

# Curriculum Change — A Multidimensional Task

## University of New South Wales Law School

Chief Justice Robert French AC

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This evening's event marks a significant change in direction in the law curriculum offered by the Law School at the University of New South Wales. The story of the process which led to the adoption of the new curriculum, and the issues thrown up by that process, are reflective of some of the hard questions facing Australian legal education today and the hard institutional work that is required to provide working answers to those questions.

Curriculum review is not a topic which readily engages the passions of innocent or even officious bystanders. So when I sat down last night to read the Law School's account of the process and its outcomes I did not hold high hopes of being swept along by the narrative.

My heart sank briefly early in the work when I came across a reference to UNSW Law having been at the cutting edge of legal education in Australia and breaking the mould which Australia had inherited from England. This mix of two-dimensional and three-dimensional metaphors in one sentence resonated with last Sunday evening's episode of 'Dr Who' in which creatures from a two-dimensional universe somehow engage with our three-dimensional universe and suck innocent passers-by into carpets and walls. So I forgave the dimensionally mixed metaphors and moved on. I'm glad I did. Reading on, I began to appreciate the complexity and magnitude of the task which UNSW Law had set for itself and undertaken over the past three or four years in its wholesale review and reform of what it teaches and how it teaches it.

Indeed, after reading further and observing the engagement of the curriculum review with competing theories of legal education and priorities to be given to various elements of it and the external regulatory and quasi-regulatory constraints affecting curriculum design, I began to find the story quite gripping. This may be a matter of concern to those who think that if you find curriculum review gripping you need to get a life. The fact is curriculum design is a battlefield in any area of education and acutely so in the field of legal education. The battlefield is populated by articulate, passionate and persuasive proponents of different and sometimes conflicting visions of what law schools should be for and what they should

do. Nevertheless, the question of purpose in legal education, which has been called strikingly by one writer, 'the lost question'<sup>1</sup>, must be asked. It has been asked in the course of this review. Law schools are not there simply to make money for their universities or to enhance institutional prestige. Any institution worthy of designation as a university must seek higher societal purposes. Harold Koh, formerly Dean of Yale Law School, emphasised the moral dimension of legal education when he said in 2006:

I do not believe it is our job to simply bless the status quo. We stand for principles about what the rule of law ought to be. As a law dean, I think that law schools are not just professional schools. They are institutions of moral purpose. We must speak up for the rule of law when someone is threatening it, because if we don't, who will?<sup>2</sup>

Of course, moral purpose is of little avail if its proponents are not equipped with the practical tools to give effect to it. The redesigned curriculum seeks to engage with the doctrinal and theoretical, the ethical and the experiential dimensions of legal practice, in an integrated way.

The review process has not been an easy one. It has had to respond to different visions of legal education within the academy, among staff and students and outside among alumni, the legal profession and the judiciary. All of those groups were the subject of consultation and participation to a greater or lesser extent.

There was an interesting little sub-story in the account of consultation with the legal profession. Academic lawyers consulting with practicing lawyers sometimes expect to be given advice about the need to make courses more practical and to cut out interdisciplinary luxuries. This proved to be an inaccurate stereotype. The review history recounts:

While we did receive some advice about our teaching of equity (long a preoccupation of some commentators), most of the lawyers had a gratifyingly progressive and positive view of the role of university legal education. They did not want us to be a 'trade school': they saw the teaching of practical legal skills as something for which they were happy to take responsibility. Instead they wanted law schools to produce graduates with higher level skills — analysis, communication, problem-solving and critical thinking. They wanted graduates capable of practising law as ethical professionals. They also often stressed the need for young lawyers to be able to see law in its increasingly important global contexts, and to be able to work with

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<sup>1</sup> Bethany Rubin Henderson, 'Asking the Lost Question: What is the Purpose of Law School?' (2003) 53(1) *Journal of Legal Education* 48.

<sup>2</sup> Harold Koh, 'On Law and Globalisation' (Speech delivered at the American Law Institute, Washington DC, 17 May 2006) quoted in Michael Coper, 'Legal Knowledge, The Responsibility of Lawyers, and the Task of Law Schools' (2008) 39 *University of Toledo Law Review* 251, 260.

international clients and partners. This entails social and cultural skills, not just extended doctrinal knowledge.<sup>3</sup>

Some important differences emerged in-house. There were strongly held and conflicting opinions within UNSW Law about the study of criminal law and procedure. One proposal was pursued by the Head of School, the other by the Dean. This was the sort of dispute which, as the review history notes, '[a]t other law schools, has caused endless grief.'<sup>4</sup> In the event the difference was resolved in an atmosphere of mutual respect and the process moved on.

The curriculum review considered both core subjects and elective subjects. The design and integration of elective units into any law curriculum is challenging. They present a difficult area of choice for students who are not sure which units will best suit their purposes and their career prospects. Recognition of that difficulty is reflected in the creation of the new Office of Director of Senior Studies, which commences this year to provide guidance to students about electives and offer general career advice about legal careers not confined to legal practice.

In devising its new curriculum, UNSW Law has had to navigate a number of constraints including those imposed by resource limitations, professional accreditation requirements, government regulations and, of course, the managerial framework of the University itself. Although the design of the curriculum has been informed by developments in United States law schools, UNSW Law operates under a much more constrained resource model. It has had to enrol four or five times as many students as a top United States law school. This leads to difficulties in managing scale. Rearranging the teaching of 500 students is very different from rearranging the teaching of 100. Then there were the pressures on staff involved in the intense innovative work required by a fundamental curriculum review. For, while engaging in that process, they had to meet their ongoing teaching demands and the relentless expectations of scholarly publication and the acquisition of research grants.

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<sup>3</sup> Curriculum Review — Designing an International, Experiential, Research-Focussed Curriculum for a C21 Law School (UNSW Law, 2013) 19–20.

<sup>4</sup> Ibid 26.

The product of the exhaustive and exhausting review and reform has some important features which I would like briefly to mention. They are the following:

- *A strong emphasis on statutory interpretation* in the teaching of formal skills and in working with statutes in subjects which were formally treated largely as case law subjects. There are few legal problems which come before practitioners or courts today which do not have a statutory dimension. That is so whether they present primarily as problems about contracts, tort, property or equity. There are very few cases in administrative law, and specifically judicial review of administrative action, which do not involve statutory interpretation. When the constitutional validity of a statute is challenged, the first task is the interpretation of the statute. More often than not, any given legal problem will involve the intersection of more than one statute.
- *The resolution of conflict outside the litigation process* is emphasised in the redesign and no longer relegated to the outdated heading of 'Alternative Dispute Resolution'. That is entirely appropriate. In so saying, however, I would caution that it is important not to treat the courts as a species of dispute resolution service. The judicial system is a branch of government. It not only determines disputes. It does so in a public way by publicly appointed officials and in so doing it publicly affirms the rule of law.
- *An emphasis on legal research and writing* as a set of learning units has been attached to 'Introducing Law and Justice', 'Equity and Trusts' and 'Law in the Global Context'.
- *The increasing internationalisation of legal practice* whether in the delivery of international legal services or the application of domestic law informed by international law is also recognised. All students will study a new course called 'Law in the Global Context' and that will be taught through a series of case studies which illustrate the penetration of international issues into a variety of settings from trade to criminal law and beyond. Internationalisation of the legal curriculum, however, must recognise different manifestations of internationalisation of the law for a law firm with a global practice and a law firm focused on domestic legal work which nevertheless increasingly involves the implementation of law giving effect to conventions and treaties.

There is also an emphasis on ethics and professional practice which will be linked to experiential learning through the in-house legal centre and other clinics and through participation in local and international internships. The effect of experiential learning on motivation cannot be understated. That is recognised widely today in legal education and reflected in an increasing emphasis on clinical legal education. The value accorded to this aspect of legal education in the reformed curriculum offers opportunities for the interaction, in a practical way, of different strands in the courses now under offer.

UNSW Law has identified a number of vertical themes through the curriculum. They are indigenous legal issues, human rights, justice and the rule of law, gender, class, race and disability, environmental issues, inter-disciplinary international and comparative perspectives, corporate and commercial law issues, personal and professional development and ethics, and experiential learning, which is described as a fundamental aspect of the new curriculum.

There are interactions between all of these themes which may yield interesting possibilities for cross-thematic exercises. One example which comes to mind would be an exercise in either a simulated or a real life situation, requiring students to devise a manual for the boards or councils of incorporated indigenous bodies managing land or funds derived from land use agreements. The object of the exercise would be to devise a practical working guide, in comprehensible language and format, to the responsibilities and obligations of such bodies. The exercise would require a consideration of statutory powers and duties, contractual rights and obligations and equitable obligations including fiduciary duties. The preparation of such a manual would necessarily have to occur at an intersection between theory, practice and experiential learning as well as the development of research and writing skills. A subsequent challenge would be to explain it to a group either in a simulated or real life board. Interaction between the vertical themes offers many pedagogical possibilities in the new degree course.

The curriculum review has been a massive project. It has confronted issues which all law schools in Australia have to confront. I congratulate UNSW Law on the work it has done and the resource which that work provides for the development of legal education in Australia generally.