

The precise nature of a liberal education is a matter of debate, different writers taking somewhat different stances. Amongst the disagreement there is, however, a considerable degree of unanimity. Education is a personal matter; and education is about how individuals will learn to direct their lives. It is not that utility has no merit but, rather, that matters of utility are subordinate to questions of value and worth. What we should do comes before the question of how we should do it. A liberal education is about 'sensitivity', not the factual acquisition of data.

Law students in all law schools are at present, in relation to their fellow students in their own universities, high achievers in education. Equally, however, they are almost always culturally illiterate. They know very little about the world of cultures, value systems and social regimes that surrounds them. A liberal education, as has been seen above, is about making personal choices about behaviour; it is about the student selecting the pattern of behaviour that they believe to be appropriate on the basis of the evidence and argument before them. In making choices about which pattern of behaviour to select, law students have little to base their choice on except their exceptionally high educational achievement and the meagre resource of their own personal cultural backgrounds. A liberal education is about students better being able to make personal decisions as individuals about value choices.

Law students are not unique in being impoverished socially, culturally and educationally. What distinguished law students from most other students in the social sciences and the humanities is the kind of teaching they are subject to and the kind of material they are given in that teaching. The material which forms the stuff of most social science and humanities courses potentially opens students out to the experience of a world which is much wider than their individual cultural horizons. The cultural and social world revealed by law reports and statutes is, by contrast, very narrow. Moreover, approached in the way they are, cases and statutes do not encourage

the students to develop their sensibility; instead, they further restrict what is already restricted. The way in which the law school reads cases and statutes, in its doctrinal mode, purports to take students away from questions of culture and sensibility. It certainly takes them away from questions of personal and individual culture and sensibility, in favour of the mystery of 'thinking like a lawyer'.

Literature is a complex form. It has many aspects and can be read, analysed and used in many ways. Reading literature offers law students the ability to read beyond themselves into other cultures and other possibilities. In part the advance to a liberal education that reading literature offers to a law student is in the description of a culture or way of life that is different to that of the individual law student who does the reading. Reading literature offers more than a knowledge of other cultures or other ways of being for the law student. Literature is, amongst other things, a way of thinking about life.

In arguing for the use of literature as a way of advancing a law student's liberal education, this article is not arguing that a university legal education should be concerned exclusively with a liberal education. Both things need to be done; the acquisition of a university degree in part involves a technical training. However, hitherto, within the law school, that education has been too much a technical training and too little a liberal education. Equally, in making a claim for the advantages of using literature in a liberal education, this article is not arguing that this is the exclusive use of literature in the law school. Furthering liberal education is one ambition for 'law and literature'; it is not the only ambition.

HISTORY

A brief history of critique in Australian legal education

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The first law school in Australia was established at the University of Sydney in 1855. The decision to install professional legal education as a discipline within the

academy was a controversial one. Many scholars viewed law as a practical vocation rather than as an academic discipline. Nevertheless, the political power of the profession was sufficient to overcome any resistance, and ensured that its desire to see law taught in Australian universities was implemented. The approach of the first Australian law schools to teaching law was strictly formalist and doctrinal. The legal profession controlled both the content of the curriculum and its teaching.

After World War II the academic status of Australian legal education began to improve. The approaches and practices of the profession at that time were perceived by the Australian government as lagging behind those in directly comparable countries, and changes to university legal education were made as a means of 'modernising' the legal profession. Part-time teaching by practitioners in law schools was discouraged, and the number of full-time legal academics was increased significantly. This led to the emergence of the 'professional law teacher', and to a concerted endeavour to adopt a more scholarly approach to the teaching of law. The new full-time law teachers in Australia marginalised, and eventually excluded.

Australian law schools embraced legal scientism or the 'law as science' approach that had been developed in the United States nearly three quarters of a century earlier. This new approach to teaching law de-emphasised the connections with legal practice and, at the same time, maintained the separation of law from other disciplines in the university. In the United States legal scientism had been criticised, and significantly modified, by the Legal Realist movement. However, no comparable movement occurred in Australia, either contemporaneously or subsequently. Consequently, students were still being taught legal doctrine and little else. It was not until the influence of radicalism, feminism and the Critical Legal Studies (CLS) movement in the 1960s and 1970s that the dominance of legal doctrinalism and scientism in Australian legal education began to be subverted.

During the 1970s this critical tradition began to influence the teaching of law within Australian law schools. Many teachers began to explore alternative politics and to question orthodox approaches to teaching. Within the newer law schools in particular, the traditional approaches to legal education were openly criticised by Marxists and other political radicals. The feminist movement also began to influence some Australian law schools in the setting of their curriculum. Elective subjects such as 'Women and the Law' and 'Sex Discrimination' were offered; both sought to teach women's perspectives on the law. While acknowledged as a step in the right direction, these subjects were subsequently criticised by feminist scholars because they reinforced the perception that 'women's issues' were appropriately taught in specialist elective subjects and ignored the consequences of those issues for the mainstream legal curriculum. By the late 1970s, however, a uniquely feminist legal scholarship had begun to develop.

Other radicals in Australian law schools openly declared support for the CLS movement. CLS scholars rediscovered the more controversial and critical insights of the Legal Realists and built on them. They accepted the insight of the Legal Realists that legal decisions were a matter of choice rather than the inevitable conclusions of abstract rules. Nonetheless, they rejected the Realists' belief in the possibility of a legal science founded in the analysis of 'policy' and instead argued that law and legal systems could never be 'objective' or 'scientific'. They argued that law was a constructed system of beliefs and meanings that operate to make inequalities of wealth and privilege appear natural. Nonetheless, a widespread critical legal education movement failed to take hold in Australia.

The publication of the Pearce Report in 1987 was one of the events most influential on the form and direction of Australian legal education at the end of the 20th century. It identified a number of problems with Australian legal education, including inertia, cause for concern about the commitment to teaching, student dissatisfaction with the intellectual calibre, a dreary

program and conflicts and divisions. It went on to make a series of suggestions about reforming legal education in Australia.

The first of these suggestions was that all law schools examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other social forces. The Report thus seemed to be strongly in favour of the inclusion of critique of law within legal education. However, despite these recommendations, the Pearce Report also indicated that 'radical' movements, such as CLS, were beyond the bounds of appropriate theoretical and critical inquiry in law schools. Australian law schools were left to wrestle with the dilemma of how to include critical perspectives in the curriculum without being too critical of legal institutions and the law school.

During the 1990s Australian legal education scholarship generally shifted towards emphasising clinical or skills-based legal education. On the other hand, 'mainstream' legal education scholars increasingly included references to the importance of critique in their writing, and many law schools began to include references to legal critique in their teaching policies and course descriptions. Feminist legal scholarship and literature about feminist approaches to teaching increased.

However, very little was written, either in Australia or the United States, about the contribution of CLS to the teaching of law. Nevertheless, CLS did not vanish completely and it continued to influence the teaching of law in Australia. Some law teachers incorporated the insights of the CLS movement into their teaching, and a small number of law schools adopted the teaching of CLS perspectives into subjects in the undergraduate and postgraduate curriculum.

How have Australia's law schools responded to this cry for a greater emphasis upon legal critique? More law schools appear to be willing to promote themselves openly as including legal critique in their curriculum. Some law schools have adopted teaching and learning policies that ex-

pressly include objectives relating to the teaching of legal critique. Some law schools now offer a substantial number of subjects that either address critical perspectives on the law or teach students to think critically about it. However, such policies and programs are in the minority. It would appear that, generally speaking, Australian law schools still give a relatively low priority to teaching legal critique. Most law schools appear to be primarily concerned with advertising their close links with the profession and emphasising the satisfaction of local admission requirements. Law schools would prefer to be perceived as 'clinical' rather than 'critical'.

Recent graduate destination surveys have shown that more and more law students are electing not to practise law. Nevertheless, it seems that the present trend in Australian legal education is for the teaching of law to become, and to be seen to be becoming, more practice-oriented. Satisfaction of the perceived requirements of the profession is still one of the highest priorities. The tendency today for many law schools to promote themselves as taking a more practical or 'real-world' approach has coincided with an improvement in relations between academics and practitioners. This trend has important consequences for the role of critique in legal education. A law school's proclaiming its intention to place a greater emphasis on legal critique may be perceived by the profession, rightly or wrongly, as a step towards making its courses more 'theoretical' and less 'practical'. There is a fear that taking such a step may break the connections with the profession that law schools have in recent years worked so hard to reforge.

Legal critique is strong in Australian scholarship, and many individual law teachers choose to incorporate critique in their teaching, but Australian law schools still place an unduly low emphasis on legal critique. Ultimately, it remains a marginalised approach to the teaching of law.