 26.

⁴⁸ Thornton, above n 10, 20. See also Halpern, above n 6; Styles and Zariski, above n 15.

⁴⁹ Hedegard, above n 15.

⁵⁰ Maranville, above n 30; Gee and Jackson, above n 15; Costello, above n 14.

⁵¹ Hedegard, above n 15; Schwartz, above n 2; Clark et al, above n 26.

⁵² Hedegard, *ibid*; Duncanson, above n 26; Kirby, above n 31; Gee and Jackson, above n 15.

⁵³ These classic law subjects make up the 'Priestley 11', named after Justice Priestley of the New South Wales Supreme Court who chaired the Law Admissions Consultative

dominate the curriculum, the expense will be a deep appreciation for ethical standards and professional responsibility.⁵⁴ The ‘latent curriculum’ phenomenon suggests that students are influenced as much by what is included in the law course as what is excluded and that this corporate bias is reflected in, and perhaps perpetuates, the development of business-oriented, ‘objectified’ and positivist attitudes amongst students.⁵⁵ As Jane Harris Aiken has said: ‘We communicate a great deal about the (un)importance of justice when we do not focus on it explicitly’.⁵⁶ The role of the legal academic has not been forgotten in this, with the accusation being levelled that law students are being trained to become more like their teachers,⁵⁷ or at least to identify with the powerful rather than the powerless.⁵⁸

However, numerous scholars have noted that there are many other influences on law students’ acculturation that may be as powerful as the law school. Erlanger and Kleagon conclude that there is empirical evidence both in support of and against the notion that law school impacts on students’ public interest orientation.⁵⁹ In particular, the attitudes of their parents and the general community, as well as their exposure to the legal profession through work experience programs, and to each other, are also thought to contribute to the process of value transmission.⁶⁰ On this basis, it has been claimed in defence of law schools that the focus of law degrees is dictated by students; that students, when given a choice, select those courses that are corporate in nature based on their perception that this will maximise their chances of obtaining their desired employment.⁶¹ It has also

Committee that developed the list of core subjects that are required to be studied for admission as a lawyer in Australia. They are: torts, contracts, criminal law and procedure, property, equity, company law, administrative law, constitutional law, civil procedure, evidence, professional conduct (including trusts); see Consultative Committee of State and Territorial Law Admitting Authorities, *Uniform Admission Requirements: Discussion Paper and Recommendations* (1992).

⁵⁴ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Australian Government, Canberra, 1999) [2.21–2.24]; Goldsmith, above n 16.

⁵⁵ See especially Chaifetz, above n 16; Goldsmith, above n 16; Aiken, above n 4.

⁵⁶ Aiken, *ibid* 6. See also Edward J. Bloustein, ‘Social Responsibility, Public Policy and the Law School’ (1980) 55 *New York University Law Review* 385, 420 who has said: ‘To be sure, consistently and overwhelmingly favouring a given social interest or class in the selection of law courses and skills designed to serve its needs may, and frequently does, speak forcefully, if indirectly, to substantive conclusions of law that favour that interest or class’. In Australia, see Booth, above n 21.

⁵⁷ See Erlanger and Kleagon, above n 15, 15 who claim that academics may not be sufficiently oriented to public interest concerns. Also, this view is reported on, but largely disproved, by Schwartz, above n 2.

⁵⁸ Chaifetz, above n 16, 1699. See also Costello, above n 14; Boustein, above n 56.

⁵⁹ Erlanger and Kleagon, above n 15. See also Hedegard, above n 15.

⁶⁰ Goldberg, above n 20; Chaifetz, above n 16; Gee and Jackson, above n 15; Hedegard, *ibid*; Goldsmith, above n 16.

⁶¹ Halpern, above n 6, 390: ‘Law students do not want to shake up the system, they want to make it in the system.’ See also Goldsmith, *ibid*. This is consistent with the idea that students with distinctive temperaments and particular political views self-select into law school; see Drodgy and Peters, above n 38; Hedegard, *ibid*.

been asserted that the job market influences students' social justice orientation; that since public interest jobs are few and far between, students feel they have no choice but to enter into a private law firm, and they approach their legal education accordingly.⁶²

Further to this, some commentators argue that legal academics may not be the most appropriate people to act as professional role models anyway. There are at least three reasons for this. First, legal academics are generally required to be an expert in more than one area of law: they may teach in multiple legal areas, and/or their research interest may not lie in their teaching area.⁶³ As Thornton remarks, their role is to produce 'generalist' lawyers, and so they are required to be generalists themselves.⁶⁴ Regardless of which field of practice their students enter into upon graduation, a generalist legal education is not likely to serve them well in their professional role.⁶⁵ Second, legal academics have rarely had extensive legal practice experience.⁶⁶ The irony is that legal academics are charged to teach students to do something they have usually done very little of themselves, and indeed have 'by their own choice, eschewed doing'.⁶⁷ Third, legal academics may consider themselves unqualified or otherwise unable to impart broader social justice notions to their students, or to teach practical skills. They might consider it easier, and cheaper, to teach 'the law', rather than training students in methods to pursue social goals.⁶⁸

Ultimately, it is submitted that the conclusion of Gee and Jackson accurately sums up the situation: law schools are at least partly responsible for the problem, and they are, practically, the only institution that can address it.⁶⁹

B Should the Law School Seek to Instil a Social Justice Orientation in Future Lawyers?

In much of the literature, it is assumed that the purpose of legal education is generally seen to be technical skills training; specifically, learning how to analyse a case, interpret a statute, and apply 'the

⁶² Gee and Jackson, above n 15.

⁶³ Thornton, above n 10; Klaus A. Ziegert, 'The Day in Court: Legal Education as Socio-Legal Research Practice in the Form of an Ethnographic Study' (1990) 2 *Legal Education Review* 59; Goldsmith, above n 16.

⁶⁴ Thornton, *ibid* 17.

⁶⁵ *Ibid*.

⁶⁶ Goldberg, above n 20.

⁶⁷ Halpern, above n 6, 393.

⁶⁸ Bloustein, above n 56; Goldsmith, above n 16; Sebastian De Brennan, 'Rethinking Pro Bono: Students Lending a Legal Hand' (2005) 1&2 *Legal Education Review* 25; Richard Collier, 'We're All Socio-Legal Now? Legal Education, Scholarship and the "Global Knowledge Economy"' (2004) 26 *Sydney Law Review* 503.

⁶⁹ Gee and Jackson, above n 15, 503. See also Goldsmith, above n 16; Chaifetz, above n 16; Halpern, above n 6; Styles and Zariski, above n 15.

law' so found to a set of facts.⁷⁰ Auerbach noted as early as 1978 that American law schools were tending to tie their curricula to 'the most mundane bar requirements'.⁷¹ This positivist approach to legal education was specifically endorsed in the foundation report of the Consultative Committee of State and Territorial Law Admitting Authorities, which in 1992 developed what is now known as the 'Priestly 11', the list of legal areas that law students are required to have studied at university in order to be eligible for admission to the legal profession.⁷²

Yet, as noted above, many commentators have argued that law school is, and indeed must necessarily be, more than just a trade school.⁷³ It has been widely opined that the law school is the most appropriate institution to instil budding lawyers with professional values such as the public service ideal, and that in order for law students to develop into true professionals, and to legitimately enjoy the independence and other privileges of membership of the legal profession, they should be reminded that the main purpose of the justice system is to ensure fairness and justice.⁷⁴ Since lawyers are actors in the justice system (and society in general) at high levels, and since their decisions may ultimately affect large numbers of people, it is critical that social and political phenomena receive attention in the law degree.⁷⁵ Indeed, it has even been said that the future of the legal profession depends upon our graduates demonstrating more altruistic attitudes, since some believe that the forced surrender of some traditional legal tasks to non-lawyers is the direct result of the decline in lawyers' standing in the community.⁷⁶

Further, it has been noted that holistic university education requires that law teachers take a step back from the profession and 'technical' training, and provide their students with a broad-based perspective of the law as a discipline that is integrated with so many others, including history, philosophy and the social sciences.⁷⁷ As

⁷⁰ Jamison Wilcox, 'Borrowing Experience: Using Reflective Lawyer Narratives in Teaching' (2000) 50 *Journal of Legal Education* 213; Auerbach, above n 20; Bloustein, above n 56; Chaifetz, above n 16; Halpern, above n 6; Ziegert, above n 63; Goldsmith, above n 16; Booth, above n 21; Kirby, above n 31.

⁷¹ Auerbach, *ibid* 462.

⁷² Consultative Committee of State and Territorial Law Admitting Authorities, above n 53.

⁷³ See especially Bloustein, above n 56, on the ideals of legal education. See also Chaifetz, above n 16 and Halpern, above n 6.

⁷⁴ Baillie and Bernstein-Baker, above n 21; Philip F. Iya, 'Legal Education for Democracy and Human Rights in the New South Africa with Lessons from the American Legal Aid Movement' (1994) 12(2) *Journal of Professional Legal Education* 211; Chaifetz, above n 16; Styles and Zariski, above n 15; Western et al, above n 17; Parker, above n 16; Thornton, above n 10; Booth, above n 21.

⁷⁵ Schwartz, above n 2; Rathjen, above n 15.

⁷⁶ Goldberg, above n 20; Arup, above n 20; Thornton, above n 10; Chaifetz, above n 16.

⁷⁷ Wizner, above n 22; Thornton, *ibid*; Duncanson, above n 26.

Thornton has said, ‘legal education could so easily be the paradigm of university education’ because:

Law is at the intersection of the ideal and the real, of metaphysics and magic, of the actual and the possible, of ideas and power, of fact and value, of is and ought, of the past and the future, of the individual and the social, of economics and politics.⁷⁸

As Justice Kirby of the High Court has noted, such an approach to legal education is not only fitting of the ideals of higher education, but is also practically important as the courts are increasingly taking a wider range of sources (including human rights principles, international legal approaches and domestic and international academic commentary) into account in their deliberations.⁷⁹ A student who lacks knowledge of this nature may lack the tools necessary to make a persuasive legal argument.⁸⁰

IV DOES THE CONTEMPORARY STUDENT VALUE SOCIAL JUSTICE PRINCIPLES IN LEGAL EDUCATION? AN EMPIRICAL ANALYSIS

A Rationale for the Study

It has been noted by some scholars that all of these ‘paternalistic’ considerations are outweighed by students’ demands as consumers.⁸¹ As Goldsmith has remarked, ‘In a market-driven higher education sector, by definition, the public interest will be defined in terms of the ability to exercise individual consumer or exchange preferences’.⁸² While it has been argued that students are not necessarily in an appropriate, or sufficiently informed, position to dictate terms regarding the nature of the education they receive,⁸³ the fact that many students report experiencing a ‘culture shock’ once they enter the workplace may well confirm students’ fears that legal academics are not succeeding in their attempts to graduate job-ready students.⁸⁴

⁷⁸ Thornton, *ibid* 20. See also Bloustein, above n 56, 417–18: law should be ‘the queen of the social sciences’.

⁷⁹ Kirby, above n 31.

⁸⁰ See also Bloustein, above n 56.

⁸¹ In Australia, this consideration is all the more relevant at present as the costs of legal education are increasingly being borne by students themselves. While previously government funding of universities meant that domestic students’ tertiary education was highly subsidised, from January 2006, all new domestic law students are almost completely full-fee paying; see The Hon Brendan Nelson MP, ‘Our Universities: Backing Australia’s Future’ (Policy Paper, Australian Government, 2005, 15).

⁸² Goldsmith, above n 16, 152. See also Thornton, above n 10, 21: ‘I recognise that it is difficult to argue against vocationalism in an age committed to efficiency, productivity and economic rationality’.

⁸³ Goldsmith, above n 16.

⁸⁴ Erlanger and Kleagon, above n 15; Clark et al, above n 26; Wilcox, above n 70.

In recognition of this, a survey of law students enrolled at the University of Queensland was undertaken in mid-2006. The study was aimed at determining the extent to which students valued public interest and social justice matters, and gauging whether they were satisfied with the extent to which such subjects were dealt with in the law course.

B Research Design

All enrolled students, of which there are approximately 1000, were invited to participate in the survey, which was available in an online format for them to complete. The survey consisted of 25 discrete questions, some yielding quantitative data and others yielding qualitative data. There was also some space at the end of the survey for students to make any further comments relevant to the study, if desired.

The first four questions asked students to indicate certain demographic information about themselves, including their age range, gender, the stage they were at in their degree, and whether they identified as a member of a minority group, specifically whether they were Indigenous, a person with a disability, a person speaking English as a second language, an international student, a person from a low socio-economic background, or gay, lesbian, intersex or transgender.

The remaining questions asked students to indicate and/or explain such things as what their motivations were/are for attending law school; the extent to which they had/have a desire to use the law to achieve social justice outcomes; the extent to which they valued discussions on social justice and political matters during their law classes; their definition of and views on professionalism; whether they intended to pursue an alternative legal career; and the extent to which they valued and/or participated in the school's clinical legal education programs or pro bono opportunities.

C Respondent Characteristics

A total of 254 responses were received. The majority of respondents were female (63 per cent), an over-representation compared with the general law school gender breakdown of around 50/50. The vast majority (81 per cent) were aged between 17 and 22 years; 17 per cent were aged between 23 and 29 years, and the remaining two per cent were aged 30 or more. This generally reflects overall student demographics; most students enrolled in the degree have come into their legal studies straight from high school. There was a relatively even spread across the respondents in terms of the stage of their degree: 23 per cent were in the first year of their legal studies; 22 per cent were in their second year; 17 per cent were in

their third year; 13 per cent were in their fourth year; and 26 per cent indicated they had been studying law for five years or more.⁸⁵

Respondents were also asked to indicate whether they considered themselves to be a member of a minority group. Only one per cent (n=4) of respondents identified as Indigenous, however this represents an over-representation, as only four students out of the entire law student body at the time formally identify as Indigenous. In addition to this, one per cent of respondents identified as a person with a disability; eight per cent indicated that they spoke English as a second language; four per cent indicated they were an international student; nine per cent identified as coming from a low socio-economic background; and four per cent identified as either gay, lesbian, intersex or transgender. In total, 78 per cent of respondents indicated that they were not a member of any of these minority groups.

D Motivations for Entering/Remaining at Law School

Students were asked to indicate both their main initial motivation for entering law school, and their main reason for remaining at law school. Respondents were required to select only one option from a list, which included educational or personal achievement; family or social expectations; a desire to help people; a desire to bring about social justice or work in the public interest; a desire to earn a high income; intellectual challenge; prestige; not sure or nothing in particular; and ‘other’.

A desire to engage in social justice or public interest practice was the main reason respondents gave for entering law school (23.9 per cent), closely followed by a desire for intellectual challenge (23.5 per cent). A further 21 per cent of respondents stated that they entered law school because they achieved sufficiently high grades at the end of high school. However, when asked why they continued on with their legal studies, 33 per cent of respondents cited personal achievement, or a desire for closure, as the reason; a further 17 per cent said their desire to enter into social justice or public interest practice motivated them to continue their law studies, and 14 per cent said the intellectual challenge kept them going. Thus, the top three responses to both questions were educational or personal achievement, intellectual challenge, and a desire to engage in social justice or public interest practice, however the relative importance of these was different for each.

A desire to earn a high income rated more highly as a motivator for entering law school than for remaining there (11 per cent and

⁸⁵ The standard LLB at the University of Queensland is four years in length, however students may study law over a longer period of time if, for example, they are completing combined degrees or if they are studying part-time.

seven per cent respectively); this may reflect a realisation amongst students that a legal education does not necessarily guarantee such a result. The prestige associated with having a law degree increased as a motivator over time, with four per cent of respondents citing it as their main reason for entering law school, and seven per cent saying this is what kept them there. A desire to help people in general was the key motivator for entering law school for eight per cent of respondents, while 11 per cent of respondents said this motivated them to continue their studies. Relatively few respondents were unsure of their primary reason for entering law school (four per cent) and less reported a current lack of motivation than expected (six per cent). Only 1.5 per cent of respondents selected 'other' in either question which would imply that the list of options provided was sufficiently exhaustive.

Having said this, students demonstrated a very high degree of optimism regarding the capacity of the law to bring about positive social change; 95 per cent indicated that they believed it did have the power to do this. Notably, those respondents in their fifth year of law school or more were least likely to agree with this statement.⁸⁶

Some differences were observed in relation to the various respondent sub-groups. Female students were twice as likely to cite a desire to enter into social justice or public interest practice as their initial motivator for entering law school, while male students were twice as likely to cite the potential for a high income to be their initial motivator.⁸⁷ Notably, when asked what their current motivation for remaining in law school was, relatively equal proportions of male and female respondents selected 'a desire to enter into social justice/public interest practice'. Thus it seems that much of the change in motivation over time may be occurring amongst female students, rather than male students. Also, respondents who spoke English as a second language were more likely to state that earning a high income was their initial motivator for entering law school.⁸⁸ It seemed from the results that gay, lesbian, intersex and transgender students may have been more likely to be motivated to continue their degree by a desire to enter into social justice/public interest practice, however the number of respondents identifying as a member of one of these groups was not high enough to yield a significant result. Overall, respondents who identified as a member of a minority group were no more likely to be motivated by a desire to enter into public interest practice than others. Predictably, those who were coming towards the end of their degree were more likely to report that their motivation for continuing law school was personal achievement or closure.⁸⁹

⁸⁶ 89 per cent compared with a rate of 96 per cent for the others; $p=0.288$.

⁸⁷ This difference was statistically significant; $p=0.001$.

⁸⁸ 26 per cent compared with a general rate of 10 per cent; $p=0.069$.

⁸⁹ 28 per cent of first years compared with 38 per cent of those in their fifth year or more of law school.

Contrary to the results of previous studies, most respondents in this study did not explicitly state that their desire to use the law to achieve social justice outcomes, or to engage in public interest practice, had diminished over the course of their legal studies. Only 18 per cent of respondents agreed that such a desire had decreased since beginning their law degree; 39 per cent said it had remained the same, and 39 per cent said it had increased over the course of their studies. Only four per cent reported never having any such desire in the first place. Notably, all those respondents who identified as Indigenous reported that their desire to use the law in this way had increased during the course of their studies, while those who identified as being from a low socio-economic background were more likely to report that their desire to use the law in this way had decreased during the course of their studies.⁹⁰

When those students who indicated that their desire to use the law to achieve social justice outcomes, or engage in public interest practice, had increased over the course of their studies were asked which aspects of their degree contributed to this, individual lecturers or tutors were most often stated to be of influence (39 per cent), followed by other students (23 per cent). These two options ranked higher than other influences such as the content of core (nine per cent) or elective subjects (18 per cent), involvement in professional associations (19 per cent) or certain forms of assessment (seven per cent). This is an interesting result, as it demonstrates the power of interpersonal relationships in the development of students' social justice orientation, both student/student relationships and teacher/student relationships.

E Extent to which Social Justice Concerns are Valued by Students

The students were also asked to indicate how important they considered discussions on politics, the social context of the law, and justice issues to be to their legal studies; they were required to select from a list of four possible answers, ranging from 'fundamental' to 'completely irrelevant'. The vast majority of respondents felt that such concerns were either fundamental to their studies (65 per cent) or interesting but not essential (30 per cent). Only six per cent of respondents stated that they felt such concerns to be a bit of a waste of time or completely irrelevant.

When asked whether they felt the current law program explored issues of social justice and the political nature of the law sufficiently enough, there was a relatively high level of ambivalence. Over half

⁹⁰ 30 per cent compared with a general rate of 17 per cent; $p=0.188$.

of the respondents answered 'no' (57 per cent), but only 17 per cent answered 'yes'; the remainder reported being unsure.

Respondents who had been at law school for either three or four years were least likely to report that the discussion of social justice concerns is fundamental to legal study, however those who had been at law school for five or more years were most likely to report that the discussion of such concerns is fundamental to legal study. Notably, all those respondents who identified as Indigenous were of the view that the discussion of social justice concerns is fundamental to legal study, and all agreed that this is not currently done at a sufficient level in the law program. Respondents of low socio-economic status were slightly more likely to be of the view that the discussion of social justice concerns is fundamental to legal study.⁹¹

F *Professionalism*

Students were also asked a series of questions on the subject of professionalism, including what their definition of professionalism was. This was an open response question, analysed using the method of qualitative analysis recommended by Miles and Hubberman.⁹² Seventy-nine per cent of respondents answered this question. The key theme that was observable amongst the responses was the idea that a 'professional' is a person with specialised knowledge and skills, especially those who possess a university degree and demonstrate a commitment to ongoing learning (n=90, 45 per cent). Another identifiable theme was the notion of the professional as a high achiever: successful, hardworking, and committed to excellence (n=31, 15 per cent). Other observable themes were that a professional demonstrates professional ethics, such as integrity, honesty and objectivity (n=27, 13 per cent); and is competent, providing a high quality service (n=23, 11 per cent). Notions of social responsibility ranked fairly low, and were only mentioned by 11 respondents (five per cent). A majority of respondents (54 per cent) indicated that their views on what a professional was had not changed since entering law school.

When asked what their primary professional goal was, half of the respondents (49 per cent) cited personal happiness or enjoyment of their job. Twenty-one per cent of respondents cited 'professional ascendancy',⁹³ but only six per cent cited 'earning money' to be their primary goal as a legal professional. Around one quarter of respondents indicated that helping people was their primary professional goal;

⁹¹ 78 per cent compared with a general rate of 63 per cent. This result did not reach significance; p=0.447.

⁹² Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: A Source Book of New Methods* (1984).

⁹³ Defined as 'achieving partner status in a law firm, becoming a judge, etc'.

13 per cent stating that they wanted to help disadvantaged people, and 11 per cent stating that they wanted to help people in general.

Female respondents were more likely than males to cite personal happiness as their primary professional goal, and male respondents were almost twice as likely to cite 'professional ascendancy' as their primary professional goal.⁹⁴ No consistent trends were observed between respondents at varying stages of their degree although the desire to achieve professional ascendancy was highest amongst first year students and lowest amongst fourth year students. The desire to help disadvantaged people was highest amongst those in their fifth year of law school and above, and lowest amongst students in third year. All other possible professional goals remained consistent between respondents at varying degree stages.

All this would seem to suggest that students' notions of professionalism are largely divorced from a desire to use the law to achieve social justice goals. However, when students were specifically asked 'Do you think working to bring about positive social change is part of being a legal "professional"?', 69 per cent responded in the affirmative. All of those respondents who identified as Indigenous agreed with this statement.

G *Career Aspirations*

When asked whether they intended to pursue an 'alternative' legal career,⁹⁵ around half (48 per cent) responded in the affirmative. The majority of the remainder (38 per cent) reported being unsure at this time. Respondents were not united on the extent to which their experiences at law school had influenced this choice; on a sliding scale ranging from 'completely' to 'not at all', respondents were fairly evenly split between affirmative, neutral and negative responses.

Consistent with previous studies, female respondents were significantly more likely than males to report that they intended to pursue an 'alternative' legal career.⁹⁶ Yet, contrary to the findings of previous research, older students were more likely than younger students (those straight from school),⁹⁷ to report that they intended to pursue an alternative legal career. Respondents in either their third or fourth years of law school were more likely to report an intention to pursue an alternative legal career than those in first, second or fifth year and above; while the trend was not statistically significant,

⁹⁴ This result was statistically significant; $p=0.025$.

⁹⁵ That is, an alternative to firm-based legal work; examples provided included community law, indigent representation, social policy, non-government work and academia.

⁹⁶ 54 per cent of females and 37 per cent of males answered 'yes'; $p=0.013$.

⁹⁷ 63 per cent of older students and 44 per cent of younger students. This trend approached significance; $p=0.186$.

it was marked enough to reflect a possible sense of disillusionment with the mainstream legal profession at this point of the degree.

Those respondents who stated that they did not intend to pursue an alternative legal career were asked why this was the case. Most stated that they simply did not have any interest in this kind of legal work; contrary to the findings of previous studies, the limited job market and lower salaries were less significant factors contributing to this decision.⁹⁸

H *What Should the Law School Do?*

Respondents were asked to indicate their support for the contention that certain social justice-oriented features of their legal education should be more available to them. The results are presented in the table below:

The extent to which students agree to the enhancement of social justice-oriented features of their legal education

Should the law school have more...?	per cent agreement
Clinical legal education programs	51
Social justice/human rights/public interest-oriented electives	61
Compulsory subjects on social justice/human rights/public interest-oriented issues	38
Class discussions on social justice/human rights issues within existing subjects	48
Teachers who are openly committed to social justice/human rights issues	34
Subjects aimed at teaching 'alternative' skills*	65
Alternative forms of assessment aimed at enhancing 'alternative' skills*	60
None of the above	5

* 'Alternative' skills were defined as 'practical advocacy, writing policy documents, drafting briefing papers, writing media releases, etc.'

As can be seen from the table above, students were generally of the view that certain social justice-oriented features of their degree should be enhanced. In particular, a majority of respondents felt that training in 'alternative' legal skills would be of benefit to them. Very few respondents stated that they would not be in support of any of these changes.

⁹⁸ This is contrary to past findings; See eg, Chaifetz, above n 16, 1701.

Students were also asked whether they supported the introduction of compulsory clinical legal education or pro bono work. Most did not support mandatoriness (only 35 per cent agreed that clinical legal education should be compulsory, and 24 per cent agreed that pro bono work should be compulsory). However, the vast majority of students indicated that if these offerings were available to them, they would be interested in participating (93 per cent for clinical legal education and 85 per cent for pro bono work).

V HOW THEN CAN WE INSTIL A SOCIAL JUSTICE ORIENTATION IN OUR LAW STUDENTS?

The empirical research reported on here demonstrates that the majority of students support the incorporation of social justice and public interest practice principles into their legal studies. Indeed, many students agree that the quality of their education will suffer without it. Certain sub-groups (particularly female students and members of some minority groups) were more enthusiastic about this than others, however this study did demonstrate a general sense of support and interest across the entire respondent base. While it is possible that students with an existing passion for social justice and public interest principles self-selected into the study, the level of interest in these principles that was uncovered exceeded expectations; and the study was not without its critics.⁹⁹

Thus, in order to meet the needs of these students (if for no other reason), legal academics and law schools should actively seek ways of enhancing the social justice content of legal education.

A Clinical Legal Education

Clinical legal education programs are often cited as the answer to the question of how a social justice orientation can be encouraged amongst law students. Their effectiveness in doing this stems from a number of different sources.¹⁰⁰ First, clinical legal education exposes

⁹⁹ In the 'further comments' section at the end of the survey, many students indicated that they had not thought about these issues before; others said that they 'had issues' with much of what was put forward in the survey; still others remarked along the lines that social justice in legal education is a 'fantasy'. Further, the fact that practicing in social justice or public interest areas did not emerge as the key motivator for students entering or remaining in law school seems to demonstrate that the extent of this kind of self-selection is limited. Having said this, it must be acknowledged that the survey was conducted at only one law school, and representativeness across that law school, or law schools as a whole, cannot be claimed. Determining whether the views expressed by students here are more generally representative or not is an avenue for future research.

¹⁰⁰ The fact that it is effective in doing this has been proved by a number of empirical studies. In Australia, see Styles and Zariski, above n 15; Clarke et al, above n 26; Curran, above n 26; Mary Anne Kenny and Anna Copeland, 'Clinical Legal Education and Refugee Cases: Teaching Law Students About Human Rights'

students to disadvantaged people; students come to learn of the multiple layers of disadvantage faced by these people, including the non-legal ones.¹⁰¹ Working with disadvantaged people gives students a glimpse of the system, and indeed the world, through their eyes, generating a sense of empathy and understanding that may not previously have existed.¹⁰² By working with and taking responsibility for disadvantaged clients, students can begin to feel socially responsible for disadvantaged people in general; thus, clinical legal education can act as a consciousness-raising exercise.¹⁰³ Second, clinical legal education introduces students to role model public interest lawyers.¹⁰⁴ Students enjoy the supportive environment and sense of solidarity that exists within the community legal sector, and report that it presents a stark contrast to the competitive, adversarial environment within the law school.¹⁰⁵ Thirdly, clinical legal education provides students with proof that they are able to use their legal knowledge to promote social justice, and to assist those in need.¹⁰⁶ Providing legal assistance to disadvantaged people is one way in which law schools can respond to social problems, and make a significant contribution to society.¹⁰⁷ Being part of this allows students to believe that they can do something meaningful and important upon graduation, and assists in the development of a rights-based approach to legal practice.¹⁰⁸ At the same time, clinical legal education enhances students' traditional skills of research and critical analysis.¹⁰⁹

However, clinical legal education programs are not without their drawbacks, for example, they are extremely resource intensive.¹¹⁰ The community organisations that take students on may expect to be resourced by the university; and rightly so considering the intensive level of supervision that students on external placements require. If supervision is provided by an academic, a high staff-student ratio is required.¹¹¹ As a result, clinical legal education is generally only offered to a small number of students in Australian law schools.¹¹²

(2000) 25(5) *Alternative Law Journal* 252. In the U.S., see Milstein, above n 21; Wizner, above n 22; Auerbach, above n 20; Aiken, above n 4.

¹⁰¹ Styles and Zariski, *ibid*.

¹⁰² Milstein, above n 21; Wizner, above n 22; Aiken, above n 4; Costello, above n 14.

¹⁰³ Wizner, *ibid*; Kenny and Copeland, above n 100.

¹⁰⁴ Styles and Zariski, above n 15.

¹⁰⁵ Clark et al, above n 26.

¹⁰⁶ Milstein, above n 21; Styles and Zariski, above n 15.

¹⁰⁷ Wizner, above n 22.

¹⁰⁸ Kenny and Copeland, above n 100.

¹⁰⁹ *Ibid*.

¹¹⁰ Milstein, above n 21.

¹¹¹ De Brennan, above n 68.

¹¹² 'Pro Bono and Clinical Legal Education Programs in Australian Law Schools' (Information Paper, National Pro Bono Resource Centre, 2001).

Also, it must be acknowledged that contact with disadvantaged clients may have the opposite of the desired effect. The student may be required to deal with difficult or involuntary clients, and may become impatient.¹¹³ Some students may be overwhelmed by the extent of disadvantage and injustice they are faced with, and may be unable to cope emotionally with this.¹¹⁴ Other students may be ill-suited to such work, perhaps as a result of their paternalistic attitudes or unempathic demeanour.¹¹⁵ As a result, students may decide (or may be advised) never to work in the community sector again.¹¹⁶

Regardless, clinical legal education should ideally be offered to at least as many students as are interested in undertaking its challenges; as Costello has remarked, the point is not to ‘graduate an entire class of public interest lawyers’ but rather to ‘substantially increase the likelihood that a student with the potential for a public interest law career will discover that vocation’.¹¹⁷

B *Student Pro Bono Work*

Involvement of law students in pro bono work is extremely underdeveloped as an alternative to, let alone a supplement of, clinical legal education in Australia.¹¹⁸ While many US law schools have made pro bono work compulsory for their law students,¹¹⁹ most of their Australian counterparts have not even canvassed pro bono as a voluntary option.¹²⁰

The law school at the University of Western Sydney has recently established ‘Pro Bono Students Australia’ as a first step towards introducing institutionalised student pro bono work in Australian law schools.¹²¹ This program links student volunteers with community organisations who require quasi-legal assistance, in an attempt to foster a public service orientation in law students, and thereby encourage lifelong pro bono service.¹²²

Of course, the main problem with pro bono is time. The majority of contemporary Australian students are in paid employment, and are struggling to balance their work, studies and personal life. Although

¹¹³ White, above n 26.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid; Gee and Jackson, above n 15.

¹¹⁷ Costello, above n 14, 438.

¹¹⁸ De Brennan, above n 68.

¹¹⁹ See Chaifetz, above n 16.

¹²⁰ This is despite recommendations from the Australian Law Reform Commission and the National Pro Bono Task Force, that Australian law schools introduce opportunities for student pro bono work; Australian Law Reform Commission, *Managing Justice* (2000) 308; *Final Report* (National Pro Bono Task Force, 2001) 10, 30.

¹²¹ Based on the Canadian model; see De Brennan, above n 68; Booth, above n 21. See also ‘Pro Bono Students New York’ cited in Goldberg, above n 20.

¹²² Booth, *ibid*; McCrimmon, above n 20.

research has shown that engaging in work while studying does not lead to significant drops in performance,¹²³ adding another demand on their time might seem too onerous to students, and may engender resentment rather than a satisfying sense of service.¹²⁴ The other difficulty with mandating pro bono is its internal inconsistency; pro bono is by definition to be freely given. Making it compulsory may reinforce the notion that community service should only be provided if it is done for reward.¹²⁵

Regardless, the development of pro bono clubs throughout Australian law schools, even if only as a voluntary option, will go some way towards enhancing a social justice orientation in and providing public interest practice opportunities to law students.

C Social Justice in Legal Education – in the Classroom

Realistically, not all students may have the opportunity or desire to undertake clinical legal education, and not all students will have the time for pro bono work, so it may be necessary to consider ways of exposing students to social justice and public interest values in the classroom. There are a number of ways in which this can be done; the most obvious being through the kinds of subjects offered to students. By making human rights or public interest law subjects compulsory, all students would be exposed to the content, but further to this, a message would be sent by the school that such subjects are considered to be as important as their corporate-commercial counterparts.¹²⁶ Other subjects, such as poverty law, welfare law and public interest law (which are routinely offered in law schools around the western world but have generally been extremely unpopular amongst Australian law schools), could also be added to the curriculum as electives.¹²⁷

However, as noted above, the way in which something is taught may be considered as important as the content of the course itself. Thus, if the way in which traditional law subjects are taught is altered, the same result might be capable of achievement. For example, it has been argued that the way in which appellate cases are taught should be altered so that the law's human face is not completely lost; cases should not be divorced from their social context.¹²⁸ Encouraging

¹²³ Chaifetz, above n 16.

¹²⁴ White, above n 26; McCrimmon, above n 20.

¹²⁵ McCrimmon, *ibid*.

¹²⁶ Sam Garwake, 'Making Human Rights Compulsory at Law Schools' (1997) 6(4) *Human Rights Defender* 19; Styles and Zariski, above n 15; Thornton, above n 10; Kirby, above n 31.

¹²⁷ Such subjects are almost unheard of in Australia, but were introduced in the U.S. in the 1960s; see Auerbach, above n 20. See also Iya, above n 74.

¹²⁸ Maranville, above n 30; Wilcox, above n 70; Styles and Zariski, above n 15; Halpern, above n 6.

students to be self-reflective, and to share their personal reactions to legal material in the classroom, is also crucial, rather than treating such discussions as a ‘frolic in an otherwise detached analytical discussion’.¹²⁹ Students should be encouraged to look at the law through critical eyes, and to be creative in finding a cause of action and making law reform suggestions.

Further, various commentators have argued that ‘experiential learning’ need not involve clinical legal education. There are other ways that students can have contact with people, and position themselves as a practitioner within the legal system and society in general. For example, students could be encouraged to have ‘real’ experiences by taking field trips (such as jail tours).¹³⁰ Involving students in empirical research, as interviewers or court observers for example, is another way of providing them with real legal experiences.¹³¹

Role play or ‘simulations’ are tools that could be used more extensively in Australian law schools, to give students something of a sense of what real practice is like.¹³² In so doing, students could receive practical skills training in counselling, empathy, negotiation and oral advocacy to supplement their theoretical knowledge.¹³³ Lessons could be learned from US law schools and Australian social work schools in this regard where experiential learning has been accepted far more readily.¹³⁴

In addition to this, assessment tasks may be altered to ensure students are taking a reflective approach to their studies. The use of reflective journals,¹³⁵ for example, encourages students to explore their personal reactions to and struggles with the material, and indeed rewards them for taking a critical approach to their learning.¹³⁶ Enlisting students to write law reform papers or submissions to

¹²⁹ Aiken, above n 4, 50.

¹³⁰ Maranville, above n 30; Aiken, *ibid.*

¹³¹ See Ziegert, above n 63 in the US, and Curran, above n 26 in Australia. Indeed, students participating in the University of Queensland’s clinical legal education program at the Homeless Persons’ Legal Clinic (a project of the Queensland Public Interest Law Clearing House) undertake empirical research on a law reform issue, and then draft a report for submission to government as their assessment exercise.

¹³² For a discussion of simulations in legal education, see Milstein, above n 21.

¹³³ Chaifetz, above n 16; Aiken, above n 4; Gee and Jackson, above n 15; Costello, above n 14; Goldsmith, above n 16; Paul J. Cain, ‘A First Step Towards Introducing Emotional Intelligence into the Law School Curriculum’ (2003/04) 14(1) *Legal Education Review* 1.

¹³⁴ See eg, Chaifetz, *ibid.*; Jim Crawley and Valerie Gerrand, ‘The Use of Role-Play in Field Work Teaching’ (1981) 4 *Contemporary Social Work Education* 55.

¹³⁵ That is, where students write a regular reflective piece (usually weekly) whereby they analyse written materials and other learning aids, including their personal reflections on these things, integrating them within the broader framework of the particular subject, or their degree as a whole.

¹³⁶ Milstein, above n 21; Aiken, above n 4; McCrimmon, above n 20; Cain, above n 133. See also Aiken, above n 4, on ‘disorienting moments’.

government are other ways of ensuring that students reflect critically on the law, and ways in which it can be improved.¹³⁷

VI CONCLUSION

Discussions of social issues and the socio-political basis and impacts of the law should be held within our classrooms. We should seek to inspire students by telling them of the foundation cases that have led to the creation or expansion of rights, reminding them that the law can make, and has made, a difference in the past.¹³⁸ The role of lawyers within the community should be actively debated, not just in 'professional responsibility' or legal ethics courses, but throughout the degree.¹³⁹ A multidisciplinary approach should be taken to legal study, such that the relevance of the social sciences, philosophy and history is recognised and integrated study of these is incorporated into existing subjects, not simply relegated to legal history and jurisprudence courses.¹⁴⁰

As teachers, we need to recognise, as the students in this study did, that grappling with justice issues is not a waste of time, and is not a distraction, but rather is fundamental to the study of law, which after all, has justice as its main goal.¹⁴¹ As Halpern has said:

Questions of social justice ought not to be irrelevant or peripheral to the study of law; they are more properly central to it. When law operates in its noblest tradition, after all, it promotes a civilised and just social order.¹⁴²

Finally, and perhaps most importantly, legal academics need to set an example. If we do not promote social justice principles, and do not value, much less engage, in public interest practice, our students cannot be expected to do so.¹⁴³

¹³⁷ Wizner, above n 22. Students undertaking the Human Rights Law elective at the University of Queensland write a submission to government, analyzing the human rights impact of a law or legal area of interest, as their major piece of assessment.

¹³⁸ *Ibid.*

¹³⁹ McLeay, above n 26; Goldberg, above n 20.

¹⁴⁰ Thornton, above n 10; Halpern, above n 6.

¹⁴¹ Maranville, above n 30; Auerbach, above n 20.

¹⁴² Halpern, above n 6, 392

¹⁴³ Goldsmith, above n 16; Erlanger and Kleagon, above n 15.