

# Curl

Property law | women and law | contemporary legal issues

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## Thinking Like a Lawyer - the Good the Bad and the Ugly



First year law students are invariably regaled with the mantra of learning to think like a lawyer: that law school is all about developing this skill. As some have identified, 'thinking like a lawyer' is a nebulous concept at best, or at worst, a 'self-aggrandising sham...to justify the existence of a...special lawyer class'.

There is however a mounting body of evidence to show that the culture of the law, including the way that lawyers think, is linked to stress experienced by law students and legal practitioners alike. (For example, see here and here.)

While this creates issues for the sustainability of the legal profession as it sees an exodus of early- and mid-career practitioners, and women in particular, I believe it also takes a toll on the personal lives and relationships of lawyers.

### Thinking Like a Lawyer at Work

I did not question the way I thought until I worked in community legal services alongside social workers. I was shocked to learn that there was another way of doing things. This stood me in good stead as I learned to work in a Native Title Representative Body, adopting different ways of thinking. However talking to other lawyers we would revert to our comfortable legal discourse and thinking like a lawyer.

Working with legal academics is akin to my years in the profession. We behave in similar ways and address problems in a similar way. I have observed though that engaging with academics from other disciplines has sometimes involved a degree of suspicion on their part and some observations about our 'peculiar' modes of thought: argumentative, adversarial, questioning, rule-based and obsessed with detail. (I remain unconvinced however by allegations of conservatism.)

These observations are pertinent, and cause me to reflect on the way in which others perceive me - including my students. Is the way in which I constantly question deemed to be an argumentative and adversarial (and therefore undesirable) mode of personal engagement? This question I think is relevant to legal education especially bearing in mind the role of emotions in learning.

### ABOUT ME



#### Kate Galloway

I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education.

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While there are many who have questioned the personal in terms of the culture of the profession (see for example here; here; and here) and the academy (see for example here and here). I also think that there is an additional dimension of 'thinking like a lawyer' - its impact on the personal in a lawyer's personal life.

### Thinking Like a Lawyer at Home

I have shared my home life with a litigation lawyer for over 20 years. We are comfortable both talking law and talking legally. ('You have my undertaking to fix the shelves on the weekend.') Our approaches to relationships, life and parenting probably take a distinctively legal flavour. (Upon witnessing an ill-thought out U-turn, three year old says: 'mummy isn't that unlawful?' The nine-year old in a first attempt at umpiring an under-eight hockey match, blows the first infringement and makes the bewildered five-year old player walk. The only conclusion I can draw is that our children are lawyers also.)

Explaining to my students that the law will take your brain apart and repackage it so you see the world differently is, I believe, no exaggeration. There isn't a television program that can be watched at our place without discussion of the legal implications or deficits in argument from a legal perspective. (Watching a nature documentary: 'Look at the whales frolicking in the Great Barrier Reef!' *Hmmm. I wonder which agencies approve a licence to get that close to those whales?*)

I was recently talking with a friend from the profession about their new relationship. To a casual observer, we would probably have sounded as though we were discussing a legal matter in terms of our language and tone. It transpired that my friend had been using this language in discussing these personal issues with their new partner. It dawned on me that the tenor of this language could have seemed somewhat threatening to a non-lawyer - they were not speaking in a language that their new partner could understand. Instead of occurring in the professional arena though (as in the cross-disciplinary university context) this could affect the non-lawyer listener on a much more personal and emotional level.

In addition to the way in which we use language and problem-solve in every day life, there are other flow-on effects from our work. The first is the impact of our ongoing risk-assessment based on our experiences in the law. (I've met many, many lawyers who will not wear new clothes without washing them, as a consequence of reading Grant v Australian Knitting Mills.) Secondly, for those of us who see the worst in human nature through criminal and family law practice, there is potentially associated emotional trauma. Inevitably, this impacts upon one's personal life.

### What are we doing about it?

Since the landmark 'Courting the Blues' Report in 2009, there has been a lot of work in the academy and in the profession to develop and implement strategies to transform the way we think about lawyering and legal education. I see this as a multi-layered and contemporaneous transformative process.

We need to develop the capacity in our students for resilience and reflective practice. At the same time, we need to promote cultural change in the profession to accept diversity and more collaborative modes of practice and working arrangements. The lynchpin in this is the legal academy. It is our job to undertake the research to support such change in the profession and in legal education; and to educate the lawyers of the future in a way that will facilitate emotional literacy and self-management strategies to minimise the down-side of thinking like a lawyer.

### Post Script

There has been some interesting discussion on Twitter in response to this post - see here.

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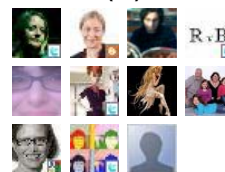
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