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# ACADEMIC RESISTANCE TO THE NEOLIBERAL UNIVERSITY

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MARY HEATH\* AND PETER D BURDON\*\*

## I INTRODUCTION

Contemporary Australian universities have always been implicated in the broader power relations in which they are embedded. In our historical period, this context has been characterised by neoliberal political and economic practices<sup>1</sup> which have, among other things, made central the relationship of individuals with the market and sidelined any larger conception of the social.<sup>2</sup> Australian universities have not been immune to the changes neoliberalism has wrought on the social fabric. Indeed, as we will argue, their impact on universities is difficult to understate.

The Australian tertiary sector has been subject to the market imperative through the implementation of policies designed to transform it ‘from a domestic social institution to a competitive export industry’.<sup>3</sup> To this end, university funding and accountability arrangements have been dramatically transformed in a manner designed to achieve a move from full government funding to ‘partial subsidisation’<sup>4</sup> and to bring about fundamental changes to university governance, budgetary processes and the conduct of teaching and research.<sup>5</sup> Australian universities have undergone changes at every level from structure and governance through to the size, duration and nature of classes.

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<sup>1</sup> David Harvey, *A Brief History of Neoliberalism* (OUP, 2005) 1.

<sup>2</sup> Bronwyn Davies & Eva Bendix Petersen, ‘Neo-liberal Discourse in the Academy: The Forestalling of (Collective) Resistance’ (2005) 2(2) *LATISS-Learning and Teaching in the Social Sciences* 77, 90.

<sup>3</sup> Suzanne Ryan, James Guthrie and Ruth Neumann, ‘Australian Higher Education Transformed: From Central Coordination to Control’ in C Mazza, P Quattrone and A Riccaboni (eds), *European Universities in Transition: Issues, Models and Cases* (Edward Elgar Publishing Ltd, 2008) 171–87, 172.

<sup>4</sup> *Ibid* 171, 174, 176.

<sup>5</sup> *Ibid* 171, 176.

At the same time, rather than public funding for universities being understood as spending for public benefit, the much-diminished government funding now allocated is justified in terms of outcomes delivered rather than in terms of the public good.<sup>6</sup> Margaret Thornton contends that in this process, the concept of the university, as well as its form and functions, has been altered as ‘the model of the for-profit corporation began to take over from the not-for-profit corporation as the primary meaning of the incorporated university.’<sup>7</sup>

Law schools have been particularly vulnerable to neoliberal policy changes. Since student demand has been high and teaching in law is seen to require minimal upfront expenditure, increasing law student numbers has been a popular method of raising institutional prestige and subsidising other parts of the university.<sup>8</sup> The steep increase in student numbers has inevitably raised concerns about the quality of legal education and its ability to foster creative inquiry and critical thinking.<sup>9</sup> These concerns are lent credibility by the fact that increased staffing and resources have not accompanied higher student numbers.<sup>10</sup> Instead, increases in student enrolment have brought larger classes, higher teaching and marking burdens and higher casualisation in most parts of the tertiary sector, including law.<sup>11</sup> In this context, some law schools have responded to pressure to manage increased student numbers and remain competitive by simplifying course content,<sup>12</sup> adopting multiple-choice assessment<sup>13</sup> or removing theoretical material.<sup>14</sup>

Our paper takes this account of neoliberal impacts on Australian legal education as its starting point. We focus on understanding the impact of neoliberalism on legal education with a view to investigating the potential for academic resistance to it. We argue that there is a pressing need for legal academics to go beyond critique and work to uphold alternative educational ideals. We also hope that this paper might provide one framework for thinking through the possibilities for mutual support and academic resistance. It is not our intention to advocate for a specific idea of legal education, or a single conception of how academics should respond. Rather, we

<sup>6</sup> Ibid 171–87, 172.

<sup>7</sup> Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012) 16.

<sup>8</sup> Ibid 27.

<sup>9</sup> Ibid 12. See also Margaret Thornton, ‘The Law School, the Market and the New Knowledge Economy’ (2008) 17 *Legal Education Review* 1, 17; Law School Reform, ‘Breaking the Frozen Sea: The Case for Reforming Legal Education at the Australian National University’ (2010) xii <[http://lawschoolreform.com/files/lsr\\_breakingthefrozensea.pdf](http://lawschoolreform.com/files/lsr_breakingthefrozensea.pdf)>.

<sup>10</sup> Denise Bradley, *Review of Australian Higher Education: Final Report* (Department of Education, Employment and Workplace Relations, 2008) 74.

<sup>11</sup> Ibid 71.

<sup>12</sup> Thornton, above n 7, 100–4.

<sup>13</sup> Ibid 94–100.

<sup>14</sup> Ibid 59–109.

propose the exploration of alternatives to neoliberalism tailored to the unique conditions faced by legal academics.

We begin by conducting a review of the literature on academic resistance to neoliberalism, much of which emerges from management studies and sociology. This research provides very little evidence of organised or collective resistance to neoliberal university reforms. It does, however, highlight visible and hidden acts of individual resistance that are both creative and effective. This literature also investigates the operation of power in the university, including the ways in which contemporary work practices and discursive strategies reconstitute academics as self-disciplining and self-monitoring neoliberal subjects.

These accounts offer valuable analyses of the nature of university 'reform' and academic responses to it. In some cases, however, they draw on the early work of Michel Foucault to conclude that there is no 'outside' to power and that as a result, academic subjectivities are necessarily formed within neoliberal power. Under this analysis, it is difficult to resist the conclusion that neoliberalism effaces academic agency — a conclusion which, the sociological work on resistance to neoliberalism in higher education suggests, many academics have already accepted. We argue that this conclusion is not required. Rather, we argue, using Foucault's later work on governmentality, that power can only be exercised over free subjects and resistance is the effort to further expand and strengthen that freedom. Thus, we argue for an account of power that enables academic agency in opposition to neoliberalism.

Finally, we put forward an alternative conception of the academic: academic as activist. This reconceptualisation recognises that academics have a unique social responsibility to critically examine social institutions, including the university. While this responsibility might be taken up on an individual basis, we also wish to highlight possibilities for collective action and strategies that respond at the level of subjectivity, motivation and values. In short, we are interested in exploring strategies for resistance that are counter to the individualism and competition of neoliberalism as well as its centralisation of the market.

In regard to collective action we begin by describing strategies foregrounding law student wellbeing and the humanisation of law schools as potential entry points for academics to engage in transformative work. We go on to discuss approaches that would require collective organisation, including 'prefigurative politics' — efforts to form alternative social relations and decision-making processes that would 'prefigure' a different kind of faculty, school or university. Finally, we consider the potential for academics to 'accompany' other university workers and students in acts of resistance that highlight common concerns, goals or grievances.

## II ACADEMIC RESISTANCE AND NEOLIBERAL UNIVERSITY 'REFORMS'

It is difficult to understate the extent and nature of change within Australian universities over the last few decades. As Hamish Coates has remarked, Australian higher education has experienced 'the most profound changes anywhere in the developed world.'<sup>15</sup> Ryan, Guthrie and Neumann, for example, describe four successive waves of change to university funding arrangements.<sup>16</sup> Of course, the higher education sector has not been alone in this process. Authors from management studies and sociology situate 'reform' to higher education within the wider context of reform to public management and public financial management.<sup>17</sup>

These changes have produced escalating levels of accountability and micro-level government control<sup>18</sup> accompanied by major changes in industrial relations which have, in both legal and structural terms, divided 'the academic community into employers and employees, and further into full-time and casual employees.'<sup>19</sup> The 51 per cent increase in student numbers between 1996 and 2005 while teaching-only and teaching-research staff slightly decreased<sup>20</sup> has been accompanied by 'onerous workloads and long working hours', increased stress, escalating levels of casualisation<sup>21</sup> and reduced job satisfaction as well as having impacts on the quality and experience of tertiary education, as we explained above.

It seems logical to expect that staff centrally involved in changes of this magnitude and extent might object to them. Various commentators have claimed that academics represent a constituency of workers who are particularly well equipped to critique and to resist neoliberal processes of surveillance, control and management. Gina Anderson, for example, argues that academics are motivated

<sup>15</sup> Hamish Coates, 'Across the Great Divide: What Do Australian Academics Think of University Leadership? Advice from the CAP Survey' (2010) 32(4) *Journal of Higher Education Policy and Management* 379, 382.

<sup>16</sup> Ryan, above n 3, 1723.

<sup>17</sup> Ibid 171–87. See also Martin Parker and David Jary, 'The McUniversity: Organization, Management and Academic Subjectivity' (1995) 2(2) *Organization* 319.

<sup>18</sup> Ibid 174.

<sup>19</sup> Ibid 177.

<sup>20</sup> Ibid 178.

<sup>21</sup> Ibid 179, 182. Recent data from 19 surveyed universities shows that 50 per cent of staff are casual. Jill Rowbotham, 'Universities' Staff Half Casual: New Data' *The Australian* (online), 21 April 2012 <<http://www.theaustralian.com.au/higher-education/universities-staff-half-casual/story-e6fgrcjc-1226454260348>>. See also Robyn May, 'Casualisation: Here to Stay? The Modern University and its Divided Workforce' (Paper presented at the annual conference of the Association of Industrial Relations Academics of Australia and New Zealand, 2011) <<http://www.nieu.org.au/library/view/id/1321>>.

to ‘resist, ameliorate or neutralize managerial change’.<sup>22</sup> She argues that academics are trained in analytic thinking and critique and therefore ‘unlikely to passively accept changes they regard as detrimental.’<sup>23</sup> Yet, researchers investigating the process of reform concede that there is little evidence of organised resistance to these changes in Australian universities in general,<sup>24</sup> nor in Australian law schools specifically.<sup>25</sup> Rather, as Margaret Thornton has observed, law school participation in neoliberal change has proceeded ‘with alacrity’.<sup>26</sup> There is evidence that law schools are early and thorough adopters of neoliberal approaches,<sup>27</sup> and this must be seen as particularly problematic for those who do not accept that these changes are desirable.

Researchers investigating responses to neoliberal and managerialist changes in Australian universities have offered several different accounts of this apparent failure of response.

Some authors explain academics’ lack of organised resistance as arising from the extent and nature of university reforms themselves. They suggest that low levels of academic resistance to neoliberal management result from the hostile, precarious and overloaded nature of academic work which has resulted from changes to governance including performance management, quality assurance processes, restructuring and budgetary devolution, all driven by funding arrangements and reductions in government funding.<sup>28</sup> Academics are simply too overworked, exhausted and overwhelmed to resist even when they do not live in fear of losing their jobs or failing to get another contract or casual position. These changes to university funding and industrial practices have been amplified by demographic changes which have created an ageing academic workforce.<sup>29</sup>

<sup>22</sup> Gina Anderson, ‘Mapping Academic Resistance in the Managerial University’ (2008) 15 *Organization* 251, 252.

<sup>23</sup> Ibid. See also Paul Trowler, *Academics Responding to Change – New Higher Education Frameworks and Academic Cultures* (Open University Press, 1998) 13.

<sup>24</sup> Ibid 13. See also Ryan, above n 3, 3; Bronwyn Davies and Peter Bansel, ‘The Time of Their Lives? Academic Workers in Neoliberal Times’ (2005) 14 *Health Sociology Review* 47. In the UK, Gill has argued that there has been very little collective resistance: Rosalind Gill, ‘Breaking the Silence: The Hidden Injuries of Neo-Liberal Academia’ in Roisin Flood and Rosalind Gill (eds), *Secrecy and Silence in the Research Process: Feminist Reflections* (Routledge, 2009).

<sup>25</sup> Margaret Thornton, ‘The Idea of the University and the Contemporary Legal Academy’ (2004) 26 *Sydney Law Review* 481, 482–3, 500.

<sup>26</sup> Ibid 482. Thornton, above n 7, 227–8 provides a brief comment on counter examples from universities in Canada, New Zealand and Europe.

<sup>27</sup> Thornton, above n 25 482.

<sup>28</sup> Ryan, above n 3, 171–87.

<sup>29</sup> Suzanne Ryan, ‘Academic Zombies: A Failure of Resistance or a Means of Survival?’ (2012) 54(2) *Australian Universities Review* 3, 6; Eva Bendix Peterson, ‘Staying or Going? Australian Early Career Researchers’ Narratives of Academic Work, Exit Options and Coping Strategies’ (2011) 53(2) *Australian Universities Review* 34.

Other writers argue that targeting academics' avenues for resistance to managerial change has been a core part of the process of higher education reform and not merely an incidental effect.<sup>30</sup> Parker and Jary, for example, explain diminished academic autonomy and reductions in democratic and collegial decision making in universities as prerequisites for the intensification of academic labour.<sup>31</sup> They argue that the degree of intensification of academic work which has occurred would not have been possible without significantly decreasing the role and power of academics in decision making as well as restricting the democratic nature of decision making.<sup>32</sup> They also suggest that the public pillorying of the university as a 'bastion of parochialism rather than the cutting edge of the intellect'<sup>33</sup> has limited academic preparedness to counter neoliberal changes, which are often articulated as being essential to ensure efficiency, productivity and market capacity. The Gillard government's decision to call its cuts to university funding an 'efficiency dividend'<sup>34</sup> beautifully illustrated the effectiveness and impact of references to productivity and efficiency in the neoliberal context.

While many Australian law schools have been insulated from redundancies to a higher degree than more vulnerable parts of the university, they have certainly not been immune from casualisation, workload intensification and pressure to take higher numbers of students. Nor have they been exempt from the general move away from collegial decision making in favour of managerialist approaches. Indeed, where this has not been mandated, 'professional' disciplines such as law are, for the reasons outlined in the introduction, under greater pressure to operate on a business-like model. Given this array of pressures and high demand for legal education, Margaret Thornton has argued that law schools

are compromising, if not overtly forsaking, the traditional values associated with collegiality, public good and the disinterested pursuit of learning in favour of a constellation of values associated with entrepreneurialism and the market.<sup>35</sup>

Accounts of these changes to higher education, and to law schools specifically, offer valuable descriptions of the nature of university 'reform' and its context. However, they offer little to those

<sup>30</sup> Stuart Macintyre, 'Universities' in Clive Hamilton and Sarah Maddison (eds), *Silencing Dissent: How the Australian Government is Controlling Public Opinion and Stifling Debate* (Allen & Unwin, 2007) 41.

<sup>31</sup> Parker and Jary, above n 17, 324.

<sup>32</sup> Ryan, above n 29, 5. See also Thornton, above n 7, 131–4.

<sup>33</sup> Parker and Jary, above n 17, 323.

<sup>34</sup> Stephen Matchett, 'Gillard to Pull \$2.3bn of Funding From Unis to Pay for Gonski Reforms', *The Australian* (online) April 14, 2013 <<http://www.theaustralian.com.au/national-affairs/gillard-to-pull-23bn-of-funding-from-unis-to-pay-for-gonski-reforms/story-fn59niix-1226619719867>>.

<sup>35</sup> Thornton, above n 25, 482–3.

who would resist these processes or their impacts on the quality and nature of legal education in Australia. Further, they do not seek to articulate the impact of these changes on the experiences of individual academics rather than upon the workforce as a whole.

Whether we conceptualise the changes that have been wrought on higher education as manifestations of ‘managerialism’ understood as a power/knowledge discourse,<sup>36</sup> or as strategies in the quest for ways to further regulate academic and university labour,<sup>37</sup> they do not impact only on the sector, on institutions and on schools. They also impact on tertiary sector workers and students as people.

A second cluster of authors make these impacts their focus. They seek to understand academics’ capacity and strategies for resistance to neoliberalism through qualitative investigation of academics’ lived experience. Bronwyn Davies and her co-authors,<sup>38</sup> for example, contend that it is not only the policy and governance context within which academics work that has changed. In doing so, they draw on Foucault’s early construction of power as a productive force, the constant negotiation of which produces our social relationships as well as our self-understandings and values — our subjectivities.<sup>39</sup>

These authors suggest that neoliberal governance has imposed panoptic surveillance regimes<sup>40</sup> on academics: regimes of oversight, accountability and audit which ensure every academic knows that s/he is constantly being watched and judged. They argue that this sense of constant surveillance produces academics who exercise self-surveillance and self-monitoring<sup>41</sup> rather than requiring the imposition of external forms of coercion, though of course, this also occurs.<sup>42</sup> They argue that the escalating accountability to which academics have become subject<sup>43</sup> has changed academic self-concepts, role concepts and emotions.<sup>44</sup> We might add that law schools and legal academics are subject to further layers of surveillance arising from our relationship to the profession and the forms of accreditation necessary to ensure that law degrees will allow admission to that profession.

<sup>36</sup> Anderson, above n 22, 253.

<sup>37</sup> Parker and Jary, above n 17, 327.

<sup>38</sup> Davies and Bansel, above n 24, 47; Bronwyn Davies et al, ‘Embodied Women at Work in Neoliberal Times and Places’ (2005) 12(4) *Gender, Work and Organization* 343; Davies and Petersen, above n 2, 77.

<sup>39</sup> Michel Foucault, ‘Truth and Power’ in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings 1972–1977* (Harvester Press, 1986).

<sup>40</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Vintage, 1991) 207. See also Jeremy Bentham, *The Panopticon Writings* (Verso, 1995).

<sup>41</sup> Davies and Bansel, above n 24, 47; Davies et al above n 38, 343; Davies and Petersen, above n 2, 77.

<sup>42</sup> For case studies of academic repression see Anthony J. Nocella II, Steven Best and Peter McLaren, *Academic Repression: Reflections from the Academic Industrial Complex* (AK Press, 2010) 164–261.

<sup>43</sup> Ibid 327.

<sup>44</sup> Ibid 329.



Further, these theorists argue that neoliberal processes constitute academics as subjects who think of ourselves and one other primarily through the lens of neoliberalism. This lens constitutes us first and foremost as individuals competing in the global marketplace. We teach students who have similarly been transformed into strategic, choice-focused consumers of educational services who need to make sure that they are maximising their chances of success under neoliberalism.<sup>45</sup> In this context, choosing law can be seen as choosing a strategy to optimise future success. The current economic climate has produced a cohort of law students whose choices are not leading to the success they anticipated at enrolment.

These accounts of the neoliberal university also suggest that many academics (necessarily) attempt to turn neoliberal processes and discourses to our own ends even if also seeking to resist them. Some academics believe that they can use neoliberal discourse without being co-opted into accepting or participating in it.<sup>46</sup> Academics and administrators who have made the case for goals seen as desirable for law schools on the basis of resoundingly economic arguments may represent a case in point. Yet, as Judith Butler argues: ‘If I am someone who cannot be without doing, then the conditions of my doing are, in part, the conditions of my existence.’<sup>47</sup> Davies and Petersen draw on Butler to argue that neoliberal discourse is, like all discourse, active: ‘It is not just a tool we take up and use for conscious and intentional ends, but it is also an active force that limits and constrains us, and that has effects we may not choose.’<sup>48</sup>

Neoliberalism works on us without our consent and despite our motivations as well as being actively taken up by us in conscious ways,<sup>49</sup> constraining us as well as constructing us and being constructed through our responses to it. Davies and Petersen therefore argue that it is not possible to take up neoliberal discourse in a purely instrumental way, complying with its dictates as you might choose to comply with a law you do not personally agree with in order to avoid forms of law enforcement which you would prefer not to suffer. Rather, in taking up neoliberal discourse, we become implicated in it; it becomes us — a process which they argue holds clear risks.<sup>50</sup>

This understanding of the construction of subjectivity in the terms of Foucault’s early work on power theorises power, including

<sup>45</sup> Davies and Petersen, above n 2, 77 and Davies and Bansel, above n 24, 47.

<sup>46</sup> Davies et al, above n 38, 344.

<sup>47</sup> Judith Butler, *Undoing Gender* (Routledge, 2004) 3.

<sup>48</sup> Davies and Petersen, above n 2, 79.

<sup>49</sup> *Ibid* 80.

<sup>50</sup> In the context of legal education, see Matthew Ball, ‘Legal Education and the ‘Idealistic Student’: Using Foucault to Unpack the Critical Legal Narrative’ (2010) 36 *Monash University Law Review* 80; Matthew Ball, ‘Governing Depression in Australian Legal Education: Power, Psychology and Advanced Liberal Government’ (2011) 21(1) *Legal Education Review* 277.

neoliberal power, as something with no outside. It is not possible to choose a vantage point from beyond neoliberal discourse from which to critique or resist it on this analysis. However, this understanding has implications for agency: a term which Foucault did not use but which Davies and Bansel deploy in arguing that academic workers have the capacity for autonomy but lack a sense of agency in the face of regulatory frameworks, globalised education systems, institutional policies and practices. They point out that the autonomy that academic workers do have tends to lead us to see ourselves as blameworthy individuals when our ‘choices’ produce undesirable results. Yet our choices and the context in which we can exercise them are severely constrained and the sense that the problem is individual and not structural or institutional or systemic is in itself problematic.<sup>51</sup> This body of argument implies that the discourse of neoliberalism effaces, if it does not entirely eclipse, academic agency.

The conclusion that any sense of academic agency is under challenge is supported not only by the work of Davies and Bansel but by the work of other qualitative researchers within the Foucauldian tradition, whose work provides a description of both academics and universities as focused not on resistance, but on survival.<sup>52</sup> For example Suzanne Ryan describes the effort to survive as resulting in ‘zombification’,<sup>53</sup> and Bronwyn Davies and Eva Bendix Petersen’s qualitative research describes ‘disillusioned and distressed individuals’ rather than ‘collective academic critique and resistance’.<sup>54</sup> Maria Maisto supports these findings, arguing that for members of the profession, organising instils a fear of being labelled as ‘the kind of person’ who organises or joins a union.<sup>55</sup>

These findings are concerning for those who would resist neoliberalism in higher education, both in the sense that they suggest that despair rather than resistance currently prevails, and in the sense that this deployment of Foucault’s early work on power seems to call into question any ground from which such resistance might begin. In the next section, we investigate Foucault’s later work on power and argue that it offers more resources toward the conceptualisation of academic resistance.

A third category of writing about academic resistance argues that analytical frameworks which focus on active, organised and collective resistance are unable to apprehend or account for the

<sup>51</sup> Davies and Bansel, above n 24, 51.

<sup>52</sup> Ibid 52.

<sup>53</sup> Ryan, above n 3, 4.

<sup>54</sup> Davies and Bansel, above n 24, 80.

<sup>55</sup> Maria Maisto, ‘Adjuncts, Class and Fear’, in *Working Class Perspectives* (23 September 2013), <<http://workingclassstudies.wordpress.com/2013/09/23/adjuncts-class-and-fear/>>.

primarily individual and passive forms academic resistance to neoliberal policies has taken.<sup>56</sup>

Gina Anderson is the key author who takes this perspective. She critiques the Foucauldian research discussed above, which documents academics as suffering anxiety and demoralisation rather than as engaged in resistance.<sup>57</sup> She suggests that there has been little research into academic resistance to the implementation of market-based measures and neoliberal managerial practices in Australian universities, limiting our understanding of what is taking place.<sup>58</sup> Further, the qualitative research which has been undertaken has used methodologies and perspectives that focus on a conceptualisation of resistance as involving co-ordinated acts with a durable public presence.

Anderson takes a broader view of political action and argues that our understanding of resistance should be expanded to include everyday, routine and informal acts of resistance to the exercise of power within university settings.<sup>59</sup> She records passive and individual forms of resistance such as ‘forgetting’ or not completing certain tasks as well as more overt forms of resistance such as teaching students about changes to higher education.<sup>60</sup> Anderson argues that these forms of resistance are widespread and effective in enabling academics to ‘resist many of the micro-physics of power associated with managerialism in Australian universities.’<sup>61</sup>

Anderson argues that we need to step beyond pessimistic accounts of power drawing on Foucault’s early work that locate individuals as engaged in self-discipline and thus as unable effectively to resist. Instead she proposes focusing on ubiquitous power as presenting increased scope for resistance and contestation in its multiple locations.<sup>62</sup> She makes the case for the forms of passive resistance she observes among academics being ‘creative, effective, and accomplished with humorous reflexivity.’<sup>63</sup>

We accept Anderson’s proposal that we consider resistance and the construction of alternatives to neoliberalism as requiring, and taking, multiple forms. However, while Anderson, focusing on the early work of Foucault, treats Foucault’s analysis of power as an

<sup>56</sup> Anderson, above n 22, 251.

<sup>57</sup> Ibid 252.

<sup>58</sup> Ibid 251.

<sup>59</sup> Ibid 267. Anderson draws on James C Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (Yale University Press, 1985); James C Scott, ‘Everyday Forms of Peasant Resistance’ in James C Scott and B Kerkvliet (eds), *Everyday Forms of Peasant Resistance in South-East Asia* (Frank Cass, 1986); James C Scott, *Domination and the Arts of Resistance* (Yale University Press, 1990).

<sup>60</sup> Anderson, above n 22, 260.

<sup>61</sup> Ibid 254.

<sup>62</sup> Ibid 253.

<sup>63</sup> Ibid 262.

obstacle to this project, we believe that Foucault's later work can contribute an analysis of power capable of enabling, rather than foreclosing, academic resistance in the face of neoliberalism.

### III POWER AND RESISTANCE

#### *'Power Is Exercised Only Over Free Subjects, and Only Insofar As They Are Free'*<sup>64</sup>

The forms of everyday resistance Anderson traces are primarily individual and passive, even undeclared. They do not rise to including the staff of a single school. Anderson was unable to find examples from the work of a trade union or staff organisation. Perhaps this reflects the prominence of individualism in academic work and 'hyperindividuality' within the neoliberal university.<sup>65</sup> Perhaps it also reflects the experience of academics who engaged in more visible and active protests and reported feeling 'dismissed, erased and reminded of their disempowerment.'<sup>66</sup> They also felt that their protests were 'fruitless, and somewhat embarrassing, to their colleagues, and ultimately to themselves.'<sup>67</sup>

This picture raises important questions for those concerned with resisting neoliberal reform. What is the source of the capacity to resist? More specifically, if power is, as Foucault puts it, an 'omnipresence',<sup>68</sup> if 'there is no outside'<sup>69</sup> from which to contest it, then how can the possibility of resistance arise? Pessimistic accounts of Foucault's perspective on power certainly suggest it cannot account for agency.<sup>70</sup> Alain Touraine, for example, critiques the Foucauldian construction of power as incapable of explaining the 'constant transformation of society by social actors' since Foucauldian accounts of power construct social actors as merely 'the manifestations of a hidden domination.'<sup>71</sup> As we suggested above, the tenor of the Foucauldian accounts of academic life under neoliberalism to which we have referred is distinctly pessimistic. These accounts draw primarily on Foucault's early work on power from *Discipline and Punish* and *The History of Sexuality Vol 1*.

<sup>64</sup> Michael Foucault, 'The Subject and Power' in *The Essential Works of Foucault, 1954–1984, Vol. 3: Power* (New Press, 2001) 329.

<sup>65</sup> David Damrosch, *We Scholars: Changing the Culture of the University* (HUP, 1995) 7.

<sup>66</sup> Anderson, above n 22, 259.

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

<sup>68</sup> Michel Foucault, *The History of Sexuality: Volume 1: An Introduction* (Vintage Books, 1990) 93.

<sup>69</sup> Foucault, above n 64, 301.

<sup>70</sup> See for example Clifford Geertz quoted in 'Introduction' in David Hoy (ed), *Foucault: A Critical Reader* (Wiley-Blackwell, 2001) 11.

<sup>71</sup> Alain Touraine, 'From Understanding Society to Discovering the Subject' (2002) 2(4) *Anthropological Theory* 387, 388.

However, in this section we will show the centrality of resistance — indeed the priority of resistance — in Foucault’s later work on power.<sup>72</sup> Further, we contend that the power exercised over academics is also productive. Thus power should be understood ‘not only a force of prohibition and repression external to subjectivities, but also and more important one that internally generates them.’<sup>73</sup> As a result, we need not understand the construction of academic subjectivities as foreclosed by power.

If universities are thoroughly invested with formations of power, these formations are mutually constitutive with the forms of resistance which contest them.<sup>74</sup> If ‘[p]ower is everywhere’, then by the same token, ‘points of resistance are present everywhere in the power network.’<sup>75</sup> For Foucault, this relationship is not a simple coincidence. Nor is it the case that resistance only galvanises itself in response to power. Resistance is not a mere ‘reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat.’<sup>76</sup> Rather, resistance ‘inhabits power’ and gives it content and form.<sup>77</sup>

In summary, we contend that any given instantiation of power within the university is dependent upon formations of resistance that both impel it and imbue it with form and substance. Formations of power are in a constant process of being undermined and re-formed by the resistance of active agents. There is always something that ‘escapes them’.<sup>78</sup>

As we explained above, researchers who have investigated academics’ responses to neoliberalism using qualitative research methods paint a picture of academics as overwhelmed and in despair. It seems to us that an invitation to conceptualise ourselves as agents (still, again) is called for. We accept that power operates through multiple mechanisms, including the formation of subjectivities. We also believe that any hope of an outside or external standpoint from which to contest power is both ‘futile and disempowering’.<sup>79</sup> However, we do not accept that these propositions eliminate agency or require despair. Rather, even in the face of profound challenges, we contend that academics remain free subjects with agency to resist. Freedom is necessarily prior to the exercise of power and

<sup>72</sup> Michael Foucault, ‘Sex, Power and the Politics of Identity’ in *Essential Works of Foucault, Vol 1: Ethics* (Penguin, 2000) 167.

<sup>73</sup> Michael Hardt and Antonio Negri, *Commonwealth* (HUP, 2009) 80.

<sup>74</sup> Foucault, above n 68, 95–6.

<sup>75</sup> *Ibid.* 95.

<sup>76</sup> *Ibid.*

<sup>77</sup> Michael Foucault, ‘Power and Strategies’ in *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (Vintage, 1980) 95.

<sup>78</sup> *Ibid.* 138.

<sup>79</sup> *Ibid.*

our resistance is ‘the effort to further, expand, and strengthen that freedom’,<sup>80</sup> an effort in which we believe everyone can participate.

#### IV ACADEMIC AS ACTIVIST

How then could academics resist the forms of power associated with contemporary universities? We accept Anderson’s argument that there is a place for the individual, hidden acts of resistance that she and other authors document. Further, we also believe that neoliberal practices and discourses should be resisted in a multiplicity of ways and that there are concrete benefits to adopting strategies that are collaborative and overt. Acknowledging the diversity of contexts in which we might resist or construct alternatives, and the many strategies academics could deploy holds promise for counteracting the discouragement and despair that has been documented by many of the authors whose work we have considered.

We propose that academics conceptualise themselves as activists: advocates and actors for a political cause. Moreover, to be effective, we argue that academic activism should refuse the discourses central to the operation of neoliberal power. In particular, since individualism, competition and the centralisation of market models and goals form key neoliberal discourses, we propose them as discourses we might seek, in particular, to resist.

In articulating a vision of academics as activists, we draw on the tradition of academics as having unique social responsibilities in accordance with the university’s role as ‘critic and conscience’ of society.<sup>81</sup> Gina Anderson has identified academics’ deployment of traditional academic culture and traditional understandings of the university as generating alternative subject positions from which to critique the impact of neoliberalism,<sup>82</sup> and this project is one form resistance might take. Edward Said goes further, with his characterisation of an academic as ‘somebody whose place it is publicly to raise embarrassing questions, to confront orthodoxy and dogma (rather than to produce them) [and] to be someone who cannot easily be co-opted by governments or corporations.’<sup>83</sup> Said argued further that when necessary an academic should be prepared to be ‘embarrassing, contrary, even unpleasant.’<sup>84</sup>

<sup>80</sup> Hart and Negri, above n 73, 82.

<sup>81</sup> See Staughton Lynd, ‘Intellectuals, the University and the Movement’ in Andrej Grubacic (ed), *From Here to There: The Staughton Lynd Reader* (PM Press, 2010) 144. A more explicit invocation toward praxis can be found in Michael Newman, *Teaching Defiance: Stories and Strategies for Activist Educators* (Jossey-Bass, 2006).

<sup>82</sup> Ibid 256–7.

<sup>83</sup> Edward Said, *Representations of the Intellectual* (Vintage, 1995) 11.

<sup>84</sup> Ibid 12.

Building on Said's description, we contend that academics have a responsibility to understand the consequences of neoliberal reform in the university. While this responsibility might take the form of private intellectual inquiry, it could also comprise taking collective action to contest neoliberal 'reforms' and their outcomes in our schools and universities, as well as in the ways we conceptualise our co-workers, our students and ourselves. Given our training in advocacy and the specific impacts that neoliberalism has had on law schools, we contend that legal academics are in a strong position to conceptualise ourselves as activists. As Thornton contends, '[l]egal academics, in particular, know that justice emerges from the dialogic relationship between the 'is' and the 'ought' of law, not from 'is' alone.<sup>85</sup>

In the space remaining, we give further content to our characterisation of the academic as activist beginning with a discussion on ethical resistance. We also engage with issues of strategy that are particular to legal academics. In starting this discussion, we are keenly aware of the gap between the exhausted and disempowered everyday life of academics described in the qualitative research we have referred to and the levels of energy, time and collaboration required for effective resistance. This context underscores the priority that must be given to creating a context in which these forms of action could begin. Here, we begin by considering actions that begin with the present situation and then move to larger projects that require greater organisation and aspire to transformation. For us, this structure is not simply theoretical. Rather, it mirrors a recent process that we have initiated in collaboration with other academics from different disciplines and universities who are interested in pursuing activism on neoliberalism that is social, investigative and collaborative. In pursuing this approach we have acknowledged that responding to overwork and despair may be a prerequisite to other forms of action and opened space for a conversation about what might be possible and how it might be accomplished.

### *A Desirable Change and Ethical Resistance*

Academics who identify as activists need a clear conception of who or what they are resisting. Put simply, not everything that occurs in universities is neoliberal or undesirable. The university consists of a complex assemblage of structures, values and practices. Like other social institutions, it has evolved over time with reference to the projects of individuals, political groups and other social institutions. Sometimes these forces are place-specific and sometimes they are national (or even international). Projects can also have lives of their own and are reproduced in unpredictable ways as they come together

<sup>85</sup> Thornton, above n 7, 228.

to constitute a particular institution.<sup>86</sup> As the outcomes of our efforts and those of others become apparent, further critique and action may be called for, and our strategies and analyses of resistance may require revision.

For these reasons, we suggest that academic activists conceptualise the university as a set of practices that are historically contingent and capable of transformation. This perspective is important, first, because it brings into view the potential for alternatives to the prevailing state of legal education. In contrast, the construction of neoliberalism as ‘necessary and inevitable’ forestalls the possibility of resistance<sup>87</sup> and makes critique appear foolish.<sup>88</sup> Second, it means that resistance can also be nuanced and directed at particular structures, practices or values rather than at the university or the tertiary system as a whole. This has obvious implications for the prospects of successful action and for our sense of agency as activists.

The flip side to this conceptualisation is also important. Desirable changes in legal education as well as in Australian universities have taken place during the last few decades as neoliberal practices have also become more and more embedded. As academic activists we need to choose forms of resistance that we believe are ethical and meaningful. We are in no way obliged to oppose every form of change. We might instead choose virtuous compliance with changes we think are desirable,<sup>89</sup> or support goals we believe are desirable while opposing forms of implementation we believe are not.

For example, the massification of the student population has increased diversity and the social mobility of individuals from lower socio-economic backgrounds. The way in which it has been implemented has brought increases in student–staff ratios and in administration.<sup>90</sup> In choosing resistance to ever increasing student–staff ratios we need not lose sight of the positive aspects of increased access to higher education. Nor should we lose sight of the need to choose ethical strategies in resisting processes such as these: while academics may not wish to pay for the consequences of neoliberalism, it is difficult to see why students should be impacted in our place.

<sup>86</sup> Cynthia Kaufman, *Getting Past Capitalism: History, Vision, Hope* (Lexington Books, 2012) 64.

<sup>87</sup> Davies and Petersen, above n 2, 84.

<sup>88</sup> *Ibid* 93.

<sup>89</sup> Sally Kift, ‘Guiding good practice for virtuous compliance’, *Campus Review*, 30 April 2012.

<sup>90</sup> Thornton, above n 7, 13.



## B *Discourses for Resistance*

If neoliberalism is not only an economic structure, but also a set of discursive strategies,<sup>91</sup> it follows that we can resist it at the level of our engagements with these discourses and at the level of the construction of our subjectivities. If discourse is a 'a series of discontinuous segments whose tactical function is neither uniform nor stable',<sup>92</sup> discourse is an instrument and an effect of power, but also a potential hindrance, a point of resistance, and a starting point for opposing strategies. Our efforts to resist should be recognised and could be consciously undertaken as forms of activism. If they were understood in this way, perhaps the evidence of academic resistance to neoliberalism would look quite different. We therefore wish to highlight some discourses for resistance that respond at the level of subjectivity, motivation and our values.<sup>93</sup>

We have argued that individualism, competition and the adoption of market metaphors and processes as appropriate for all dimensions of life form key dimensions of neoliberalism. Individualism operates to isolate academics and predispose us to adopt understandings of the neoliberal university in which the difficulties we face are constructed as individual rather than structural or institutional. It is seen to follow that solutions must be found through individual effort and that our colleagues should be seen as our competitors. We propose the adoption of strategies which refuse individualism. Rather, we advocate that academics build relationships with one another and work collaboratively toward mutually agreed goals.

For example we can participate in the wider conversation about student wellbeing that has grown up in response to research and advocacy on law student depression.<sup>94</sup> In doing so, we should contest conceptualisations of the problem and potential solutions which strengthen, rather than undermine, neoliberalism. A focus on student wellbeing offers multiple possibilities for conceptualising students as human beings rather than as potential sources of profit, and for critique and politicisation of the practices of the legal profession and the law school. Rather than treating students as problem-bearers or individual victims of mental illness, we can draw on responses which, instead of asking what students have done to make themselves sick, seek to ask how the law school, the university and the profession

<sup>91</sup> Davies and Petersen, above n 2, 87; Anderson, above n 22, 256.

<sup>92</sup> Ibid.

<sup>93</sup> Parker and Jary, above n 17, 320.

<sup>94</sup> Norm Kelk et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Legal Practitioners* (2009) <<http://sydney.edu.au/bmri/research/mental-health-clinical-translational-programs/lawreport.pdf>> viii; Kath Hall, Molly O'Brien and Stephen Tang, 'Changing our Thinking: Empirical Research on Law Student Wellbeing, Thinking Styles and the Law Curriculum' (2011) 21 *Legal Education Review* 147.

might be having this impact and how we can respond.<sup>95</sup> These responses can offer our students paths toward critical engagements with the legal profession as well as offering strategies and tools for teachers who are seeking to support student wellbeing.

We can participate in wider discussions about the health and wellbeing impacts of a profession and workplaces that treat our graduates as a means for profit making at the expense of their wellbeing and their participation in their families and communities. We can be part of discussions questioning why the professions for which we are preparing our students have high rates of alcoholism, (mis)use of other drugs, anxiety, depression and suicide.<sup>96</sup> Indeed, where we see these phenomena in our own lives and workplaces we might consider inquiring into, and politicising, their causes there.<sup>97</sup> Rather than allowing these conversations to be drawn relentlessly down to the level of individualising and medicalising the problem, we can be looking to the causes of ill health and misery in our institutions and in the professions.

The US literature on humanising the law school forms another example of thinking about students and the profession from the perspective of thriving, with a focus on community service, ethical obligations, and turning critical thinking toward the practices of law schools and the profession.<sup>98</sup> In the Australian context, the national Threshold Learning Outcomes<sup>99</sup> and degree objectives related to critical thinking skills and social context<sup>100</sup> may offer further options

<sup>95</sup> See, for example, Rachel Field and James Duffy, 'Law Student Psychological Distress, ADR and Sweet-Minded, Sweet-eyed Hope' (2012) 23(3) *Australasian Dispute Resolution Journal* 195; Rachel Field and Sally Kift, 'Addressing the High Levels of Psychological Distress in Law Students Through Intentional Assessment and Feedback Design in the First Year Curriculum' (2010) 1(1) *International Journal of the First Year in Higher Education* 65; Rachel Field and James Duffy, 'Better to Light a Single Candle Than to Curse the Darkness: Promoting Law Student Well-being Through a First Year Law Subject' (2012) 12 *Queensland University of Technology Law and Justice Journal* 133.

<sup>96</sup> Kelk, above note 94; Lisa Pryor, *The Pin Striped Prison* (Picador Australia, 2008) 34.

<sup>97</sup> Ball, 'Governing Depression' above n 50, 297.

<sup>98</sup> See, for example, Michael Schwartz and Michael Hunter, 'Humanizing Legal Education: An Introduction to a Symposium Whose Time Came' (2008) 47(2) *Washburn Law Journal* 235.

<sup>99</sup> See Office for Learning and Teaching, 'Threshold Learning Outcomes' <<http://www.olt.gov.au/resources?text=threshold%20learning%20outcomes?>> The Law Associates Deans of Teaching Network has commissioned a set of good practice guides for the implementation on TLOs in law, available at: <http://www.lawteachnetwork.org/resources.htm>. See also Anna Huggins, 'The Threshold Learning Outcome on Self-Management for the Bachelor of Laws Degree: A Proposed Focus for Teaching Strategies in the First Year Curriculum' (2011) 2(2) *International Journal of the First Year in Higher Education* 23.

<sup>100</sup> See for example, the Adelaide Law School Graduate Attributes <[http://www.adelaide.edu.au/professions/downloads/gradattributes/law\\_llb.pdf](http://www.adelaide.edu.au/professions/downloads/gradattributes/law_llb.pdf)>. They maintain that graduates will have 'critical thinking and problem solving skills' as well as 'an understanding of social justice through the operation of law.'

for engagement with students and teaching which centralise social context and critique rather than a market based perspective.

However, we cannot participate in these (or any other) strategies on the basis that our actions can be innocent or neutral in the face of power. Psychological and pedagogical research which underpins much of the literature on law student depression and humanising the law school does not represent innocent knowledge — that is,

some sort of truth which can tell us how to act in the world in ways that benefit or are for the (at least ultimate) good of all. Those whose actions are grounded in or informed by such truth will also have their innocence guaranteed. They can only do good, and not harm, to others.<sup>101</sup>

Rather, we need to be constantly alert to the ways in which these projects may contribute to pressure for students to become ‘responsible, risk-managing and self-governing persons’ whose formation ‘reflect[s] and reinforce[s] advanced liberal government’.<sup>102</sup> This is a process in which we may participate no matter how pure we feel our motivations are: our actions can never be innocent of power, and the outcomes engagement with power produces can never be entirely within our control. However, inaction in the face of neoliberalism also represents a relationship with power that is not innocent, a relationship with power which carries risks, as the qualitative research into academic life we have discussed above reveals.

If, as Butler suggests, we perform ourselves as neoliberal subjects, we can also choose to perform ourselves and our roles as academics in transformative and subversive ways.<sup>103</sup> We can refuse the marketisation of everything we do in ways large and small. We do not need to continue to participate in the processes by which we (together with the rest of the Australian workforce) are rendered more and more ‘productive’ through overwork. We can participate in strategies like the Australia Institute’s ‘Go Home on Time Day’.<sup>104</sup> We can encourage others to do likewise — and to question why there should be only one day of the year when we go home on time. We can reclaim lunch as an opportunity to have conversations away from the desk and computer. We can reclaim conversation with our co-workers as a pleasure rather than a limitation on productivity. We can constantly hold out the possibility for constructive solutions through collaboration and a determination to keep seeking alternatives to the aspects of our work and our institutions that do not work for students or for staff. We can think big, but we don’t have to wait for the day

<sup>101</sup> Jane Flax, ‘The End of Innocence’ in Judith Butler and Joan Scott (eds), *Feminists Theorise the Political* (Routledge, 1992) 447.

<sup>102</sup> Ball, ‘Governing Depression’ above n 50, 296.

<sup>103</sup> Judith Butler, *Undoing Gender* (Routledge, 2004) 3.

<sup>104</sup> Go Home on Time Day: <http://www.gohomeontimeday.org.au/>.

that neoliberalism grinds to a halt to act. We can begin at our own desktops and in our own tutorials and meetings. To the extent that we feel we have become ‘zombies’,<sup>105</sup> we can begin to figure out — with our friends, at work and outside and with our families — what would need to be different for us to thrive and become agents in our own working lives, law school and institutions.

### *C Prefigurative Forms of Resistance*

The existing literature offers a very narrow conception of the kinds of activities that academics are engaging in to resist undesirable neoliberal reform. Even Anderson’s more expansive study focuses almost exclusively on individual and sometimes hidden acts of protest. Reflecting rising pressure on academics and our perceived disempowerment, these accounts conceptualise resistance as primarily responsive or negative. Yet, once legal academics have begun to collaborate and engage with some of the discourses noted above, we might seek to expand their resistance and draw applicable lessons from successful social movements in broader society where the challenges are surely no smaller.

While it is varied, social movement literature has consistently highlighted the importance of positive projects that both galvanise support for their cause and create the kinds of social relations and institutions that participants would like to see an ideal future society embody.<sup>106</sup> This kind of resistance is called ‘prefigurative politics’ because it is designed to create the conditions necessary to conceptualise different futures and acquire the skills needed to bring them about.

The notion of prefigurative politics emerged in the 1960s from the US student movement.<sup>107</sup> As described by Wini Breines the term denotes ‘relationships and political forms’ that prefigure and embody ‘the desired society’.<sup>108</sup> Central to this approach is the belief that the methods used for resistance are intimately connected with the ends toward which they are directed.<sup>109</sup>

<sup>105</sup> Ryan, above n 3, 3.

<sup>106</sup> See for example Barbara Epstein, *Political Protest and Cultural Revolution: Nonviolent Direct Action in the 1970’s and 1980’s* (University of California Press, 1991); Andrew Cornell, *Oppose and Propose: Lessons from Movement for a New Society* (AK Press, 2011).

<sup>107</sup> Wini Breines, *Community and Organization in the New Left, 1962–1968* (Rutgers University Press, 1989) 6. Note that prefigurative politics is also described as a strategy proffered by the Italian political theorist Antonio Gramsci.

<sup>108</sup> Ibid.

<sup>109</sup> Cynthia Kaufman, *Ideas for Actions: Relevant Theory for Radical Change* (South End Press, 2003) 278. In this sense, prefigurative politics embodies what Max Weber termed ‘value rational action’. See further Max Weber, *Economy and Society* (University of California Press, 1978) 24.

In the context of law schools, possibilities for prefigurative projects are significant. For example, Margaret Thornton has highlighted the impact of neoliberal reforms on the teaching of critical approaches to the law.<sup>110</sup> Prefigurative projects for resisting the ‘jettisoning’ of critical perspectives might involve collaboratively learning techniques for teaching critical theory; mapping the prominence of critical theory in the compulsory LLB curriculum (both in terms of course content and assessment); and investigating opportunities for strengthening critical theory in the compulsory curriculum.<sup>111</sup>

Another possibility for prefigurative work concerns the diminution of collegiality and collective decision-making within law schools. The concentration of power in management has contributed to the ‘sense of alienation and anomie that besets the contemporary legal academic.’<sup>112</sup> While corporatisation is destructive of collegiality<sup>113</sup> it has not yet eroded all opportunities for collective decision making in law schools. For example colleagues retain a significant level of autonomy in how we interact with each other in daily administration and the decision-making process for team teaching.<sup>114</sup> While perhaps small, these examples are important for the personal practice in collegiality and collective decision making. They must also be seen in light of more forceful advocacy for the democratisation of universities.<sup>115</sup> One visible example is the petition ‘Manifesto for Change’, which was signed by over 500 academics in the UK.<sup>116</sup> The document calls on the coalition government and UK universities to reverse policies that are leading to the commercialisation of higher education. Part of the document demands that universities: ‘[Democratise] governing bodies through the allocation of equal votes to staff and student representatives, community members, and employers’ representatives.’<sup>117</sup>

While we recognise existing constraints on academic activism, we contend that projects like these are a precondition for realising any radical alternative to the prevailing neoliberal form of university education. Prefigurative projects, both small and large, can also

<sup>110</sup> Thornton, above n 7 chapter three.

<sup>111</sup> See for example Gabrielle Appleby, Peter Burdon and Alexander Reilly, ‘Critical Thinking in Legal Education: Our Journey’ which is included in this volume.

<sup>112</sup> Ibid 131.

<sup>113</sup> Ibid.

<sup>114</sup> Beyond governance, opportunities also exist for democratising the classroom. See in particular, Paulo Freire, *Education for Critical Consciousness* (Bloomsbury Academic, 2005) and Ira Shor and Paulo Freire, *Freire for the Classroom: A Sourcebook for Liberatory Teaching* (Heinemann, 1987).

<sup>115</sup> See Richard Wolff, *Democracy at Work: A Cure for Capitalism* (Haymarket Books) 34.

<sup>116</sup> Simon Baker, ‘UK Consumer Culture Causes Global Concerns’, *Times Higher Education* (online), 19 May 2011 <<http://www.timeshighereducation.co.uk/416152.article>>.

<sup>117</sup> Michael Bailey and Des Freedman (eds), *The Assault on Universities: A Manifesto for Resistance* (Pluto Press, 2011) 180.

represent an affirmative form of resistance that is rewarding and gives energy to one's work. Indeed, if undertaken collaboratively and with mutual respect, we contend that prefigurative acts of resistance can enrich the life of a law school and the educational experience of students.

### D *Accompanying*

So far our characterisation of the academic activist has stressed the importance of breaking from the individualisation of neoliberalism and moving toward collective forms of resistance. Taking this further, we suggest that legal academics can learn from the practice of 'accompanying' and understand their activism as intimately connected to academics within other disciplines<sup>118</sup> as well as other university workers and students.

The term 'accompanying' has a long history in social movements.<sup>119</sup> Paul Farmer offered a useful description of the term during a commencement address for the Harvard University Law School. In the context of his work during the 2010 Haitian earthquake, Farmer states that 'to accompany someone is to go somewhere with him or her, to break bread together, to be present on a journey with a beginning and an end.'<sup>120</sup> Farmer indicates that we're almost never sure about the end:

There's an element of mystery, of openness, in accompaniment. I'll go with you and support you on your journey wherever it leads. I'll keep you company and share your fate for a while. And by "a while", I don't mean a little while. Accompaniment is much more about sticking with a task until it's deemed completed by the person or persons being accompanied, rather than by the accompagnateur.<sup>121</sup>

Labour-lawyer Staughton Lynd describes accompanying as a non-hierarchical practice that implicitly challenges individualisation and isolation. He suggests that 'if accompanier and accompanied are conceptualised, not as one person assisting another person in need, but as two experts, the intellectual universe is transformed.'<sup>122</sup> No longer do we have one kind of person helping a person of another

<sup>118</sup> It is important to recognise that many other disciplines do not enjoy the same privileged position as law within the university and have had more significant funding and workload impacts. For an exploration of the impact of neoliberalism on the liberal arts see Frank Donoghue, *The Last Professors: The Corporate University and the Fate of the Humanities* (Fordham University Press, 2008).

<sup>119</sup> For an exploration of this term and its historical application see Staughton Lynd, *Wobblies and Zapatistas: Conversations on Anarchism, Marxism and Radical History* (PM Press, 2008) 51–3.

<sup>120</sup> Paul Farmer, *Accompanying as Policy* (Office of the Special Envoy for Haiti, 2011) 1.

<sup>121</sup> *Ibid.*

<sup>122</sup> Staughton Lynd, *Accompanying: Pathways to Social Change* (PM Press, 2012) 4.

kind. Rather we have two collaborators who are exploring a path forward together.<sup>123</sup>

In the context of law schools this reframing is important because it recognises that academics are not the only ones impacted by neoliberal reforms. Professional staff and students also have the opportunity to be involved in articulating potential solutions or methods of resistance. A serious process of accompaniment with these groups necessitates that artificial barriers of separation between academics and the rest of the university community be broken down. In particular, notions of superiority and illegitimate hierarchies<sup>124</sup> are barriers to collective engagement and our ability to resist the individualisation of neoliberal discourse.

One potential barrier to student accompaniment is the fluctuating nature of the student cohort. Further, student organisations in most Australian universities in the era of Voluntary Student Unionism have very limited resources and little access to the collective memory of student movements of the past. Nevertheless, students continue to organise. Law students, in particular, form a relatively coherent cohort studying a largely shared set of topics, in which legal academics will often have multiple opportunities for contact. They are often organised even at institutions where the wider student body is less active, and they also have a national organisation with institutional memory.<sup>125</sup> Opportunities for accompanying students who are seeking to improve legal education or the legal profession or who are responding to government policies are therefore more plentiful in law than in many disciplines.<sup>126</sup>

For an accompanying approach to be successful, academic staff need to approach the process with humility and self-reflection as privileged and relatively powerful members of the university community. Academics should also acknowledge that when students pursue change, they are doing so in their own time and with limited resources. They are also breaking the mould of the 'passive' or 'disinterested' student and demonstrating a passionate concern for their own education. If we fail to engage with groups of students who seek to raise concerns or advocate for alternatives to the educational experience they are currently offered, we risk disempowering the student body and further inculcating a culture of disengagement with the learning community. Moreover, we lose the opportunity to model for our students (many of whom will go on to occupy positions of

<sup>123</sup> Ibid.

<sup>124</sup> Illegitimate hierarchies refer to relationships of 'power over' which cannot be justified. In proposing this idea we wish to highlight that not all hierarchical interactions between teachers and students are illegitimate. Common examples of 'power over' which could be justified include (but are not limited to) classroom interactions and marking assessment.

<sup>125</sup> The Australian Law Students' Association: <http://alsa.net.au/>.

<sup>126</sup> For one example of such student activism at the level of a single law school see: Law School Reform, above n 9, xii.

authority) how a person with privilege could reflexively engage with those with less power than themselves.<sup>127</sup>

## V CONCLUDING REMARKS

This article seeks to begin a conversation about how academics might respond to the neoliberalisation of universities. This is a fundamentally different question from that addressed by the growing critical literature on legal education. It requires us to look backward at the reforms that have occurred over the past 30 years and also forward with recognition that we are implicated in and integral to the power dynamics of universities. How we navigate this space matters a great deal to the future of legal education and how our institutions function.

We have put forward an argument for conceptualising academics as activists — a term we used to encompass both direct action and prefigurative programs of resistance. There are multiple opportunities for individualised, subtle or hidden forms of protest, and these strategies form necessary and significant parts of responding to neoliberalism. They can undoubtedly be characterised as activism. There is evidence that these strategies predominate amongst those currently being deployed by Australian academics.

We would argue, however, that collaborative strategies also offer viable paths for expanding and strengthening our freedom or agency as individuals and as co-activists. More than ever, there is need for a ‘dissensual community’ in an environment where acquiescence has become the norm. We have an obligation as legal academics to begin a conversation about how we can uphold the university’s role as ‘critic and conscience of society’ and support colleagues and students to empower themselves to resist a vision of education which many believe is beyond reproach. As this article has demonstrated, there are choices about how to proceed and more opportunities will come into view as we work on this issue, build alliances and include new voices. One thing is clear: if we do nothing, we can guarantee that there will be no change for the better.

<sup>127</sup> See Nel Noddings, *Education and Democracy in the 21st Century* (Teachers’ College Press, 2013).