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Property law | women and law | contemporary legal issues

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The future of legal education

Are lawyers prepared for the future?*

At the 2014 Australasian Law Teachers' Association conference, I will be participating in a plenary panel discussing 'Creating a Better Future for Legal Education'. In this post I outline some of my thoughts on this topic, in the hope that readers might share their own views and challenge my own.

My focus here will be on where I would like legal education to go in the next 10 years, and what changes legal academics need to make now to achieve that vision. In short, in my view legal education must challenge the existing silos of doctrinal specialisation and embrace the broader context of the law. This aligns with calls to break down barriers between university disciplines themselves, to deal with the 'big problems'.

Broader Contexts

Much of the work I have done on the law curriculum in the past decade has involved what might loosely be termed 'broader contexts' of the law. This term is used in the Discipline Standards for Law as part of the 'threshold learning outcome' ('TLO') on discipline knowledge expected of graduates. It draws together a variety of themes and issues that are reflected elsewhere in legal education (such as internationalisation of the curriculum), in higher education (such as sustainability and Indigenous perspectives) and in the profession (such as wellness and resilience and gender). I would include in these contexts digital literacy and human rights.

Steel's Good Practice Guide (2013) provides background and a literature review to support curriculum development in this area. The Guide canvasses the legal education literature as well as texts to support student learning. It is clear that there is a lot of good work being done, but that there is not so much evidence of systematic curriculum-wide approaches to this diverse range of issues.

There are good arguments however that legal education must embrace these themes in an intellectual and practical way both to serve the profession and the community, and to expand the boundaries of the law itself.

- **Internationalisation** recognises the reach of both international law into Australian law, and the international contexts of the practice of law even where lawyers are practising within Australia. It provides the opportunity to embrace place in the study and practice of law - both within one's own region, within Australia and further afield. Understanding of place is crucial to effectively engage with legal problems.
- **Sustainability** offers a critical insight into both the law itself and its capacity to promote durability of governance, economy, environment and society. It addresses also the inter-relationships between these 'pillars' of our communal life. The law is part of a larger institutional system and the student - and

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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graduate - of law requires an awareness of the systems that law affects, and those that affect the law. Systems thinking is second nature in examining the justice system and how component parts and rules affect justice, but this approach seems to be ignored when looking at the 'silos' of the subjects of the traditional law degree.

- The experiences of **Aboriginal and Torres Strait Islander peoples** at the hands of the law are well documented but are not reflected broadly within the fabric of legal education. For the law graduate to understand the power of the law and to participate in practices of law that emancipate rather than oppress, the perspectives of Indigenous Australians must become embedded within the curriculum.
- **Wellness** has become a central concern of legal regulators, professional bodies, legal educators and professional indemnity insurers. The culture of the profession and probably the law school are now implicated in psychological distress - with consequences for the structure of curriculum and our pedagogy. Part of the solution is to educate for self-management (TLO 6) and this affects how we think about skills in the law school.
- **Gender** in legal education was raised long ago by the Australian Law Reform Commission in its 1994 Report into Equality Before the Law. Yet as with other themes, gender does not appear to be addressed systematically in curriculum. Instead it is a focus within a 'law in context' subject, or a specialist elective. The results of our failure to educate on gender can perhaps be seen in the alarming statistic that 50% of women practitioners have experienced sex discrimination or harassment. This is having grave implications in the profession for staff retention and practitioner wellbeing.
- As with internationalisation, **human rights** is a field of increasing importance within the substantive curriculum. It is unlikely to affect the development of Australian law to the extent of that, say, in the UK. But an understanding of the role of human rights in the development and evolution of the law generally enables a greater capacity for identifying the breadth of legal problems within a scenario and to tailor a comprehensive solution outside the boundaries of discrete practice areas.
- Finally, **digital literacy** is seen by some as the future of legal practice. While not all would agree with Susskind's technological vision of legal practice, the role of digital tools in the practice of law is growing and legal education is behind. Additionally, as with many of these other themes, the changing use of digital technology is shifting our understanding of privacy and control over information. Information in one form or another is central to the law - the Court process is actually an information control system. There are even questions about who 'owns' the law, in light of how public legal documents should be. Without developing our graduates' digital literacy (let alone coding skills), we leave them ill-equipped to engage fully in and to apply and develop the law. We also leave a gap in the law's capacity to evolve to meet the needs of contemporary (and evolving) society. Additionally, the law graduate will be left without the breadth and depth of skills to become future leaders.

Barriers to change

New technologies can be frightening**

As I mentioned, there are excellent examples of curriculum and teaching practice that embrace each of these elements. I suspect however that there would be very few full programs of study that manage to comprehensively engage with these themes and issues. It is fair to ask whether it is even possible to go so far as to embrace all in a holistic way. Leaving that aside for now, I think that there is a more fundamental barrier to embedding these considerations in a law degree and that is the lawyer's embrace of what Sugarman calls the 'text book tradition'.

On the whole, legal academics are not really specialists in law, but rather they are specialists in a particular subject of the law. The structure of the Australian law degree (the 'Priestley 11') is dictated by the way in which lawyers have traditionally categorised the component subjects of the law. These subject areas were developed by the classical

jurists and have not been updated. We thus teach the law as discrete elements and I suspect, often fail to provide students with a vision of how each component contributes to a coherent whole.

Because of this tradition, for the expert in a legal subject area the idea of introducing an additional 'subject area' such as human rights or international contexts, falls outside the expert's own understanding of their discipline. The same can be said for gender and Indigenous perspectives, and sustainability although these may suffer from the additional burden of being perceived as ideological or sociological themes. Digital literacy is a little different, being a new context for the law and which does not seem to carry an ideological burden. Apart from the 'neutral' context of online databases, it is possible that many legal academics may not see the digital realm as bearing a relationship to their own discipline specialty despite growing evidence of its disruption to the substance and practice of the law.

These themes can therefore be seen (and therefore rejected) as a dilution of the essential doctrinal content of a subject. Many academics are so far removed from these themes that it is difficult even to find a connection with their area. In light of these barriers, how then to we advance change?

Dismantling doctrinal classifications

I think that David Howarth's book *Law as Engineering* might provide some pointers for a re-imagined future for legal education. Howarth points out that law is about designing solutions to problems. It is largely about transactions, and very little of the law involves litigation. Despite this, we spend most of law school dealing with appellate case law and focusing on details of doctrine that may rarely be encountered.

Detailed theorising is intellectually important work - but it need not necessarily be the sole basis for an undergraduate degree. Yet thinking in the doctrinal distinctions of the textbook tradition will keep us within the theoretical and litigation mindset to the exclusion of the real purposes and contexts of the law. It will uphold the silo approach to learning and thinking and categorising the law, to the exclusion of the people and purposes the law is to serve.

As an example, in my own field of property law a focus on appellate decisions concerning Torrens title would have the law graduate believing in a vellum duplicate certificate of title to be deposited in a single state registry office. Now that e-conveyancing has been introduced in some eastern states, for how much longer do we continue to construct a curriculum around a 19th century legal process? How do we learn about the effect of digital technologies on title; about conceptions of transparency and security of title in a digital 'age'?

Or if the law itself fails to offer 'home' as a category of property, how do we understand the motivations of claimants to equitable title; of the framework of residential tenancy protections; of the context of so many family maintenance claims and even family law property proceedings?

The answer is that the present basis for learning law around doctrine alone, fails to provide the context for solving real problems of real people. I propose that legal educators need to reconceptualise the structure of the law degree and organise it in a way that draws on these broader contexts. They have potential to provide a unifying narrative around the law and its purpose in a way that is engaging, intellectually stimulating and that facilitates a problem-solving and design approach to the law. How to do *this* is another post...

What is your view? Can legal education better provide for the 'big problems' of the future?

* Image from http://www.listal.com/viewimage/4224390

** http://www.advrider.com/forums/showthread.php?t=788560

Labels: digital, gender, Indigenous, legal education, legal profession, sustainability