LEGAL EDUCATION

Changing University Law Admission Policy in New South Wales

With an increase in the number of university law schools in Australia, and a relative growth in the accessibility of legal education, an opportunity exists for law schools in New South Wales (and generally) to reconsider their admission policies to correlate student entry with the pedagogical aims of the institution. It is now widely accepted that the best HSC students are not necessarily the best law students and that universities should be more selective in their admission policies.[1] The growth in the number of Australian law schools provides an opportunity for greater diversity in how and to whom law is taught.

The rapid growth of the university legal education sector seems to have caught many universities off guard. There is an apparent lack of co-ordination amongst law schools as to how legal education should be structured in an age when legal education is becoming relatively more accessible than ever before. This is particularly the case with regard to the criteria for admission to law school which have been a constant problem for universities in New South Wales. The HSC is still the predominant method for law student selection in New South Wales. Little consideration has been given, however, to the fact that the educational experience of new law students is often at odds with the requirements for the study of law given the propensity of law students to undertake HSC science and mathematics.

With over 20 institutions for prospective law students to choose from nationally, law schools now have an opportunity to better reflect the diverse nature of legal education by tailoring the admissions policy of individual institutions to the values and aims of their law program. A more focused admissions policy may also provide access to groups usually excluded from legal education. For example, a regional bias could be structured into the mainstream admission policy of some of the new non-metropolitan universities (e.g. Wollongong University has a university-wide regional weighting for admissions purposes). Law, in this way, may become more reflective of the social and cultural mix of society at large.

There has been increasing discussion in some established New South Wales law schools about reviewing admission policies, with a view to including HSC history (or some other humanities unit) as a compulsory prerequisite to the study of law. This paper attempts to outline, very briefly, some of the considerations that may be associated with that change and how the changes currently facing legal education provide extraordinary opportunities for greater diversity in legal education.

The 'sameness' of legal education

University law schools have tended towards replication in terms of curriculum, aims and most importantly, the types of students they attract. As a consequence, prospective students have not been pressed to make an academic choice in their selection of law school.

Law schools have traditionally been perceived as primarily responsible for the training of lawyers. This has had the effect of making legal education generally conservative in its method and approach. Until recently, as a consequence, there has been little to distinguish university law schools both in terms of the form and substance of the undergraduate law curriculum. This is particularly the case with respect to optional components of the law curriculum, where considerable replication between universities takes place (despite a cross-institutional crediting agreement that allows students to move between universities to undertake courses not taught at the home institution). A quick examination of the undergraduate, and increasingly postgraduate, curriculum of university law schools shows considerable duplication beyond the required curriculum. This may be explained by a convergence of academic interests. However, it seems to be part of a growing tendency within law schools to see a multiplicity of optional courses as a measure of success (even options that are offered once in a blue moon) and the absence of an option (or program) offered by another university as a failure. With more law schools now operating, or due to come into operation, universities have an opportunity to involve themselves in greater experimentation without being seen to compromise the basic role of law schools to provide training for legal practice (although this narrow conceptualisation is now very dated within the legal profession and academia).

Not only are most law schools similar in curriculum and aims, they attract students who are predominantly drawn from the same social and economic groups. The upward pressure of TER and HSC entrance scores has made legal education less and less attainable for all but a very select few. In a Sydney University Law School survey, it was found ('not unexpectedly') that:

> . . . Law students come from families where, more likely than not, fathers have a professional or managerial occupation; mothers have a university degree; where parents send their children to selective schools (independent, Catholic, state-selective) rather than non-selective schools; where parents are Australian born and speak exclusively English as the family language; and where families live in the more affluent suburbs of Sydney.[2]

This archetypal law student is not uncommon, a study in the United States revealing a similar pattern.[3] As Zeigert suggests, law schools are drawing 'aspiring law students' from the same pool because the ' . . . profile of what being a lawyer means is precisely the profile which the community has of its law; and which the legal system in Australia has as its self-concept'.[4] In short, not only are Australian law schools predominantly teaching the

same things, we are teaching them to the same people.

Factors influencing change

A number of other factors suggest it may be time for a change:

more thought and research is being concentrated on legal education, with advocates for different approaches to the role of the law school and the training of lawyers;

- mutual recognition legislation has created a national employment market for law graduates and has contributed to greater geographical mobility among pre-law students. In addition, students will inevitably become more selective about their choice of law school while the employment market remains competitive (some evidence suggests that this is already occurring);

  a continuing increase in the areas of legal work available to lawyers, making law a field of study for a more varied group of students. As a vocational program, law is decreasingly seen as an entree into legal practice, and a greater number of students are entering law without an intention of becoming a legal practitioner; and
- a decrease in the number of law graduates seeking admission to practice due to a constricted demand for tradition lawyering.

Law admission policy

Admissions policy can operate at both a symbolic and practical level. Delimiting the type of student admitted to a law school on the basis of educational qualification, cultural or geographical background makes a statement about the types of students we wish to see graduating. It is as much a statement about the school's approach and teaching strategy as a mission statement. At a practical level, altering admission requirements or procedures will have the effect of altering the actual composition of the student body.

In the past there has been no fair or financially feasible way of determining mainstream undergraduate student admission except for computer selection based on TER or HSC results. This system only had the advantage of certainty; it did not (and does not) match students to programs in any logical sense. For example, a high percentile result in HSC physics is not equivalent to a high percentile result in HSC history. It could be said that one student would be more suited to the study of law than the other, but the HSC system is:

> . . . based on the assumption that scores on conceptually different courses can be interpreted as measures of the same latent ability and that it is thus appropriate to combine these scores to summarise a student's secondary school achievement in a single number.[5]

Without otherwise prescribing the prerequisite requirements for entry into law, students are condensed down to a single number regardless of their expertise or interests. Some law schools have opted for entry based on first year university results (e.g. Adelaide University) diminishing the impact of high school study as a determinant in selection for law. For the bulk of law schools in New South Wales, however, reliance is placed on an arbitrary admissions scheme based on high school performance. Thus, financial considerations play a greater part in admissions policy than academic considerations.

The 'Macquarie' approach

Macquarie University School of Law is one faculty currently considering a shift in its admissions policy to attempt to attract a different type of student to the study of law. The School has endorsed a proposal to introduce a compulsory prerequisite in ancient or modern history at 2U level or above for entry into the law program. Students must also be in the top 50% of students in ancient or modern history for entry into Macquarie law. The rationale for the scheme derived from concerns expressed by staff in the introductory law course, History and Philosophy of Law. In a Report to the Academic Senate of Macquarie University in 1987 they stated:

> . . . [s]tudents who score high marks in the HSC are, it is thought, likely to excel in mathematics and science as it is in those subjects, it is believed, that high marks are scored . . . [T]o perform well in Law, students need to be literate rather than numerate. Therefore, if one looks for generalised correlations between HSC performance and performance in Law, one should not be surprised to find a drop in the latter relative to the former.[6]

The primary concern of the School of Law is that students who undertake science and mathematics are most likely to gain a place in the law program, but in some respects, are the least suitable for the study of law. The School is not opposed to science and mathematics students, but is opposed to the fact that students who fail to specialise in science/mathematics at high school level are less likely to gain a place in law. The School is committed to a broad-based and interdisciplinary legal education and is concerned by the extent to which the HSC and university entry system encourage high school students to narrow and instrumentalise their focus in academic study at high school. This change is a means of effecting change within a financially realistic framework. The introduction of history as a compulsory prerequisite will have a twofold effect of:

- forcing prospective law students to broaden their studies at high school level, such that they enter university with a broader educational background; and
- encouraging students with an interest in history and the humanities to choose law at Macquarie, so that our program is matched to students who share a common intellectual interest.

The School of Law selected history because of its relationship to the 'general thrust' of the curriculum and because it allows ' . . . for a ladder effect in the transition from secondary education to legal studies'.[7] (Under NSW Department of Education plans, 2U English will become a compulsory component of the HSC score in the future.) Furthermore, and perhaps most importantly, it was argued that:

This focus will assist further differentiating the Macquarie approach to legal education from that of many other law schools in Australia. That will assist in strengthening its appeal to a section of the high school population . . . We believe this will enhance the level of work done in the first years of study and will mitigate the wasted resources resulting from students feeling that they would have preferred a different approach.[8]

The survey of Sydney University law students found that ' . . . law becomes an option for students not by its intrinsic attractiveness but, above all, when the achieved high school marks put a legal career into reach'.[9]

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Structural problems

Issues often raised relating to the structure of the Scheme are:

- It is unreasonable that the formula makes no distinction between babies and teenagers when the costs are greater for older children.
- The children of second families are prejudiced, both in terms of the percentages allowed for each, and because of the high level of child support applicable for the first family. Payers often claim they cannot afford to start a new life.
- Payment of child support should not be required where access to the children is denied by the custodial parent.
- The formula allows the custodial parent to earn more than average annual earnings of $30 000 before the payer is entitled to any reduction in child support payable. The paying parent is only entitled to an exempt income equal to the pension.

  Child support should not have to be paid while the children are on access visits to the paying parent.
- Non-custodial parents whose income is not liable to PAYE tax are difficult to exact payments from where they are unwilling to pay.

The Commonwealth Ombudsman's Report released on 6 October 1992 was highly critical of the Child Support Agency, understandably emphasising the administrative aspects of the Scheme rather than inherent structural problems. Particular emphasis was placed on the Agency's inability to deal with criticism. The most common response seems to be to assert the supposed excellent level of service and advert to the difficult nature of the subject matter.

It is no doubt true to say that some of the emotion arising from the relationship breakdown is directed at the Agency, and often both parties may be displeased with the result of an application for an assessment — the payer says the assessment is too high and the payee finds it insufficient.

Whichever way one views the scheme, the structured national commitment to the support of children has meant that maintenance is now a serious issue for parents and not a right and a duty of doubtful enforceability and variable application. The Scheme is working to an extent. It has much as yet unrealised potential, for example, in existing but unregistered liabilities, and in enforcement.

Many of the criticisms of the Scheme result from societal attitudes to maintenance which were not instantly changed by legislation, and led to an insufficient commitment to making the Scheme itself as efficient as possible. There can be no doubt that an understanding of the real consequences of projecting one's genetic material into the next generation will evolve. The pace of this process is significantly dependent on the way in which the legislature and the Child Support Agency meet the challenge of continuing changes in family structure and financial pressures on all stake-holders.

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The suspicion that not law but something else provided the intrinsic interest for studying law is supported by our finding that the curricula of law schools by themselves had practically no appeal whatsoever for the students when they decided to study law.[10]

The School of Law wants to reverse the trend of high school specialisation and make it possible, with a broader range of universities now offering law studies, for each university to tailor its entry criteria to the specific pedagogy applied at the institution and/or to the specific student population that the program would suit best. In a very crude sense, admissions policy should require aspiring law students to make a choice about studying law, and in particular how and where they study law, rather than the simple choice currently offered to study law.

Conclusion

In short, an opportunity is available to law schools to diversity their educational offerings and seek to specialise teaching techniques and academic focus. This will not only cater to applicants more appropriate to the program offered but will provide the legal profession and other employers with a greater range of graduates who have different pedagogical experiences to draw upon. The tendency towards uniformity in legal education can be broken in favour of diversity, both in pedagogical terms, but also in a variety of other ways, such as regionalism (e.g. the selection criteria for Macquarie's distance legal program, for example, includes a preferential system based on regional location and professional attainment), ethnic composition (e.g. preferential admission for Aboriginal students), legal specialisations (e.g. teaching and research strengths) and so forth. Universities can break the increasing tendency towards replication and focus on their unique capacities.

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References

1. The most useful contribution to the question of admission to law is a study of Sydney University Law School, the results of which are analysed in Zeigert, A., 'Social Structure, Educational Attainment and Admission to Law School', (1992) 3 *Legal Educ. Review* 155.
2. Zeigert, A., 'The Challenge of Learning to Understand Law', (1992) 2 *Crossexaminer* 6 (footnote omitted).
3. See also Astin, A., 'Pre-Law Students — A National Profile', (1984) 34 *Journal of Legal Education* 73.
4. Zeigert, above, ref.2, at 7.
5. Parkinson, P., Tremayne, K. and Stubbs, J., 'Secondary School and University Results as Predictors of Success in Law', (1992) 3 *Legal Educ Review* 235 at 239 quoting Masters, G., and Beswick, D., *The Construction of Tertiary Entry Scores: Principles and Issues*, Centre for the Study of Higher Education, Melbourne, 1986 at 113.
6. Report to Academic Senate by First Year Law staff, Macquarie University, 1987.
7. Quoted from Report to Academic Senate, 'Admissions Policy: A New Admissions Policy for Entry into Law at Macquarie University', 1992.
8. Quoted from Report to Academic Senate, above.
9. Zeigert, above, ref. 1, at 205.
10. Zeigert, above, ref. 1, at 204 (footnote omitted).