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'SELLING THE DREAM': LAW SCHOOL BRANDING AND THE ILLUSION OF CHOICE

MARGARET THORNTON* AND LUCINDA SHANNON**

I INTRODUCTION

In a little over 20 years, the number of law schools in Australia has tripled — from 12 to 36. The catalyst for this revolutionary change occurred in 1988 when by a stroke of the pen the then Minister for Employment, Education and Training, John Dawkins, declared all Colleges of Advanced Education (CAEs) to be universities.¹ The intention was to increase school retention rates and enhance the calibre of the Australian workforce so that Australia might be more competitive on the world stage. Despite the transformation of the tertiary sector, government funding was not proportionately increased.²

Indeed, such phenomenal growth could not be sustained from the public purse. To generate additional revenue, the Dawkins reforms heralded a shift away from free higher education to a user-pays regime in which students themselves assumed partial responsibility for the cost of their education.³ While initially resisted, the new regime was quickly normalised. Public acceptance was ensured by, firstly, eschewing the language of fees and referring to the charge euphemistically as a 'contribution' (the Higher Education Contribution Scheme or HECS); secondly, setting the initial cost for domestic undergraduate students at a modest AU\$1800 per annum across the board; and, thirdly, making HECS repayable only when a graduate reached a certain income threshold. Of course, once a fee

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¹ Hon John S Dawkins, *Higher Education: A Policy Statement* (Australian Government Publishing Service, White Paper 1988).

² The number of universities increased from 16 to 34 in four years. See Simon Marginson and Mark Considine, *The Enterprise University: Power, Governance and Reinvention in Australia* (Cambridge University Press, 2000) 28–29.

³ Free higher education was introduced by Prime Minister, Gough Whitlam, in 1974. For discussion, see Marginson and Considine, *ibid* 56–7.

regime is put in place, it is inevitable that fees will be ratcheted up, and disciplinary differences soon emerged, with law being charged at the top rate. The shift from an élite to a mass system, supported by a user-pays philosophy, dramatically changed the character of legal education.⁴

CAEs were formerly teaching-only institutions which generally did not include professional programmes, but once they had become universities they were anxious to legitimise their new-found status by offering professional degrees. As universities had been largely deregulated,⁵ they were free to choose what courses they wished to offer — with the exception of medicine. To boost the knowledge economy, it was hoped they would offer courses with clear career paths. Law was a popular choice. In addition to attracting well-credentialed students, university administrators believed that a law degree required few resources. Indeed, it was a longstanding myth that law could be taught ‘under a gum tree’.⁶ The persistence of this myth ignored the notable pedagogical shift that had occurred in legal education away from the large-lecture model of course delivery (the ‘sage on the stage’) to an active learning model of small-group discussion, critique and interrogation of legal knowledge — a superior pedagogical model, but one requiring substantially more resources.

Many new law schools was established in the early to mid-1990s, not only in the new universities (for example, Southern Cross, Western Sydney and Victoria) but also in the ‘third generation’ universities established in the 1960s (for example, Flinders, Griffith, and La Trobe). The parlous financial situation in which all the law schools soon found themselves compelled them to take in more and more students to meet budgetary shortfalls. This set in train an endless spiral and caused them to espouse once again the outdated but cheaper pedagogies that had so recently been cast aside. Income generation and cost cutting became the primary concern of law deans everywhere.

In a volatile climate beset with risk, a law school, particularly a new school, could not passively wait for students to apply for admission. Through a range of marketing tools and the creation of a distinctive ‘brand’, law schools set out to woo student/customers and persuade them to choose *their* institution over others. This article examines the ways in which Australian law schools present

⁴ For a thoroughgoing analysis of the transformation that occurred, see Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012).

⁵ The Commonwealth Tertiary Education Commission was abolished in 1987 and transferred to the Department of Education, Employment and Training. See Marginson and Considine, above n 2, 31.

⁶ Martin Report (Committee on the Future of Tertiary Education in Australia), *Tertiary Education in Australia: Report to the Australian Universities Commission* (Government Printer, 1964) II, 57.

themselves to the world as attractive and desirable in a competitive market. The first port of call for prospective customers is likely to be the law school website, on which we propose to focus.

While purporting to present themselves as distinctive, law schools tend to emphasise similar things in their advertising. Attractiveness and desirability are construed in terms of consumerism with advertising often redolent of a tourist brochure. The student who undertakes a law degree is promised employability, prestige and wealth; he or she is also assured of a glamorous and fun-filled career. As a result, the serious and difficult aspects associated with the study of law are sloughed off, as well as the centrality of justice and critique. But first a word about competition policy in legitimating the pre-eminent role of the market in reshaping the legal academy.

A Competition Policy

In accordance with the values of social liberalism, the prevailing political philosophy extols the role of the market, rather than the state, as the arbiter of the good. Freedom for the individual within the market is the fundamental social good according to neoliberal guru, Friedrich Hayek, as it fosters competition.⁷ The philosophy of Hayek, which was applied to universities by his colleague, Milton Friedman, assisted by Rose Friedman,⁸ underpins the commodification of higher education in Australia and is particularly relevant to legal education. Friedman was of the view that students who enrolled in professional courses should not be the recipients of public funding because it was assumed they would subsequently earn high incomes. The loan system that Friedman advocated, which would be repayable throughout the taxation system,⁹ was precisely the one that was implemented in Australia.

Competition, however, is by no means peculiar to higher education, for it is an inescapable dimension of the 'market metanarrative',¹⁰ which permeates every aspect of contemporary society. Competition became an official plank of Australian government policy with the Hilmer Report in 1993.¹¹ In accordance with the philosophy of

⁷ Friedrich A von Hayek, *The Constitution of Liberty* (Routledge & Kegan Paul, 1960) 92–3.

⁸ Milton Friedman, with the assistance of Rose D Friedman, *Capitalism and Freedom* (University of Chicago Press, 1962); Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (Harcourt Brace Jovanovich, 1980).

⁹ Friedman, *Capitalism*, above n 8, 105.

¹⁰ Peter Roberts, 'Rereading Lyotard: Knowledge, Commodification and Higher Education' (1998) *Electronic Journal of Sociology*: <<http://www.sociology.org/content/vol003.003/roberts.html>>.

¹¹ Hilmer Report (Independent Committee of Inquiry into Competition Policy in Australia, *National Competition Policy*) (Australian Government Publishing Service, 1993). The main recommendations of the report were incorporated into the *Competition Policy Reform Act 1995* (Cth).

Hayek and Friedman, competition policy endorses the view that the operation of the vectors of supply and demand within a free market is the best way for society to generate greater efficiencies in production as well as a superior outcome for consumers. In other words, the effect of the marketising reforms required universities to reposition themselves as the ‘simulacra of business’.¹²

Prior to the Dawkins reforms, Australian law schools had been largely immune from competition. For decades there was only one law school in each State, but the landscape was to change irrevocably. The proliferation of law schools has inevitably meant increased competition for ‘market share’, particularly for top-performing students. Competition also means that some schools will succeed while others will founder. To date, however, no Australian law school has been compelled to close. This is because the most vulnerable — the regional universities — are generally located in marginal electorates. It is nevertheless within a competitive social Darwinist environment that law schools operate, perpetually haunted by the possibility of third-ratedness and non-success. As the now classic work of Ulrich Beck has established, risk is the inescapable corollary of entrepreneurialism and the production of wealth.¹³

The ideological underpinnings of the transformed environment have been secured by the emergence of a new marketised language in which it is accepted that students are ‘consumers’ or ‘customers’ in a ‘higher education market’ and universities are ‘higher education providers’ delivering a ‘product’. Like consumers generally, the consumers of higher education are expected to exercise choice as to which law school ‘product’ would best equip them with the means of realising their dreams. To the student/customer/consumer, legal education is the ‘bridge to [the] displaced meanings’ of an idealised future career.¹⁴ That is, legal education is understood as the pursuit of knowledge not for its own sake as articulated by John Henry Newman, one of the most famous theorists of the *idea* of the university,¹⁵ but because of what it promises. But how are students to know which law school to choose?

¹² Helen Sauntson and Liz Morrish, ‘Vision, Values and International Excellence: The “Products” that University Mission Statements sell to Students’ in Mike Molesworth, Richard Scullion and Elizabeth Nixon (eds), *The Marketisation of Higher Education and the Student as Consumer* (Routledge, 2011) 73.

¹³ Ulrich Beck, *Risk Society: Towards a New Modernity* (Mark Ritter trans, Sage, 1992) 19 [trans of *Risikogesellschaft: auf dem Weg in eine andere Moderne*, 1986].

¹⁴ Grant McCracken, *Culture and Consumption: New Approaches to the Symbolic Character of Consumer Goods and Activities* (Indian University Press, 1988) 110.

¹⁵ John Henry Newman, *The Idea of a University*, edited with introduction and notes by IT Ker (Clarendon, 1976 [1852]).

B *The Standardising Imperative*

While there is a modicum of diversity in Australian law schools,¹⁶ there is simultaneously a propulsion towards homogeneity which constitutes a particular marketing challenge, as sameness is anathema to the ideology of choice. The imperatives in favour of sameness are not mere abstract exhortations but prescripts emanating from the profession and the state, underpinned by the rhetoric of competition at the international level.

Firstly, as a professional discipline, law is subject to the requirements of the admitting authorities. Acceptance of the 'Priestley Eleven', the eleven compulsory areas of knowledge necessary for the accreditation of a law degree, is regarded as non-negotiable by all Australian law schools — a factor that straightaway ensures a significant degree of sameness in the curriculum. Secondly, the state itself is playing an increasingly interventionist role in ensuring the curricular and pedagogical standardisation of higher education through auditing and accountability mechanisms.¹⁷ The most notable recent instance is the Australian Qualifications Framework (AQF),¹⁸ which is designed to ensure consistency in the provision of all tertiary and vocational qualifications. For law schools to be compliant, the AQF requires distinct learning outcomes for the LLB, LLB Honours, LLM (coursework) and JD programs.¹⁹ Thirdly, the contemporary trend in favour of the international ranking of universities further encourages sameness and entrenches stratification.²⁰ League tables assume that universities, like football teams, all compete on a level playing field regardless of differences in aims, age, resources and student catchments. Hence, if a wealthy private American Ivy League university is No 1, the aim is to emulate its characteristics in the hope of elevating one's own institution in the global rankings, whether that is appropriate for a public university in Australia or not. League tables, with their obsessive focus on rankings, also reinforce

¹⁶ Richard Johnstone and Sumitra Vigaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Commonwealth of Australia, 2003) 56.

¹⁷ In response to the Bradley Review into higher education, the Government set up the Tertiary Education Quality and Standards Agency (TEQSA) in 2011. TEQSA is charged with ensuring compliance with the Higher Education Standards Framework. See <<http://www.teqsa.gov.au/>>.

¹⁸ See <<http://www.aqf.edu.au/>>.

¹⁹ *Australian Qualifications Framework*, Australian Qualifications Framework Council, South Australia, 2nd ed 2013, 47–52, 59–62: <<http://www.aqf.edu.au/>>.

²⁰ Some of the better known global league tables are: the Academic Ranking of World Universities <<http://www.shanghairanking.com/index.html>>; QS World University Rankings <<http://www.topuniversities.com/university-rankings/world-university-rankings>>; Times Higher Education World University Rankings <<http://www.timeshighereducation.co.uk/world-university-rankings/>>.

the tendency to see higher education as ‘a product to be consumed rather than an opportunity to be experienced’.²¹

Competition policy and the market embrace both emphasise the division between older and newer law schools. While the former have substantial positional goods emanating from their age, wealth and status, often as the sole provider of legal education in a State for as long as a century, the latter, with none of these benefits, are struggling. However, such differences are discounted on a supposedly level playing field. The move to standardise, referred to as *isomorphism* by Marginson and Considine²² and, perhaps more evocatively, as *McDonaldisation* by Ritzer,²³ is a way of describing how the creation of an identical product is required with only a frisson of difference, a surface variation, to set it apart for the purposes of marketing.²⁴ As students are not ‘reliable long-term clients’ but ‘fickle customers who may be difficult to attract and retain’,²⁵ law schools must purport to offer something special. While sameness is accepted as a tacit criterion, it is difference that is marketed.²⁶

II MARKETING AND THE ILLUSION OF CHOICE

At its simplest, marketing is ‘the provision of information to help people make decisions’.²⁷ Possessing the means to access information to inform their choices, individuals supposedly become autonomous rational actors in accordance with the prevailing ethos of neoliberalism. But this faith in the idealised freely choosing consumer to which the dominant market paradigm subscribes is questionable. Bauman contends that choice is the ‘meta-value’ of a consumer society and that it enables the evaluation and ranking of all other values.²⁸ He suggests that the conjunction of the discriminating consumer and the market as the purveyor of free choice are essentially myths that nourish each other.²⁹ Marketing does not simply disseminate information; it actively works to ‘create’ the appearance of difference and to encourage favourable associations

²¹ Roger Brown, ‘The March of the Market’ in Molesworth et al, above n 12, 16.

²² Marginson and Considine, above n 2, 176.

²³ George Ritzer, *The McDonaldisation of Society: New Century Edition* (Pine Forge Press, 2nd ed, 2000); George Ritzer, *McDonaldisation: The Reader* (Pine Forge Press, 2010).

²⁴ Thornton, *Privatising*, above n 4, 43.

²⁵ George Ritzer, ‘Enchanting McUniversity: Toward a Spectacularly Irrational University Quotidian’ in Dennis Hayes and Robin Wynyard (eds), *The McDonaldisation of Higher Education* (Bergin & Garvey, 2002) 19, 20.

²⁶ Cf Michael Ariens, ‘Law School Branding and the Future of Legal Education’ (2003) 34 *St Mary’s Law Journal* 301, 349.

²⁷ Anthony Lowrie and Jane Hemsley-Brown, ‘This Thing Called Marketisation’ (2011) 27 *Journal of Marketing Management* 1081, 1081.

²⁸ Zygmunt Bauman, *Work, Consumerism and the New Poor* (Open University Press, 2nd ed, 2005) 58.

²⁹ *Ibid.*

with a product. Vast resources are mobilised by big business in the construction of a product's uniqueness through advertising and branding.³⁰ Despite the asymmetry between business and individual consumers, the presence of 'different' products transforms choice into what Holt terms an act of 'personal sovereignty'.³¹ The products being chosen then become authentic resources in the establishment of the consumer's identity.³² Nevertheless, the promotion of the 'cult of *difference* and choice' effectively obscures the marked similarity between goods and services.³³ Thus, while commonplace products such as washing powders all perform basically the same function, each manufacturer aims to persuade consumers that their product possesses some unique quality. This paradox of sameness and difference is similarly exemplified in the marketing of legal education.

A Branding and the Aesthetic of Work

Law schools may claim to be 'excellent', 'the best' or 'world class' but such claims alone are unlikely to entice well qualified applicants.³⁴ In any case, Readings effectively demolishes the concept of excellence as the 'watchword' of the contemporary university.³⁵ While no one can be against excellence, no one really knows what it is, because it not only lacks a fixed standard of judgment,³⁶ it lacks cultural content altogether.³⁷ Excellence, then, is a pre-given in the marketing of legal education, but there needs to be some additional feature that is distinctive, or an element of 'niche marketing' to create a unique identity or 'brand'. The need or desire for branding has emerged as a result of increased competition in conjunction with consumer choice.

At its simplest, a brand is a name, mark or symbol which denotes a particular seller's product or service.³⁸ A successful brand will involve a product with a recognisable identity and represent a particular set of values that is important to the consumer. Even if the claims made are spurious, as has long been the case with myriad prophylactic products, consumer perception is the key to a successful

³⁰ Barry Smart, '(Dis)Interring Postmodernism or a Critique on the Political Economy of Consumer Choice' in Jason L Powell and Tim Owen (eds), *Reconstructing Postmodernism: Critical Debates* (Nova Science Publishers, 2007) 162, 172.

³¹ Douglas B Holt, 'Why Do Brands Cause Trouble? A Dialectical Theory of Consumer Culture and Branding' (2002) 29: 1 *Journal of Consumer Research* 70, 79.

³² *Ibid* 83.

³³ Bauman, above 28, 59.

³⁴ Ariens, above n 26, 337.

³⁵ Bill Readings, *The University in Ruins* (Harvard University Press, 1996) 21.

³⁶ *Ibid* 24.

³⁷ *Ibid* 38.

³⁸ Peter Doyle, *Marketing Management and Strategy* (Hemel Hempstead, 2001) 166.

brand. Hence, as Temple argues, branding as a route to success is an illusion.³⁹ Law schools must therefore work hard to associate their product with the idealised futures imagined by prospective customers. Branding is not merely about uncovering the ‘essence’ of an institution; it is also about creating certain associations with the brand in accordance with the dominant ideology of the consumer culture.⁴⁰

Professional credentialing is an ever-present consideration in law school marketing.⁴¹ Even if students elect not to practise law, the majority like to qualify for admission ‘just in case’. But advertising a law degree requires much more than the promise of credentialism. It also requires access to professional labour markets — but not any job. Zygmunt Bauman argues that the consumer society has radically altered the perception of work, which has shifted from production to consumption.⁴² Rather than providing security and a stable identity of the kind associated with modernity, work is now expected to produce an aesthetic of pleasure through excitement, adventure or happiness. The line separating work and life is thereby corroded. This aesthetic of pleasure, which is a mark of the contemporary culture of ‘youthism’,⁴³ can be discerned as a leitmotif in law school advertising, where law schools increasingly represent themselves as the gateway to a satisfying and fun-filled career. No consumer exercising free choice would choose a boring job ‘devoid of aesthetic value’, as Bauman points out.⁴⁴ Needless to say, repetitive and routine work, which may characterise a great deal of the work undertaken by junior associates in large law firms,⁴⁵ is accorded short shrift in advertising material. Potential students must be tempted and tantalised by the idea that a law school can make their dreams come true.⁴⁶ Branding, therefore, is less about the consumption of a product than about ‘the social relations, experiences and lifestyles such consumption entails’.⁴⁷

³⁹ Paul Temple, ‘University Branding’ (2011) 15:4 *Perspectives: Policy and Practice in Higher Education* 19.

⁴⁰ Holt, above n 31, 80.

⁴¹ Cf Ariens, above n 26, 329.

⁴² Bauman, above n 28, 34.

⁴³ Margaret Thornton and Trish Luker, ‘Age Discrimination in Turbulent Times’ (2010) 19(2) *Griffith Law Review* 141, 165.

⁴⁴ Bauman, above n 28, 34.

⁴⁵ The Chief Justice of NSW, Bathurst CJ, was compelled to resile from a controversial reference to new recruits in corporate law firms as ‘mindless drones’, which he replaced with ‘mechanical drones’. The retention of the word ‘drone’ is nevertheless salutary. See Chris Merritt, ‘Bathurst rethinks “drone” attack’, *The Australian* (Sydney), 11 May 2012, 33.

⁴⁶ Helen Haywood, Rebecca Jenkins and Mike Molesworth, ‘A Degree will make your Dreams come true: Higher Education as the Management of Consumer Desires’ in Molesworth et al, above n 12, 184.

⁴⁷ Melissa Aronczyk and Devon Powers, ‘“New Branded World” Redux’ in Melissa Aronczyk and Devon Powers (eds), *Blowing up the Brand: Critical Perspectives on Promotional Culture* (Peter Lang, 2010) 7.

The time spent at law school studying law is frequently glossed over in advertising, being represented merely as a means to an end — a mere blip between the reality of the present, the receipt of a testamur and the realisation of the dream. It is the campus culture rather than the content that receives attention in marketing because it comports with the prevailing aesthetic of pleasure. Inger Askehave likens the rhetoric of advertising in the student prospectus to that of the tourism industry.⁴⁸ An example from Southern Cross Law School illustrates the point: 'Embrace the sun, sand and surf. Study law this summer at Byron Bay or the Gold Coast'.⁴⁹ 'The 'vibrant campus culture' was what appealed most of all to two University of Western Australia alumni, according to the Law School website.⁵⁰ There is no advertence to the fact that intellectual engagement with new ideas requires effort and commitment, or that law students will have to spend hours reading.⁵¹ Neoliberal rhetoric in conjunction with a consumerist mentality has contributed to an 'intellectual shift from engagement to passivity' in higher education generally.⁵² Student/consumers expect their 'service providers' to ensure that they pass the course with minimum effort. The point was made by numerous academics interviewed for *Privatising the Public University*.⁵³

B Websites

In the marketing of legal education, promotion of the idealised work/lifestyle mix is found in most contemporary media.⁵⁴ Universities produce a range of physical materials in the form of glossy brochures highlighting attractive features of the campus or student life. Professional and academic staff, students and alumni engage in various forms of direct marketing through events such as open days, information nights and university fairs at home and abroad.

However, as the impact of the Internet is deep and far-reaching, it requires special consideration. The nub of Marshall McLuhan's famous aphorism 'the medium is the message' is that the use of

⁴⁸ Inger Askehave, 'The Marketization of Higher Education Genres — The International Student Prospectus as a Case in Point' (2007) 9 *Discourse Studies* 723, 739.

⁴⁹ School of Law and Justice, Southern Cross University <<http://www.scu.edu.au/schools/law/>> at 12 September 2012.

⁵⁰ Iona Quahe: <<http://www.studyat.uwa.edu.au/courses/business-law/>>; Cameron Barnes: <<http://www.studyat.uwa.edu.au/courses/law-and-society/>> at 11 September 2013.

⁵¹ Cf Graeme Broadbent and Pamela Sellman, 'Great Expectations? Law Schools, Websites and "the Student Experience"' (2013) 47(1) *The Law Teacher* 44, 62.

⁵² Joanna Williams, 'Constructing Consumption: What Media Representations reveal about Today's Students' in Molesworth et al, above n 12, 172.

⁵³ Thornton, *Privatising*, above n 4.

⁵⁴ Colin Symes, 'Selling Futures: A New Image for Australian Universities?' (1996) 21 *Studies in Higher Education* 133, 137.

any communications medium has an influence far greater than its content.⁵⁵ One aspect of the Internet's potency is derived from the fact that it is made up of 'all or at least most media that have come before it, with writing ubiquitous in the driver's seat.'⁵⁶ The webpage holds great potential because the message can be conveyed in a range of formats in the one place. For many students, a visit to the homepage of a university or faculty will be the first campus 'visit',⁵⁷ and the global reach of the Internet may be especially useful in attracting full fee-paying international students. Prospective students can view video clips of student testimonials, take a virtual tour of the campus and the law school, find out about the course and career options, and read online brochures together with the profiles of lecturers and successful graduates. Websites allow users to navigate this content in a way that is relevant and interactive,⁵⁸ which enhances an individual's 'relationship' to the brand in question.⁵⁹

It takes significant resources to produce a high-quality website which incorporates a range of media and creates a unified and compelling statement, but not all websites are created equal. For instance, some law school websites contain only written text, with a few pictures and the university crest. The information contained on these websites relates mainly to course content and structure rather than an attempt to lure students with powerful imagery and the promise of opportunities. The 'success' of online branding depends on a cluster of rational and emotional values that enable the consumer to recognise the 'promise experience'.⁶⁰

Websites may be the 'virtual face'⁶¹ of an institution but the divergence in quality has implications for a law school's ability to harness effectively the language and imagery of the aesthetic of work. Hence, a lack of resources may limit a school's ability to sell itself as a pathway to a bright future. However, there is no necessary correlation between the amount expended on marketing and students' choice of university. An investigation by the *Times*

⁵⁵ Paul Levinson, *Digital McLuhan: A Guide to the Information Millennium* (Routledge, 1999) 35.

⁵⁶ *Ibid* 38.

⁵⁷ Robert Opoku, Russell Abratt and Leyland Pitt, 'Communicating Brand Personality: Are the Websites Doing the Talking for the top South African Business Schools?' (2006) 14 *Brand Management* 20, 32.

⁵⁸ Geoffrey J Simmons, "'i-Branding": Developing the Internet as a Branding Tool' (2007) 25 *Marketing Intelligence and Planning* 544, 551; Ji Hee Song and George M Zinkhan, 'Determinants of Perceived Web Site Interactivity' (2008) 72 *Journal of Marketing* 99, 99.

⁵⁹ Simmons, above n 58, 553.

⁶⁰ Chris Chapleo, María Victoria Carrillo Durán and Ana Castillo Díaz, 'Do UK Universities communicate their Brands effectively through their Websites?' (2011) 21:1 *Journal of Marketing for Higher Education* 25, 30.

⁶¹ Katrina A Meyer, 'The "Virtual Face" of Institutions: Why Legislators and Other Outsiders View Higher Education as Aloof' (2008) 11 *The Internet and Higher Education* 178.

Higher Education of universities in the United Kingdom found that despite the significant increase in expenditure by nearly a quarter, they suffered a 7.4 per cent fall in applications the following year. It is notable that the new universities (post-1992) were among the biggest spenders on advertising, while those belonging to the Russell Group, the most prestigious, were the lowest.⁶² As might be expected, Oxbridge attracts students regardless of marketing expenditure, while large sums spent by the new universities will not necessarily prove to be a wise investment. While the international marketing of Australian undergraduate law degrees has been limited because of the largely municipal nature of the law degree, the globalisation of legal markets is inducing a change. The full fee income received from international students is the main reason they are being targeted, despite the curricular and pedagogical challenges posed by diverse student cohorts.⁶³

III LEGAL EDUCATION AND THE 'GOLDEN TICKET' TO EMPLOYMENT

Perhaps unsurprisingly, law school marketing is strongly correlated with the vocational aspects of legal education. Vocationalism is described by James as 'the set of statements about legal education produced by law schools and by legal scholars which emphasise the importance of the teaching of legal skills and prioritise employability as an objective of legal education.'⁶⁴ The development of commercially focused law programs, the emphasis on applied skills for the 'real world' and the marketing of law schools as a branch of the legal profession are salient features of law school websites as schools strive to build a brand that can tap into the consciousness of prospective students lured by elite careers. The emergence of the global law firm as a key stakeholder in the educational enterprise and the demands of the global new knowledge economy more generally have become key selling points for law schools. Although precise data are not available, a 2010 survey by Graduate Careers Australia revealed that only 43.7 per cent of law graduates started work in

⁶² Of the 70 universities offering data, Cambridge, Oxford and St Andrews spent nothing on advertising. See David Matthews, 'University student marketing spend up 22%', *Times Higher Education* (London), 10 February 2013: <<http://www.timeshighereducation.co.uk/story.asp?storycode=422601>>.

⁶³ Cf Vai Io Lo, 'Before Competition and beyond Complacency — The Internationalisation of Legal Education in Australia' (2012) 22 *Legal Education Review* 3.

⁶⁴ Nickolas John James, 'Why has Vocationalism Propagated so Successfully within Australian Law Schools?' (2004) 6 *University of Notre Dame Australia Law Review* 41, 44.

law firms.⁶⁵ While some law school websites advert to a wide range of possible careers,⁶⁶ the overwhelming focus is directed towards conventional private legal practice.⁶⁷

A *The Commercial Focus*

A symbiotic relationship between law and business is not new but it has been accentuated with the neoliberal embrace in which the market has become the measure of all things. Understanding the marketability of the commercially oriented law school requires an interrogation of the drivers of law school behaviour, including the pressures that students and the legal services market place on law schools. This encourages law schools to stress their strengths in commercial, corporate and taxation law.⁶⁸ The commercial orientation, as well as providing a pathway to practice, demonstrates to the corporate legal labour market the ‘marketability’ of a law school’s graduates.

The élite corporate firms, including the emergent global conglomerates that evince a particular interest in Asia,⁶⁹ represent the most desirable destinations for law graduates and there is an attempt to shape the curriculum accordingly. Sydney Law School, for example, offers specialised post-graduate courses in areas such as Law and Investment in Asia or US International Taxation.⁷⁰ Other law schools are careful to show that commercial specialisation is one of several core areas on offer.⁷¹ Alumni profiles often showcase individuals who have risen in the ranks of top-tier law firms or have pursued high-flying international corporate careers as a means of emphasising the accessibility of such careers to the graduates of a particular law school.

⁶⁵ Nicola Berkovic, 2011. Fewer law graduates are choosing practice as a career. *The Australian* [online]. 1 July. Available from: <<http://www.theaustralian.com.au/business/legal-affairs/fewer-law-graduates-are-choosing-practice-as-a-career/story-e6frg97x-1226085138499>>.

⁶⁶ Eg. UNSW Law: <<http://www.law.unsw.edu.au/current-students/careers>> at 11 September 2013; UTAS: <<http://www.utas.edu.au/law/about-the-faculty-of-law>>.

⁶⁷ A study of law school websites in the UK found a similar orientation. See Broadbent and Sellman, above n 51, 60.

⁶⁸ Eg. Deakin Law School: *Welcome from the Dean and Head of School, Professor Mirko Bagaric*: <<http://www.deakin.edu.au/buslaw/law/about/>>.

⁶⁹ A flurry of amalgamations occurred between super-élite London-based and Australian firms in 2012. They include Allens Linklaters, Ashurst, Norton Rose, Clifford Chance, DLA Piper and King & Wood Mallesons. See, for example, Alex Spence, ‘Asia the prize as City lawyer seals deal’, *The Times* (London), 29 June 2012, 39.

⁷⁰ Sydney Law School: <<http://sydney.edu.au/law/fstudent/coursework/buslaw.shtml>> at 11 September 2013.

⁷¹ *School of Law Mission Statement*, University of Canberra: <<http://www.canberra.edu.au/faculties/busgovlaw/school-of-law/school-of-law-mission-statement>>; Victoria University: *Bachelor of Law, Course Objectives* <<http://www.vu.edu.au/courses/bachelor-of-laws-blaw>>.

Employment with an élite law firm is prized by students, both for its high earning potential and the glamorous and youthful lifestyles held out in the firm's own marketing materials.⁷² As a result, student/consumers may place pressure on law schools for more commercial options, to the detriment of critical or social justice approaches.⁷³ Nevertheless, as a concession to the sense of altruism that many students retain, law school websites may link social justice initiatives with the pro bono programs of commercial firms.⁷⁴ Students, conscious of their HECS (now FEE-HELP) debt and wooed by the luxurious offices and prestige of the super-élite global firms, are inclined towards those law schools which position themselves as conveyor belts to these and other large firms. Invariably, these law schools are likely to be the oldest and most prestigious in a State.

B *Skills, Experiential Learning and the 'Real' World*

One of our aims has always been to have graduates known for what we call 'real world readiness'.⁷⁵

In the new knowledge economy, it is 'know-how' rather than 'know-what' that is valued.⁷⁶ This shift in favour of applied knowledge is clearly discernible in the law curriculum as law schools include more practical skills in the curriculum. In the United States, the global financial crisis has induced a scathing attack on law schools for favouring esoteric scholarship over the training of 'practice ready' graduates.⁷⁷ The view is that the American law degree, the JD, not only takes too long, it is too expensive and contains insufficient 'useful knowledge'. As the Australian LLB/JD is a prerequisite for admission to practice and does not entail a separate Bar exam, there

⁷² Cf Richard Collier, "'Be Smart, Be Successful, Be Yourself...?': Representations of the Training Contract and Trainee Solicitor in Advertising by Large Law Firms' (2005) 12 *International Journal of the Legal Profession* 51, 61–4.

⁷³ Thornton, *Privatising*, above n 4, 71.

⁷⁴ For example, Sydney Law School's social justice page for undergraduate students outlines a range of initiatives that students can take part in, many of which are accomplished through partnerships with large law firms: *Sydney Law School Social Justice Program*: <http://sydney.edu.au/law/fstudent/undergrad/social_justice_program.shtml>.

⁷⁵ University of Wollongong: *Where a UOW Law Degree Can Take You ...* <<http://www.uow.edu.au/law/uowllb/index.html>>.

⁷⁶ OECD (Organization for Economic Co-operation and Development), *The Knowledge-Based Economy* (OECD, 1996).

⁷⁷ David Segal, 'What they don't teach law students: lawyering'. *The New York Times* 19 November 2011. Available from: http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?_r=1&pagewanted=all; Special Committee on the Impact of Law School Debt on the Delivery of Legal Services, *Final Report & Recommendations* (Illinois State Bar Association, 2013). Cf Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (Australian Law Reform Commission, 2000) <<http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC89.pdf>>, 36–9.

is a greater consciousness of the needs of the profession, but the neoliberal turn has accentuated the desirability of practical skills over theoretical and critical knowledge.⁷⁸

Accordingly, a salient theme in law school marketing is the provision of skills through experiential learning and contact with the ‘real’ world. Sally Kift argues that in developing skills for practice, ‘experiential learning is the best (and possibly the only effective) way to prepare students’.⁷⁹ Experiential learning is also often understood as the centrepiece of progressive education as it engenders an active rather than a passive approach to learning.⁸⁰ However, law schools market experiential learning not so much because it will result in better lawyers but because it accords with the market’s demand for graduates with ‘job ready’ skills — that is, the neoliberal imperative which favours ‘know how’ over ‘know what’:

Experiential learning is a high priority for UniSA Law. We aim to develop not only students’ knowledge in Law, but also their practical skills so that they are job ready when they graduate.⁸¹

External placements and clinical legal education are the main ways in which experiential learning is undertaken. Clinical legal education is usually accomplished through either a partnership with a local legal centre or, in cases where the law school is perhaps better resourced, through a legal centre run by the law school itself. While law schools attempt to show these clinical experiences as an aspect of their ‘unique’ brand of legal education,⁸² experiential and skills-based learning is widespread and its validity is rationalised using a common theme of access to the ‘real’:

Working on real cases with real clients you will be under the expert supervision of our legal practitioners at one of Monash Law School’s two community legal centres.⁸³

...a unique opportunity for law students to apply their studies to actual legal practice with real clients.⁸⁴

⁷⁸ Thornton, *Privatising*, above n 4, esp 59–84.

⁷⁹ Sally Kift, ‘Lawyering Skills Finding Their Place in Legal Education’ (1997) 8 *Legal Education Review* 43, 58.

⁸⁰ Sara Rankin, ‘Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools’ (2012) 10 *Seattle Journal of Social Justice* 11, 22–3.

⁸¹ University of South Australia School of Law: *Experiential Learning* <<http://www.unisa.edu.au/Business/Law/About-us/Experiential-learning/>>.

⁸² For example, Newcastle Law School provides its students with a legal clinic called ‘Law On the Beach’ which consists of free legal advice for the public provided by students under the supervision of a lawyer. The unique setting, with its appeal of sun and sand, is intended to appeal to young people who may be otherwise denied access to legal advice: <<http://www.newcastle.edu.au/school/law/unlc/law-on-the-beach.html>>.

⁸³ Monash Law School: ‘Real cases with real clients’ <<http://www.law.monash.edu/future-students/undergraduate/course-guide/law-undergrad-courseguide-2013.pdf>>.

⁸⁴ Newcastle, above n 82.

The relationship between the 'real world', practical legal skills and law school 'uniqueness' is best encapsulated in the QUT online advertisement entitled *Real Graduates*.⁸⁵ This consists of testimonials from three graduates employed by large corporate law firms. Each testimonial begins with the graduates smiling reassuringly into the camera and holding up a sign that reads 'REAL'. Each graduate goes on to detail their story and extol the virtues of QUT's unique practical, skills-based focus, which prepared them for the workforce and made them attractive to employers. This is part of QUT's broader branding strategy, which positions the institution as 'a university for the real world' in accordance with its slogan. While QUT is exceptional in its articulation of such a clear message, appeals to the 'real' are widespread. Implicit in these appeals is the notion that theoretical and critical knowledge is arcane and irrelevant; it is not real.

Bond University's video advertisement for its accelerated law program contains images of well-dressed, capable, go-getting young people winning trophies, finishing their degrees in record time and connecting one-on-one with knowledgeable and charismatic teachers, all performed to a rocking upbeat soundtrack.⁸⁶ At the point of 'World-Class Facilities', the video shows law students mooting in a state-of-the-art moot courtroom, complete with its own Leo McKern doppelganger on the bench.⁸⁷ The idea that this university is geared towards preparing students to get out there into the 'real world' is the key message.

The language of the 'real world' or situated learning is also known as problem solving or problem-based learning in the legal education literature, for it seeks to create an educational context reflective of the complexity of actual practice.⁸⁸ As with colloquial speech, the phrase is used glibly on websites reinforcing the idea that the time spent at university is a break from normal life and the process of studying for a degree is less important than the outcome.⁸⁹ The discourse of the 'real world' instantiates the stereotype of the university campus as an ivory tower cut off from ordinary life; its primary use value in the market being the award of a testamur.

⁸⁵ QUT Law: *Courses and Study – Work placement and projects – Real Graduates* <<http://www.qut.edu.au/law/courses-and-study>>.

⁸⁶ Bond University: *Ten reasons why Bond Law* (video clip) <<http://www.bond.edu.au/faculties-colleges/faculty-of-law/about-the-faculty/why-bond-law/index.htm>>.

⁸⁷ In their study of UK law school websites, Broadbent and Sellman note the disproportionate prevalence of images of mooting, although the limited visible potential of law is acknowledged. See Broadbent and Sellman, above n 51, 61–2.

⁸⁸ Rankin, above n 80, 24.

⁸⁹ Joanna Williams, 'Constructing Consumption; 'What Media Representations reveal about Today's Students' in Molesworth et al, above n 12, 175.

C *Links with the Profession and Beyond*

At a time when law schools were anxious to secure their acceptance as legitimate constituents of the academy, they sometimes regarded close relations with the profession with suspicion, but this has now crystallised into an essential selling point. While the legal profession generally does not play other than a minimal role in the design and delivery of legal education, except for specifying the criteria for admission, intimate relations may now be emphasised by a law school anxious to assure prospective students of its legitimacy as a ‘real’ legal educator, and links between the two are made clear in the law school’s promotional texts.⁹⁰ For instance, the ‘well designed curriculum’ means one that is ‘developed in consultation with the legal profession and other key stakeholders’.⁹¹ Further, the professional credentials of law school staff are seen as vital:

The strongest [aspect of Sydney law school] is the links it has to the current legal community outside of uni. So you go into a lecture and you’re tutored by barristers, you’re tutored by practising judges, you’re tutored by practising advocates. And having that link to the legal community is really useful because they draw upon their own experience ... they give you that realism.⁹²

I’ve gone to seminars here, you know, with professionals from all around Queensland, and I sit down at a table and there’s one of my lecturers ... Just the other day my supervisor had said, ‘Go and call this barrister, he’s the best in Commercial Law,’ and I looked at the name and I thought, ‘Hang on, I know him,’ and I Google him and he’s a QUT lecturer ...⁹³

While academics may be ‘experts’ in regard to a substantive field of knowledge, it is more appealing if they practise law, as it is assumed that they will then be able to transmit the values and knowledge needed for students to move seamlessly into the élite, high-paying careers in the global economy which they desire. Members of the practising profession are characterised as the definitive legal ‘knowers’ and the closer the law school is able to position itself to the kernel of practical legal knowledge, the more persuasive its claims to expertise appear. That a school’s graduates are ‘highly prized by the legal profession’⁹⁴ is a feature that demonstrates the value of the

⁹⁰ RMIT, for example, emphasises ‘work integrated learning’. See, RMIT Graduate School of Business and Law, *Be the leader you want to be* <<http://www.rmit.edu.au/bus/schools&groups>>.

⁹¹ UTS, Law: *Information for Future Law Students* <<http://www.law.uts.edu.au/students/future/index.html>>.

⁹² Sydney Law School: *The Sydney LLB – Combined Law* — Jared Ellsmore (video clip) <http://www.youtube.com/watch?v=VmlyEnheAGc&list=UUKXY_RwWHOp2vo3lOldTDw&index=5&feature=plcp>.

⁹³ QUT Law: *Courses and Study, Real Graduates*, Natalie Taylor, (video clip) <<http://www.qut.edu.au/law/courses-and-study>>.

⁹⁴ James Cook University School of law: *The law program* <http://www.jcu.edu.au/law/JCUEDEV_002404.html>.

degree. Such statements reveal the endurance of the profession's 'magnetic pull' over legal education.⁹⁵ Like the commercial focus and the emphasis on 'real world' skills, links to practising lawyers are believed to be highly marketable. These links effectively vouch for the fact that a law school's educational product is a bridge to the coveted and prestigious careers to which prospective students aspire.

D Internationalising the Curriculum, Internationalising the Appeal

Spurred on by the internationalisation of law and legal markets together with the attendant demands of employers, the impetus to internationalise legal education is 'gathering momentum'.⁹⁶ Internationalisation entails a range of approaches from augmenting the curriculum to increasing the numbers of international enrolments.⁹⁷ While an increase in enrolment of fee-paying international students is one of the aims of marketing, it does not in itself necessarily internationalise Australian legal education.⁹⁸ As early as 2004 the International Legal Services Advisory Council (ILSAC) drafted a report that called for a greater focus on and co-ordination of internationalisation efforts in Australian law schools in order that graduates and institutions could be competitive on the global stage.⁹⁹ More recently, a thoroughgoing report was commissioned by the Australian Government Office for Learning and Teaching, which was strongly of the view that the law degree should be internationalised, although it did not prescribe how this might be done.¹⁰⁰ A number of law schools have already embarked on curriculum redesign projects that encourage international perspectives. The University of New

⁹⁵ David Sugarman, 'Legal Theory, the Common Law Mind and the Making of the Textbook Tradition', in William Twining (ed), *Legal Theory and Common Law* (Blackwell, 1986) 27.

⁹⁶ Michael Coper, 'Law Schools and Legal Education: What is Really Important?' (Paper presented at Legal Education for a Global Community, Australasian Law Teachers Association Conference 2012, University of Sydney Law School, 1-4 July 2012), 4. Cf Lo, above n 63.

⁹⁷ Coper, above n 96, 4.

⁹⁸ Lo, above n 63, 36.

⁹⁹ International Legal Services Advisory Council, *Internationalisation of the Australian Law Degree* (ILSAC, 2004).

¹⁰⁰ Office for Learning and Teaching, Department of Industry, Innovation, Science, Research and Tertiary Education (Australian Government), *Internationalising the Australian Law Curriculum for Enhanced Global Legal Practice* (Australian Government Office for Learning and Teaching, 2012) 86: <<http://www.olt.gov.au/resource-internationalising-australian-law-curriculum-enhanced-global-legal-practice-2012>>.

South Wales Law School, for example, has redesigned its entire curriculum to reflect the global imperative:

This is one of the strongest characteristics of the new curriculum that it's going to reflect the new international dimensions that anybody who studies law or who works in law in the future has to be familiar with. So we will have a new compulsory course on global perspectives in law and we will be introducing and expanding more and more international opportunities for our students to go and study law overseas ...¹⁰¹

While websites stress the academic value of the global content of the law curriculum, this pales in comparison with the allure of international postings: 'It's not just a university, it's a global community. You'll join a network of Bond graduates now working in Dubai, Kuala Lumpur, London, New York, Paris, Shanghai, Singapore, Toronto...the sky is the limit'.¹⁰² Many law schools offer educational exchanges with overseas universities,¹⁰³ and placements and internships with organisations overseas also come across as a means of linking the law degree with excitement and adventure, both personal and professional.

The appeal of overseas travel and the prestige of élite international careers underpin the marketing of international placements and educational exchanges by presenting them as pleasurable activities facilitated by the law school. Exchange programs with overseas universities are a response to the idea that students will be required to connect with 'trans-national' legal knowledge.¹⁰⁴ Such programs are sometimes rationalised by drawing on discourses of personal development. To use the words of Sydney University on its 'The Sydney LLB Advantage' webpage, an exchange not only internationalises the degree but also 'challenges [students] academically; facilitates the development of new skills; and enhances their personal growth and self-confidence.'¹⁰⁵ Beyond such statements, the accent is on exchanges as an 'exciting' opportunity to incorporate overseas travel into the degree,¹⁰⁶ and the testimonials of students stress the opportunities for fun, adventure and new experiences:

¹⁰¹ UNSW Law: David Dixon, Dean, *Studying Law at UNSW – Part 1* (10 May 2012) (YouTube) <<http://www.youtube.com/watch?v=dG9NzN2MIk>>.

¹⁰² Bond Law School, above n 86.

¹⁰³ Richard Johnstone and Sumitra Vigaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Commonwealth of Australia, 2003).

¹⁰⁴ Simon Chesterman, 'The Evolution of Legal Education: Internationalization, Transnationalization, Globalization' (2009) 10 *German Law Journal* 877, 881–2.

¹⁰⁵ Sydney Law School: *The Sydney LLB — Study Abroad and Exchange* <<http://sydney.edu.au/law/fstudent/undergrad/exchange.shtml>>.

¹⁰⁶ For example, Monash University Law School: *Undergraduate Course Guide, Law International Programs*, 8 <<http://www.law.monash.edu.au/future-students/undergraduate/course-guide/law-undergrad-courseguide-2013.pdf>>.

All in all, it was a magical experience, and an unforgettable summer. More than rules and regulations, tagliatelle and one-euro pastries, what has stayed with me since Tuscany is how diverse the study of law can be, and what incredible places a law degree can take me.¹⁰⁷

[Studying in Japan] was a lot of fun. I think a whole different experience, a whole eye opening experience...being able to explore a country...you don't really get to see until you've been there and experience it for yourself.¹⁰⁸

International internships and placements often take place in the context of human rights or international governance organisations, such as the Khmer Rouge trials¹⁰⁹ or defending the rights of prisoners on death row.¹¹⁰ Furthermore, the notion of 'where a law degree can take you' is articulated powerfully in the choice of law alumni profiles that law schools share on their websites and online promotional material. While the alumni profiles of judges, barristers and corporate lawyers are to be expected, strong contingents of alumni profiles are also made over to those operating at the highest levels of international law and governance. The profiles of graduates working for the UN or for international courts are held out as proof of a direct causal relationship between having attended a particular law school and the attainment of a career in international justice:

Terry said he chose to study law at UQ because of its reputation, and since completing his degree he hasn't looked back: 'University was great. It was hard work but I wouldn't be where I am today without UQ', says Terry. 'More specifically, I wouldn't be here [at the United Nations] without the guidance and knowledge I received from the staff at the TC Beirne School of Law.'¹¹¹

These international careers accentuate employment as a portal to 'enriching' experiences that involve travel and adventure:

I am an associate legal officer in the Rwandan Criminal Tribunal's Chambers ... but having the opportunity to learn first-hand and in detail about the Rwandan genocide is extremely enriching. The opportunity also to work at an international level and in such an amazing country as Tanzania is an obvious highlight in my career path.¹¹²

¹⁰⁷ UNSW Law: *UNSW Law Undergraduate Guide 2013*, Katrina Geddes, 5th Year Commerce/Law student (online brochure) 31 <<http://www.law.unsw.edu.au/future-students/undergraduate/why-study-law>>.

¹⁰⁸ Sydney Law School: *The Sydney LLB – Combined Law, The Sydney Law Advantage*, Rebecca Tan (video clip) <<http://sydney.edu.au/law/fstudent/undergrad/advantage.shtml>>.

¹⁰⁹ Melbourne Law School, *JD, Experience* (video clip) <<http://www.law.unimelb.edu.au/jd/experience>>.

¹¹⁰ Sydney Law School: *Alumni and Friends, Naomi Hart* <<http://sydney.edu.au/law/alumni/profiles/hart.shtml>>.

¹¹¹ TC Beirne School of Law, UQ: *What Students Say, Terry Slight* <<http://www.law.uq.edu.au/what-students-say>>.

¹¹² UNSW Law: *Graduate Profile, Miriam Mafessanti* (online brochure) <<http://www.law.unsw.edu.au/student/miriamn-mafessanti>>.

During university I worked in the international office of a global firm and also undertook an internship at the United Nations in New York ... I am currently based in Paris, but my clients and colleagues are in The Hague, London and the Middle East.¹¹³

Such texts evoke images of globetrotting careers pursued for pleasure and are often accompanied by a photo of the smiling graduate at his or her workplace. In this way, alumni profiles visually and textually embody ideal careers in a way that plays into the desires of students for pleasurable post-law school employment. There is no acknowledgement that these roles, particularly those involving the examination or prosecution of human rights abuses, are premised on the suffering of the world's most vulnerable people. In order to set up these idealised visions of future employment, the routine and disturbing aspects of international opportunities and perspectives are excised. To be desirable to consumers of legal education, the international career appears as a glittering prize that is attainable by any graduate of *that* law school and it is one that is devoid of the mundane, the distasteful or the difficult.

IV CRITIQUE

As James has illustrated, there is little consistency in the meaning of 'critique' in legal education discourse generally.¹¹⁴ It is frequently confused with unwarranted criticism, and the favouring of a positivist and doctrinal approach to legal education and adjudication has coincided with 'know how' and the favouring of applied knowledge currently in vogue. A passive pedagogy encouraged by the lecture method also discourages interrogation and critique. It encourages students to search for 'right answers' rather than accept the law as a canvas comprising many shades of grey which demand interrogation.¹¹⁵

James claims that terms such as 'critical thinking', 'critical reasoning', 'critical evaluation', 'critical perspectives' and 'criticism', while having potentially different meanings, are often employed in Australian legal education discourse interchangeably and refer to an understanding of 'critique' as criteria-based judgment.¹¹⁶ The ambit of the concept shifts depending on the broader ideological framework in which it is deployed. In the promotional monologue of legal education a particular vision of 'critique' as a practical skill has emerged. The texts of websites equate critical thinking with

¹¹³ UNSW Law, *Law Undergraduate Guide 2013*, Philippa Webb (online brochure) <<http://www.law.unsw.edu.au/future-students/undergraduate/why-study-law>>.

¹¹⁴ James, above n 64, 377.

¹¹⁵ Thornton, *Privatising*, above n 4, 85.

¹¹⁶ James, above n 64, 377.

the 'skills for life'¹¹⁷ and 'the skills employers really look for in a graduate'.¹¹⁸ Where critical thinking is not clearly marked as a skill, it is paired with practical skills in order to have value:

[the law] program is distinctive in that it blends critical thinking and enquiry with the development of sound legal practice skills.¹¹⁹

Our unique approach to legal education will provide you with a critical and questioning attitude, broad perspectives and the skills and knowledge required for whatever career you may choose.¹²⁰

This casting of critique in the service of employability is a central feature of what James refers to as the 'vocational critique' in which critique becomes merely the ability to 'supplant sloppy or distorted thinking with thinking based on reliable procedures of inquiry'.¹²¹ But absent from this technical understanding of the definition of critical thinking is any assessment of the broader theories of knowledge that go to the heart of the discipline to consider how law might contribute to the creation of a more just society for all. The idea that critique involves the application of a wider lens that can encompass a socio-political interrogation of law or an understanding of theoretical knowledge receives short shrift when employability is deemed to have far greater use value in the market. Despite the responsiveness of law to the politics of the day, the law school has been tardy about incorporating significant curricular change. Indeed, the core curriculum has evinced little change over a century. The social liberalism of the Whitlam era succeeded in bringing about a degree of modernisation to the curriculum, but the inclusion of critical perspectives on law occupied a prominent place for only a brief moment before there was a resiling induced by the neoliberal turn.¹²² Student demand, in conjunction with consumerism, has played a key role in the retreat from the critical and the recasting of law as a purely vocational skill. Within the current marketised environment, as we have suggested, corporate subjects, taught from a largely functional perspective, are regarded as vastly more desirable as they are deemed to have greater relevance to students' imagined careers than critical perspectives or subjects focusing on critique.

¹¹⁷ James Cook University School of Law, *The aim of the school* <http://www.jcu.edu.au/law/JCUDEV_002404.html>.

¹¹⁸ Macquarie University Law School: *Future students* <http://www.law.mq.edu.au/future_students/>.

¹¹⁹ Southern Cross School of Law and Justice: *The School* <<http://www.scu.edu.au/law-justice/index.php/4>>.

¹²⁰ University of Wollongong Faculty of Law: Professor Warwick Gullett, Dean, *Where a UOW Law Degree can take you* <<http://www.uow.edu.au/law/uowllb/index.html>>.

¹²¹ James, above n 64, 385.

¹²² Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8 *International J Legal Profession* 37.

As shown by this study of websites, the tendency of law school branding is to slough off critique with its suggestion of abrasive and ponderous scholarship that is unlikely to help realise the dream of a fun-filled career.

Most significantly, critique is a destabilising concept.¹²³ Feminist, racial, queer and critical legal studies provide frameworks that shine a bright light on the socio-political undersides of identity and power. When deployed in the study of law, critique unmasks the myth of legal objectivity and demands that attention be paid not just to the impact of administrative and judicial decision-making at home but also to the imperialistic designs of multinational corporations elsewhere. This now includes global law firms pursuing the interests of powerful clients with mining and resource interests all over the world, without regard as to whether they are in Mongolia, South Africa or the Middle East. The version of critique contained in the marketing materials of websites constricts its political reach by focusing on the aesthetic of pleasure.

V CONCLUSION

Freedom of choice is regarded as an unmitigated good within a liberal democratic society. The concept has been effectively deployed by neoliberalism and its market embrace so that consumer choice, by metathesis, is accepted as an unproblematic good. The result of virtually unlimited choice is that it blunts the critical capacity of students and induces a conservatism among them.¹²⁴ This is because choice favours the easy, pleasant and attractive path rather than one that is complex, challenging and reflexive.¹²⁵ Indeed, critique is not a word that features in the marketing repertoire because it induces ‘the sort of dissonance and angst that good marketing works hard to eliminate’.¹²⁶

The essays in Molesworth, Scullin and Nixon’s collection show compellingly how a consumerist culture is eroding the civic role of higher education generally in the UK in favour of hedonism.¹²⁷ Building on *Privatising the Public University*,¹²⁸ and examining Australian law school marketing on websites, this essay has suggested that the shift has also been marked in law. Rather than aiming to produce critical thinkers who can contribute constructively to public debate on the pressing issues of our time, law school marketing encourages consumerism as the ultimate telos of the good life.

¹²³ K Robins and F Webster, *Times of the Technoculture* (Routledge, 1998) 128.

¹²⁴ Elizabeth Nixon, Richard Scullin and Mike Molesworth, ‘How Choice in Higher Education can create Conservative Learners’ in Molesworth et al, above n 12.

¹²⁵ Cf Broadbent and Sellman, above n 51, 59.

¹²⁶ Nixon et al, above n 124, 207.

¹²⁷ Molesworth et al, above n 12.

¹²⁸ Thornton, *Privatising*, above n 4.

Academics have undoubtedly been complicit in the sea change that has occurred in the legal academy as a result of widespread acceptance of the market metanarrative.¹²⁹ Academics, no less than student/customers, are neoliberal subjects shaped by the relentless demands of the market. Not only are they (we) enmeshed in the prevailing consumer culture with all its fictions, but their (our) attention has been effectively deflected by institutional demands to teach ever larger and more diverse cohorts of students while being ever more productive in terms of research 'outputs'. Cutting corners in teaching by adopting an uncritical, minimalist approach is therefore functional for academics as well as for students.

The market, the branding of law schools and the seductive illusion of choice have effectively combined to consign the scholarly pedagogical project of the legal academy to the margins. As Ashehave puts it, we no longer '*teach* courses to *students*' but we '*sell* courses to our *clients*'.¹³⁰ Of course, there are legal academics who are committed to including critical thinking in their teaching and imbuing their students with a sense of the possibilities of realising a more just and responsible society through law. However, the task of committed academics has become progressively harder as good intentions are frustrated by the fantasy world of marketing.

We have sought to draw attention to just how pervasive this fantasy world of law school marketing has become and how difficult it is to resist as marketing has become a key rationality of the corporatised university. Despite the pressures confronting law schools in a competitive environment, however, we should not abandon hope. Critical engagement — involving academics, students and the wider community — is the only way to challenge the new orthodoxy. A mere nanosecond ago, neonate law students wanted to change the world but many have been captivated by the ubiquitous message that consumerism epitomises the good life. There is no point in ruing the passing of free higher education in the belief that its reinstatement might resolve the market malaise, for those days have gone for good. Nevertheless, there are always spaces in the legal academy in which to animate the spirit of justice that many students still secretly long for in contrast to the vacuous dreams spun for them by marketing departments. We need to pay heed to those spaces.

¹²⁹ Roberts, above n 10.

¹³⁰ Ashehave, above n 48, 725.