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# LEADING CHANGE IN LEGAL EDUCATION: INTERESTING IDEAS FOR INTERESTING TIMES

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PENELOPE WATSON\*

Come gather 'round people  
Wherever you roam  
And admit that the waters  
Around you have grown  
And accept it that soon  
You'll be drenched to the bone  
If your time to you  
Is worth savin'  
Then you better start swimmin'  
Or you'll sink like a stone  
For the times they are a-changin'.<sup>1</sup>

## I INTRODUCTION: THE TIMES THEY ARE A-CHANGIN'

There is a Chinese curse which says 'May he live in interesting times'. Like it or not we live in interesting times. They are times of danger and uncertainty; but they are also more open to the creative energy of men than any other time in history.<sup>2</sup>

In these words Robert Kennedy summed up the central thesis of this article: that legal education is at a crossroads, facing uncertainty and pressures for change on multiple fronts, and we

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<sup>1</sup> Bob Dylan, 'The Times They Are A'Changin' (1963).

<sup>2</sup> Senator Robert F Kennedy, Day of Affirmation speech to National Union of South African Students, University of Cape Town, South Africa, 6 June 1966 at <<http://www.jfklibrary.org/Research/Ready-Reference/RFK-Speeches/Day-of-Affirmation-Address-news-release-text-version.aspx>>.

have a choice. We can either see this as a ‘curse’ or as a unique opportunity to actively embrace change, rethinking our fundamental premises and questioning received wisdom and mental models<sup>3</sup> or conceptualisations about ‘the way we do things round here’, to harness our ‘creative energy’. The great outpouring of creative energy that occurred during the heady days in Australia of free tertiary education and university expansion throughout the 1970s and 1980s was characterised by a bold and radical rethinking of teaching styles, delivery modes, curricula,<sup>4</sup> the nature and roles of law academics and students, law school governance, and virtually every aspect of legal education, in the quest for a new ‘not Sydney/not Melbourne’ (that is, non-traditional) model of legal education. Law in context, small-group teaching, the Socratic method, student-centred learning, a focus on theoretical, critical, humanistic and social justice aspects of legal knowledge, interdisciplinarity, distance delivery, and five-year combined degrees, are all part of the exciting legacy of that era.<sup>5</sup>

Today’s law schools are very different places, with a different set of challenges, including operating in a far more regulated environment, but with the same opportunities for creativity. This article proposes a reconceptualisation of some key ideas which may assist decision makers and change agents (broadly understood) to work towards far-reaching and sustainable longer-term change, extending our mental models of organisations, leadership, change agents, and curriculum. Opportunities for, and constraints on, innovation and change depend on a combination of objective conditions (physical, material) and subjective conditions (expectations, beliefs, attitudes),<sup>6</sup> and this paper chiefly concerns the latter. Changing our mental models will require a willingness to accept all the ‘messiness’ entailed, embrace some ‘interesting ideas’ for these interesting times, and embark upon:

<sup>3</sup> Term coined by Kenneth J W Craik in *The Nature of Explanation* (Cambridge University Press, 1943). See also Peter M Senge, *The Fifth Discipline: The Art and Practice of the Learning Organisation* (Random House, revised ed 2006) 163–190; Dedre Gentner and Albert L Stevens (eds), *Mental Models* (Lawrence Erlbaum Associates, 1983).

<sup>4</sup> For example, at Macquarie University in the 1970s law subjects were designed around interests rather than causes of action, and had names such as Personal Injury (a combination of Crime and Tort), Standards of Legal Responsibility (a different combination of Tort and Crime), The Notion of Property, and Remedial Law. The complete dearth of commercially available texts suited for such an approach meant staff prepared all their own materials. For an inspiring trip down the memory lane of legal education, see Bruce Kercher, speech given at the 40<sup>th</sup> anniversary of the Macquarie Law School, Macquarie University, 15/11/12 (unpublished).

<sup>5</sup> For a discussion of changes to legal education in the two decades since the 1980s, see Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2011).

<sup>6</sup> Stephen Kemmis and Robin McTaggart (eds), *The Action Research Planner* (Deakin University Press, 3<sup>rd</sup> ed, 1988).

a journey of unknown destination, where problems are our friends, where seeking assistance is a sign of strength, where simultaneous top-down, bottom-up initiatives merge, where collegiality and individualism co-exist in productive tension ... It is a world where we will need generative concepts and capacities. What will be needed is the individual as inquirer and learner, mastery and know-how as prime strategies, the leader who expresses but also extends what is valued enabling others to do the same, team work and shared purpose which accepts both individualism and collectivism as essential to organizational learning, and the organization which is dynamically connected to its environment ...<sup>7</sup>

This is by no means to decry the extremely valuable work of the many 'Heroes of the Revolution', those 'dedicated legal academics in Australia who have put in an enormous effort to promote excellence and innovation in teaching and learning, despite laboring without adequate resources, recognition or reward, and sometimes in largely unsympathetic and unsupportive environments.'<sup>8</sup> In so many respects, we have already come a long way. For institutions at the forefront,

professional and scholarly approaches to university teaching are now well entrenched ... and the goal of Boyer's seminal work, *Scholarship Reconsidered: The Priorities of the Professoriate*,<sup>9</sup> has largely been achieved; clear ground has been given in the unhelpful dichotomous debate of 'teaching versus research' and broader acceptance has been accorded to a more efficacious model of academic work that integrates the four overlapping scholarship aspects ... the scholarships of discovery, application, integration and teaching (and learning).<sup>10</sup>

Law schools generally appear to be engaging with curriculum redesign and renewal, not least because of externally imposed pressures in the form of Standards,<sup>11</sup> Australian Qualifications Framework (AQF)<sup>12</sup> requirements, Threshold Learning Outcomes

<sup>7</sup> Michael Fullan, *Change Forces: Probing the Depths of Educational Reform* (Falmer Press, 1993) viii ('*Change Forces*'). See also Michael Fullan and Andy Hargreaves, *What's Worth Fighting for in your School?* (Teachers' College Press, 1991) and Michael Fullan and M Miles, 'Getting Reform Right: What Works and What Doesn't' (1992) 73(10) *Phi Delta Kappan* 744.

<sup>8</sup> David Weisbrot, Foreword to Sally Kift, Jill Cowley, Michelle Sanson, Penelope Watson (eds), *Excellence and Innovation in Legal Education* (LexisNexis, 2011) x ('*Kift, Excellence and Innovation*').

<sup>9</sup> Ernest L Boyer, *Scholarship Reconsidered: The Priorities of the Professoriate* (Carnegie Foundation for the Advancement of Teaching, 1990).

<sup>10</sup> Author Preface, Sally Kift, *Excellence and Innovation*, above n 8, xxxvi; the four scholarships referred to are taken from Boyer, above n 9.

<sup>11</sup> Council of Australian Law Deans (CALD), *The CALD Standards for Australian Law Schools (2009)* <<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>>.

<sup>12</sup> Australian Qualifications Framework Council, *Australian Qualifications Framework* (1<sup>st</sup> ed, 2011) (27/11/2012) <<http://www.aqf.edu.au/>>.

(TLOs),<sup>13</sup> and accreditation. These are discussed further below. New versions of the law degree, most notably the Juris Doctor (JD), have emerged; some are questioning whether it is time to revisit the Priestley 11 rules<sup>14</sup> that prescribe minimum knowledge content; others are advocating more compressed and pared down law degrees, and still others are working to improve access and equity and promote social inclusion. Most of the above are important reforms, and the journey is ongoing.

The aspirational nature of what is proposed here is frankly acknowledged in light of the constraints we face in higher education today. These include: increased reliance on student fees and reduced income from other sources; ever-increasing student numbers; declining staff–student ratios and constant pressures to reduce face-to-face teaching hours; increased demand for online delivery with attendant technological and professional development requirements; reliance on a more casualised workforce; and the relentless pressure towards a consumerist paradigm of higher education with its focus on instrumental and commercial forms of legal training. Add to this an unprecedented level of regulation in which teaching and learning performance indicators and funding-based performance models are the order of the day.

These are ‘dangers’, certainly, but they are not reasons for inaction or timidity. In his ‘interesting times’ speech, quoted above, Robert Kennedy identified four ‘dangers’ impeding bold change: (1) the danger of futility (the belief there is nothing one man or one woman can do); (2) the danger of expediency (allowing hopes and beliefs to bend before immediate necessities); (3) the danger of timidity (unwillingness to brave the disapproval of one’s fellows, the censure of colleagues); and (4) the danger of comfort (the temptation to follow the easy and familiar path of personal ambition and financial success).<sup>15</sup> ‘Dangers’ are only subjective conditions or mental models that can be changed with sufficient will.

The remainder of this part considers competing notions of curriculum, and briefly alludes to the multiplicity of work by other authors (those ‘Heroes of the Revolution’) on various aspects of curriculum and legal education reform. Part II outlines the background and context for the current change pressures, moving on in Part III

<sup>13</sup> S Kift, M Israel and R Field, *Bachelor of Laws Learning and Teaching Academic Standards Statement* (ALTC Learning and Teaching Academics Standards Project, 2010) <[http://www.altc.edu.au/system/files/altc\\_standards.LAW\\_110211\\_rv2.pdf](http://www.altc.edu.au/system/files/altc_standards.LAW_110211_rv2.pdf)>.

<sup>14</sup> Legal Practitioners Admission Rules 1994 (NSW) sch 5. Subjects required for admission to legal practice and for law school accreditation are: Criminal law; Tort law; Contract law; Land and property law; Equity and trust law; Legal ethics; Administrative law; Constitutional law; Civil procedure; Evidence; Company law.

<sup>15</sup> Kennedy, above n 2, ‘dangers’ condensed and summarised from various sections of the speech.

to suggest some ‘interesting ideas’ for driving change at both the cultural and ‘broad curriculum’ levels. The aim is to create pathways towards a transformative vision of what law schools could aspire to: becoming institutions that deliver excellence in legal education within a whole-of-School culture of intellectual excitement, engagement, collaborative enquiry, and shared responsibility and leadership.

What is proposed is a twin-pronged approach: (i) reconceptualising law schools as ‘learning organisations’, including learning to constantly scrutinise and interrogate our mental models;<sup>16</sup> and (ii) adapting conventional notions of leadership to incorporate distributed leadership, marrying this with ideas from the literature on change management relating to leading school reform.<sup>17</sup> The second plank envisages a process by which a law school can be reconceptualised and the knowledge activities of everyone in the community of that law school can be recast as shared leadership activities in a common forum that focuses on capabilities and responsibilities with multiple intersecting roles.

Part IV addresses the sustainability of change, drawing on principles from environmental law to suggest how innovation in legal education can be embedded and maintained over time in an organic and dynamic process of renewal, consistent with the vision of a flexible learning organisation able to continually identify and respond to novel demands. Part V demonstrates the possibilities inherent in adopting a whole-of-school shared model of leadership, and the capacity of students to act as leaders and change agents. It briefly describes a student–staff collaboration to design and implement a structured peer tutoring and informal mentoring program — called LAW-PAL<sup>18</sup> at Macquarie University — as an example of a student-initiated program that extends the broad curriculum and taught curriculum.

### *A The Concept of Curriculum: ‘Broad’ or ‘Taught’?*

Good curriculum work must be guided by a clear vision, whether curriculum is understood in its broadest sense as a whole-of-institution transformative approach, meaning the ‘academic and

<sup>16</sup> Senge, above n 3, 163–190.

<sup>17</sup> See Fullan, *Change Forces*, above n 7, and many other works by the same author, including: Michael Fullan, *Leading in a Culture of Change* (Jossey-Bass, 2001, 2004); Michael Fullan, *The Six Secrets of Change* (Jossey-Bass, 2008); Michael Fullan, *The Challenge of Change: Start School Improvement Now* (Sage Publications, 2<sup>nd</sup> ed, 2009); Michael Fullan and Andy Hargreaves (eds), *Change Wars* (Solution-Tree, 2009); Michael Fullan and Geoff Scott, *Turnaround Leadership for Higher Education* (Jossey-Bass, 2009).

<sup>18</sup> Law Peer Assisted Learning (‘LAW-PAL’).

social organizing device’, and the ‘glue that holds knowledge and the broader student experience together’,<sup>19</sup> or in its narrower, more usual sense of the formal taught program of study. For convenience, the terms ‘broad curriculum’ and ‘taught curriculum’ are used to differentiate between these. A lot of very valuable work has already been undertaken developing guiding principles and strategies for curriculum design<sup>20</sup> at both levels, especially involving the critical transition points of first year<sup>21</sup> (school to university) and final year<sup>22</sup>

<sup>19</sup> Sally Kift, Karen Nelson and John Clarke, ‘Transition pedagogy: A third generation approach to FYE — A case study of policy and practice for the higher education sector’ (2010) 1(1) *International Journal of the First Year in Higher Education*, 1, 4.

<sup>20</sup> See, eg, Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18 *Legal Education Review* 1; Sally Kift ‘Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Case Study’ (Paper presented at the Association for Active Educational Researchers Conference, Brisbane, December 2002); Sally Kift, ‘Integrating the Knowing, the Doing and the Practice for Radical Curriculum Renewal’ (Paper presented at the International Conference on the Future of Legal Education, Georgia State University College of Law, Atlanta, Georgia, 20–23 February 2008); Sally Kift, ‘Curriculum Design Challenges for 21st Century Legal Education’ (Paper presented at (Dis)integration — Designs on Law Curriculum: Learning in Law Annual Conference, University of Warwick, Coventry, 3–4 January 2008).

<sup>21</sup> See, eg, Karen J Nelson and Sally Kift, ‘Beyond curriculum reform: embedding the transition experience’ in ABrew and CAsmar (eds), *Proceedings, HERDSA 2005* 28, 225 (University of Sydney: 2005) <<http://eprints.qut.edu.au/archive/00003944>>; Sally Kift, ‘A Transition Pedagogy: The First Year Experience Curriculum Design Symposium’ *HERDSA News*, 31(1), 1–4; Sally Kift ‘The First Year Experience in Higher Education – a Conference. Queensland Government’ (2006) *Education Views*, 15(8), April, 7; S Kift and K Moody, ‘Harnessing Assessment and Feedback in the First Year to Support Learning Success, Engagement and Retention’ in ATN Assessment Conference 2009, 19–20 November (RMIT, Melbourne); S Kift and R Field, ‘Intentional First Year Curriculum Design as a Means of Facilitating Student Engagement: Some Exemplars’ (Paper presented at 12th Pacific Rim First Year in Higher Education (FYHE) Conference, 29 June–2 July 2009, Townsville); S Kift, ‘The next, great, first year challenge: Sustaining, coordinating and embedding coherent institution-wide approaches to enact the FYE as “everybody’s business”’ (Keynote presentation, 11th Pacific Rim First Year in Higher Education Conference, 30 June–2 July, Hobart); K Nelson, S Kift and J Clarke, ‘Expectations and realities for first year students at an Australian university’ (Paper presented at 11th Pacific Rim First Year in Higher Education Conference, 30 June–2 July 2008, Hobart); Karen Nelson, Sally M Kift and John A Clarke ‘A transition pedagogy for student engagement and first-year learning, success and retention’ in Ian Solomonides, Anna Reid and Peter Petocz (eds) *Engaging with Learning in Higher Education* (Libri, 2012).

<sup>22</sup> Particularly, the ‘Curriculum Renewal in Legal Education’ project, an ALTC funded project which seeks to renew the final year curriculum of legal education by articulating a set of curriculum design principles and designing a transferable model for an effective final year program ( a ‘capstone unit’). See also Susan Armstrong and Judith McNamara, ‘Transition Pedagogy in First and Final Year Law Programs’, in Kift, *Excellence and Innovation*, above n 8, 207.



(university to work). Other useful resources deal with whole-of-curriculum design,<sup>23</sup> graduate capabilities,<sup>24</sup> including inculcating critical thinking skills,<sup>25</sup> internationalising<sup>26</sup> and indigenising<sup>27</sup> the curriculum, strengthening ethics teaching,<sup>28</sup> assessment,<sup>29</sup> incorporating threshold learning outcomes,<sup>30</sup> and much more. The legal education community is deeply indebted to these authors, but it is beyond the scope of the present article to delve into this large body of work.

Achieving reform in the second ‘taught curriculum’ sense will be challenge enough, encompassing perhaps a five-year transition, already partly realised for most, to the new order as defined by Standards, AQF and Threshold Learning Outcomes. Designing ongoing review cycles and quality assurance processes will be the next challenge. For those who choose to stop here, the structural vision is already in place, and is likely to be achieved with the stimulus of top-down mandated change. One word of caution, however: top-down change needs grass roots input as well to avoid becoming merely ‘window dressing’. To be truly effective, outcomes and standards require communities of teachers to make sense of them together (take ownership), in relation to the particular nature of their students.<sup>31</sup> In many respects top-down change is the easiest form to achieve (although by no means easy), short-cutting the messy design phase (the ‘what’ phase) and moving straight to the implementation (‘how’) phase. This type of change can occur within an existing well-established organisational culture without posing any major challenges to it, irrespective of the decision-making and leadership or governance model in place. This article will be of benefit to both groups, although it is hoped to challenge the ‘taught curriculum’ group to reconsider and embrace a more holistic and extended view.

<sup>23</sup> Richard Johnstone, ‘Whole-of-Curriculum Design in Law’ in Kift, *Excellence and Innovation*, above n 8, 1.

<sup>24</sup> Normann Witzleb and Natalie Skead, ‘Mapping and Embedding Graduate Attributes Across the Curriculum’ in Kift, *Excellence and Innovation*, above n 8, 31; Penelope Watson and Con Papas, ‘Mapping and embedding sustainable graduate capabilities in Law’ (2009) 2(1&2) *Journal of the Australasian Law Teachers Association* 217.

<sup>25</sup> Nick James, ‘Logical, Critical and Creative: Teaching ‘Thinking Skills’ to Law Students’, (2012) 12(1) *QUT Law & Justice*, <[http://ljj.law.qut.edu.au/editions/v12n1/pdf/Fin2\\_Logical%20critical%20and%20creative.pdf](http://ljj.law.qut.edu.au/editions/v12n1/pdf/Fin2_Logical%20critical%20and%20creative.pdf)>.

<sup>26</sup> Afshin Akhtarkhvari, ‘Why and What to Internationalise in Australian Legal Education’ in Kift, *Excellence and Innovation*, above n 8, 119.

<sup>27</sup> Thalia Anthony, ‘Embedding Specific Graduate Attributes: Cultural Awareness and Indigenous Perspectives’ in Kift, *Excellence and Innovation*, above n 8, 137.

<sup>28</sup> Michael Robertson, ‘Embedding “Ethics” in Law Degrees’ in Kift, *Excellence and Innovation*, above n 8, 99.

<sup>29</sup> Mary Heath, ‘Assessment Strategies’ in Kift, *Excellence and Innovation*, above n 8, 269.

<sup>30</sup> Anna Huggins, Sally Kift, Rachael Field, ‘Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox’, (2011) 21(1) *Legal Education Review* 183.

<sup>31</sup> Andy Hargreaves and Dennis Shirley, *The Fourth Way* (Corwin, 2009) 7.



## II REASONS FOR CHANGE

In response to the multiplicity of influential reports<sup>32</sup> urging reform over the last two decades, both in Australia and abroad, change began percolating through the higher education sector, although at an uneven pace.<sup>33</sup> Innovators and early adopters have been well underway with broad based reform for some time, whilst the early majority and some of the late majority<sup>34</sup> are catching up rapidly. The nature of the dissatisfaction is well known: too little emphasis on skills development, too little connection with the world of work, too strong a focus on doctrinal learning, and too much concentration on

<sup>32</sup> See, eg, in Australia: Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) ('Pearce Report'); Craig McInnis, Simon Marginson, *Australian Law Schools After the 1987 Pearce Report* (1994); Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (2000) ('*Managing Justice*'); Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee (AUTC)* (2003); *Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment: Final Report* (2009) Australian Learning and Teaching Council (ALTC)/Council of Australian Law Deans (CALD) ('Discipline Based Initiative (DBI) in Law'); Roderick West, *Learning for life: Review of higher education financing and policy: final report* (1998) ('*West report*'); Council of Australian Law Deans (CALD) *Review of Australian Higher Education: Questions for Discussion*. CALD Submission to DEST (2008) <<http://www.dest.gov.au/NR/rdonlyres/7DBB3799-744D-4EB9-971F-5CA98930401B/23456/275CouncilofAustLawDeans.pdf>>. See, eg, in the United States: American Bar Association, Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap* (1992) ('*MacCrate Report*'); American Bar Association, Section of Legal Education and Admissions to the Bar, *Teaching, Learning and Professionalism: Report of the Professionalism Committee* (1996); William Sullivan, Anne Colby, Jucith Wegner, Lloyd Bond and Lee Schulman, *Educating Lawyers: Preparation for the Profession of Law* (2007) ('*Carnegie Report*'). See, eg, in the United Kingdom: Lord Chancellor's Advisory Committee on Legal Education and Conduct, *First Report on Legal Education and Training* (1996); The Law Society of Scotland, Education and Training Committee, *The Future Of Legal Education, Training, and CPD: Report to the 2009 AGM* (2009). See, eg, in Canada: Canadian Bar Association, Committee Responding to Recommendation 49 of the Systems of Civil Justice Task Force Report, *Attitudes-skills-knowledge: proposals for legal education to assist in implementing a multi-option civil justice system in the 21st century* (1999). See, eg, in Hong Kong: The Steering Committee on the Review of Legal Education and Training in Hong Kong, *Legal Education and Training in Hong Kong: Preliminary Review, Report of the Consultants* (2001).

<sup>33</sup> See, eg, The Law Society of Scotland (2006–07) <<http://www.lawsocot.org.uk/training/consult>> lamenting in 2006 that 'a radical reconsideration of the principles which underlie [legal education] has not recently been undertaken.'

<sup>34</sup> These descriptors are taken from Everett Rogers, *Diffusion of Innovations* (Free Press of Glencoe, 1962), in which Rogers sought to explain the rate and process by which innovations spread throughout a social system. He classified individuals/groups according to their readiness to adopt innovation as: 'innovators' 2.5%, 'early adopters' 13.5%, 'early majority' 34%, 'late majority' 34%, and 'laggards' 16%.

rationality and analytical thinking at the expense of moral and ethical concerns. The *Carnegie Report* noted in 2007 for example, that:

Today's law school experience [in the USA] is severely unbalanced. The difficulty lies in the relentless focus on the procedural and formal qualities of legal thinking ... sometimes to the deliberate exclusion of the moral and social dimensions and often abstracted from the fuller contexts of actual legal practice'. [Whilst acknowledging that analytical thinking and discipline knowledge are priorities in legal education, Carnegie stressed that] 'priority should not be misconstrued as sufficiency', and legal doctrine 'often comes most fully alive for students when the power of legal analysis is manifest in the experience of legal practice ... [P]ractical skill is developed through modelling, habituation, experiment and reflection...require[ing] settings and pedagogies different from those used in the teaching of legal analysis... [P]rofessional identity joins [legal analysis and practical skill] and is...the catalyst for an integrated legal education.<sup>35</sup>

Similar sentiments were expressed in the Australian Law Reform Commission (ALRC) *Managing Justice* report,<sup>36</sup> as well as by the *West Review of Universities*,<sup>37</sup> both of which urged that curricula should focus on 'what lawyers need to be able to do [rather than being] anchored around outmoded notions of what lawyers need to know'<sup>38</sup> and highlighting the desirability of inculcating broad generic skills.<sup>39</sup>

More recently, it has become apparent that law students are experiencing high levels of depression and poor emotional well-being<sup>40</sup> that appear to be connected with their law school experience. In 2009, the Brain and Mind Research Institute (BMRI) established empirically that Australian law students were suffering disproportionately high levels of psychological distress,<sup>41</sup> as compared with medical students and their age-matched non-student peers. Thirty five per cent of law students reported distress at high to very high levels.<sup>42</sup> Similar concerns have been reported

<sup>35</sup> Sullivan et al, *Carnegie Report*, above n 32, 145.

<sup>36</sup> Australian Law Reform Commission, *Managing Justice*, above n 32.

<sup>37</sup> *West report*, above n 32.

<sup>38</sup> Australian Law Reform Commission, *Managing Justice*, above n 32, 2.20.

<sup>39</sup> For example, reflective thinking; technical/theory competence; intellectual curiosity; effective communication; research skills; problem solving and teamwork; and ethical standards: see 'Reimagining the Law: Graduate Attributes' ALTC/CALD (Paper presented at Australasian Law Teachers Association Conference, Cairns, 6–9 July 2008).

<sup>40</sup> Penelope Watson and Rachael Field, 'Promoting Student Wellbeing and Resilience at Law School', in Kift, *Excellence and Innovation*, above n 8, 389 ('Promoting Wellbeing').

<sup>41</sup> Norman Kelk et al, 'Courting the blues: Attitudes towards depression in Australian law students and lawyers', (Brain and Mind Research Institute, 2009) <<http://sydney.edu.au/bmri/research/mental-health-clinical-translational-programs/lawreport.pdf>>.

<sup>42</sup> Kelk et al, above n 41, 11.

in the USA,<sup>43</sup> where symptoms of psychological distress have been found to rise significantly in the first year of law studies, and persist throughout the degree to post-graduation.<sup>44</sup> Results from other Australian studies<sup>45</sup> also paint a disturbing picture. Whilst it is clear that law students are not alone, this is no cause for complacency. One recent study<sup>46</sup> comparing law, psychology, medicine and mechanical engineering students found significant distress in 48% of the sample, ranging from 58% in the worst affected group (law) to 40% for the least affected (psychology). And it does not stop upon graduation for law students: in the USA lawyers have been said to ‘sit at the unenviable zenith of depressed professionals,’<sup>47</sup> and the BMRI research confirms that the profession in Australia is also under stress.<sup>48</sup> Part V discusses one example of curriculum re-design that addresses these issues: developing peer communities of practice to improve student autonomy and wellbeing whilst enhancing legal knowledge and capabilities in a collaborative setting.

<sup>43</sup> G A Benjamin et al, ‘The role of legal education in producing psychological distress among law students and lawyers’ (1986) 2 *American Bar Foundation Research Journal* 225; A L Iijima, ‘Lessons learned: Legal education and law student dysfunction’ (1998) 48 *Journal of Legal Education* 524; P F Lake, ‘When Fear Knocks: The Myths and Realities of Law School’ (1999–2000) 29 *Stetson Law Review* 1015; K M Sheldon and L S Krieger, ‘Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values and Well-Being’ (2004) 22 *Behavioural Science and Law* 261. For Canada, see Jeff Rybak, ‘Pushing Students to go to university may lead to depression’ (28 April 2008) <<http://oncampus.macleans.ca/education/2008/04/28/student-depression>>.

<sup>44</sup> Benjamin, above n 43; Iijima, above n 43.

<sup>45</sup> M Tani, and P Vines, ‘Law students’ attitudes to education: Pointers to depression in the legal academy and the profession?’ (2009) 19 *Legal Education Review* 3; Molly Townes O’Brien, Stephen Tang and Kath Hall, ‘Changing Our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum’ (2011) 21 *Legal Education Review* 149; Molly T O’Brien, Stephen Tang and Kath Hall, ‘No Time to Lose: Negative Impact on Law Student Wellbeing May Begin in Year One’ (2011) 2(2) *International Journal of the First Year in Higher Education* 49; W Larcombe, ‘Wellbeing and the ‘Law School Experience’ of LLB and JD Students: local results, international trends’ (Paper presented at Australasian Law Teachers Association Conference, Sydney, 1–4 July 2012); W Larcombe et al, ‘Evidence-based Wellbeing Interventions for JD Students’ (Paper presented at Law and Society Conference, Hawaii, 5–8 June 2012, University of Melbourne); Helen Stallman, ‘A qualitative evaluation of perceptions of the role of competition in the success and distress of law students’ (2012) *Higher Education Research and Development*, DOI: 10.1080/07294360.2012.655241 (University of Queensland).

<sup>46</sup> Catherine M Leahy et al, ‘Distress levels and self-reported treatment rates for medicine, law, psychology and mechanical engineering tertiary students: cross-sectional study’ (2010) 44 *Australian and New Zealand Journal of Psychiatry* 608. This study of 955 students at the University of Adelaide found that 48% were psychologically distressed. Law students were worst affected (58%), followed by mechanical engineering (52%), medicine (44%) and psychology (40%).

<sup>47</sup> Todd David Peterson and Elizabeth Waters Peterson, ‘Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology’ (2009) 9 *Yale Journal of Health, Policy, Law & Ethics* 357, 358.

<sup>48</sup> Kelk et al, above n 41, 12.

In the new Australian environment of the Higher Education Quality and Regulatory Framework, which includes the establishment of the Tertiary Education Quality and Standards Agency (TEQSA), change is mandatory. Teaching and learning standards are being defined and articulated across the sector, along with strategies for gathering and reporting on data and achievement. Teaching and learning performance indicators and performance-based funding models are also being developed.<sup>49</sup> In 2009 the Council of Australian Law Deans (CALD) published its Standards for Australian Law Schools.<sup>50</sup> These were endorsed by the Law Admissions Consultative Committee (LACC), and contain a mixture of aspirational and threshold inputs and outcomes.<sup>51</sup> The CALD Standards were influenced by standards developed in the UK and USA.<sup>52</sup>

This was followed in 2010 by the Australian Learning and Teaching Council's *Bachelor of Laws Learning and Teaching Academic Standards Statement* (the LLB LTAS Statement), articulating Threshold Learning Outcomes (TLOs) for Bachelor of Laws<sup>53</sup> degree programs, based on award level descriptors defined in the Australian Qualifications Framework (AQF).<sup>54</sup> Bachelor degrees are classified at level 7, bachelor degrees with honours and JD degrees at level 8 of the AQF, which applies to all higher education providers, including those with self-accrediting authority.<sup>55</sup> The LLB LTAS statement was the outcome of the Learning and Teaching Academic Standards Project in law carried out by Discipline Scholars Professors Sally Kift and Mark Israel. The TLOs set out the minimum discipline-specific skills and professional capabilities, including attitudes and professional values, that are expected of a graduate — that is, what

<sup>49</sup> Kerri-Lee Krause, Simon Barrie, Geoff Scott, with contributions from Judyth Sachs and Belinda Probert, 'Mapping Learning and Teaching Standards in Australian Higher Education: An Issues and Options Paper' (Feb 2012) <[http://www.uws.edu.au/\\_data/assets/pdf\\_file/0008/294137/KerriLee\\_website.pdf](http://www.uws.edu.au/_data/assets/pdf_file/0008/294137/KerriLee_website.pdf)>.

<sup>50</sup> Council of Australian Law Deans (CALD), The CALD Standards for Australian Law Schools (2009) <<http://www.cald.asn.au/docs/CALD%20-%20standards%20project%20-%20final%20-%20adopted%2017%20November%202009.pdf>>.

<sup>51</sup> *The Learning and Teaching of Academic Standards Project: Bachelor of Laws* (2010) 4.2.

<sup>52</sup> United Kingdom Quality Assurance Agency (QAA) Subject Benchmark Statement for Law, the United Kingdom Joint Statement of the Law Society and the General Council of the Bar, and the American Bar Association Standards: *The Learning and Teaching of Academic Standards Project: Bachelor of Laws* (2010) 4.2.

<sup>53</sup> *Ibid.* The Bachelor of Laws (LLB) ('law') degree is the most common type of law undergraduate qualification in Australia. The TLOs do not apply to the Juris Doctor (JD), the Legal Profession Admission Board (LPAB) Diploma in Law, the Honours component of the LLB, Practical Legal Training (PLT) courses, and all postgraduate courses: *ibid.* at 2.1.1 and 2.1.2.

<sup>54</sup> Australian Qualifications Framework Council, *Australian Qualifications Framework* (1<sup>st</sup> ed, 2011) <<http://www.aqf.edu.au/>>.

<sup>55</sup> Australian Government, Tertiary Education Quality and Standards Agency: <[http://www.teqsa.gov.au/sites/default/files/Course%20Accred%20Guide\\_final\\_080212.pdf](http://www.teqsa.gov.au/sites/default/files/Course%20Accred%20Guide_final_080212.pdf)>.

graduates are expected to ‘know, understand, and be able to do’<sup>56</sup> as a result of their law school experience. The TLOs were endorsed by CALD in late 2010, and link with, but do not exactly replicate, the more aspirational CALD standards. Together these documents establish the benchmarks for evaluation and accreditation.<sup>57</sup>

The previously sufficient ‘prescribed academic areas of knowledge’ for law graduates, developed in 1992 and known as the Priestley 11,<sup>58</sup> have been joined by University-specific statements of graduate attributes or capabilities. These tend to vary more in the expression than the substantive content, and are always framed in broad general terms such as: graduates will be ‘engaged and ethical local and global citizens’, or ‘socially and environmentally active and responsible’, or will possess ‘problem solving and research capability’,<sup>59</sup> leaving the specifics to be worked out at the discipline level. Law<sup>60</sup> descriptors need to be developed from these for each institution, integrating and fleshing out the TLOs, and then must be further translated into learning outcomes and criteria with performance descriptors (for criterion referenced assessment) at the individual unit/subject level, to ensure that curricula deliver sufficient opportunities for students to develop the required capabilities. Given the extensive process of consultation with professional, student, academic and regulatory bodies, including the judiciary and admitting authorities, that was undertaken to develop the TLOs, and the broad general nature of the statements, there appears to be widespread agreement<sup>61</sup> with their general intent, and still plenty of scope for differentiation and individual interpretation across institutions. Scholarly articles are appearing to assist with implementation,<sup>62</sup> and

<sup>56</sup> Sally Kift, Mark Israel, Rachael Field, ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Australian Learning and Teaching Council, 2010) <[http://www.olt.gov.au/system/files/resources/altc\\_standards.LAW\\_110211\\_rv2.pdf](http://www.olt.gov.au/system/files/resources/altc_standards.LAW_110211_rv2.pdf)>.

<sup>57</sup> At <[http://www.teqsa.gov.au/sites/default/files/Course%20Accred%20Guide\\_final\\_080212.pdf](http://www.teqsa.gov.au/sites/default/files/Course%20Accred%20Guide_final_080212.pdf)>.

<sup>58</sup> Legal Practitioners Admission Rules 1994 (NSW) sch 5, above n 14.

<sup>59</sup> Examples drawn from Macquarie University statement of graduate capabilities: Office of the Macquarie University Provost, *Review of Academic Programs, White Paper* (2008) <[http://www.mq.edu.au/provost/reports/docs/SenateFINALWHITEPAPER\\_revised.doc](http://www.mq.edu.au/provost/reports/docs/SenateFINALWHITEPAPER_revised.doc)>.

<sup>60</sup> The term ‘law’ here is used to mean the Bachelor of Laws (LLB) degree. See n 53 above.

<sup>61</sup> But cf J Dietrich, ‘Law Threshold Lowers the Bar’, *The Australian*, 30 March 2011.

<sup>62</sup> See, eg, on TLO 3: Nick James, ‘Logical, Critical and Creative: Teaching ‘Thinking Skills’ to Law Students’ (2012) 12 (1) *QUT Law and Justice*, <[http://ljj.law.qut.edu.au/editions/v12n1/pdf/Fin2\\_Logical%20critical%20and%20creative.pdf](http://ljj.law.qut.edu.au/editions/v12n1/pdf/Fin2_Logical%20critical%20and%20creative.pdf)>. On TLO 6: Anna Huggins, Sally Kift and Rachael Field, ‘Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional design Strategies from the Current Curriculum Toolbox’ (2011) 21 (2), *Legal Education Review* 217.

other resources are available.<sup>63</sup> The six TLOs concern: Knowledge (encompassing the Priestley 11) (TLO 1); Ethics and professional responsibility (TLO 2); Thinking skills (TLO 3); Research skills (TLO 4); Communication and collaboration (TLO 5); and Self-management (TLO 6).

### III 'INTERESTING IDEAS' FOR ACHIEVING CHANGE

This Part discusses a twin-pronged approach for achieving sustainable broad-spectrum change. First, reconceptualising law schools as learning organisations with the capacity to reconfigure unhelpful mental models; and second, expanding our concepts of leadership, responsibility and accountability to encompass distributed leadership, and marrying this with the literature on change management as it relates to leading school reform. This is not to downplay the importance of formal positional leadership, of course, but rather, to emphasise the potential and benefits of a shared assumption of responsibility for achieving buy-in of stakeholders, augmenting resources, and getting the most out of the rich 'messiness' of change.

#### *A Reconceptualising Law Schools as Learning Organisations*

The concept of 'Learning Organisations' popularised by Peter Senge and other influential scholars<sup>64</sup> is particularly apposite for higher education, where every individual (staff and student) is a professional learner with escalating skill levels. The notion of learning communities or professional learning communities in education is an offshoot from Senge's ideas.<sup>65</sup> A Learning Organisation is one that facilitates the learning of all its members and continuously transforms

<sup>63</sup> See resources and explanatory notes on ALTC website <<http://www.olt.gov.au/resources>>.

<sup>64</sup> Senge 2006, above n 3; Peter M Senge and John D Sterman 'Systems Thinking and Organizational Learning: Acting Locally and Thinking Globally in the Organization of the Future' in Thomas A Kochan and Michael Unseem (eds), *Transforming Organizations* (Oxford University Press, 1992); Chris Argyris, *On Organisational Learning* (Wiley, 2<sup>nd</sup> ed 1999); Chris Argyris and Donald A Schön, *Organisational Learning: A Theory of Action Perspective* (Reading, MA: Addison-Wesley, 1978) 8; J Burgoyne 'The Learning Organisation' in Nigel Nicholson, Randall Schuler and Andrew H Van De Ven (eds) *The Blackwell Encyclopedic Dictionary of Organisational Behaviour* (Blackwell Business, 1995); Donald Schön, *The Reflective Practitioner: How Professionals Think in Action* (Basic Books, 1983); D Garvin, 'Building a Learning Organisation' (1993) 71(4) *Harvard Business Review* 78, 80.

<sup>65</sup> Shirley M Hord, 'Professional Learning Communities: What Are They and Why Are They Important?' (1997) (revised) 6 (1) *Issues ... about Change 1* ('Professional Learning Communities'), <[www.sedl.org/change/issues/issues61/Issues\\_Vol6\\_No1\\_1997.pdf](http://www.sedl.org/change/issues/issues61/Issues_Vol6_No1_1997.pdf)>.



itself.<sup>66</sup> Pedler, Burgoyne and Boydell<sup>67</sup> define it as ‘an organisation skilled at creating, acquiring and transferring knowledge and at modifying its behaviour to reflect new knowledge and insights.’ According to Senge,<sup>68</sup> learning organisations are ‘organizations where people continually expand their capacity to create the results they truly desire, where new and expansive patterns of thinking are nurtured, where collective aspiration is set free, and where people are continually learning to see the whole together’. The basic rationale for such organizations is that in situations of rapid change, only those that are flexible, adaptive and productive will excel. For this to happen, it is argued, organizations need to ‘discover how to tap people’s commitment and capacity to learn at *all* levels.’<sup>69</sup>

Senge views organisational leaders as designers, stewards and teachers, who are responsible for building organisations where people continually expand their capabilities to understand complexity, clarify vision, and improve shared mental models. He sees Organisational Learning as a process in which an organisation strives to improve its performance, to detect and correct errors and to adapt to its environment through evolving knowledge and understanding. Learning is the key characteristic as it enables the organisation to sense changes (both internal and external) and to adapt accordingly in the face of an increasingly discontinuous environment.<sup>70</sup> However, ‘adaptive’ or ‘survival’ learning is not enough; learning organisations are also said to require learning that enhances members’ capacity to create, or ‘generative learning’.<sup>71</sup> The ‘dimension’ that distinguishes this learning from that in more traditional organisations is the mastery of five basic disciplines, which Senge identifies as: systems thinking; personal mastery; mental models; building shared vision; and team learning. The disciplines are ‘concerned with a shift of mind from seeing parts to seeing wholes, from seeing people as helpless reactors to seeing them as active participants in shaping their reality, from reacting to the present to creating the future.’<sup>72</sup>

A detailed coverage and evaluation of Senge’s work is not possible here, but more can usefully be said about mental models. Senge’s building blocks for the learning organisation are personal mastery, mental models, shared vision, and team learning. ‘Mental models’ are ‘deeply ingrained assumptions, generalizations ... that influence how we understand the world and how we take action’,<sup>73</sup>

<sup>66</sup> M Pedler, J Bourgoyne and T Boydell, *The Learning Company: A Strategy for Sustainable Development* (2<sup>nd</sup> ed, McGraw-Hill, 1997).

<sup>67</sup> *Ibid.*

<sup>68</sup> Peter M Senge, *The Fifth Discipline: The Art and Practice of the Learning Organization* (Currency Doubleday, 1990) 3.

<sup>69</sup> *Ibid.*, 4. Emphasis in original.

<sup>70</sup> *Ibid.*, 4.

<sup>71</sup> *Ibid.*, 14.

<sup>72</sup> *Ibid.*, 69.

<sup>73</sup> *Ibid.*, 8.



operating at the unconscious level to limit us to familiar ways of thinking and acting. They are similar to Schön's<sup>74</sup> professional's 'repertoire', or Argyris'<sup>75</sup> 'theories-in-use' (as opposed to espoused theories). Argyris and Schön<sup>76</sup> claim that teams and organisations trap themselves in 'defensive routines' that protect mental models from scrutiny, resulting in 'skilled incompetence', or being skillful at avoiding the pain and threat posed by learning situations.

Senge argues that organisations need to develop the capacity to constantly bring to the surface and test mental models, promoting personal awareness and reflective skills, institutionalising regular practice with mental models, and developing a culture that promotes inquiry and challenges our thinking.<sup>77</sup> Schön's<sup>78</sup> twin concepts of reflection (reflection-in-action and reflection-on-action) are well known in higher education circles, and resonate with this approach. Moving from personal reflective practice to organisational practice at the relatively modest level of a law school has the potential to dramatically change the culture, and open the way for fruitful discussion of other building blocks such as shared vision and team learning. At the risk of sounding corny, 'It ain't what you don't know that gets you into trouble. It's what you know for sure that just ain't so.'<sup>79</sup>

### *B Reconceptualising Leadership as Everyone's Business*

The notion of leadership as it relates to leading and embedding cultural and curriculum change in universities can be usefully extended beyond conventional positional leadership, to include 'distributed', 'informal', 'emergent' or 'dispersed' leadership, suggesting a less formalised model where the leader's role is dissociated from the organisational hierarchy. Significant funded research into this type of leadership has been conducted in universities in recent years,<sup>80</sup> with considerable interest being shown in investigating and harnessing its benefits. The author was heavily involved in one such

<sup>74</sup> Donald A Schön, *The Reflective Practitioner: How Professionals Think in Action* (Temple Smith and Basic Books, 1983).

<sup>75</sup> Chris Argyris, *Reasoning, Learning and Action: Individual and Organizational* (Jossey-Bass, 1982).

<sup>76</sup> Chris Argyris and Donald Schön, *Organizational Learning: A Theory of Action Perspective* (Addison-Wesley, 1978).

<sup>77</sup> Senge 2006, above n 3, 171.

<sup>78</sup> Schön, *Reflective Practitioner*, above n 74.

<sup>79</sup> Attributed to Mark Twain.

<sup>80</sup> For an evaluation of recent projects on distributed leadership, see Sandra Jones and Kevin Ryland, 'Lessons learnt: identifying synergies in distributed leadership projects', *Final Report*, July 2011 ('Lessons learnt'). Support for the original work was provided by the Australian Learning and Teaching Council Ltd, an initiative of the Australian Government Department of Education, Employment and Workplace Relations.

action research project,<sup>81</sup> and some of the ideas put forward in this part had their genesis during that period. The distributed leadership model proposes that individuals at all levels in an organisation and in all roles (not just those that are overtly ‘management’) can exert leadership influence over their colleagues and thus influence the overall leadership of the organisation. Heifetz<sup>82</sup> distinguishes between the exercise of ‘leadership’ and the exercise of ‘authority’, thus dissociating leadership from formal organisational power roles, whilst Raelin<sup>83</sup> talks about developing ‘leaderful’ organisations. The origins of distributed leadership can be traced to the fields of sociology and politics rather than more traditional management literature, and draw on concepts such as organisational culture and climate to highlight the contextual nature of leadership.

Leadership here is regarded as a process of sense-making and direction-giving within a group, so that it is quite possible to conceive of emergent rather than predefined leadership, and to begin to break down management and doctrinal boundaries that exist in law schools between researchers, teachers, and students. The concept is more collective than positional leadership, allowing, indeed expecting, individuals to lead in certain areas of interest or expertise by influencing, coaching, mentoring, modeling good practice in their own work, reaching out to others, and raising awareness and sharing knowledge about their particular passion. Distributed leadership values working alongside, rather than replacing, formal leaders.<sup>84</sup> It is characterised by: moving from a reliance on power and control to that of influence and autonomy; leadership that is collective and bottom-up, encouraging greater staff participation; and leadership that assumes a shared purpose through cycles of change.<sup>85</sup> It is clearly consistent with the ideas embodied in the notion of a learning organisation, or learning community, discussed above.

Fullan’s view of teachers as ‘change agents’ (for educational and societal change) is based on a similar vision of empowered and distributed leadership.<sup>86</sup> As he says:

Change is too important to leave to the experts ... every person working in an enterprise committed to making continuous improvements must be change agents with moral purpose ... we cannot leave the responsibility to others ... each and every teacher has the responsibility to help create an

<sup>81</sup> Macquarie University ALTC Leadership for Excellence Project LE6–12, ‘Leaders in Effective Assessment Practice’ (LEAP), 2006–2008. The author was also a member of the Community of Practice for the ‘Lessons learnt’ project, Jones and Ryland, above n 80.

<sup>82</sup> Ronald A Heifetz, *Leadership Without Easy Answers* (Belknap Press, 1994).

<sup>83</sup> Joseph A Raelin, *Creating Leaderful Organisations: How to Bring Out Leadership in Everyone* (Berrett-Koehler Publishers, 2003).

<sup>84</sup> Jones and Ryland, above n 80, 1.

<sup>85</sup> Jones and Ryland, above n 80, 9–10.

<sup>86</sup> Michael Fullan, *Change Forces*, above n 7, and related titles, above n 17.

organization capable of individual and collective inquiry and continuous renewal, or it will not happen.<sup>87</sup>

This is an admirable sentiment, with one major reservation: why limit change agents to teachers? Why are students excluded? Why are administrators excluded? Students represent a huge pool of potential change agents that has been all but ignored, yet they have a very substantial stake in educational reform. The article returns to this theme in Part V.

A pivotal concept in Senge's work is his view of organisational leaders as designers, stewards and teachers. Using the term 'leaders' in the distributed sense discussed above, this includes all stakeholders in the organisation. Stewardship implies 'the responsible overseeing and protection of something considered worth caring for and preserving,'<sup>88</sup> often used in the environmental sense as stewardship of assets and resources for the benefit of generations still to come, and is linked to sustainability. Fullan and others also talk of stewardship. Sirotnik,<sup>89</sup> for example, argues that stewardship involves 'moral commitments to inquiry, knowledge, competence, caring, freedom, well-being, and social justice' and that the implications of this go well beyond the classroom and taught curriculum. He poses the following insightful questions for examining an institution's culture:

- To what extent does the organizational culture encourage and support educators as inquirers into what they do and how they might do it better?
- To what extent do educators consume, critique and produce knowledge?
- To what extent do they engage competently in discourse and action to improve the conditions, activities and outcomes of schooling?
- To what extent do [they] care about themselves and each other in the same way they care (or ought to care) about students?
- To what extent are [they] empowered to participate authentically in pedagogical matters of fundamental importance – what [Law] schools are for and how teaching and learning can be aligned with this vision?<sup>90</sup>

The suitability of the model described above for achieving *metanoia* or 'a fundamental shift of mind'<sup>91</sup> in regard to learning

<sup>87</sup> Michael Fullan, *Change Forces*, above n 7, 38.

<sup>88</sup> <<http://dictionary.reference.com/browse/stewardship>>.

<sup>89</sup> K Sirotnik, 'Society, schooling, teaching and preparing to teach' in J Goodlad, R Soder, K Sirotnik, (eds) *The Moral Dimensions of Teaching* (Jossey-Bass, 1990) 296, 298 ff.

<sup>90</sup> Sirotnik, above n 89, 312.

<sup>91</sup> Senge 1990, above n 68, quoted in Michael Fullan, *Change Forces*, above n 7 at 3. *Metanoia*, from the Greek, 'denoting changing one's mind, in the sense of embracing thoughts beyond the mind's present limitations or thought patterns' <<http://en.wikipedia.org/wiki/Metanoia>>; 'a profound, usually spiritual, transformation' <<http://dictionary.reference.com/browse/metanoia>>.

and teaching is clear. Distributed leadership connotes distributed responsibility and accountability as well. Developing quality and continual improvement in the praxis of knowledge creation and learning requires a clearly thought out vision, supported by commitment and shared leadership by all participants to create and embed the enabling conditions and strategies. Law schools need to develop a shared vision and sense of common purpose through a commonly owned aspirational culture, and that culture needs to be built into the structural design of the school's activities in order to be translated into action.

This vision for legal education is therefore built around a whole-of-school culture that includes academics, students, administrators and legal practitioners as *partners* engaged in collaborative endeavours, including learning and teaching, research/scholarship, curriculum redesign, and community and professional outreach and engagement. Such a school would be characterised by a robust culture of innovation, intellectual excitement and inspiration, empowerment, openness to experimentation and risk taking, active engagement, pride in the school, and broadly shared celebration. Boyer's concept of the scholarship of teaching<sup>92</sup> can be used to foster and instill a sustainable culture of excellence in learning and teaching, based on a critical mass of academics engaging with and understanding the literature on learning and teaching research; using well informed, effective approaches that engage students in appropriate learning to develop critical creative thinking; systematically gathering and using evidence and reflecting on the literature to improve students' learning; and communicating findings<sup>93</sup> by engaging in the scholarship of learning and teaching.

Scholarship (dissemination of research) and scholarly teaching practice would be integral, typified by ongoing inquiry, reflection, and discussion of educational design, pedagogy and curriculum knowledge. It would involve a commitment at both the institutional and personal levels to:

- norms of continuous critical enquiry and continuous improvement;
- a widely shared vision or sense of purpose;
- a norm of involvement in decision-making;
- mutual respect and positive relationships between all participants;
- a sense of community in the Law school;<sup>94</sup>

<sup>92</sup> Boyer, above n 9.

<sup>93</sup> R M Taylor, P A Canfield, 'Learning to be a Scholarly Teaching Faculty: Cultural Change through Shared Leadership', in A Brew and J Sachs (eds), *The Transformed University: Scholarship of Teaching and Learning in Action* (2007) Ch 23. This is an excellent account of cultural transformation through the scholarship of learning and teaching in a veterinary science faculty.

<sup>94</sup> Points 1–5 are taken from Hord, above n 65, 4.

- a commitment to evidence based teaching;
- ongoing professional development including peer observation and feedback;
- a clear nexus between research and teaching; and
- recognition of the scholarship of learning and teaching as ‘real research’.

All of these contribute to enhanced learning for the community of participants (staff, students, administrators, scholars and professionals) and foster lifelong learning. A law school characterised by scholarly praxis well grounded in theory and widely disseminated through publications, conference presentations, peer mentoring, active community engagement and interdisciplinary collaboration, will be perfectly positioned to embrace and embed change and innovation in a spiral of continuous renewal.

#### IV SUSTAINABILITY: A FRAMEWORK FOR EMBEDDING CHANGE

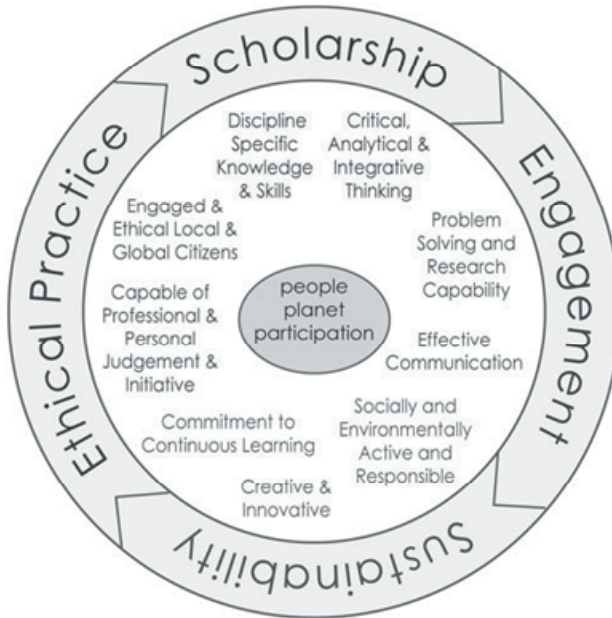
The framework outlined below draws on the environmental concept of sustainability to suggest how innovation in legal education can be embedded and maintained over time in an organic and dynamic process of renewal. The concept is well suited for defining the interconnected elements of a ‘sustained’ style of thinking in learners. Irrespective of discipline, pedagogy should foster learners who are perpetually analytical, integrative of diverse interdisciplinary perspectives, collaborative, focused on innovation, and have a tendency towards autonomous lifelong inquiry and growth. This is essentially the ‘sustainable development’ model of learning.

Macquarie University has embedded sustainability as a ‘core value’, not only in the traditional areas of energy, water and waste, but also in learning and teaching, research and human resources.<sup>95</sup> Sustainability is viewed as a ‘guiding principle within which the curriculum is developed.’ Macquarie’s statement of graduate capabilities and curriculum principles is contained in Figure 1.<sup>96</sup> Note that the Sustainability principle specifically includes ‘commitment to continuous learning’ (lifelong learning), ‘creative and innovative’ capabilities, and ‘socially and environmentally active and responsible’ attitudes and behaviour.

<sup>95</sup> Macquarie University, *Sustainability@MQ* (2009) <<http://www.mq.edu.au/university/sustainability.html>>.

<sup>96</sup> Office of the Macquarie University Provost, *Review of Academic Programs, White Paper* (2008) <[http://www.mq.edu.au/provost/reports/docs/SenateFINALWHITEPAPER\\_revised.doc](http://www.mq.edu.au/provost/reports/docs/SenateFINALWHITEPAPER_revised.doc)>.

Figure 1: Macquarie University Statement of Graduate Capabilities, 2008



In international treaty law, sustainable development is an agreed objective of many treaties at the global and regional levels. Both ‘sustainability’ (the popular usage) and ‘sustainable development’ require a balance between economic, social and environmental concerns, with a strong social justice foundation.<sup>97</sup> The central concepts are: integrated decision making, socio-cultural and economic equity, inclusion of all stakeholders, valuing services, and protection of endangered or weaker key elements. The Brundtland Commission Report<sup>98</sup> defines sustainable development as ‘development which meets the needs of the present without compromising the ability of future generations to meet their own needs’. In that sense then, it balances wants against needs. The 25 principles of sustainable

<sup>97</sup> I am very much indebted in this section to my friend and former colleague, Dr Erika Techera, for her generous assistance, expertise and passion for all things concerning sustainability. For a related treatment of sustainability applied to graduate capabilities, see Penelope Watson and Con Papas, ‘Mapping and embedding sustainable graduate capabilities in law’ (2009) 2(1&2) *Journal of the Australasian Law Teachers Association* 217. See also Penelope Watson and Con Papas, ‘Leading Change in Legal Education: Towards a Framework for Sustainable Curriculum Design and Knowledge Integration’ (Paper presented at Australasian Law Teachers Association Annual Conference, University of Sydney, 1–4 July 2009).

<sup>98</sup> *Report of the World Commission on Environment and Development: Our Common Future* UN Doc A/42/427 (1987) (‘Brundtland Report’).

development set out in the Rio Declaration<sup>99</sup> have been honed down to five key elements in Australian environmental legislation:

1. Integration of economic, environmental and social issues in decision-making
2. Biodiversity conservation
3. Precautionary principle
4. Intergenerational equity
5. Improved valuation, pricing and incentive mechanisms.<sup>100</sup>

Learning in Law can be conceptualised in such a way that all the fundamental aspects of pedagogical praxis can be framed as ‘sustainable development of learning’ ideas. A more detailed exploration of the five key elements as applied to curriculum design follows.

### *A Integration of Multi-dimensional Decision Making*

Sustainable learning in law students mandates an inclusive partnership between learners, teachers, and employers, having regard to access and equity issues. Sustainable education aims to develop learners’ skills, abilities and motivation holistically rather than piecemeal. Learners are at the centre of an active participatory experience, with learning, facilitation and decision making in the hands of learners themselves.<sup>101</sup> Student centred learning, and learning activities that promote autonomy and independence, as well as collaboration and interdependence, are key. Classic ‘law in context’ teaching elucidating the rationales for law, the greater context in which the legal order operates, and the relationship between law and society, is expanded to draw in, and on, skills from other disciplines, and though many law students are enrolled in combined degrees, much more can be done to integrate different doctrinal capabilities, such as scientific reasoning versus legal reasoning, or comparison of lawyers’ and historians’ use of evidence and primary sources. The ongoing relevance of legal professionals to problem solving, development of policy, and conflict resolution in communities depends on their ability to work collaboratively within diverse and complex groups, and to perceive, analyse and act upon multi-dimensional information.

<sup>99</sup> *Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development*, UN Doc A/CONF.151/6/Rev.1 (1992). In education the seminal document is the Talloires Declaration, signed in 1990, in which universities committed to environmental sustainability. See *University Leaders for a Sustainable Future, The Talloires Declaration*, [http://www.ulsf.org/programs\\_talloires.html](http://www.ulsf.org/programs_talloires.html)>. However, this document addresses sustainable actions rather than processes.

<sup>100</sup> See, eg, *Protection of the Environment Administration Act 1991* (NSW) s 6(2).

<sup>101</sup> IUCN Commission on Education and Communication (CEC) (2004) p 52.



## B *Conservation of Diversity*

Diversity can be applied to many types of assets, information and processes, which in the educational context includes diverse cultural practices and attitudes, technological capability, corporate or government experience, specific doctrinal expertise, and generic skills and attitudes in communication, collaboration, ethical practice, cultural empathy, analysis, creativity, strategic insight, and ability to see global and local contexts together. As discussed in Part II, much of the feedback from institutions<sup>102</sup> and industry indicates that graduates with diversified learning and an ability to apply that learning to a diverse world are what drives the relevance of lawyers in modern society.

## C *The Precautionary Principle*

The precautionary principle in the context of environmental protection is essentially about the management of scientific risk. It is a fundamental component of ecologically sustainable development.<sup>103</sup> The idea is that if there is a suspected risk of harm to people or the environment, but a lack of scientific consensus exists that the particular action or policy may be harmful, those wishing to implement it bear the burden of proving that it is not harmful. Thus decision-makers operating in a context of uncertainty are required to act with caution, anticipate harm, and take steps to minimise it. However, scientific uncertainty should not preclude precautionary measures being adopted. Principle 15 of the *Rio Declaration*<sup>104</sup> states: ‘...the precautionary principle shall be widely applied... Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation’.

Current enthusiasm for reform of legal curricula is potentially risky if undertaken without adequate foundation. To address this, curriculum reform must be precautionary (rather than cautious) — that is, well grounded in theory, evidence-based, and supported by learning about the learning process itself: meta-learning. Learning and innovation is a perpetually rotating dialectic of learning challenges and conceptual risk-taking supported by rigorous foundation-building in the learning process. Supporting measures are necessary to maintain integrity of the learning experience as the learner progresses through expanding levels of challenge and sophistication

<sup>102</sup> For example those listed above, n 32.

<sup>103</sup> David Cole, ‘The Precautionary Principle — Its Origins and Role in Environmental Law’ (2005) *GreenLaw*, <<http://www.edo.org.au/edosa/publications/newsletter/edo%20newsletter%20october%202005.htm>>.

<sup>104</sup> United Nations Conference on Environment and Development, Rio, 1992 (the Rio Declaration).

of inquiry. The need to support learning with rigorous foundations is not limited to students: Macquarie Law School and many others have identified one of the biggest institutional challenges as being to provide resourcing for local curriculum analysis and for professional development of law teachers.

### D *Intergenerational Equity*

This refers to the notion that future generations have a stake in the current generation. This plays out in two ways in legal education. First, curriculum design questions are generated: Which core values do we want future generations to adopt? Which attitudes to learning, to work, to legal practice and law, and to ethics, social justice and personal and corporate responsibility? Which cognitive skills need to be developed to facilitate this, such as creativity, innovation and collaborative and co-operative problem solving and working? Second, the concept of stewardship involves individual, group and community learning as an ongoing process between generations, and so capacity for intergenerational interaction depends, *inter alia*, on whether today's graduates have intergenerational capabilities embedded into their own education. These include: (i) lifelong habits of inquiry, (ii) willingness and fitness for collaboration, and (iii) an intergenerational stewardship outlook as motivation for innovating in their discipline.

### E *Improved Valuation and Incentive Mechanisms*<sup>105</sup>

This concept is about recognising and rewarding value-adding activities in a community's 'accounts'. In the learning and teaching context, it has implications for prioritising learning and teaching of capabilities equally with doctrinal knowledge. Actively teaching for the desired capabilities, including by means of designing appropriate learning tasks and outcomes, providing opportunities for practice and reflection, assessing graduate capabilities as part of the expected learning, and factoring skills into the time and workload (staff and student) for a given unit or subject, can all be built into the prioritisation of resources and the structuring of incentives.

Sustainable learning, including organisational learning, is learning that endures; it is organic in the sense that it is capable of adapting and reconfiguring itself to meet changing demands. By definition then, it must be process and skill based rather than solely content based, centred on well-defined principles. Embedding a sustainable curriculum depends heavily on stakeholder<sup>106</sup> buy-in, which can

<sup>105</sup> See, eg, *Protection of the Environment Administration Act 1991* (NSW) s 6(2).

<sup>106</sup> Academics, students, practitioners, employers.

be achieved by creating a culture of commitment to excellence in learning and teaching as core business, firmly linked to scholarship and professional learning and development, with embedded quality assurance processes and continual renewal. Practising what we preach, that is, treating sustainable learning and learning outcomes for students as a core value, can be facilitated by ensuring that we actively engage in sustainability ourselves in all our processes and practices, including those related to curriculum.

V AN EXAMPLE OF DISTRIBUTED LEADERSHIP AND  
SHARED RESPONSIBILITY FOR CHANGE: A  
STUDENT-INITIATED PROGRAM THAT  
INTEGRATES THE ‘CO-CURRICULUM’,  
‘TAUGHT CURRICULUM’ AND  
‘BROAD CURRICULUM’

The following section briefly describes<sup>107</sup> a student/ staff collaboration to design and implement a structured peer tutoring and informal mentoring program called LAW-PAL<sup>108</sup> at Macquarie University. This demonstrates the possibilities inherent in adopting a whole-of-school view of leadership, and the capacity of students to act as change agents. Here what would normally be classified as a co-curricular activity forms part of the taught curriculum by being integrated into an elective subject designed to house it. It also contributes significantly to the broad curriculum, not least by addressing the issue outlined above of depression and low emotional well-being amongst law students.

<sup>107</sup> For a fuller discussion, see: Watson and Field, *Promoting Well-being*, above n 40; Penelope Watson, ‘Building communities of practice through Peer Assisted Learning (PAL)’ (Paper presented at Australasian Law Teachers Association Annual Conference, University of Auckland, 4–7 July 2010); Penelope Watson, ‘Well-being and Resilience — what are they and how can they be promoted in Law students?’ (Paper presented at Australasian Law Teachers Association Annual Conference, Queensland University of Technology, 3–6 July 2011); Penelope Watson and Theodore Souris, ‘Promoting Excellence and Sustainability in Peer Learning Programs Pt I: Creating a PAL subject’ (Paper presented at 7<sup>th</sup> National PASS Conference, Sydney, 27–29 Sept, 2011); Penelope Watson and Theodore Souris, ‘Promoting Excellence and Sustainability in Peer Learning Programs Pt II: Beyond the PAL Subject’ (Paper presented at 7<sup>th</sup> National PASS Conference, Sydney, 27–29 Sept, 2011); Penelope Watson and Colin James, ‘Resilience Development for Legal Practice’ (Paper presented at 2012 International Conference on Law and Society, Honolulu, Hawaii, 5–8 June 2012); Colin James and Penelope Watson, ‘Resilience Development for Legal Practice’ (Paper presented at Australasian Law Teachers Association Annual Conference, University of Sydney, 1–4 July 2012).

<sup>108</sup> Based on the Supplemental Instruction (SI) or Peer Assisted Study Sessions (PASS) model of peer tutoring, developed at the University of Missouri, Kansas, and licensed to the University of Wollongong; known at Macquarie Law School as LAW-PAL (Law Peer Assisted Learning).

The impetus for the program came from the students themselves, initially as a response to the BMRI findings on poor emotional well-being. They approached the author to allow them to conduct a two week mini trial of peer assisted learning in Torts in 2009. This progressed into a larger funded<sup>109</sup> pilot study across three units in first semester 2010, and continued to expand rapidly, encompassing almost the entire core curriculum. In just under two years, it had become the largest PAL program in any Australian law school, unique in its emphasis on shared leadership, responsibility and decision-making — that is, total partnership, between one staff member<sup>110</sup> and an expanding group of students. At the taught curriculum level, it adds another layer of support to lectures and tutorials conducted by academics. Diverse groups of mixed-ability and varied background students learn outside the formal classroom, through weekly peer assisted learning (PAL) sessions in which later year students voluntarily assist earlier year students to practice skills and deepen their understanding of legal content in a given subject. In the context of LAW-PAL, the term ‘session’ is used to differentiate student-run PAL classes from those offered by academics; the term ‘Leader’ refers to a later-year high-achieving student who is trained as a facilitator and takes responsibility for designing and managing the weekly sessions; the term ‘Learner’ refers to the students attending PAL sessions.

LAW-PAL’s genesis as a response to well-being issues meant that particular care was taken in the design to address these. The program is built on the three pillars of autonomy, competence, and connectedness or relatedness, drawn from self-determination theory.<sup>111</sup> This theory maintains that well-being is correlated with intrinsic motivation, or performing tasks and activities because they are inherently gratifying. In a study of American law students, Sheldon and Krieger found that ‘autonomy support predicted ... higher subjective well-being ... better graded performance ... and more self-determined motivation to pursue the upcoming legal career’.<sup>112</sup> Volunteering is an expression of self-determination or autonomy, as well as being intrinsically rewarding, which may explain why it is consistently correlated with increases in well-being.<sup>113</sup> According to positive

<sup>109</sup> Penelope Watson, Macquarie University Learning and Teaching Fellowship (2010–11).

<sup>110</sup> A second academic was recruited later to share the load of convening the Leading Peer Learning elective subject, the only elective in the Law school to be offered every semester every year. This is discussed below.

<sup>111</sup> Kennon M Sheldon and Lawrence S Krieger, ‘Understanding the negative effects of legal education on law students: A longitudinal test of self-determination theory’ (2007) 33(6) *Personality and Social Psychology Bulletin* 883, 884.

<sup>112</sup> Sheldon and Kreiger, above n 111, 884.

<sup>113</sup> Stephan Meier and Alois Stutzer, ‘Is Volunteering Rewarding in Itself?’ Institute for the Study of Labor (IZA), Bonn, Germany, Discussion Paper No. 1045, March 2004.

psychologists, well-being is affected by individual traits, subjective experience, and institutions and communities.<sup>114</sup> Resilience is a sub-set of well-being. The essential components of well-being are pleasure, engagement, and meaning. Research has confirmed that pursuing any of these three contributes to life satisfaction, but that the happiest people are those who experience all three together.<sup>115</sup> Importantly, positive emotions are not just psychological effects, but can also be significant *causes* of positive outcomes such as increased productivity and better workplace performance.<sup>116</sup>

Leaders and Learners are actively encouraged and guided to become more autonomous in their learning, more competent at learning and applying that facility to a given learning task, and more connected with one another, with the discipline, and with the Law school. Developing connectedness around shared learning, values and practices, maximises achievement and boosts competence. Learning activities are deliberately designed to be fun (pleasurable), engaging, and purposeful (meaningful). LAW-PAL creates learning communities or communities of practice,<sup>117</sup> defined as ‘groups of people who share a concern or a passion for something they do and learn how to do it better as they interact regularly’,<sup>118</sup> including experiencing the attendant social and affective benefits that drive engagement and learning.

Teamwork is a key feature for PAL Leaders, who work in pairs in the classroom, co-operate in a larger subject team, and form part of the entire LAW-PAL community. In so doing they are supporting one another and modeling, as well as developing, the skills of collaboration and co-operation (connectedness). Groupwork is just as important for Learners, who typically interact in sessions in guided group activities such as problem solving, quizzes, interviews, games or role plays. Leaders are afforded high levels of autonomy, for example, as regards session planning and development of learning activities, and are encouraged and expected to be creative and innovative. They are supported throughout by: regular peer and staff observation and

<sup>114</sup> Shelly L. Gable and Jonathan Haidt, ‘What (and Why) is Positive Psychology?’ (2005) 9 *Review of General Psychology* 103, 108. Peterson and Peterson, above n 47, 390.

<sup>115</sup> Peterson and Peterson, above n 47, 391.

<sup>116</sup> Sonja Lyubomirsky, Laura A. King and Ed Diener, ‘The Benefits of Frequent Positive Affect: Does Happiness Lead to Success?’ (2005) 131 *Psychological Bulletin* 803, 846, cited in Peterson and Peterson, above n 47, 391.

<sup>117</sup> Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation* (University of Cambridge Press, 1991); Etienne Wenger, ‘Communities of Practice. Learning as a social system’, *Systems Thinker* (1998) <<http://www.co-i-l.com/coil/knowledge-garden/cop/lss.shtml>>; Etienne Wenger, ‘Communities of practice. A brief introduction’ (c 2007) <<http://www.ewenger.com/theory/>>; Etienne Wenger, Richard McDermott and William Snyder, *Cultivating communities of practice: a guide to managing knowledge* (Harvard Business School Press, 2002).

<sup>118</sup> Wenger, 2007, above n 117.

feedback; thorough training that includes learning theory and detailed pedagogy along with practical instruction and practice; guided reflection; class discussion and sharing of problems; and celebration of successes. These are all forms of empowerment, teamwork, and continuous learning, which are recognised as ‘practices designed to enhance human sustainability and social capital’.<sup>119</sup> The program enables students in leadership roles to achieve a cultural shift in self-concept, to embrace a vision of themselves as teachers and learners concurrently. It also enables those in Learner roles to see themselves transitioning into Leaders in the future, since LAW-PAL Leaders in third or fourth year may well occupy the roles of Leader (of an early year subject) and Learner (in a later year PAL session) concurrently.

The shared leadership and collaborative nature of LAW-PAL are amongst its greatest strengths. The staff member and Student Co-ordinators (usually two or three former PAL Leaders who have moved on to a policy-making, supervisory and administrative role) together form the Co-ordinator team, working collaboratively to: market the program through means such as ‘lecture bashing’, community meetings, Facebook and Twitter; interview and recruit Leaders; write the Training Manual; conduct all Leader training; plan timetabling of 22 sessions per week over ten weeks every semester; carry out Leader observations and provide feedback; collate records and perform statistical analysis; and manage all other day-to-day running of the program. In addition, the Co-ordinator team initiated fund raising from industry; collaborated with industry bodies working on emotional well-being issues;<sup>120</sup> and obtained grants to develop and pilot an extended online version of LAW-PAL for distance students. Various Leaders collaborated with the academic team member and with one another to present scholarly papers at national conferences, and the pilot team was awarded a Vice Chancellor’s Citation for Outstanding Contributions to Student Learning. All leadership, policy making, and day to day activities of the program, with two exceptions, were staff–student collaborations.

The first exception relates to designing and teaching the elective Leading Peer Learning. Despite the emphasis on volunteering (as opposed to paid programs elsewhere), there were several compelling reasons for channeling the program through an elective subject. The chief among these were (1) to manage workload issues for staff and students, and attract resources and (2) quality control and maintenance of standards. All Leaders were required to enroll

<sup>119</sup> Dexter Dunphy, Andrew Griffiths, and Suzanne Benn, *Organizational Change for Corporate Sustainability* (Routledge, 2003) 54.

<sup>120</sup> Tristan Jepson Memorial Foundation, set up in memory of Tristan Jepson, a former UNSW law student who took his own life; Resilience@Law project, a collaboration between five large law firms and the College of Law; see <<http://www.collaw.ede.au/Research-and-Resources/Resilience-at-Law/>>.

in the elective in their first semester in the program, and it was mandatory for those staying on to repeat the two-day training course each semester. Assessment in the elective emphasised: (1) actual practice as a Leader, (2) strong grasp of relevant theory (leadership, teamwork, learning and pedagogy, reflective practice, PAL), and (3) reflective practice. The second exception concerns an offshoot of LAW-PAL known as LawSmart. This was initiated and run by one of the student Co-ordinators, in conjunction with psychologists from Macquarie Campus Well-being. Purpose-designed workshops for law were conducted on topics such as time management, work-life balance, healthy lifestyle, and positive thinking, over several weeks at the start of the year. Later iterations added workshops on study skills topics conducted by volunteer law academics, to improve students' academic competence and confidence.

LAW-PAL has been an outstanding success, with demand from potential student Leaders far outstripping available places. It has now been rolled into a larger Faculty based multi-disciplinary program. Anecdotal evidence confirms the affective and community-building gains. The benefits of peer tutoring are well documented,<sup>121</sup> with clear evidence in the literature that the tutor/Leader benefits as much or more than the person being tutored. Engaging in LAW-PAL constantly reinforces Leaders' prior learning, encouraging a more holistic or 'big picture' grasp of law and the legal curriculum. LAW-PAL promotes social inclusion and enhances student learning by ensuring a safe, positive and supportive experience for all students to maximise achievement levels, and by developing an inclusive culture and practice in the area of learning and teaching. The small session (class) sizes, peer Leaders, absence of assessment, voluntary attendance, informal friendly and welcoming atmosphere, emphasis on group work and collaborative activity, all encourage students to attend and participate, even those who might normally be more withdrawn. It also allows Learners to obtain individual attention, build networks, take advantage of informal mentoring opportunities, and speak up freely about concerns in a way that they may not do with staff.

The program is consistent with Macquarie's mission to 'excel in teaching and learning ... and in improving social justice', as well as 'providing opportunities for students to serve their communities and develop their leadership skills'.<sup>122</sup> It provides 'an environment

<sup>121</sup> For example in Keith Topping, 'The Effectiveness of Peer Tutoring in Further and Higher Education: A Typology and Review of the Literature' (1996) 32(3) *Higher Education* 321; S Goodlad and B Hirst, *Peer Tutoring: A Guide to Learning by Teaching* (Nichols Publishing, 1989); David Boud, Ruth Cohen and Jane Sampson, *Peer Learning in Higher education* (Routledge, 2001).

<sup>122</sup> Professor Steven Schwartz, Vice Chancellor, Macquarie @50, 100-Day Report to Council and Staff, 4.



that embraces students and supports their success.<sup>123</sup> The program progresses graduate capability objectives by creating opportunities for students to practice and develop leadership and teamwork capabilities, communication skills, and specific discipline skills. It fosters a sense of belonging, and an ethic of mutual obligation, volunteering and community service. It relates directly to student engagement, support and retention, and links with national social inclusion objectives.<sup>124</sup>

An external evaluation<sup>125</sup> of the project was conducted in December 2011 by a consultant in higher education learning and teaching. The success indicators for evaluation are shown in Figure 2.

<sup>123</sup> Above n 122, 5.

<sup>124</sup> See *Review of Australian Higher Education, Final Report*, Dec 2008 ('Bradley Review').

<sup>125</sup> Carolyn Webb, cwebbconsulting, External Evaluation of the Law Peer-Assisted Learning (PAL) Project: A Macquarie University Learning and Teaching fellowship 2010, awarded to Penelope Watson, Director (L&T), Macquarie Law School (2011).

Figure 2: Extrapolated success indicators for evaluating the LAW- PAL program

<ul style="list-style-type: none"> <li>• Project implementation yields a clearly and coherently conceptualised program design</li> <li>• Program design aligns objectives and strategies to achieve intended outcomes</li> </ul>	Program design
<ul style="list-style-type: none"> <li>• Risks are appropriately identified and managed</li> <li>• Ethical implications are identified and addressed</li> <li>• Equity implications are identified and addressed</li> <li>• Program documentation is comprehensive and user-friendly</li> <li>• Program administration is transparent and efficient</li> </ul>	Program management
<ul style="list-style-type: none"> <li>• Program participants are representative of target group diversity</li> <li>• Student participation is well-supported</li> <li>• The experience of participating in the program is positive</li> <li>• Intended learning outcomes for participants are achieved</li> </ul>	Student engagement and experience
<ul style="list-style-type: none"> <li>• Quality assurance and improvement processes are effective</li> <li>• Evidence-based evaluation processes are in place to assess effectiveness and impact</li> </ul>	Quality assurance and improvement
<ul style="list-style-type: none"> <li>• Outcomes from the project are disseminated for scholarly critique</li> <li>• Peer reviews of scholarly outputs are positive</li> </ul>	Dissemination and scholarship
<ul style="list-style-type: none"> <li>• Program is endorsed by key stakeholder groups</li> <li>• Program is embedded in plans, policies and practices within local context</li> <li>• Program is scalable to accommodate variations in demand</li> <li>• Program is viable within projected resources envelope</li> <li>• Program is adopted in (or adapted to) other contexts</li> </ul>	Sustainability and transferability
<ul style="list-style-type: none"> <li>• Improvement is discernible in student well-being and belonging in an inclusive community</li> <li>• Supportive learning community network is self-sustaining over the long term</li> <li>• Program's reach extends beyond university contexts</li> </ul>	Impact

The external evaluator's assessment of the program included the following comments:

The Law PAL program's design and conduct attests to the effectiveness of the collaboration between staff and students, the shared commitment to the multiple mutual benefits, and the clarity of roles and responsibilities. This uniquely shared stewardship is a great strength of the program – students are empowered by the obligations entrusted to them, the academic oversight of the program ensures the institution's duty of care obligations are met along with the assurance of academic standards, and the inter-relationships between students and staff, and between learning and teaching, offer palpable evidence of the dynamic learning community which is being fostered by the program ...

It concluded:

All in all, the Macquarie Law PAL program is an exemplary initiative. The team-based (staff-student) collaborative stewardship of this program, from its gestation through to its current stage of development, is a model of the principles that the initiative itself embraces. Its obvious success can already be witnessed in the flourishing of a learning community based on mutual respect across diverse roles and levels of responsibility. The program has excellent potential to be sustained as part of the bedrock of the learning and teaching infrastructure, both locally and in new contexts, and to contribute to the transformation of students' learning experience and well-being during their studies and beyond into their professional lives.

For academics, learning to trust students with control of their learning, which necessarily means giving up some of our own control, can be challenging. Students, too, often find it challenging being expected to learn to collaborate and co-operate with one another, problem solve, take risks, and be proactive. Students operate on the basis of mental models just as much as academics, and can be equally reluctant to give up their comfortable and well-honed practices. However, in the LAW-PAL program the student Leaders, Co-ordinators and the academic staff member worked together as equal partners in every way with complete trust, produced remarkable results, and learned extensively from the interaction. This type of collaboration has the potential to be the richest and most rewarding experience in teaching, and is entirely consistent with the vision of a 'broad curriculum' discussed above. Over time, the new norms developed in LAW-PAL for staff and students have the potential to become the 'taken-for-granted' culture wherever it operates.

## VI CONCLUSION

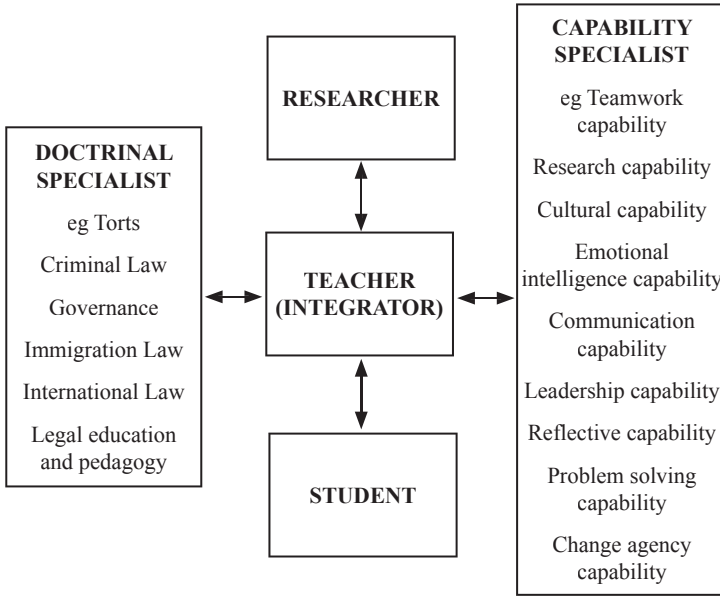
We do indeed live in interesting times. This paper has argued that the current climate of externally imposed change in legal education provides us with a golden opportunity to move beyond compliance, and reconceptualise some of our basic assumptions or mental

models about modern law schools. In line with research in other organisational contexts, it suggests that we need to move away from narrowly defined roles and jobs and risk-averse cultures, towards a far more expansive self-concept, one that validates positive risk taking and builds in attitudes of constructive discontent, or the search for constant improvement. Challenging our current mental models about organisations and the roles of different individuals within them will enable us to embrace a more collaborative culture, building capacity through shared leadership and shared decision making by all members of the law school community, broadly defined to include academics, students, practitioners and others.

Law schools should be ‘incubators of leadership’ and other capabilities. Conceptualising all members of the community as sitting along a continuum of constantly developing expertise and skills, involves learning to respect and trust in the capability of others and embedding processes to foster that capability. This is inherent in the concept of stewardship discussed above. We need to be constantly on the lookout for problems, opportunities, successes and challenges, all of which can help us to harness our creative energy.

Ambitious change is non-linear and unpredictable – ‘messy’ – and therefore likely to be uncomfortable at times, but unless we embrace these new challenges, we are not only failing to capitalise on large reservoirs of available potential talent and resources, but also failing to develop those resources as we should. What is offered here is a conceptual framework for action that integrates both top- down and grass roots approaches, working towards sustainable curriculum design within the overall goal of achieving integration of the various activities of law schools. It is no longer merely a matter of empowering individuals to act, more importantly, it is essential that action be seen and embraced as an imperative and an obligation for professional teachers and students alike, not a choice. Figure 3 (below) illustrates how all the concepts in this paper align to establish a law school as a holistic learning organisation where all the roles intersect and where all the types of knowledge and capability intersect.

Figure 3: The Law School as an holistic learning organisation with intersecting roles<sup>126</sup>



Finally, Fullan’s comment is worth repeating:

Change is too important to leave to the experts ... every person working in an enterprise committed to making continuous improvements must be change agents with moral purpose ... we cannot leave the responsibility to others ... each and every teacher [and student] has the responsibility to help create an organization capable of individual and collective inquiry and continuous renewal, or it will not happen.<sup>127</sup>

<sup>126</sup> Adapted by Penelope Watson from graphic created by Con Papis. An earlier version was published in Penelope Watson and Con Papis, ‘Mapping and embedding sustainable graduate capabilities in law’ (2009) 2(1&2) *Journal of the Australasian Law Teachers Association* 217.

<sup>127</sup> Michael Fullan, *Change Forces*, above n 7, 38.