

1-1-2010

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Grant Morris

*Victoria University of Wellington*

Kimberley Lewis

*Victoria University of Wellington*

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### Recommended Citation

Morris, Grant and Lewis, Kimberley (2010) "Imaginings of Legal Education in New Zealand Fiction," *Legal Education Review*: Vol. 20 : Iss. 1 , Article 10.

Available at: <https://epublications.bond.edu.au/ler/vol20/iss1/10>

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# IMAGININGS OF LEGAL EDUCATION IN NEW ZEALAND FICTION

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GRANT MORRIS AND KIMBERLEY LEWIS\*

## I INTRODUCTION

What do legal pedagogy and legal fiction have in common? Many things in fact, one being that the former appears as a subject in the latter. *The Paper Chase*<sup>1</sup> and *Legally Blonde*<sup>2</sup> are only the two most famous examples of a sub-genre of American legal fiction: law school fiction.<sup>3</sup> These texts have proved popular tools for academics analysing the nature of American legal education.<sup>4</sup> However, in

\* Grant Morris is a Senior Lecturer in Law at Victoria University of Wellington, New Zealand and Kimberley Lewis is a Researcher at the Faculty of Law, Victoria University of Wellington. The authors wish to thank Jennifer Moore and Kathleen Birrell for providing helpful comments in the preparation of this article.

<sup>1</sup> *The Paper Chase* (Directed by James Bridges, Twentieth Century Fox, 1973); John J Osborn, *The Paper Chase* (Coronet Books, 1973).

<sup>2</sup> *Legally Blonde* (Directed by Robert Luketic, Metro-Goldwyn-Mayer, 2001); Amanda Brown, *Legally Blonde* (Time Warner, 2003).

<sup>3</sup> Other examples include George P Fletcher, *The Bond* (Hart, 2009); Lisa Scottoline, *Daddy's Girl* (HarperCollins, 2007); John Grisham, *The Summons* (Arrow Books, 2002); *The Socratic Method* (Directed by George Hunlock, Pothole Productions, 2001); *Rounders* (Directed by John Dahl, Miramax International, 1998); Amanda Cross, *An Imperfect Spy* (Ballantine Books, 1995); *The Pelican Brief* (Directed by Alan J Pakula, Warner Bros, 1993); John Grisham, *The Pelican Brief* (Arrow Books, 1992); *Soul Man* (Directed by Steve Miner, New World Pictures, 1986); Michael Levin, *The Socratic Method* (Simon and Schuster, 1987). While only some of these examples are set exclusively in a law school, all use law school as an important part of the plot.

<sup>4</sup> Examples include William MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford University Press, 2007) ch 6; John J Osborn, 'Bleak House: Narratives in Literature and Law School' (2007) 52 *New York Law School Law Review* 339; Michael Vitiello, 'Professor Kingsfield: The Most Misunderstood Character in Literature' (2005) 33 *Hofstra Law Review* 955; David R Papke, 'Crusading Hero, Devoted Teacher, and Sympathetic Failure: The Self-Image of the Law Professor in Hollywood Cinema and in Real Life, Too' (2004) 28 *Vermont Law Review* 957; Christine A Corcos, "'We Don't Want Advantages': The Woman Lawyer Hero and Her Quest for Power in Popular Culture' (2003) 53 *Syracuse Law Review* 1125; James R Elkins, 'Troubled Beginnings: Reflections on Becoming a Lawyer' (1996) 26 *University of Memphis Law Review* 1303; Stacy Caplow and Spencer Weber Waller, 'Images of Law School and Law Teaching in *An Imperfect Spy*' (1996) 8 *Yale Journal of Law and the Humanities* 261; Arthur D Austin, 'The Waste Land of Law School Fiction' (1989) 2 *Duke Law Journal* 495; Michael Ariens, 'The Politics of Law (Teaching)' (1988) 13 *Law and Social Inquiry* 773; Audrey Schwartz, 'The Paper Chase Myth: Law Students of the 1970s' (1985) 28 *Sociological Perspectives* 87.

exploring the nature of New Zealand legal education through the lens of popular culture, it is not enough to co-opt American portrayals and attempt to apply them in a New Zealand setting. Perceptions found in New Zealand popular culture are necessary to provide an appropriate context for the discussion.

New Zealand written and visual fiction contains many references to law.<sup>5</sup> There are also references to legal education, at least enough to raise pertinent issues relating to how law is taught and to reveal some of the popular perceptions about law schools which exist (whether accurate or not). If the criticisms, obvious and implied, that exist in the texts have validity then the texts perform an important function in highlighting them. Fiction has the great advantages of having flexibility with the 'truth' and freedom from verifiable facts and statistics. The author can concentrate on making a point or developing a theme. While this may be at the cost of accuracy, when combined with relevant survey data and pedagogical studies, a more enlightening picture of New Zealand legal education emerges. As we will argue, fictional texts should be added to the conventional research literature available on legal education. They provide another source of information in an area of study which should utilise all available information. Fiction does not have all the answers to what are very complex problems, but if it can assist in the answering process then it should not be ignored.

This article does not adopt a conventional approach to analysing education practice and it is important to locate the argument methodologically. By co-opting texts from New Zealand fiction, legal education theory can engage with a more contextualised understanding of the reasons why students study law and the challenges they face in doing so; in particular, the impact of law school power relations on students. As with William MacNeil, who argues that fiction can show us 'alternatives for legal education',<sup>6</sup> our approach looks at how these New Zealand texts engage the pedagogical imagination of readers in order to highlight aspects of legal education that require our attention.

These texts can partly uncover the aims and outcomes of legal education by detailing the teaching approaches that exist in law school and then by exposing the nature of law school through the exaggeration of strengths and weaknesses. Consciously or subconsciously, readers are forced to confront problems in fictional literature that also appear in educational debates about the most effective and inclusive way of learning the law. Each text, to a greater or lesser degree, urges us to question the effectiveness of modern

<sup>5</sup> There are over 500 texts referenced in the New Zealand Law and Literature/Law and Visual Media Database: Grant Morris, *New Zealand Law & Literature/Law & Visual Media Database* (2009) Victoria University of Wellington <[www.victoria.ac.nz/lawlit](http://www.victoria.ac.nz/lawlit)>.

<sup>6</sup> MacNeil, above n 4, 98.

legal education in New Zealand and the extent to which it is meeting the needs of students. What becomes clear is that the processes by which students learn, and the teachers from whom they learn, can fail to create an empathetic and nurturing learning environment.

In each part of the article, the available New Zealand research literature is discussed in relation to fictional representations. This article is purposely situated in a New Zealand context using New Zealand fiction and New Zealand research literature in order to reflect directly upon the situation in New Zealand legal education. There is a limited amount of research literature on legal education in New Zealand and, in addition to complementing what is available, fictional literature can potentially fill some of the gaps that exist. This article is the first examination of legal education as portrayed in New Zealand legal fiction. To ensure that the debate does not occur in a vacuum, the rich body of American work, both fictional and non-fictional, is utilised to provide useful context where necessary.

Most New Zealand legal education studies criticise, or at least relay criticisms of, the approaches used by legal educators.<sup>7</sup> Many of the negative aspects of legal education are located in the novels, short stories, films and television shows cited in this article. While there is little focus on legal educators (unlike in American fiction) the experience of New Zealand law students is explored in these texts. There are some glimpses of the motivations for attending law school which can complement, and sometimes contradict, the central motivations governing a character's actions. One text in particular, *The Miserables* by Damien Wilkins,<sup>8</sup> tackles the controversial Socratic Method of teaching, pioneered at Harvard Law School in the late nineteenth century and still practised at Victoria Law School in Wellington.

New Zealand legal fiction is dominated by the perspective of the outsider. This is definitely true of references to legal education. The roles of insider and outsider in law school provide the author with an opportunity to comment on disadvantage, ethnocentrism and patriarchal power. Much of the stereotyping associated with legal education, whether accurate or exaggerated, can be found in the creation of characters who either fit into, or are alienated from, the law school elite. Interestingly, the categorisation of insiders

<sup>7</sup> Three articles in particular highlight the inadequacies of New Zealand legal education: Carmel Rogers, 'How Legal Education will Assault You as a Woman' (1993) 23 *Victoria University of Wellington Law Review* 167; Leah Whiu, 'A Maori Woman's Experience of Feminist Legal Education in Aotearoa' [1994] *Waikato Law Review* 161; Caroline Morris, 'A "Mean Hard Place?" Law Students Tell It as It Is' (2005) 36 *Victoria University of Wellington Law Review* 197. An article that addresses the process of legal education at Victoria Law School is Jennifer Moore, 'It Could Have Been Otherwise: Emphasising Student Empowerment (Voice, Agency and Needs) in Modern Legal Education' (2009) 2 *New Zealand Law Students' Journal* 131.

<sup>8</sup> Damien Wilkins, *The Miserables* (Victoria University Press, 1993).

and outsiders is not so rigid as to prevent transformations which can occur in law school; namely, transformations of outsiders into insiders through acculturation into the power elite. The structure of this article follows the typical educational journey of a law student, beginning with an exploration of why students attend law school, progressing to the way in which students are taught and the social stratification they experience, concluding with the outcomes of a legal education.

This article stresses the importance of fictional representations of legal education to the legal educator, but it also acknowledges the limitations of fiction in providing a reflection of reality. The authors of fiction discussed in this article are under no obligation to provide factual portraits of legal education. Even when authors do seem to provide accurate references, the way in which these references are used in this article reflects only our perspective on the text. Much literary theory revolves around the question of whether there can ever be one authoritative reading of a text, with the overwhelming majority now arguing that the answer is emphatically no.<sup>9</sup>

This article argues that fictional literature can be used as a form of evidence to highlight issues in legal education. As legal educators, when we read legal fiction our attention is drawn to critiques of legal education and, as Roland Barthes would have it, we have the right as readers to interpret the texts in a multiplicity of ways rather than being constrained by seeking a single 'true' authorial perspective.<sup>10</sup> Issues relating to gender and ethnicity are discussed in this article. There is potential for feminist and/or post-colonial readings of the texts. (This is not the approach taken in this article but it would be very worthwhile for others to treat the topic using these theoretical approaches.)

The methodology adopted for choosing texts for this article is relatively straightforward, drawing on the New Zealand Law and Literature/Law and Visual Media database, completed in September 2009. This database is a comprehensive annotated bibliography of New Zealand's written and visual fictional texts containing legal references. Most New Zealand fictional texts have been examined and those containing legal references analysed and incorporated into the database. The database can be searched by topic and this article features those texts that refer to legal education. The reference to legal education could be large or small but it must be direct; that is, it must clearly be about the nature of legal education in New Zealand. This methodology ensures that the texts upon which the conclusions

<sup>9</sup> This can be seen in a multiplicity of theories including post-structuralism (see Barthes), deconstructionism (see Derrida) and feminist interpretations (see Irigaray).

<sup>10</sup> Roland Barthes, *Image, Music, Text* (Stephen Heath (ed) trans, Noonday Press, 1977).

of this article are based include all those available rather than a narrow selection that may or may not be representative.

## II MOTIVES FOR ATTENDING LAW SCHOOL IN NEW ZEALAND FICTION

The reasons for attending law school found in student surveys are often grouped into three categories: ‘career reasons, intellectual reasons, and social justice reasons’.<sup>11</sup> As Debra Schleef observes, these three groupings fail to include other possibilities such as ‘ambivalence, default, parental influence, or class maintenance’.<sup>12</sup> A survey carried out at Victoria University of Wellington in 2004 showed the primary motivations to attend law school were an ‘interest in the subject’ (62.6 per cent), followed by ‘intellectual stimulation and training’ (35.66 per cent) and ‘influence of family, friends or teachers’ (34.34 per cent).<sup>13</sup> New Zealand fictional literature and visual media portray all of the above motives for attending law school. Motives can be analysed under the following headings: parental influence, Maori law students working to achieve justice through Pakeha (white) law, altruism, the high status of the law degree, and an intellectual interest in law.<sup>14</sup> In analysing these motives it is important to note the many references to law students becoming disillusioned with law school and questioning their motives for studying law. Schleef convincingly argues that this uncertainty undermines ‘the assumption that students carefully, or even consciously, choose their careers’.<sup>15</sup> The research literature relating to student motivations provides the starting point for an analysis of the fictional literature. Fiction will, of course, not

<sup>11</sup> Gordon Gee and Donald Jackson, ‘Bridging the Gap: Legal Education and Lawyer Competency’ [1977] *Brigham Young University Law Review* 695. For an Australian perspective on the main reasons law students choose to complete a law degree and the external factors influencing this decision see Massimiliano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ (2009) 19 *Legal Education Review* 3.

<sup>12</sup> Debra Schleef, ‘“That’s a Good Question!” Exploring Motivations for Law and Business School Choice’ (2000) 73 *Sociology of Education* 155, 155.

<sup>13</sup> Morris, above n 7, 203.

<sup>14</sup> Popular perceptions of lawyers and law degrees also motivate students to pursue a legal education. These popular perceptions can influence students from an early age as they seek the excitement of a legal career and the glamorous lifestyle that is unrealistically portrayed in film and television. See Fiona Farrell, *Book Book* (Random House, 2004) 257. The narrator’s mother in *Book Book* talks of a law degree as attractive mainly because ‘it looks interesting on Perry Mason’. New Zealand legal fiction does not expand on popular culture influencing students to study law. However, it is a realistic motive and American academics acknowledge this. See Robert Batey, ‘Race & the Limits of Narrative: Atticus Finch, Boris A Max, and the Lawyer’s Dilemma’ (2005–06) 12 *Texas Wesleyan Law Review* 389, 390; David Papke et al, *Law and Popular Culture: Text, Notes, and Questions* (LexisNexis, 2007) 69: ‘Most people who decide to come to law school have come with an image of “lawyer” imprinted on them by some exposure to a lawyer (usually, unrepresentatively, a trial lawyer) from movies, television, literature or popular culture.’

<sup>15</sup> Schleef, above n 12, 170.

be as accurate as statistical data, nor should it be. But it can provide a more contextualised interpretation of these motivations which can take us beyond numbers and figures.

Parental occupation and influence have the ability to profoundly shape a child's educational choices. According to Schleef there are two obvious ways that parents can stress to their children the importance of a professional career: 'either by unconscious occupational example or through conscious statement'.<sup>16</sup> New Zealand literature focuses on both. Having a parent as a lawyer can mean a character never really questions why they are studying law; rather, it is an expectation that has always existed.<sup>17</sup> The narrator in Maurice Shadbolt's 'The Voyagers' exemplifies this occupational influence and the inevitability of lawyers' children having career paths paved for them:

'I'm at university', I explained.  
'Law, naturally. Like your old man.'  
'That's right. Like my old man.'  
'And you'll take over his practice.'  
'That's the general idea,' I agreed.<sup>18</sup>

The idea that a law degree is seen as 'natural' as in the quotation suggests an unspoken expectation that children will follow in their father's or mother's footsteps, having little real choice in their educational pursuits. This acknowledges how strong parental influence can be and the importance parents with a legal background place on career development and higher education. Furthermore, as the legal profession is generally portrayed as elite, New Zealand authors emphasise the 'old boys' network' and the pride in having a law firm that has been in the family for generations.<sup>19</sup> Having valuable family contacts in the legal profession creates security for a successful career. Therefore, law students' decisions to follow in their parents' footsteps seem to be more representative of the need to have a successful professional career with a secure salary rather

<sup>16</sup> Ibid 169. A 2005 survey carried out at the University of New South Wales revealed that law students placed more importance on familial influences in their educational choices than students in other disciplines — for a discussion of these results see Tani and Vines, above n 11, 13.

<sup>17</sup> American texts also focus on parental influence as a motive for attending law school. Brown, above n 2, 15: 'Warner had often told Elle that family tradition would lead him into politics and that public service was a Huntington family legacy.' Warner is following in his family's footsteps by studying law to become a senator. See also Grisham, *The Summons*, above n 3, in which Ray Atlee's father is a powerful judge — one motivation for him to complete his law degree and become a law professor.

<sup>18</sup> Maurice Shadbolt, 'The Voyagers' in *Figures in Light: Selected Stories* (Hodder & Stoughton, 1978) 166.

<sup>19</sup> See also Judy Corbalis, *Mortmain* (Random House, 2007) 107; Nellie Scanlan, *Kelly Pencarrow* (Whitcombe & Tombs, 1958) 9. Both have references to parental influence and legal dynasties.



than an inherent interest in studying law. There is a perceived need to maintain the social status, success, and credentials of their parents. A family legal background can also guarantee a student insider status.<sup>20</sup> Yet, in both Shadbolt's 'The Voyagers' and Judy Corbalis' *Mortmain*, it is implied that the insider characters suffer a certain loss of autonomy as a result of familial pressure.<sup>21</sup> As readers, we are challenged to imagine the lost opportunities for these characters.

Unique to New Zealand is the significance of Maori attending law school in order to achieve justice for their people: *iwi*, *hapu* and *whanau*.<sup>22</sup> A recurring theme in New Zealand legal fiction is Maori law students' quest to gain that justice by utilising Pakeha law. In this quest, a law degree is seen as a means to an end. *Whanau II* by Witi Ihimaera encapsulates the main motivation of a Maori law student; 'the idea of making it in the legal profession in the Pakeha world drove him forward'.<sup>23</sup> Maori law students are often portrayed in fiction as outsiders in a white world. The only way to break into this world is to learn the Pakeha way. Learning the Pakeha way can have unintended consequences for the Maori law students portrayed in New Zealand fiction; namely, transforming from outsider to insider status or being co-opted into the 'system'.<sup>24</sup> Despite increasing attention to Maori customary law and Maori legal issues in the Bachelor of Laws (LLB) curricula, the norms that underpin legal education in New Zealand are overwhelmingly Western.<sup>25</sup>

This idea of knowing a legal system primarily in order to challenge it brings to mind the concepts of retribution and redress. These ideas are portrayed poignantly in *The Waimate Conspiracy* where a recently graduated female Maori lawyer, Zena, is the 'brown hope' for her *whanau* (extended family) in claiming back their land.<sup>26</sup> She uses her knowledge of Pakeha law, acquired at law school, in order to successfully challenge the Pakeha system. Likewise a young female Maori student, Kohimarama, in *He Tangi Aroha* is learning law because 'our culture, our language, our land, has been and is being lost. If you study government laws it's very easy to see how it was and is done'.<sup>27</sup> Knowledge provides the power to prevent further injustice. This valuable insight into the motivations of Maori

<sup>20</sup> As discussed in Part IV below.

<sup>21</sup> Shadbolt, above n 18; Corbalis, above n 19.

<sup>22</sup> *Iwi* (large pan-tribal grouping), *hapu* (tribal grouping of interrelated families), *whanau* (extended family).

<sup>23</sup> Witi Ihimaera, *Whanau II* (Reed Publishing, 2004) 104.

<sup>24</sup> As discussed in Parts IV and V below.

<sup>25</sup> For an analysis of some of the challenges experienced by Maori law students see Carwyn Jones, 'Indigenous Legal Issues, Indigenous Perspectives and Indigenous Law in the New Zealand LLB Curriculum' (2009) 19 *Legal Education Review* 257.

<sup>26</sup> *The Waimate Conspiracy* (Directed by Stefen Lewis, Dark Horse, 2006); Stefen Lewis, *The Waikamukau Conspiracy* (Hazard Press, 1999). In the novel, the young lawyer is a male Maori called Hercules Kepa.

<sup>27</sup> Apirana Taylor, *He Tangi Aroha* (Huia, 1993) 43.



law students is clearly stated in the fictional texts and provides contextual understanding as to why Maori study law. There are few empirical articles on this subject so the fictional texts fill an obvious gap. Understanding why Maori study law can serve as the first step towards legal educators being more responsive to Maori educational needs.

When talking to first-year law students, many profess that their primary motivation for attending law school is to achieve altruistic goals. Schleef asserts that ‘if there is a Holy Grail among legal education researchers, it has been to discover why law students, especially elites, enter with altruistic aspirations geared toward public service but take jobs in corporate practice upon graduation’.<sup>28</sup> This unexplained paradox mirrors a focus in New Zealand legal fiction on materialistic ambitions as opposed to altruistic ambitions. However, there are notable exceptions. *Just Jane* by James Duncan portrays a law student who genuinely wants to use her law degree for the altruistic purpose of saving the environment.<sup>29</sup> Furthermore, she wants to create ‘an international climate, which would allow us to take offenders to an international court’.<sup>30</sup> Her passion for world peace and her ambition to achieve her goals are seen at first as ‘unrealistic’.<sup>31</sup> Perhaps this is a reason why many people come to law school with altruistic aspirations and leave with corporate ambitions: achieving altruistic goals is too idealistic and unrealistic.

In *Outrageous Fortune*, Jethro West, from a criminal family in West Auckland, purports to use his law degree for worthy purposes. He takes over Corky’s law practice because he ‘want[s] to work for the real people, people like us’.<sup>32</sup> A parallel can be drawn between Jethro’s desire to use his law degree to help ‘his people’ and the motives discussed earlier vis-à-vis Maori students. Both have a strong link to a disenfranchised societal group and a concern for the wellbeing of that group.<sup>33</sup> An altruistic approach to legal education often goes hand-in-hand with outsider status. The empathy gained from experiencing alienation can be harnessed to help others who are suffering hardship and in need of advocacy and advice.

<sup>28</sup> Schleef, above n 12, 157.

<sup>29</sup> James Duncan, *Just Jane* (James Duncan, 1996) 2.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> ‘Think Yourself a Baby’, *Outrageous Fortune* (Directed by Simon Bennett, South Pacific Pictures, 2005) series 2 episode 2, 0:06:00.

<sup>33</sup> Jethro’s other main motivation to attend law school is ‘to figure out the system. Play it smarter. Play it smarter than Dad, Grandad, all the Wests put together. I only went to law school to figure out how to break the law better than them’: ‘All that Fortune, Death and Danger Dare’, *Outrageous Fortune* (Directed by Mark Beesley, South Pacific Pictures, 2005) series 2 episode 7, 0:35:00.

The high status of a Bachelor of Laws influences people to study law.<sup>34</sup> A law degree is viewed as a solid educational option, paving the way for a secure career. The narrator in ‘The Voyagers’ emphasises this security.

‘Quite a future you’ve got already’, he observed. ‘All tied up. Neat, safe, secure’. ‘Well, yes?’ I said. ‘Security’s a big thing, you know. Half the battle, as they say’.<sup>35</sup>

Similarly, in *The Fools on the Hill*, recently graduated students, and in particular law students, could find ‘jobs wherever they looked, in whatever fields they wanted’.<sup>36</sup> A parallel can be made to American visual representations and the obsession with the elite status of a Harvard law degree. The degree itself is portrayed as being a key motive for attending law school. Hart and his study group in *The Paper Chase*,<sup>37</sup> Warner and Vivian in *Legally Blonde*,<sup>38</sup> and Mark Watson in *Soul Man*<sup>39</sup> all attend Harvard primarily to achieve the highest status degree possible; that is, the Harvard law degree. In Warner’s case, he is using the degree as a means to become a senator. Like the law graduate in *The Fools on the Hill*,<sup>40</sup> Warner acknowledges that a law degree can open doors to other professions and provide unlimited career opportunities. Stability and status are but two potential outcomes of legal education — others include power, money and fame. Beyond fiction, students will often be loath to admit motives that seem superficial and materialistic. Therefore, the honesty contained in the fictional texts can supply legal education with a ‘warts and all’ perspective on student motivations.

Many students have an intellectual passion for studying law and place a lot of significance on acquiring specific skill sets and being able to ‘think like a lawyer’. According to the 2004 Victoria University survey, interest in the subject and the intellectual stimulation of a law degree were two of the primary motivations for students to study law.<sup>41</sup> New Zealand authors reflect this. Cam,

<sup>34</sup> Schleef, above n 12, 161. Greg McGee presents the irony of law students striving for a high status degree and respectable profession whilst engaging in criminal activity: see Greg McGee, *Tooth and Claw* (Victoria University Press, 1984) 88 — Oliver, a lawyer, admits that he and a friend ‘pushed drugs to get [themselves] through law school!’

<sup>35</sup> Shadbolt, above n 18, 166.

<sup>36</sup> Graeme Lay, *The Fools on the Hill* (Century Hutchinson, 1998) 153.

<sup>37</sup> Osborn, *The Paper Chase*, above n 1; *The Paper Chase*, above n 1.

<sup>38</sup> Brown, above n 2; *Legally Blonde*, above n 2.

<sup>39</sup> *Soul Man*, above n 3.

<sup>40</sup> Lay, above n 36.

<sup>41</sup> See Tani and Vines, above n 11, 9, in which the authors argue that ‘law students are less likely to say that their choice of being at university and field of study is motivated by learning than comparable students in medicine’. Although this may be the reality, it does not follow that law students therefore lack inherent interest in their law degrees. American texts portray this interest: see *The Pelican Brief*, above n 3; Grisham, *The Pelican Brief*, above n 3, 12 — Darby Shaw is passionate about law and students at Tulane University find constitutional law ‘interesting’; *The*

in *A Red Silk Sea* by Gillian Ranstead, talks about her enjoyment of studying law:

But Cam liked studying law ... She read case after case, family law, criminal, employment and contract law and liked the way the muddle of everyday life could be shaped so finely by it. It had an elegant structure, a logic that could untangle the rawness of thinking, motive, behaviour or impulse, uncover the essential elements, the points of law or precedence, and polish them until they shone clear. She enjoyed it and she was good at it.<sup>42</sup>

Passion for the law itself and the satisfaction derived from legal learning can make a law degree an appealing educational choice. The cut and thrust of legal debate in lectures, learning how to write in a legal fashion and increasing knowledge of legal issues are all reasons why students attend law school. For certain students, a law degree is not merely a means to an end, but an end in itself.<sup>43</sup>

New Zealand authors also portray the uncertainty and ambivalence that students feel when deciding whether law school is right for them. Rather than having well thought out motivations for gaining a law degree, many students remain confused about their educational choice. These students seem to have ‘fallen’ into a law degree.<sup>44</sup> Thus, a law degree can become more of a default option — although an option providing an apparently glamorous lifestyle and reliable educational outcome. Dan, in ‘My Real Life’ by Julian Novitz,<sup>45</sup> Frank in *Naomi* by Wendy Simons,<sup>46</sup> Megan in ‘Malone’ by Forbes Williams,<sup>47</sup> and Emma in *Scarflies*<sup>48</sup> all express uncertainty as to why they are attending law school. This suggests that the students have no clear career path or direction. Despite this they are willing to invest time, effort, and money into their law degree.<sup>49</sup> These fictional law students who do not have a clear sense of direction find law school more of a struggle than ultra-focused students such as Kohimarama in *He Tangi Aroha*<sup>50</sup> and Ted Castle in *Mortmain*.<sup>51</sup>

*Paper Chase*, above n 1; Osborn, *The Paper Chase*, above n 1 — Hart becomes so engrossed in contract law that he reads all of Professor Kingsfield’s papers on the subject and even steals Kingsfield’s original law school notes from the library; *Legally Blonde*, above n 2 — Elle Woods develops an interest in law and enjoys the intellectual stimulation of class debates.

<sup>42</sup> Gillian Ranstead, *A Red Silk Sea* (Penguin, 2005) 322.

<sup>43</sup> See also Corbalis, above 19, 185: ‘Ted thinks of the hushed calm of the library, the smell and feel of the huge law volumes, the excitement of chasing a lead among the thousands of legal sentences, the following of a strand of thought stretching back into history, the *Magna Carta*, the *Mortmain Statutes*’.

<sup>44</sup> Schleef, above n 12, 162.

<sup>45</sup> Julian Novitz, ‘My Real Life’ in Julian Novitz, *My Real Life and Other Stories* (Random House, 2004) 37.

<sup>46</sup> Wendy Simons, *Naomi* (Collins, 1984) 27.

<sup>47</sup> Forbes Williams, ‘Malone’ in Forbes Williams, *Motel View* (Victoria University Press, 1992) 38.

<sup>48</sup> *Scarflies* (Directed by Robert Sarkies, Essential Films, 1999).

<sup>49</sup> Schleef, above n 12, 170.

<sup>50</sup> Taylor, above n 27.

<sup>51</sup> Corbalis, above n 19.

New Zealand writers address two ways in which law students lack any clear motive for being at law school. Firstly, students may enter law school with valid reasons but lose sight of these reasons and become disillusioned with law during their degree. Frank in *Naomi* expresses that he is ‘tired of being a student ... sick of law. Lost interest in it.’<sup>52</sup> What had once validated his presence at law school no longer applies as he not only questions why he is doing law but also what his future career path will be.<sup>53</sup> Secondly, students may have never thought carefully about why they are studying law.<sup>54</sup> Emma, a law student at Otago University in *Scarflies*, states that she has no desire to become a lawyer and when asked why she is studying law she replies, ‘dunno’.<sup>55</sup> These examples definitely challenge the assumption that all law students consciously decide to study law. This almost ambivalent attitude to legal study is an important issue for legal educators to consider, especially as most New Zealand law schools openly state that one of their key aims is to train lawyers. It could suggest that a more generalist approach in legal education is more appropriate.

New Zealand legal fiction usually focuses on one central reason for a character wanting to attend law school. This is not representative of reality. There are usually many reasons why students desire a law degree. The reason why writers fail to address the multiplicity of reasons could be because being a law student is only one small aspect of their fictional character. Therefore, there is no real need to go into the various motivations of why they are attending law school. Alternatively, writers may be laypeople who stereotype and oversimplify the reasons for pursuing a legal education without appreciating the complexity of the decision. The general theme addressed by New Zealand authors is that most students are not at law school for the educational experience but rather for the opportunities a law degree can give them. A law degree is usually a means to an end, undertaken for self-centred or altruistic ambitions. Legal educators should be concerned because, regardless of the factual accuracy of this finding, it demonstrates a worryingly negative popular perception of the law degree which could serve to undermine the degree’s intrinsic qualities.

Overall, fictional imaginings reflect many of the key motivations for students studying law and portray these motivations in an accessible and interesting — though somewhat simplified — fashion.

<sup>52</sup> Simons, above n 46, 27.

<sup>53</sup> See also Novitz, above n 45, 37 — when asked whether he wants to be a lawyer, Dan claims ‘Hell no! ... I can’t be bothered actually using this [expletive omitted] four-year degree’; and Forbes, above n 47, 38 — Megan ‘was doing law at university but wasn’t sure whether that’s what she really wanted to do’.

<sup>54</sup> Schleaf, above n 12, 162.

<sup>55</sup> *Scarflies*, above n 48.

### III THE PROCESS OF LEGAL EDUCATION IN NEW ZEALAND FICTION

One important aspect that New Zealand writers have focused on when imagining legal education is the process of education. This includes the method by which law is taught in New Zealand and also the effect that this method has on students. In analysing literary and visual media references, it is apparent that New Zealand authors portray a realistic representation of legal pedagogy in New Zealand and that they portray it in a powerful fashion — powerful enough to shape popular perceptions. Of particular interest is the role the Socratic Method plays. Other important issues addressed in the texts include the relationship between lecturer and student, arbitrary assessment practices, the heavy workload involved in studying law and the absence of practical training.<sup>56</sup>

The Socratic Method continues to be used in contemporary legal education.<sup>57</sup> Traditionally, this dialectical method involves the lecturer calling on students to answer questions. It is designed to make students prepare for lectures and be alert during them. Through answering questions, it becomes clear whether students understand the legal material. The Socratic Method also enables them to think clearly and concisely on their feet, training them for the public speaking required in legal practice. Rosato defines the method as ‘education by interrogation’.<sup>58</sup> Similarly, Kennedy claims that the Socratic Method is an ‘assault’ on students who experience humiliation when unable to answer a question, often leading to the dehumanisation and mystification of the law.<sup>59</sup> The Socratic Method exaggerates the unequal relationship between teacher and student, as the teacher is seen in a position of obvious power and authority. There has been a significant move away from this teaching style to a watered-down version, which embraces techniques to lessen the anxiety of being called upon; for example, being able to pass on a question.<sup>60</sup> The Socratic Method has been completely rejected and deemed outdated in some law schools. Nevertheless it serves a vital role at other law schools, for example, Victoria University of Wellington Law School and Harvard Law School.

<sup>56</sup> Similar issues are discussed in Duncan Kennedy, ‘Legal Education as Training for Hierarchy’ in David Kairys (ed), *The Politics of Law* (Pantheon Books, 1982).

<sup>57</sup> Morrison Torrey, ‘You Call that Education?’ (2004) 19 *Wisconsin Women’s Law Journal* 43, 43.

<sup>58</sup> Jennifer Rosato, ‘The Socratic Method and Women Law Students: Don’t Feminize’ (1997) 7 *Southern California Review of Law and Women’s Studies* 37, 40.

<sup>59</sup> Duncan Kennedy, ‘How the Law School Fails: A Polemic’ (1970) 1 *Yale Review of Law and Social Action* 71, 73.

<sup>60</sup> Vitiello, above n 4, 957; Torrey, above n 57; see also Orin S Kerr, ‘The Decline of the Socratic Method at Harvard’ (1999) 78 *Nebraska Law Review* 113, 125–6.

New Zealand legal fiction provides valuable insights into the New Zealand version of the Socratic Method. Victoria Law School is the only New Zealand law school that consistently uses this teaching approach.<sup>61</sup> New Zealand's Socratic Method is less abrasive than that seen in American representations which are usually set at the home of Socratic teaching, Harvard Law School.<sup>62</sup> Despite this, there is still a focus on the Kennedy-like depiction of the Socratic Method, an adversarial game in which teachers show that they have the answers and power.<sup>63</sup> There is one comprehensive example in New Zealand legal fiction that portrays the significance of the Socratic Method. Damien Wilkins in his novel *The Miserables* describes it in the following passage:

In the law class at university, a seating plan was instituted in the large lecture hall ... Healey saw how this opening of the sheet which contained the seating plan affected everyone in the room, fixing in their minds the image of themselves answering a question when their name was called ... Healey could see that the friend who sat next to him in class, although he said that he also feared the so-called Socratic Method, was really learning how to imagine himself five or ten years from then, a trick which Healey himself could never master.<sup>64</sup>

The Socratic Method is one way in which students are 'transformed' into lawyers. Wilkins' representation of the Socratic Method portrays the 'sado-socraticism' of legal education<sup>65</sup> but more subtly than the vivid representation of Elle Woods<sup>66</sup> and James Hart's<sup>67</sup> 'first class of their first day of their first year at law school'.<sup>68</sup> Wilkins' deft handling of this idiosyncratic teaching approach effectively portrays the social conditioning and power relations discussed above. The reader is exposed to Healey's detachment and

<sup>61</sup> Amelia Keane, 'The Socratic Method or "How to Put Up Your Hand in Class"' in Ed McGimpsey (ed), *Insider's Guide to Law School 2009* (Victoria University of Wellington Law Students' Society, 2009) 9.

<sup>62</sup> See *The Paper Chase*, above n 1; Osborn, *The Paper Chase*, above n 1; *Legally Blonde*, above n 2; Brown, above n 2.

<sup>63</sup> Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* (AFAR, 1983) 61.

<sup>64</sup> Wilkins, above n 8, 104.

<sup>65</sup> MacNeil, above n 4, 100.

<sup>66</sup> *Legally Blonde*, above n 2; Brown, above n 2.

<sup>67</sup> *The Paper Chase*, above n 1; Osborn, *The Paper Chase*, above n 1.

<sup>68</sup> MacNeil, above n 4, 99; see also *Legally Blonde*, above n 2; Brown, above n 2 — Professor Stromwell begins questioning Elle Woods at her very first lecture at Harvard Law School. Elle is unable to answer the question as she is clearly unprepared. As a result, Stromwell humiliates Elle, asking her to leave the lecture. She also encourages another member of the class, Vivian, to condemn Elle's lack of preparation. In *The Paper Chase*, above n 1, Hart also turns up to his first Harvard Law School lecture unprepared. Professor Kingsfield makes him stand up to answer a question and mocks Hart by telling him to 'fill this room with your intelligence'. The New Zealand version of the Socratic Method is kinder than American representations set at Harvard: Moore, above 7 and Keane, above 61.

alienation in a way that empirical research literature would struggle to replicate.<sup>69</sup>

The relationship between lecturer and student is obviously central to the process of legal education. This relationship is portrayed by New Zealand writers as inherently unequal with a substantial power differential. Legal education is definitely not an example of mutual learning. Representations mirror Kennedy's depiction of the teacher-student relationship as 'master and disciple'<sup>70</sup> and MacNeil's Lacanian interpretation positing the teacher as 'Master'.<sup>71</sup> Kennedy asserts that this type of relationship has the potential to be either 'fruitful and satisfying or degrading or both at once'.<sup>72</sup> Witi Ihimaera's *The Dream Swimmer* portrays the relationship as degrading. Tamatea, a young Maori law student, encounters 'lecturers and professors whose attitudes, questions or statements bordered on racist'.<sup>73</sup> The in-class argument that Tamatea has with his law lecturer, regarding the way the legal system exploits Maori, highlights disturbing dynamics between lecturer and student.

[Tamatea:] 'Sir, it is not correct to consider New Zealand prior to the Pakeha as being uncivilised and needing a legal framework. We, the Maori, had a system of law based on tapu, noa and hierarchical structures'.

The lecturer was patronising. 'I take your point', he answered, 'but English settlers provided a better law for Maori people'.

'But if your laws are better than ours', I asked, 'Why are we worse off? Why are we suffering? Why do we no longer have our land? Where are our rights?'

The lecturer deflected the question with charming urbanity and forgiveness. I threw the force of my anger at him.<sup>74</sup>

The lecturer is patronising and voices without hesitation his ethnocentric views. Despite this power imbalance, Tamatea is able to challenge his lecturer by questioning his point of view. Tamatea's relationship with his lecturer has similarities with the

<sup>69</sup> See also *Scarflies*, above n 48, 0:58:00. A large lecture is presided over by an authoritarian professorial presence, with the lecturer speaking formally to a class about the importance of ratio decidendi. For a discussion of the 'pedagogic stress' involving anxiety and fear which results from this method of teaching, see Edward Rubin, 'Balancing Symposium: Curricular Stress' (2010) 60 *Journal of Legal Education* 110, 114.

<sup>70</sup> Kennedy, 'How the Law School Fails', above n 59, 73.

<sup>71</sup> MacNeil, above n 4, 98.

<sup>72</sup> Kennedy, 'Legal Education as Training for Hierarchy', above n 56, 68.

<sup>73</sup> Witi Ihimaera, *The Dream Swimmer* (Penguin, 1997) 313.

<sup>74</sup> *Ibid* 326.



Hart–Kingsfield relationship in *The Paper Chase*.<sup>75</sup> This futile student defiance against authority merely emphasises the unequal relationship between lecturer and student.

New Zealand writers of fiction portray assessment in law schools as arbitrary, having the effect of instilling self-doubt in students. Kennedy argues that students merely receive a grade on a single examination and ultimately there is no correlation between the grade and ‘how much you worked, how much you liked the subject, how much you understood going into the exam, and what you thought about the class and the teacher’.<sup>76</sup> This inability of students to fully understand how to succeed in law is exemplified by Brett Healey in *The Miserables*. Healey comes to the realisation that when writing legal assignments ‘it seemed to make no difference as to the quality of the prose in which these words were discovered’.<sup>77</sup> Furthermore, when he receives his marked assignment he ‘first felt surprised that he had passed, then disappointed that he hadn’t achieved a better mark’.<sup>78</sup> This frustration with assessment transcends jurisdictions as Kevin Brooks in *The Paper Chase* struggles with law and does not achieve good grades despite his diligence and excellent memory recall. These two examples suggest that many students believe law assessment merely reflects some inherent ability and that the quest to have control over their grades is futile.

New Zealand writers acknowledge how much work law school entails. Law students are usually depicted as slaving away, spending hours on their law readings and preparing for assignments. Zena in *The Waimate Conspiracy*,<sup>79</sup> Caro in *Book Book*,<sup>80</sup> Ted in *Mortmain*,<sup>81</sup> Kohimarama in *He Tangi Aroha*,<sup>82</sup> Cam in *A Red Silk Sea*<sup>83</sup> and the second- and third-year law students in *The Miserables*<sup>84</sup> all comment on how demanding a law degree is.<sup>85</sup> The following passage from

<sup>75</sup> *The Paper Chase*, above n 1, 0:97:00. When Hart is unable to answer a question properly in class, Kingsfield calls him down to the front and says, ‘Go call your mother, and tell her you’ll never be a lawyer’. In reply, Hart screams, ‘You’re a son of a bitch, Kingsfield’. See also representations of American professors; Scottoline, above n 3; Cross, above n 3; *Legally Blonde*, above n 2; Brown, above n 2; *The Pelican Brief*, above n 3; Grisham, *The Pelican Brief*, above n 3; John Grisham, *The Rainmaker* (Doubleday, 1995); *The Socratic Method*, above n 3; Levin, above n 3; *Soul Man*, above n 3; Grisham, *The Summons*, above n 3; *Rounders*, above n 3.

<sup>76</sup> Kennedy, ‘Legal Education as Training for Hierarchy’, above n 56, 63.

<sup>77</sup> Wilkins, above n 8, 110.

<sup>78</sup> *Ibid.*

<sup>79</sup> *The Waimate Conspiracy*, above n 26.

<sup>80</sup> Farrell, *Book Book*, above n 14, 257.

<sup>81</sup> Corbalis, above n 19, 184.

<sup>82</sup> Taylor, above n 27, 125.

<sup>83</sup> Ranstead, above n 42, 322.

<sup>84</sup> Wilkins, above n 8, 106.

<sup>85</sup> In *The Waimate Conspiracy*, above n 26, 0:48:00, Zena states that she ‘worked flippin hard to get through that law school George’. See also Taylor, above n 27, 125: Pitama says of law student Kohimarama ‘You’ve done nothing but work, work, work’.

*Book Book* alludes to the amount of dense work involved in a law degree.

Caro was doing law. The books on her desk were enormous, dense with detail: Adams on Criminal Law. Cheshire and Fifoot ... It should have been interesting: The Carbolite Smokeball Case! Donoghue v. Stevenson! Frazer v. Walker! But in reality, the discussion revolved around tiny points of debate. There was no grand sweep, not around the kitchen table at any rate, no sparkling dialogue, no revelatory climax, just dry resolution and precedent.<sup>86</sup>

In this respect, New Zealand literature reflects the reality of law school. It is hard work and, substantively, it can also be rather dry.<sup>87</sup> Repetition of these stereotypes through fiction, accurate or otherwise, potentially creates a self-fulfilling prophecy; that is, law schools are like they are because that is what the public expects them to be.

Kennedy argues that skills taught at law school do not prepare students for the practical side of becoming a lawyer.<sup>88</sup> Students mistakenly believe that they are coming to law school to be fully equipped to become a successful lawyer. Many students would like the law degree to provide comprehensive practical training. On the other hand, there are those students who prefer not to be taught with the assumption that they will become practising lawyers. These students are often those mentioned earlier who 'fall' into a law degree.

New Zealand fiction rarely touches on practical training as part of the law school curriculum. There are only two specific references to a moot court exercise. Healey's law school friend in *The Miserables* speaks of the 'fearful second and third years of law, in which there were mock trials and endless opportunities to be called upon by name to act as a lawyer'.<sup>89</sup> *Just Jane* by James Duncan depicts a group of female law students who act for the prosecution in a mock trial of an industrial company for polluting a river.<sup>90</sup>

The lack of references to practical training reflects the limited emphasis that is placed on this type of training in a New Zealand law

<sup>86</sup> Farrell, *Book Book*, above n 14, 257.

<sup>87</sup> See also Lay, above n 36, 22–3. Simon, a law student, is consistently spending time on assignments and preparing for law exams and finds the lectures boring and the lecturers incompetent: 'You should hear the one we've got for Jurisprudence. He's an utter fool.'

<sup>88</sup> Kennedy, 'Legal Education as Training for Hierarchy', above n 56, 60. This lack of practical training is also discussed in Kennon Sheldon and Lawrence Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33 *Personality and Social Psychology Bulletin* 883.

<sup>89</sup> Wilkins, above n 8, 106.

<sup>90</sup> Duncan, above n 29, 56.

degree.<sup>91</sup> However, American films tend to exaggerate the extent to which law school practically prepares students to become lawyers. This enables a director to create dramatic effect whilst audiences are (mis)led to believe that law students are capable of handling complex legal matters such as court trials.<sup>92</sup>

The effects of the legal education process on students can lead to a 'hostile, pressured social and educational environment that is destructive to the individual student ... they become competitive, hostile and aggressive'.<sup>93</sup> MacNeil argues that law school not only trains for hierarchy but also for hysteria.<sup>94</sup> This hysteria is captured in *The Miserables* when Healey speaks of students complaining about law tutors, 'a complaint which really had to do with the speed at which their dreams were receding from them, a feeling not dissimilar from being shut out by a foreign language'.<sup>95</sup> Similarly, Ted Thurston in 'No Escape' shows that this 'hysteria' can take the form of jealousy, indicating the lengths law students will go to get ahead of their peers. The following extract demonstrates the jealousy law students can have towards students who are more successful.

<sup>91</sup> See 'Hit and Run', *Street Legal* (Directed by Chris Bailey, Screenworks, 2000) pilot episode, in which Tim O'Connor is a recently graduated law student who is about to start work at Wyeth & Associates. On his first day of work, Tim meets David Silesi who gets him to defend a client on a traffic charge. The judge picks up on Tim's inexperience and lack of ability. David states: 'this isn't law school, this is real life'. This suggests that law school does not prepare students for the practical side of becoming a lawyer.

<sup>92</sup> See, eg, *Legally Blonde*, above n 2; Brown, above n 2: Elle Woods successfully acts for the defence in a murder trial. It is unlikely that a law student would be capable of defending an alleged murderer. Similarly, John Grisham, *The Firm* (Arrow Books, 1991) and *The Firm* (Directed by Sydney Pollack, Paramount Pictures, 1993) unrealistically portray a law graduate, Mitch McDeere, as able to handle complex taxation transaction matters.

<sup>93</sup> Schwartz, above n 4, 92. There has been much scholarship on the severe mental effects a law degree has on students. Legal education can lead to detrimental effects on health, eventually leading to depression. The high workload, extremely high standards students set themselves coupled with self-criticism, the high level of competitiveness, the emphasis placed on good grades, and the lack of social connection leads to a loss of autonomy, self-worth and sense of self. Sheldon and Krieger argue that 'the intense pressures and competitive success norms at most law schools begin a process that reorients students away from positive personal values and towards more superficial rewards and image-based values, leading to a loss of self-esteem, life satisfaction, and well-being': Kennon Sheldon and Lawrence Krieger 'Does Legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-being' (2004) 22 *Behavioural Sciences and the Law* 261, 263. For a discussion of the effects of law school on students' wellbeing generally see this article and also Sheldon and Krieger, 'Understanding the Negative Effects of Legal Education on Law Students', above n 88; Tani and Vines, above n 11, 17–20; Kenneth Rice et al, 'Perfectionism, Stress and Social (Dis)Connection' (2006) 53 *Journal of Counseling Psychology* 524, 524; Martin Seligman, *Authentic Happiness* (Free Press, 2004) 177.

<sup>94</sup> MacNeil, above n 4, 99.

<sup>95</sup> Wilkins, above n 8, 107.

All my hopes and aspirations lay in that scholarship, and when Roderick Temple came out a good 10 per cent better than I the whole world seemed to come crashing about my head. I think it was the thought, too, that Temple would have access to all the things I loved so well.<sup>96</sup>

Years later, Thurston gives false evidence at a military trial against Temple, leading to Temple's execution. The motivation for this was the bitterness the protagonist still felt after Temple was more successful than him at law school. Here, the effects of legal pedagogy are not only confined to the 'destruction of the individual' but also extend to the premeditated destruction of another student. The power of what is effectively a parable exaggerates the 'hysteria' while simultaneously forcing the reader to confront the issue. Similarly, in *Legally Blonde*, Vivian assists in sadistically humiliating Elle Woods in a lecture. Vivian agrees with the lecturer that Elle Woods should leave due to lack of preparation.<sup>97</sup> A more accurate representation (because it is less extreme) can be seen in *The Paper Chase* when Hart's study group breaks up with one reason being the students become worried that helping others will pose a threat to their placing in the class.<sup>98</sup>

In many ways, New Zealand fictional depictions of the process of education reflect the reality of how law is taught in New Zealand. For example, the New Zealand version of the Socratic Method is accurately portrayed through Healey's Victoria Law School experience in *The Miserables*.<sup>99</sup> As is to be expected, there are the exaggerations and simplifications inherent in the process of fiction writing. Some of the examples cited simply illustrate the challenging nature of a professional degree but others indicate that the process of legal education is more than just a challenge to be undertaken.<sup>100</sup> It can have detrimental effects on students, especially those who do not fit the traditional law student mould. As legal educators, we can acknowledge these fictional voices in our quest to create a more inclusive learning experience.

#### IV INSIDERS AND OUTSIDERS AT LAW SCHOOL IN NEW ZEALAND FICTION

When imagining the experiences of law students, New Zealand authors usually place their characters in two categories: the insider and the outsider. As law school is generally portrayed as

<sup>96</sup> Marion Davidson, 'No Escape' in John Kingston (ed), *Pataka: Selected Short Stories by New Zealand Authors* (K System Publishing, 1936) 40.

<sup>97</sup> *Legally Blonde*, above n 2.

<sup>98</sup> *The Paper Chase*, above n 1, 0:79:00.

<sup>99</sup> Wilkins, above n 8.

<sup>100</sup> Moore, above n 7. Moore compares legal and medical education and concludes that medical education is more nurturing.

an elite, inaccessible institution reserved for those with the right backgrounds, the experience of the outsider should be uniformly negative but, as the fictional texts illustrate, things are not so straightforward. A student could be classed as an outsider due to race: Tamatea Mahana in *The Dream Swimmer*,<sup>101</sup> Fern in *Grace is Gone* by Kelly Ana Morey,<sup>102</sup> Kohimarama in *He Tangi Aroha* by Apirana Taylor,<sup>103</sup> Mark ‘Boogie’ Heke in *What Becomes of the Broken Hearted?*<sup>104</sup> and Kingi in *Shortland Street*;<sup>105</sup> economic background: Julien in *Julien Ware* by Guthrie Wilson,<sup>106</sup> Jethro West in *Outrageous Fortune*,<sup>107</sup> Ted Thurston in ‘No Escape’ by Mary Davidson,<sup>108</sup> Cam O’Connell in *A Red Silk Sea* by Gillian Ranstead<sup>109</sup> and Helen Murphy in *Miramar Mornings* by Denis Edwards;<sup>110</sup> or gender: Genevieve Pencarrow in the Pencarrow saga.<sup>111</sup>

The exploration of the experiences of the outsider in law school is a time-honoured tradition in American texts. For example, the ethnic minority outsider is explored in the 1980s film, *Soul Man*,<sup>112</sup> gender is explored through the now iconic character of Elle Woods in *Legally Blonde*,<sup>113</sup> and economic background is explored in various books and films, especially the works of John Grisham — for example, Mitch McDeere in *The Firm*<sup>114</sup> and Rudy Baylor in *The Rainmaker*.<sup>115</sup>

Since the 1970s, there has been a huge increase in the number of students from traditional outsider groups attending New Zealand law schools. Female student numbers increased from approximately 5 per cent in the early 1970s to approximately 60 per cent in the early 1990s.<sup>116</sup> Maori student numbers have also increased. At Waikato Law School, approximately 24 per cent of students are Maori despite Maori constituting approximately 13 per cent of the New Zealand

<sup>101</sup> Ihimaera, above n 73.

<sup>102</sup> Kelly Ana Morey, *Grace is Gone* (Penguin, 2004).

<sup>103</sup> Taylor, above n 27.

<sup>104</sup> Alan Duff, *What Becomes of the Broken Hearted?* (Vintage, 1996). There is only a fleeting reference to Boogie becoming a law student but, given the iconic nature of this novel and its predecessor, Alan Duff, *Once were Warriors* (Tandem Press, 1990), it is worth noting that, to symbolise the fact that Boogie is the most successful of the six Heke children, Duff sends him to law school.

<sup>105</sup> *Shortland Street* (South Pacific Pictures, 2009) [various episodes].

<sup>106</sup> Guthrie Wilson, *Julien Ware* (Robert Hale, 1952).

<sup>107</sup> ‘Think Yourself a Baby’, *Outrageous Fortune*, above n 32.

<sup>108</sup> Davidson, above n 96.

<sup>109</sup> Ranstead, above n 42.

<sup>110</sup> Denis Edwards, *Miramar Mornings* (Penguin, 2005).

<sup>111</sup> Nellie Scanlan, *Winds of Heaven* (Whitcombe & Tombs, 1958) 194.

<sup>112</sup> *Soul Man*, above n 3.

<sup>113</sup> *Legally Blonde*, above n 2; Brown, above n 2.

<sup>114</sup> Grisham, *The Firm*, above n 92; *The Firm*, above n 92.

<sup>115</sup> Grisham, *The Rainmaker*, above n 75.

<sup>116</sup> New Zealand Ministry of Education statistics, 2006, cited in Grant Morris, *Law Alive: The New Zealand Legal System in Context* (Oxford University Press, 2009) 214.

population.<sup>117</sup> Students from lower socio-economic backgrounds have increasingly seen law as a viable option.<sup>118</sup> Despite these inspiring statistics, law is still seen by many as an elitist profession dominated by affluent white men.

Using clearly defined insider and outsider students in legal fiction assists plot structure and thematic development. For example, an obvious outsider can assume the role of underdog and perhaps even triumph against the odds. While this example may seem clichéd, it immediately engages the interest of the reading or viewing audience. Some characters are more obviously insiders or outsiders than others. To some extent, it is a matter of degree. The following discussion addresses ‘insider’ and ‘outsider’ as categories but also distinguishes between students within categories. To the extent that outsiders can transform into, or act as, insiders, students can be insiders and outsiders simultaneously. For example, the elite female students discussed below could be considered insiders due to their affluence while retaining some outsider status due to gender. There is of course fluidity in these categorisations though this is subject to the overarching conclusion in this Part: the process of transformation and/or acting involves sacrifice on the part of the individual student. To the extent that a divide exists between elite and non-elite students, attempting to belong to, and be accepted by, both groups is a difficult and potentially dangerous task.

At this point, it is necessary to address the issue of essentialism. This article juxtaposes insiders and outsiders and argues that authors do create characters that can be described in this way, especially when authors utilise stereotyping. The very fact that there is movement between the two categories, as described above, could be evidence that categorisation is a difficult and, possibly, misleading task. Perhaps some characters belong to both or neither, rather than being travellers between the two. To support the argument that insiders and outsiders are useful categories through which to analyse the way in which fiction represents legal education it could be helpful to call in the aid of critical legal theory. Following from the arguments put forth by feminist legal theory and critical race theory, it is clear that women and ethnic minorities have been treated as outsiders by the law, including legal education. While this experience will not be universal it is very common and provides a basis to argue that a dialectical approach which talks of outsiders and insiders is a useful one in analysing fictional representations of legal education.

<sup>117</sup> University of Waikato Law School, *Maori @ Te Piringa — Faculty of Law* (15 February 2010) <<http://www.waikato.ac.nz/law/maori>>.

<sup>118</sup> Instead of basing admission on high school grades, several law schools now have open entry to the first-year intermediate program, which tends to reduce the importance of the secondary school attended.

The outsider most comprehensively portrayed in New Zealand legal fiction is the Maori student.<sup>119</sup> The reason for this may lie in the motives for Maori students attending law school as outlined in Part II of this article. One of the great themes of New Zealand literature is the struggle of Maori to achieve justice. Authors quite rightly view the legal system as playing a vital role in this quest and law school as the training ground for those who would change the legal system. Without exception, the Maori law students portrayed in New Zealand fiction are studying law as a means to achieve justice for Maori.

Much of the angst experienced by outsiders is due to their treatment by insider students or by the academic teaching staff. It is in relation to those who wield power in law school that those who do not experience alienation. Duncan Kennedy's seminal work on legal education stresses the centrality of hierarchy in indoctrinating law students.<sup>120</sup> This hierarchy is so much more intimidating for outsider students. Suddenly, the attributes that make them outsiders become very evident. As Kennedy argues:

In law school, students have to come to grips with implications of their social class and sex and race in a way that is different from (but not necessarily less important than) the experience of school. ... People change the way they dress and talk; they change their opinions and even their emotions.<sup>121</sup>

Tamatea in *The Dream Swimmer* is a Maori studying law in the 1960s; in other words, a complete outsider. As well as contending with the Socratic Method and workload, Tamatea also faces institutional ethnocentrism:

It took guts to last even one day at university. Those were times when there were very few Maori students there. It was a White world, gate-kept and controlled by Pakeha. ... I felt angry, abused and isolated. Most of my peers had already been streamed away into middle- or lower-class occupations, automatically failed because of the colour of their skin. Those of us who succeeded did so not because we were privileged but because we were driven to do so.<sup>122</sup>

Through fiction, we can better understand the plight of outsiders like Tamatea. In New Zealand fiction, outsiders are given a voice. This is often not the case in the context of the law school hierarchy. Tamatea's voice can be heard clearly in the extract above and it is a voice of frustration and perseverance.

While much empirical research literature fails to provide this personalised narrative voice, there are examples that do. Ihimaera's descriptions of Tamatea's experiences at Victoria Law School are

<sup>119</sup> A useful context for this discussion can be found in Jones, above n 25.

<sup>120</sup> Kennedy, 'Legal Education as Training for Hierarchy', above n 56.

<sup>121</sup> Ibid 66.

<sup>122</sup> Ihimaera, above n 73, 313–4.



mirrored to a large extent in Leah Whiu's 1994 article, 'A Maori Woman's Experience of Feminist Legal Education in Aotearoa' based on the author's real-life experiences at Waikato Law School. Whiu states:

I remember protecting myself while two Maori women lectured about the effects of Pakeha law on Maori women. I remember blocking the white women out, disconnecting from them, fearing the disguised barbs of their conscious and unconscious racism, their colonialism.<sup>123</sup>

The alienation experienced by Whiu highlights the Eurocentric dominance within New Zealand law schools and its ability to degrade outsiders.

In texts set in more recent times, there is something of a transmogrification as outsiders play at being insiders. While Fern is going to be a Maori land rights activist manipulating the oppressor's law to help the oppressed, she is not ostracised in the way Tamatea is: 'the laptop was on the courier to beloved grandchild Fern in Wellington, who at that time was breezing her way through her intermediate year of law at Victoria University — scholarshiped, thanks to her mother, to the eyeballs.'<sup>124</sup> Academically able and financially secure, Fern's outsider status is mitigated by her own ability and her access to systems of support.

There is even hope for the outsider, if he or she commits totally to the institution of law and its evitable hierarchy. Cam has accepted the narrow focus of legal education and, unlike her friend Laurie, accepts the sacrifices that must be made in the pursuit of a legal career:

'You're like a train on its track, Cam, you don't look left, you don't look right, you just keep going straight ahead. You miss so much that way.' But Cam liked studying law. She had struggled at first, intimidated by the other students who had been at better schools and were better prepared. But the years she had spent watching and waiting and keeping one step ahead were another kind of preparation: she could move quickly, constructing arguments and tying them up while the others were still cautiously keeping to familiar paths.<sup>125</sup>

Julien Ware also presents us with a paradox. He begins his *bildungsroman* journey as the ultimate outsider: the son of a poor farm worker in the remote central South Island. A private school education transforms Julien from an outsider into an insider and, by the time he attends Victoria Law School, he is (outwardly at least) indistinguishable from the other elite students:

The Catley Award for the outstanding law graduate came to him in his final year and it was earned beyond dispute. These were necessary

<sup>123</sup> Whiu, above n 7, 164.

<sup>124</sup> Morey, above n 102, 221.

<sup>125</sup> Ranstead, above n 42, 322.

achievements. But he gained also a reputation that made him a power in the small community of which he was a part.<sup>126</sup>

If not poor, a member of an ethnic minority and/or female, a New Zealand law student is most likely rich or at least middle-class, white and male and therefore an insider. Fictional examples of insiders are not as plentiful as one might imagine but that is possibly because an outsider's struggle makes for better fiction. Elite law students include Ted Castle in *Mortmain* by Judy Corbalis, Simon in *The Fools on the Hill* by Graeme Lay, Michael Pencarrow in *Kelly Pencarrow* by Nellie Scanlan, the narrator in 'The Voyagers' by Maurice Shadbolt, and Hugh in *Outrageous Fortune*.<sup>127</sup> Interestingly, there are also enough examples to suggest an elite class of female law students. This should not be too surprising given the current preponderance of females at law school and the fact that the examples are from recent texts. Megan in 'Malone' by Forbes Williams, Amy Smart in *Go Girls*, and Melanie Wyeth in *Street Legal* are female law students with all the advantages of a Ted Castle except automatic access to the 'old boys' network'. However, these elite females may not be as secure as they appear in the law school hierarchy. Carmel Rogers' description of Victoria Law School in the 1990s provides a warning:

There are Dolly Parton women law students at Victoria. These are the Country Road, Beders and L'Esprit women who sing themselves into the system, confident that playing the game will win the match. Well sisters, unless you fancy being a well-manicured mannequin, you will not win the match. The system that you subscribe to will always insist on silencing you. It will enjoy seeing you, it will use you, then it will abuse you.<sup>128</sup>

To be a law school insider requires the right demographic combination, the right family background, the right accent and the right attitude as seen in various American examples. In *The Paper Chase*, even the ambitious James Hart struggles for insider status when his Mid-West credentials are compared with the East Coast elite such as Thomas Anderson and Franklin Ford III. In *Legally Blonde*, Elle Woods may be the daughter of a Californian millionaire but her choice of pre-law subjects, extroverted dress sense and Malibu image mark her as an outsider whereas Warner Huntington III and his fiancée, Vivian, are updated versions of Anderson and Ford.

<sup>126</sup> Wilson, *Julien Ware*, above n 106, 110.

<sup>127</sup> See Charlotte Grimshaw, *Guilt* (Abacus, 2000) 34: Marcus comes from a privileged background and would have been an insider if he had gone to law school as his mother wanted. He rejects his 'advantages' because 'he didn't want to be a middle-class shit and to be claustrophobically pampered and spoiled'. This suggests law students are negatively perceived as elitist.

<sup>128</sup> Rogers, above n 7, 177.

More than any other factor it is the sense of *entitlement* that makes an insider. There is never any question that Edward-Wilson ‘Ted’ Castle of Castleton will follow his father into the family firm.<sup>129</sup> Indeed, after studying law at Cambridge, he returns to New Zealand and quickly establishes a successful legal career. Ted has the perfect background for an insider. Even his home town is named after him. The ‘old boys’ network’ seems alive and well in texts such as Denis Edwards’ *Miramar Mornings*, as the partners focus on ‘harvesting the best young men from King’s College and Auckland Grammar as they emerged from Auckland University, feeding them into the hoppers that dropped them on the short conveyer ride from “entry level” to “highly paid partner”.’<sup>130</sup> Edwards offers this metaphor as a negative critique challenging the legal educator (as reader) to respond.

Amy Smart, from the recent Television New Zealand serial, *Go Girls*, is described in the promotional material as ‘a princess, who grew up beautiful, smart and rich, and with every gift bestowed upon her’.<sup>131</sup> Amy ultimately drops out of law school just before completing her degree but because it was ‘boring and unrewarding’ rather than because she felt alienated in any way.<sup>132</sup> Amy is what New Zealanders might expect a law student to be: intelligent, glamorous and bankrolled by a wealthy father.<sup>133</sup>

In *The Miserables* Brett Healey’s experience as a first-year law student at Victoria University of Wellington leads him to claim that ‘The lawyers in the room were those who could fix themselves in the image of their fathers, who were also lawyers’.<sup>134</sup> A family legal background plays a central role in creating insiders. Ted followed his father into law, while Michael has followed his grandfather, Megan has followed her mother and Melanie has followed both parents. In the pilot episode of *Street Legal*, Melanie Wyeth can rely on her legal lineage to extricate her from a tricky situation after she is arrested while protesting.<sup>135</sup> With a judge for a mother and a senior partner for a father, Melanie will have every legal door opened to her. In ‘The Voyagers’, the central character is studying at Auckland Law School.

<sup>129</sup> Corbalis, above n 19, 224. Recent studies show that many parents of law students have a graduate education, especially fathers: see Tani and Vines, above n 11, 6.

<sup>130</sup> Edwards, above n 110, 35.

<sup>131</sup> TVNZ, *Anna Hutchinson is Amy* (2009) <<http://tvnz.co.nz/go-girls/anna-hutchison-amy-2446761>>.

<sup>132</sup> Ibid.

<sup>133</sup> Interestingly, Amy, the Auckland insider, bears some resemblance to Elle Woods, the Harvard outsider. Direct comparisons between New Zealand and the United States can be misleading, however. The East Coast preppie stereotypes who reject the flamboyant Elle have no New Zealand equivalent. A conventional view of an elite New Zealand female student would not place such emphasis on regional variations, perhaps due to New Zealand’s smaller and more homogenous elite.

<sup>134</sup> Wilkins, above n 8, 105.

<sup>135</sup> ‘Hit and Run’, *Street Legal*, above n 91.

When he is reunited with an old school friend, Mike, he provides a description which outs him as an insider:

I was the only son of one of the town's two lawyers, Mike the fourth son of a railway engine-driver. Mike's family was more or less itinerant, mine long established in the district. Socially our fathers were a mile apart; politically too. My father was austere right-wing, president of the local National Party; Mike's was an old Labour party militant.<sup>136</sup>

The concept of the insider can be paradoxical. There is an unexpected fluidity in some texts that undermines the easy division of students into insiders and outsiders. This complexity is neatly portrayed in New Zealand fiction in a way that is lacking in the corresponding research literature, which tends to portray clear-cut barriers.<sup>137</sup> Two characters in the novels of Guthrie Wilson highlight this paradox. Firstly, working-class boy Julien Ware appears to be the archetypal law school insider due to the 'polish' he has received at his exclusive Christchurch boarding school.<sup>138</sup> Victoria law student Paul Mundy exudes entitlement in *Sweet White Wine*. His friend, the outsider Simon, allows himself to be lectured by Paul on which university clubs to join, the importance of knowing the right people and the correct way to wear a tiepin. Simon's boarding house pales into insignificance in comparison with Paul's (untruthful) description of his lodgings.

By suggestion and by implication rather than by description I was led to understand that it was very large, aggressively opulent, with splendid grounds and an unrivalled view. But I didn't see it until much later. I will say this: Paul Mundy looked as though he had such a home behind him. He looked it more than any other man who attended lectures at Victoria. ... That year he was elected President of the Students' Executive. He was the youngest student ever to reach that position, I believe. He adorned the office. Perhaps his appearance grew more commanding, his speech more deliberate. No one complained that he had been made conceited by his new dignities. He seemed born to lead, out of the ruck of common men.<sup>139</sup>

It turns out that Paul's privileged background is greatly exaggerated but as he so clearly projects entitlement it hardly seems to matter.

Law students as an amorphous group can appear as insiders to other students. While there are insiders and outsiders within the law school, within the wider tertiary community law students are often perceived to be insiders relegating those studying less 'illustrious' subjects to the role of outsider. Fiction can challenge legal educators and law students to step outside the insular world of law school

<sup>136</sup> Shadbolt, above n 18, 164.

<sup>137</sup> See Whiu, above n 7; Rogers, above n 7.

<sup>138</sup> Wilson, *Julien Ware*, above n 106, 76.

<sup>139</sup> Guthrie Wilson, *Sweet White Wine* (Robert Hale, 1956) 54, 59.

and see themselves in the way that others might. In the short story ‘Opportunity’, by Charlotte Grimshaw, Lisa, a tourism student, flats with a law student, Sean. When Sean invites his law school friends around to the flat, Lisa is immediately cast as an outsider:

I used to stay in my room when Sean’s friends came around. Sometimes I came out and sat with the group, but I couldn’t really join in. They talked about law and legal cases and about politics, and I didn’t know much about that stuff. In my family we talked about who was sick and who was well, who’d lost money, who had big bills to pay, who’d bought a new car. . . . Anyway, I felt uncomfortable with the law students, and often I’d go back into my room and watch TV.<sup>140</sup>

The paradoxes highlighted in this Part do not detract from the clear belief found in New Zealand fiction that law school is an elite institution created for, and perpetuated by, insiders. While a few outsiders may be able to navigate their way through law school successfully, that success will ultimately depend on their success in transforming themselves into insiders. There are outsiders and insiders in New Zealand legal education and both the research literature and fictional representations attest to this fact. Fact provides the data while fiction can provide the voice. Fact and fiction complement each other and when seen together clearly highlight the need for a more inclusive and liberating educational approach.

## V OUTCOMES FOR LAW STUDENTS IN NEW ZEALAND FICTION

Law students decide to enter law school for a reason. Law teachers attempt to transform these students into lawyers. Some will thrive while others will struggle. But what of the end result? What are the outcomes for the law students imagined by New Zealand’s writers of fiction? The answers to these questions are accessible only in those texts which detail the post-law school life of the protagonist.

The picture is a mixed, even mixed-up, one. Of the law school outsiders, Tamatea establishes a successful career working as a lawyer for the Ministry of Foreign Affairs;<sup>141</sup> Julien, the poor scholarship boy from the elite private school, becomes a wealthy and high-profile barrister;<sup>142</sup> while Helen’s rise up the legal ranks is cut short by a combination of male chauvinism and her rough, working-class past catching up with her.<sup>143</sup> Of the insiders, Ted, Michael and the narrator in ‘The Voyagers’ fulfil their destinies by successfully taking over the family firm, while the careers of Auckland rich girls,

<sup>140</sup> Charlotte Grimshaw ‘Opportunity’ in Charlotte Grimshaw, *Opportunity* (Random House, 2007) 139–40.

<sup>141</sup> Ihimaera, above n 73.

<sup>142</sup> Wilson, *Julien Ware*, above n 106.

<sup>143</sup> Edwards, above n 110.

Amy and Melanie, end prematurely; in Amy's case, before she even finishes law school.<sup>144</sup> Despite this mixed picture, the three archetypal insiders, the affluent white males, all succeed in the law.

Despite the anger and alienation experienced by Tamatea at Victoria Law School, his subsequent career seems to progress relatively smoothly:

Over the next four years I first worked in a private law firm, then joined the legal division of the Ministry of Foreign Affairs...<sup>145</sup>

During those eight years, although Regan and I put down roots in Wellington, I became more and more involved in my international career as a lawyer for the World Bank in Washington.<sup>146</sup>

Kohimarama also finds her outsider status little impediment in the legal job market:

That morning she'd received a letter from Justin and Swain, a law firm in Auckland. The letter was in reply to one which Kohimarama had sent them, in which she'd asked whether or not there was a position in their firm for her. She'd included her curriculum vitae and her exam results. They replied that they probably had a position for her and they should meet for an interview on the eighteenth of February.<sup>147</sup>

While Tamatea and Kohimarama may be 'playing' at insiders in that they remain committed to an outsider cause, their success in the legal profession is partly due to the way in which they can operate successfully as insiders — or put more simply, the success of their transformations effected by legal education.

Other outsiders experience a more difficult transition. Cam leaves law school to work as a lawyer in Melbourne, 'earning good money' before, like Helen, her outsider past undermines her insider success.<sup>148</sup> 'White trash' Jethro West scrapes through law school and obtains a job only after falsely claiming he is Maori.<sup>149</sup> The West family's criminal past and present eventually undermine Jethro's legal career as he becomes as crooked as the crooks he represents.

As the title of this article suggests, these imaginings are just that, fictional possibilities. The authors discussed in this article universally agree on the elitist atmosphere of law school and also the opportunities it can provide. If a character can survive the rigours of the institution, they will often thrive in the legal profession, whether

<sup>144</sup> TVNZ, above n 131.

<sup>145</sup> Ihimaera, above n 73, 330.

<sup>146</sup> Ibid 383.

<sup>147</sup> Taylor, above n 27, 205.

<sup>148</sup> Ranstead, above n 42, 82.

<sup>149</sup> 'Slings and Arrows', *Outrageous Fortune* (Directed by Vanessa Alexander, South Pacific Pictures, 2005) season 1 episode 1, 0:30:00.

insider or outsider. The key is being able to survive the institution. As Healey explains in *The Miserables*:

The friend was now a lawyer, a profession whose training depended upon the forming in its aspirants' minds of the image of themselves in the posture of 'the lawyer'. Once this image was secure, the lawyer was admitted to the bar.<sup>150</sup>

In comparison to fiction, a graduate destination survey is destined to fail in capturing this contextualised complexity.

While law school caters for the already privileged, it can also transform outsiders who attend it into insiders. This is perhaps why smart young Catholics,<sup>151</sup> idealistic young Maori,<sup>152</sup> ambitious young women<sup>153</sup> and disciplined working-class kids<sup>154</sup> desire, or are encouraged, to enrol. This raises the question addressed by Kennedy. If an outsider is to become an insider, what becomes of the 'self' of the outsider? It is quite possible that any transformation could be co-opted by the power elite for its own purposes. In *Miramar Mornings*, in a scene set in the early 1970s, the male partners cynically use tokenism to increase the profitability of their firm:

Her [Helen's] picture was booked for a new brochure, replacing the expensive one that had arrived from the printer just last week. The firm went out and found a Maori man doing a law degree in Wellington and hired him. He was insurance in case this Treaty of Waitangi fuss turned sour. Helen was going into the office next to his, both clearly visible from the reception area. First impressions count! The partners had heard about a Samoan finishing a law degree in Hawaii. His parents were in Auckland and he wanted to join them. As soon as they'd seen his CV they'd hired him too.<sup>155</sup>

In this way, conformity to law school expectations can compromise the difference that defines an outsider.<sup>156</sup>

<sup>150</sup> Wilkins, above n 8, 101.

<sup>151</sup> Edwards, above n 110. In *Miramar Mornings*, Catholic lawyer Corbett Wilson is a part-time lecturer at Victoria Law School, 'where he quietly promoted eager young Catholic students and laid subtle and vicious traps for the sons of prominent Freemasons': at 73.

<sup>152</sup> Ihimaera, above n 73.

<sup>153</sup> Fiona Farrell, *Six Clever Girls Who Became Famous Women* (Penguin, 1996).

<sup>154</sup> Wilson, *Julien Ware*, above n 106.

<sup>155</sup> Edwards, above n 110, 34.

<sup>156</sup> According to Kennedy, 'Legal Education as Training for Hierarchy', above n 56, 69–70:

It is easy enough to see this situation of enforced cultural uniformity as oppressive, but somewhat more difficult to see it as training, especially if you are aware of it and hate it. But it is training nonetheless. You will pick up mannerisms, ways of speaking, gestures, that would be 'neutral' if they were not emblematic of membership in the universe of the bar. You will come to expect that as a lawyer you will live in a world in which essential parts of you are not represented, or are misrepresented, and in which things you don't like will be accepted to the point that it doesn't occur to people that they are even controversial.



## VI CONCLUSION

When New Zealand authors of fiction imagine legal education, these imaginings are often accurate. Many of the key issues facing New Zealand legal educators can be found in the fictional texts that explore this subject. While it would be wonderful to see even more attention paid by authors to the creation of fictional law students and law schools (as in the United States), there are enough New Zealand examples to spark a discussion which incorporates both law and literature scholarship and legal education research. The various texts highlight the many reasons for attending law school, though not in a nuanced enough way to reflect the overlapping motivations of real-life New Zealand law students. For students in the fictional texts who do have a clear idea of why they are studying law, a law degree, for all its academic merit, is primarily a very challenging means to a very financially and professionally rewarding end.

The challenges of law school are accurately highlighted in several of the texts. Wilkins' treatment of the Socratic Method provides an excellent example of the alienation that can result from traditional teaching methods. Through fiction, Wilkins forces readers to confront the uncomfortable reality that many law students are marginalised by legal pedagogy. As Duncan Kennedy has tirelessly argued for several decades, the process of legal education is one deeply embedded in the hierarchal and highly competitive nature of the wider legal profession. Most of the fictional law students mentioned in this article struggle for a place in this hierarchy with differing levels of success.

This success comes much easier for those who could be classed as insiders. Race, gender and wealth are the key determinants of this elite status. Fictional characters that possess all of these attributes live a charmed life both in law school and later in legal practice. For those without these advantages, law school is a much more fearsome proposition. Whether it is racism, sexism or a generalised and alienating elitism, outsider students must rebut the presumption that they are not eligible for Kennedy's 'training for hierarchy', let alone able to cope with it. One of the most interesting observations that can be made after analysis of the fictional texts is that this seemingly dismal picture actually includes a number of hopeful exceptions. The outsider who can adapt to the rigid and demanding requirements of legal education can succeed and go on to take their place in the profession, though with no guarantee of a successful long-term career. This fluidity is more marked in recent texts, reflecting an increasingly diverse student body and progressive profession. These observations are particularly useful for legal educators as they provide a compelling argument for a more inclusive educational experience. Analysing the trials and tribulations of the characters discussed in

this article provides an empathetic experience that complements traditional pedagogical analysis.

Transformations of outsiders to insiders, however, raises the unnerving question of what is being lost in the acculturation process. Academic articles about New Zealand legal education, combined with Kennedy's thesis, suggest that outsider students are compromising integral parts of their identities in order to survive and perhaps even thrive in law school. Perhaps, when New Zealand authors of fiction begin writing about law schools that adapt to suit the diversity of the student body rather than writing only about students adapting to suit the narrow perspectives of law schools, we may be confident that in these reflections the very real problems raised by this article are finally being addressed.