

LEGAL EDUCATION: EVOLUTION OR REVOLUTION? REFLECTIONS ON THE FRESH CHALLENGE FOR LEGAL EDUCATORS

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ABSTRACT

This article is adapted from a Panel presentation considering whether legal education is in a state of evolution or revolution, and if it is, whether and what reforms might be needed to either protect the status quo or move it in a new direction to reflect the fresh challenges for legal educators. It suggests that the problems facing the future of legal education reflect the challenges for tertiary education generally. To paraphrase a statement by David Lodge from his book *Small World*:

Previously the primary activities of universities were confined to the physical confines of their campuses but now information is much more portable in the modern world than it used to be. So are people. *Ergo*, it's no longer necessary to hoard your information in one building, or keep your top scholars corralled in one campus.... Scholars don't have to work in the same institution to interact, nowadays.¹

How has this new approach been embraced by the legal education community? How has it responded to these challenges, and does it need new approaches to ensure the successful future of the law academy and legal education, in respect of both law teaching and research? Legal educators must also face the added dilemma of balancing the twin objectives of training individuals as legal practitioner and providing a liberal education during a period of rapid transition of the legal profession. It is of interest to see how the Panel responded to these demanding and stimulating questions which are currently testing the ability of law academics to react in a positive way to ensure the future of legal education and address whether it is evolving or needs urgent dramatic change.

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¹ David Lodge, *A Small World* (Penguin Books 1985) 43.

I PROVOCATION: DAVID BARKER

As motivator of this panel presentation, I have been drawn back to a conference in which I took part, organised in 2017 by the Australian Academy of Law resulting in a book, *The Future of Australian Legal Education A Collection*.²

The key phrase in that Conference was by the late Emeritus Professor Michael Coper in which he explained: ‘the issues relating to legal education are [always] many and complex and some perennial, and our engagement with them is a never-ending story.’

The conclusion of both the Conference and the book was that new technologies will result in: ‘an ongoing need for lawyers and, indeed new opportunities for lawyers, at least those with appropriate skills.’ One could add that there will be an urgent need for lawyers for critical thinking skills, technical literacy – sensitive to core regulatory, commercial and rule of law values.

Echoing the recommendations of the NSW Law Society’s 2017 FLIP Report,³ chapter 23 of the Book emphasises not only the importance of traditional skills but also emotional intelligence, teamwork, collaboration, and resilience. These latter skills underline the continuing the need for human judgement and the protection of human skills – it could be said that these embrace aspects of legal education which are not part of the expectation of the legal profession.

It is helpful also to inject into the discussion some topics considered in Chapter 29 of the Book, authored by Penny Crofts.⁴ Crofts emphasises the influence of the FLIP Report on a UTS Law innovative Legal Futures and technology major which comprises a mix of existing law electives, bespoke law electives such as disruptive Technologies and two capstone subject – Technology, Law, Policy and Ethics (Capstone 1) and Applied Project in Law, Innovation and Technology (Capstone 2). This is an example of the kinds of skills legal practitioners may need in the future, including understanding of technologies, legal resources and project management. Professor Crofts regards the outcomes of the UTS Legal Future and Technology major as offering students the opportunity to ‘engage specifically with the interface of law and socio-technological developments through the prism of classic legal values of justice and ethics.’

Against this background, the following part provides an overview by Nick James of the landscape of legal education, followed by reflections from Michael Adams of the role of the present state of legal education, emphasising the role of technology in producing graduate lawyers. In the final part, Kate Galloway examines possible futures based on the provocation of whether we are in, or should be in, a state of evolution or revolution.

II THE LANDSCAPE OF LEGAL EDUCATION: NICK JAMES

I very much enjoyed participating in the ALAA Conference in Melbourne in July 2022, and I appreciated the opportunity to hear from colleagues from law schools across the region about their

² François Kunç, Kevin Edmund Lindgren, Michael Coper (eds), *The Future of Australian Legal Education: A Collection* (Thomson, 2018).

³ ‘The Future of Law and Innovation in the Profession’ (The Law Society of New South Wales Commission of Inquiry, 2017) (‘FLIP Report’).

⁴ Penny Crofts, ‘Teaching skills for Future Legal Professionals’ in François Kunç, Kevin Edmund Lindgren, Michael Coper (eds), *The Future of Australian Legal Education A Collection* (Thomson, 2018).

experiences and observations as law teachers and scholars. I was also grateful to be given the opportunity at the conclusion of the Conference to present my views on the theme of the Conference: evolution or revolution in legal education and scholarship.

In this section I would like to set the scene for the contributions by my fellow panellists by reflecting upon the landscape of legal education. Specifically, I would like to emphasise the nature of ‘legal education’ as an artificial construct that means different things to different people, and how our unique perspectives on legal education result in each of us having a very different perception of whether or not legal education is currently undergoing, or is in need of, evolution or revolution. I really only have one major point to make in this section ... although it is admittedly quite a complex point, and it will no doubt take me a few pages to make it. It is a point that I have been making since I wrote my doctoral thesis more than 20 years ago.⁵ (The fact that I am still talking about something I said in my thesis all of this time later is evidence of the fact that doing a PhD results in lifelong trauma. For those of who are currently writing a thesis, or are about to commence: I am, of course, joking.)

My point is this. Legal education is not monolithic. It is not a single, static thing. It is a large, dynamic, complex adaptive system. It is made up of people: students, academics, professional staff members, employers, stakeholders, regulators, Deans, research assistants and many others. It is made up of physical assets: classrooms and buildings and laptops and whiteboards. It is made up of processes and procedures and practises, beliefs and assumptions and discourses. It is constantly shifting and changing. And there is no distinct boundary between legal education and the rest of the world; rather, it blends from one to the other. In the face of all this complexity, uncertainty and dynamism, it is simply not possible for any of us individually to see it or comprehend it accurately. The best we can do is create in our minds an oversimplification, an extremely low-resolution model of legal education. And when each of us constructs that low-resolution model of legal education in our minds, we choose different aspects of the reality of legal education to emphasise and prioritise. As a result, each of us has our own model of legal education, and that means that whenever we talk about legal education, each of us is talking about something different. What we say about legal education, and how we feel about what is happening in legal education now, really does vary according to what each of us thinks legal education really is.

For example, you may be somebody who believes that the bottom line is that legal education is about teaching *the law* to students.⁶ It is primarily about ensuring that law students learn about legislation, case law, doctrines, and principles. Law students need to be taught how to research the law, how to read and interpret the law, and how to use the law to solve legal problems. If this is your preferred perspective on legal education, then you might view recent progress towards greater use of technology-enabled teaching⁷ as a positive thing in that it makes it easier and quicker for all students and legal scholars to access accurate and up-to-date versions of the law in Australia and internationally. On the other hand, you might view recent efforts to expand the law curriculum beyond black letter law to include a variety

⁵ The point was made repeatedly in, inter alia, Nick James, ‘Australian Legal Education and the Instability of Critique’ (2004) 28 *Melbourne University Law Review* 375.

⁶ Nickolas John James, ‘Expertise as Privilege: Australian Legal Education and the Persistent Emphasis upon Doctrine’ (2004) 8 *University of Western Sydney Law Review* 1.

⁷ See eg, Tamara Wilkinson and Craig Horton, ‘Converting to Online – Best Pedagogical Practices and Practical Realities’ (Conference Paper, ALAA Conference, 8 July 2022); Cornelia Koch, ‘I have never done such a course in law before.’ The technological and pedagogical revolution -engaging students through flipped, blended, scenario-based, collaborative learning (all at once)’ (Conference Paper, ALAA Conference, 8 July 2022); Julian Webb, Vivi Tan and Jeannie Paterson, ‘Law, Technology and Curriculum Innovation: (Re)Framing The Issues’ (Conference Paper, ALAA Conference, 8 July 2022); Renato Saeger M Costa, ‘Beyond Zoom Meetings: The Experience of Teaching on YouTube’ (Conference Paper, ALAA Conference, 9 July 2022).

of social and political perspectives on the law as an unwelcome dilution of legal education and as problematic. You might be alarmed by what appears to be higher levels of disengagement and shortening attention spans on the part of our students and be concerned about their ability and willingness to engage with complex and challenging legal concepts.

Alternatively, you may be somebody who believes that the bottom line is that the purpose of legal education is to train law students to become lawyers.⁸ You might believe that the focus should be relatively narrow and that we should prepare students to be a particular type of lawyer, eg an employee of a large law firm, or you might believe that the focus should be broader and acknowledge the wide of range of careers within and beyond legal practice. Regardless, the focus should be upon not only teaching the law but also developing students' practical legal skills, enhancing their employability, and preparing them to be successful legal practitioners.⁹ If that is the case, then you might welcome the recent shift in the public discourse about higher education in favour of an emphasis upon the 'job-readiness' of university graduates. You might see the close connections between law schools and the legal profession as a positive development. On the other hand, you might be concerned about the ability of law schools to adequately meet the expectations of the profession and other employers regarding the competence of our graduates. You might view the long and ever-growing list of types of expertise, abilities and attitudes expected of law graduates and junior lawyers with alarm, and share the view that the 'dead hand' of Priestley is restraining law schools from reviewing and revising their LLB/JD curricula to respond to the changing circumstances of legal practice.¹⁰ You might be particularly concerned about the rapid changes occurring in the legal services sector as a consequence of the impact of a variety of emergent technologies – online engagement platforms,¹¹ artificial intelligence,¹² blockchains,¹³ and the like – and the ability of law teachers and law schools to keep abreast of these changes and modify their programs and courses appropriately.¹⁴

Or you may be someone who is critical of the vocational emphasis upon legal education, and who favours a wider, more liberal approach.¹⁵ You might believe that the bottom line is that the responsibility of law schools is to ensure law students are taught to be not only rational and technically competent practitioners but also ethical, responsible, and broadly educated professionals committed to justice, the public good and the rule of law. If so, you might have a positive view about recent efforts to widen the scope of the law school curriculum beyond doctrine and 'hard' legal skills. You might welcome the many initiatives presently occurring across law schools to emphasise the importance of diversity and

⁸ Nickolas John James, 'Why Has Vocationalism Propagated So Successfully within Australian Law Schools?' (2004) 6 *University of Notre Dame Australia Law Review* 41.

⁹ See eg, Anne Hewitt, Laura Grenfell, Deanna Grant-Smith, Craig Cameron, Stacey Henderson, 'Evolving legal work experience to improve how it works' (Conference Panel, ALAA Conference, 9 July 2022).

¹⁰ Sally Kift, 'Keynote Presentation' (Conference Paper, ALAA Conference, 8 July 2022).

¹¹ Louise Parsons, 'Oral Advocacy on Virtual Platforms: Zoom and Doom?' (Conference Paper, ALAA Conference, 8 July 2022).

¹² Chris Marsden, 'Artificial Intelligence coregulation: a legal technology history' (Conference Paper, ALAA Conference, 9 July 2022); Paul Burgess, 'Rule of Law Revolutions: AI's Exercise of Constitutional Power' (Conference Paper, ALAA Conference, 9 July 2022).

¹³ Craig Cameron, 'Blockchain Law: A decentralised curriculum for a decentralised technology' (Conference Paper, ALAA Conference, 9 July 2022).

¹⁴ Ibnu Sitompul, 'The Challenge of Information and Technology on Legal Education' (Conference Paper, ALAA Conference, 9 July 2022); Caroline Hart and Aaron Timoshanko, 'Revolutionsing the Law Curricula? Legal Educations' Imperative to Meet Impacts of Emerging Technologies Through Leadership and Engagement' (Conference Paper, ALAA Conference, 9 July 2022).

¹⁵ Nickolas John James, 'Liberal Legal Education: The Gap between Rhetoric and Reality' (2004) 1 *University of New England Law Journal* 163.

respect,¹⁶ and educate students about Indigenous knowledges,¹⁷ environmental matters,¹⁸ human rights and the importance of pro bono and service to the community.¹⁹ On the other hand, you are probably concerned about the continuing influence of ‘big law’ over law schools and their programs, and the government’s emphasis upon employability and job-readiness. You will also be alarmed by the declining levels of student wellness and the impact of the pandemic upon students, academic and practitioner wellbeing.²⁰

Perhaps you are a person who favours a more corporatist or managerialist perspective (a perspective often favoured by Vice Chancellors and their ilk).²¹ You might see the bottom line for legal education as, literally, the bottom line: a law school is primarily a way to attract good quality students to the university. The focus must be upon operating and administering the law school efficiently and sustainably, maximising revenue from tuition fees and other sources, and keeping operating costs as low as possible. If so, you might pay particularly close attention to fluctuations in enrolment numbers of domestic and international law students. You might be interested in the capacity for technology to make the delivery of legal education and higher education not only more efficient and cost effective but also more engaging and attractive for the customers, our students.²² You might share the concern about academic and student wellbeing, but primarily because of the impact upon employee productivity and customer satisfaction.

Finally, you might be someone who favours a much more critical or even radical perspective upon legal education, and be interested in the potential for law schools, law students and law graduates to contribute to law reform and social change.²³ You might believe that the bottom line is that legal education is about exposing the systemic flaws in our legal system and the ways in which laws and legal processes are often used to favour some individuals and groups within our community, and to discriminate against, marginalise, and disadvantage other individuals and groups.²⁴ You might be

¹⁶ See eg, Paula Gerber, Tamsin Phillipa Paige, Claerwen O’Hara, Danish Sheikh, ‘Queering the Australian Law Curriculum’ (Conference Panel, ALAA Conference, 9 July 2022).

¹⁷ See eg, May Cheong, Graeme Lyle La Macchia, Kate Robinson, “‘Yarning’ as a live resource for Indigenous Cultural Competency” (Conference Paper, ALAA Conference, 8 July 2022); Metiria Stanton Turei, ‘Indigenising the NZ LLB’ (Conference Paper, ALAA Conference, 8 July 2022).

¹⁸ See eg, Jennifer McKay and Srecko Joksimovic, ‘Critical reflections on environmental law by students’ (Conference Paper, ALAA Conference, 8 July 2022); Nathan Cooper, ‘(Re)imagining and (re)teaching human rights in the Climate Crisis’ (Conference Paper, ALAA Conference, 9 July 2022); Katie O’Bryan, ‘Future Directions in Australian Legal Education: Environmental Law, Earth Jurisprudence and Legal Rights for Nature – Not as Revolutionary as You Might Think!’ (Conference Paper, ALAA Conference, 9 July 2022).

¹⁹ See eg, Francesca Bartlett, Francina Cantatore, Rachael Field and Mandy Shircore, ‘Pro bono models in law schools and the student experience: Challenges and opportunities moving forward’ (Conference Paper, ALAA Conference, 8 July 2022).

²⁰ See eg, Upeka Perera and Darryl Coulthard, ‘Change, Stress and Law Students’ (Conference Paper, ALAA Conference, 8 July 2022); Brett Woods and Ruth Liston, ‘Reflections from the Precariat: Impacts of insecure employment of sessional legal academics on wellbeing, teaching practices and student learning experiences’ (Conference Paper, ALAA Conference, 9 July 2022).

²¹ Nickolas James, ‘Power-Knowledge in Australian Legal Education: Corporatism’s Reign’ (2004) 26 *Sydney Law Review* 587.

²² Stephanie Falconer and Emma Henderson, ‘[R]evolutionary assessments: Practical legal skills assessment by video’ (Conference Paper, ALAA Conference, 8 July 2022).

²³ Nickolas John James, ‘The Marginalisation of Radical Discourses in Australian Legal Education’ (2006) 16 *Legal Education Review* 55.

²⁴ See eg, Bridget Fa’amatuainu, ‘Critical reflections on Pacific decolonial pedagogies in law teaching: Aotearoa and Samoa’ (Conference Paper, ALAA Conference, 8 July 2022).

interested in the capacity for law and legal education to be an engine for positive change.²⁵ If so, you might be pleased to observe ... well, ‘pleased’ may not be the correct term, since being concerned is often a prerequisite to being critical and seeking reform. You might be particularly concerned about the ongoing cultural conservatism within legal education and law, the disengagement of the legal academy from the ‘reality’ of the world outside of the university, and the ongoing dominance of the neo-liberal worldview²⁶ over institutional decision making and Faculty priorities. You might also be concerned about law students’ increasing passiveness and what appears to be the disempowerment of academics and the centralisation of university authority under the guise of an emergency response to the pandemic.

In short: the views about legal education, its present state and its future prospects expressed at this Conference can best be described as ‘mixed’, and that is because each of us only sees a part of the whole, and the nature of that part depends very much upon our own beliefs, assumptions and expectations. Everyone has a piece of the puzzle, and the only way forward is for the conversation to continue. That is why Conferences such as this one are so important. It is here that we come together to share our perspectives and our experiences and move some way towards collaborating on creating a vision for legal education and scholarship as a whole and identifying the best pathways forward for its participants and stakeholders. Long live ALAA!

²⁵ See eg, David Plater, ‘Helping Change the World? Law Students and Law Reform in South Australia through the South Australian Law Reform Institute (Conference Paper, ALAA Conference, 8 July 2022); Narelle Bedford, Alice Taylor and Wendy Bonython, ‘Climbing down from the ivory tower? Law reform participation as authentic assessment’ (Conference Paper, ALAA Conference, 8 July 2022).

²⁶ Jessica Mant, ‘Teaching Family Law in Neoliberal Times: Lessons from England and Wales (Conference Paper, ALAA Conference, 9 July 2022).

III THE NATURE OF CHANGE IN LEGAL EDUCATION: MICHAEL ADAMS

Professor Sally Kift provided a wonderful overview of what has been occurring in the legal education sector across several jurisdictions, in particular, the UK, Hong Kong and New Zealand, as well as Australia. This session has opened with reviews from Professor David Barker AM on the future of legal education and the impact of technology. My contribution is to pick up on the technology aspects, as did Julian Webb of Melbourne University in an earlier session within the conference.

I have reflected that there are three key points in respect of the evolution or revolution of technology in legal education. These can be summarised as:

- Consequences of change.
- Cost of technology; and
- Change in understanding of being a ‘lawyer’.

I have directly experienced a vast number of changes over the 30+ years I have been an academic. My observations come from being an academic in the 1990s who rose through the levels A to E (senior tutor to professor) and noted the changes and expectations of legal academics. From 2007 my point of view moved to that of a Dean of Law, first at Western Sydney University and from 2019 at the University of New England. Thus, the consequences of legal academics change on a personal level as one rises in the profession and the personal ability to change.

The old saying that the only constant is change is very true. The last decade has seen the pace of change continue to grow – but change in the academic world over the last 30 years has been a constant. Thus, both academics and management have been required to react to changing government policies; the change in student cohorts and backgrounds; the broader change in technology (remember the iPhone was only launched in 2007)! The personal impact of being connected to computer systems via mobile phone, tablet/laptop and other devices makes space for family and friendship more challenging. As was observed through the COVID lockdowns, at times the technology helped with connections, but also re-enforced the loneliness and sense of isolation.

The professional consequences of changes to technology have meant keeping up with the latest Learning Management System (‘LMS’) a university adopts from time to time. Enhancing e-research skills and avoiding the paper-based law library for the vast amounts of databases, with materials from all over the world. It can be professionally challenging to keep up with the latest software and applications. There are also institutional consequences of change – a workforce gets to use enrolment, LMS, billing and tracking software. All publications are recorded and stored for ERA and other purposes. At UNE there are over 150 computer systems and they do not always ‘talk’ to each other and can require multiple logons. UNE has adopted multi-factor authenticity (‘DUO’) which provides protection for cybersecurity but adds another layer to business efficiency. The decisions that are made to invest in new technology outstrip buildings and have profound impacts across the professional, technical, and academic staff.

The cost of technology is also a critical point. There are multi-million-dollar investments in a new LMS or student enrolment system. But the real cost is in the transfer of data from one system to another and the challenges of re-training the whole workforce. There is a true opportunity cost when academic would prefer to do other activities, as seen as core business. Many tasks that were completed by learning designers and professional administrative staff are now expected to be conducted by academics. The

individual academics competence and skill base to do these tasks varies greatly and is not always reflected in their allocated workload. The hardest cost is that it is never ending. There is constant evolution and changing of the technology – so the process and costs never end. I believe this is hard for the staff, the management and the Institution to continue to fund and invest. This is not a new problem, but the amount of funds invested are huge, relative to the investment in new academic and professional staff.

A change in understanding of what it means to be a ‘lawyer’ is my third main point. There has been lots written about the history of legal education and the limit of a few law schools attached to capital city institutions. The waves of growth in both universities and thus law school has been documented. The Dawkins reforms of 1990 created a whole new generation of institutions and again in the 2000s. Virtually every university now has a law school. There has been demand for jobs with a legal academic qualification, as well as the traditional solicitor or barrister route within the profession. Since the mid-1990s approximately 50% of law graduates wish to be admitted to practice and 50% have no wish to do so. As such, during the academic stage of a student’s education, the priority to understand the nuance of practising law is not the same for all students. The recent popularity of JD programs has a higher percentage that wish to be admitted, but the more traditional double degree with LLB and other disciplines have even lower numbers completing PLT and admission.

The variety and diversity of roles which employ graduates with a law degree have grown significantly. The not-for-profit sector; public servants, government, and regulator roles. The second degree may be the driving force in accounting and finance or even criminology. This all means the focus of a LLB curriculum that only has a real connection to being a solicitor is out of step with society and the demands of students. The alternative career spectrum has always been available but now seen as more common. Moving from a solicitor in a major firm to in-house counsel to a director of a government department or CEO of a corporation, is now seen as normal. The challenge is the preparation of our current students for a very uncertain future. There is no simple answer to this statement.

One approach UNE has adopted (after a formal 2019 LLB curriculum review) was the introduction of a capstone unit (subject) called LAW499 Technology and the Law. This subject is divided into two distinct parts:

Part 1 – Lawyers technology – this introduces students to the many different types of legal practice, from a sole practitioner to a multi-partner international law firm; to in-house counsel and government solicitor and community law centres. It examines time keeping software document management systems, e-legal research and discovery. The assessment is a memorandum to a managing partner of a law firm to adopt a new technology, including evaluating the pros and cons.

Part 2 – Technology legal issues – this introduces students to the latest developments in blockchain, artificial intelligence, big data, chatbots, drones and facial recognition. As well as explaining the technology, there are connections to smart contracts, torts law, intellectual property, employment law (confidentiality), data protection and privacy laws. The assessment is a letter of advice to a client in respect of a new or developing technology.

The feedback from the students after five offerings has been very positive and seen as helping to prepare UNE students for a wide variety of careers.

Finally, as Walter Mondale stated in 1978, ‘if you think you understand everything that is going on, you are hopelessly confused’.

IV THE FUTURES OF LEGAL EDUCATION: KATE GALLOWAY

Given the mapping of the legal education landscape provided so far, there are some archetypes of futures that come to mind in addition to evolution and revolution, including collapse, and ‘back to the future’.²⁷ In one sense, rather than evolution (the gradual development of something) or revolution (a forcible overthrow of a social order in favour of a new system), it is possible that law school – and perhaps a lot of other tertiary education – is in a state of devolution.²⁸ That is, legal education is ‘descending to a lower or worse state’.

Devolution, or collapse, is an archetypal future.²⁹ It is a future rejected, however, by Barnett who instead, sees ‘[n]ew, even more challenging, roles are opening up for it, roles that still enable us to see continuities with its earlier self-understandings built around personal growth, societal enlightenment and the promotion of critical forms of understanding.’³⁰

Despite my earlier professed pessimism, following Barnett’s optimism I approach the provocation informed by an adaptation of a futures lens as described by Inayatullah.³¹ The aim of this analytical lens is to provide a ‘systematic study of possible, probable and preferable futures including the worldviews and myths that underlie each future.’³² As an abbreviated outline of possible futures, this part engages only fleetingly with the discipline of futures studies, noting rather that it helpfully frames the ideas presented here. This is not to predict what will happen, but rather to assist in envisioning alternative futures to challenge beliefs, provide a basis for planning³³ and ultimately for transformation.³⁴

A Causal Layered Analysis

Having mapped the landscape of the past and the present, it is possible to identify multiple layers of problem, with broadly conceived solutions – described by Inayatullah as a ‘causal layered analysis’.³⁵

At the lowest, *day-to-day level*, is the professed problem that graduate lawyers need better knowledge and skills.³⁶ Despite the prescription of the Priestley 11 knowledge areas, the still-current Threshold

²⁷ Sohail Inayatullah, ‘Futures Studies: Theories and Methods’ in Nayef Al-Fodhan (ed) *There’s a future: Visions for a Better World* (BBVA, 2013) 46.

²⁸ Kate Galloway, ‘Are we seeing the devolution of university education?’ *Katgallow* (Blog Post, 3 May 2017) <<https://kategalloway.net/2017/05/03/are-we-seeing-the-devolution-of-university-education/>>.

²⁹ James Dator, ‘Four images of the future’ (2014) 1 *Set: Research Information for Teachers* 61 doi:10.18296/set.0319.

³⁰ Ronald Barnett, ‘University knowledge in an age of super complexity’ (2000) 40(4) *Higher Education* 409, 411.

³¹ Inayatullah (n 27) 36.

³² *Ibid.*

³³ Both of these ideas are from Jim Dator, ‘What futures studies is, and is not’ in Jim Dator, *Jim Dator: A Noticer in Time* (Springer, 2019) 3-5.

³⁴ Inayatullah (n 27) 57.

³⁵ *Ibid* 52, 54.

³⁶ See eg, Francina Cantatore, Kate Galloway and Louise Parsons, ‘Integrating Technology to Increase Graduate Employability Skills: A Blockchain Case Study in Property Law Teaching’ (2021 31 *Legal Education Review* 1.

Learning Outcomes for Law³⁷ and diverse approaches to curriculum across the sector in Australia, there remains a perception that graduates are not ‘work-ready’.³⁸

Structurally there are several factors implicated in the redundancy of the existing regulatory framework of legal education. The rapid development of the technologies of legal practice (lawtech) and the impact of emergent technologies on the existing law (tech law) together provide a context for the application of legal knowledge that exceeds the limits of a doctrinal academic degree. The globalisation of legal services alters the landscape of legal practice for the jurisdictional and juristic bounds of legal education.³⁹ The increasingly diverse student (and graduate) cohort is still not accommodated by the tradition-bound degree program and the profession has shown itself unable, seemingly, to provide a safe working environment.⁴⁰

From the even higher-level perspective of *worldview*, the courts’ monopoly on the regulation of legal education is inward-looking at a time when an expansive and contemporary approach is required. The structures within higher education responsible for accreditation, have so far not been visible in challenging this monopoly, implicating the academy in maintaining the arcane, high context, state-based admissions processes. The juristic approach to gatekeeping entry to the profession may be at odds with acceptance of the discipline status of the law. Just as a degree in sociology, or history, implicitly represents a coherent body of discipline knowledge – absent a regulatory body – so too would law, as a discipline, manifest itself as a course of study. Despite this, accreditation requires law schools to implement a prescribed doctrine within discipline categories, begging the question: to what end?

At this much higher level also, law graduates will increasingly be called upon to answer complex questions in an increasingly complex world. Barnett, for example, describes this as ‘super complexity’ that, in contrast to (mere) complexity, emerges ‘under conditions of a conceptual overload: ... [it is] is the outcome of a multiplicity of frameworks.’⁴¹ Similarly, Morton describes ‘hyper objects’ as ‘things that are massively distributed in time and space relative to humans’ and are thus almost too big for the individual to comprehend.⁴² A hyper object is so enormous as to transcend locality and even time. A hyper object is ‘viscous’ in that it sticks to you, no matter where you go,⁴³ and it is enmeshed through

³⁷ Sally Kift, Mark Israel and Rachael Field, ‘Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Australian Learning and Teaching Council, 2010). See analysis in Kate Galloway, ‘Disrupted Law Degree: Future Competencies for Legal Service Delivery’ (SSRN Working Paper, 17 July 2017) <<https://ssrn.com/abstract=3082486> or <http://dx.doi.org/10.2139/ssrn.3082486>>.

³⁸ See eg, a project commissioned by the Queensland Law Society to determine whether graduates are work ready: ‘Are new lawyers job ready?’ *Queensland Law Society* (Survey) <<https://www.qls.com.au/Content-Collections/News/2021/Are-new-lawyers-job-ready>>.

³⁹ See discussion in Kate Galloway, Melissa Castan and John Flood, *The Global Lawyer* (LexisNexis, 2020) 131-50.

⁴⁰ Alison Wallace et al, ‘National Attrition and Re-engagement Study (NARS) Report’ (Law Council of Australia, 2014); Kate Galloway, ‘The law is a man’s world. Unless the culture changes, women will continue to be talked over, marginalised and harassed’ *The Conversation* (25 June 2020) <<https://theconversation.com/the-law-is-a-mans-world-unless-the-culture-changes-women-will-continue-to-be-talked-over-marginalised-and-harassed-141279>>; Angela Melville, ‘Barriers to entry into law school: an examination of socio-economic and indigenous disadvantage’ (2014) 24 *Legal Education Review* 45.

⁴¹ Barnett (n 30) 415.

⁴² Timothy Morton, *Hyperobjects: Philosophy and Ecology after the End of the World* (University of Minnesota Press, 2013) 1.

⁴³ *Ibid* 48.

relationships generating interconnections that not only consists of links, but also gaps between things.⁴⁴ Its scale is such that a human can only see parts of a hyper object at any one time.⁴⁵

To illustrate, Morton offers climate change (he refers to it as global warming) as an example.⁴⁶ One can feel the rain on one's face, and experience that as weather.⁴⁷ But that is not the same as the diverse implications of climate change including sea level rise, water quality issues, extreme bushfires, and so on, as interconnected events. Given our experience in recent years, pandemic would be another hyperobject: we might understand an illness and its aetiology, but the pandemic involved multiple layers of government, international agencies, effects on trade and supply lines, intersections with the employment market, and so on. Technology too, through the operation of multinational corporations, pervades social, economic, and political life and manifests as a norm-setter standing in for the nation state's own legal system.⁴⁸ As such, it too might be described as a hyperobject. In these examples the law in its present manifestation, derived from classical legal theory and emerging at a time of classical scientific discovery,⁴⁹ and legal education as both a driver and a reflection of the existing system, is no longer equipped to provide the kinds of solutions needed in a super complex world.⁵⁰

Finally, at what Inayatullah describes as the level of *narrative*⁵¹ and related to the monolithically regulatory approach to legal education, is the paramountcy of the juristic myth of thinking like a lawyer⁵² – not only as to what (we think) law school is 'doing' to or for law students, but also as to the mode of operation of regulation as a list of qualification rules to be followed to the letter.

Within these layers of challenge are a range of solutions. To date these have focused on adding to the existing curriculum⁵³ and an enhanced focus (sector wide) on work integrated learning, including internships and placements.⁵⁴ Paradoxically, the courts mandate an *academic* qualification that is morphing into a practical one due to pressure from the legal profession—represented principally, it seems, by law firms.

B Transforming for the Future

These developments are not, however, real solutions. They do not address the scale of the problems facing the practice of law or legal education. A far deeper solution is required. And, importantly, there

⁴⁴ Ibid 83.

⁴⁵ Ibid 68.

⁴⁶ Ibid 4.

⁴⁷ Ibid 48.

⁴⁸ See eg, Larry Catá Backer, 'The structural characteristics of global law for the 21st century: fracture, fluidity, permeability, and polycentricity' (2012) 17(2) *Tilburg Law Review* 177.

⁴⁹ See Morton (n 42) 41.

⁵⁰ See eg, Kate Galloway, 'Big Data: A case study of disruption and government power' (2017) 42(2) *Alternative Law Journal* 89.

⁵¹ Inayatullah (n 27) 52.

⁵² See eg, CM Campbell, 'Legal Thought and Juristic Values' (1974) 1(1) *British Journal of Law and Society* 13.

⁵³ As illustrated in the FLIP Report (n 3). See analysis of the FLIP Report in Kate Galloway, 'A Roadmap for the Legal Profession: FLIP' *Katgallow* (Blog Post, 6 April 2017) <<https://katgalloway.net/2017/04/06/a-roadmap-for-the-legal-profession-flip>>; and Kate Galloway, "'Add Tech and Stir' is no Recipe for Innovation" *Katgallow* (Blog Post, 7 April 2017) <<https://katgalloway.net/2017/04/07/add-tech-and-stir-is-no-recipe-for-innovation>>.

⁵⁴ See eg, Universities Australia, 'Career Ready Graduates' (Report, 2019) <<https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/06/Career-Ready-Graduates-FINAL.pdf>>.

need not be only one future for legal education. Rather, there are many futures that once imagined, might assist in generating transformation.⁵⁵

First, to respond to the systemic causes of the challenges facing legal education requires new educational qualifications and new modes of gaining those qualifications. This might include a ‘back to the future’ solution of articles of clerkship (for an appropriate term). Anecdotally, law firms already want law graduates who have been paralegals. A return to articles would mean that students who cannot afford to study can have paid work while learning the craft.

There may be new qualifications for new types of legal professional. This may be a bachelor’s degree in, for example, legal technologies⁵⁶ or it may be a shorter qualification in a particular field of practice. Just as migration agents, or tax agents are registered, so too might we embrace a family law, or a criminal law qualification resulting in a qualified practising certificate. Such qualifications would include knowing the bounds of one’s knowledge – when to brief out, when to enlist other expertise, etc. These would be tailored qualifications suitable to constrained practice. Given how the legal profession is currently organised, this provides an opportunity for far deeper, more targeted education suitable for work-ready graduates.

Along with this change would be a lifelong learning requirement. Practitioners would update their qualifications throughout their careers, generating a bespoke suite of capabilities to meet changes in employment, in interests, and in society. Universities and other providers might be involved in this.

While these solutions operate at a smaller level, to generate graduates equipped to solve problems of super complexity a longer program of formal study would be required. Speaking to Lodge’s point,⁵⁷ affirmed also by Barnett,⁵⁸ this kind of education is not to be bounded by knowledge alone. It requires traversing disciplines, knowing how to engage with other specialists and how to effectively collaborate to generate novel solutions. Again, this cannot be constrained by a regulated suite of knowledge but requires a discipline orientation to locate and comprehend that knowledge, and to meld it with other traditions.

All of this depends on removing the courts’ monopoly on accredited education. Courts are highly skilled in the application of doctrine through recognised modes of analysis and reasoning but, with respect, may not be the best equipped to design educational experiences. My bold suggestion for a possible revolution in legal education is the relinquishing of judicial regulation and taking up self-regulation. This is a shift from a juristic mindset to self-regulation. It would enlist a portfolio approach that puts the onus on law schools to be accountable for graduate capabilities that are recognisably within the discipline. It is more a principles-approach to legal education than a rules-based approach. It puts education in the hands of educators who can tailor their programs to meet the needs of their stakeholders. This would replace degrees that are apparently not presently achieving that goal – explaining why we are discussing evolution and revolution of legal education.

These futures – all of which might co-exist – are structural. Certainly, change demands institutional buy-in and an integrated approach by ‘the profession’, namely courts, firms, admissions boards,

⁵⁵ See eg, Dator (n 33).

⁵⁶ Such as the Bachelor of Legal Transformation at Bond University. See ‘Bachelor of Legal Transformation’ *Bond University* (Web Page) <<https://bond.edu.au/program/bachelor-legal-transformation>>.

⁵⁷ Lodge (n 1).

⁵⁸ Barnett (n 30) 409-11.

attorneys-general, solicitors' and barristers' associations, and the law deans. However, change cannot occur without the day-to-day conscientious action by individuals within this system. Inayatullah suggests that mechanisms of long-term change include new futures driven by a creative minority, and 'hinge periods where the action of a few makes a dramatic difference'.⁵⁹ Further, echoing McLuhan,⁶⁰ both Inayatullah⁶¹ and Dator⁶² suggest that technology is both shaped by us, and shapes us. The current quest for evolution or revolution is in part brought about by technology and the changes it has wrought. Yet the regulatory behemoth resists the change, even as it is shaping the landscape of legal education. As producers within this realm, we have the capability to enact, explain, and argue the case for systemic change.

Legal education calls for the academy and the profession to step outside the boundaries of our juristic thinking and to imagine the futures of our role in society, and how we bring that about including through legal education. Those who make the law determine legal education, but they are depending on aged patterns that are no longer able to hold the professional project together. The time for revolution is now!

⁵⁹ Inayatullah (n 27) 48.

⁶⁰ Marshall McLuhan, *Understanding Media: The extensions of man* (Gingko Press, 2013).

⁶¹ Inayatullah (n 27) 49.

⁶² Dator (n 33) 3.