

**AALS Conference: Educating Lawyers for Transnational Challenges
Meeting the Challenges (Saturday, May 29, 2004)
Special Methods and Tools for Educating the Transnational Lawyer**

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Introduction

Australian law schools have gone through enormous changes in the last 15 years, including doubling the number of law schools and quadrupling the number of law students. Additionally, there has been an increase in the adoption of new learning and teaching techniques and greater use of technologies. This paper provides a snapshot of the current Australian Law School environment and tries to explain the impact of information technology on the teaching and researching of law.

The internet and legal databases now provide a range of information sources which would have been nearly impossible (or extremely expensive) for any single library to maintain. Less than five years ago I would have been hard pressed to set a research assignment in Australian corporate law to be compared and contrasted with a Civil Code jurisdiction, such as China.

Australian Legal Education in Profile

Australia is a common law jurisdiction based primarily on the laws of the United Kingdom. In fact, the *Australian Courts Act* 1828 adopted all the laws of England into New South Wales (a colony) and slowly developed its own jurisprudence. The six States and two Territories of the Commonwealth of Australia were formed in 1901. Although Australia had a State and Federal Court system and Parliaments to match, the final appeals still went to the Judicial Committee of the Privy Council (UK House of Lords). This finally came to an end under the *Australia Act* 1986, when the High Court of Australia became the final court of appeal.

Australia with a land mass similar to the United States, but a tiny population of only 20 million, is blessed with 38 universities (two are private and the rest government funded) and 28 law schools. Most universities are established by State acts of parliament, but are primarily funded by the Federal Government for teaching and research. The last decade has seen a huge growth in international students, which helps to balance the budget! The relevant Federal Government portfolio is the Department of Education, Science and Training (DEST).

There are four main non-government bodies that take an active interest in legal education and these are the Law Council of Australia (with the State & Territorial Law Admitting Authorities); the Council of Australian Law Deans (CALD); the Australasian Law Teachers Association (ALTA) and the Australian Law Students Association (ALSA).

Practising lawyers (those admitted to practice are at a State level including solicitors, barristers, legal practitioners, or solicitors and barristers, depending upon the admitting jurisdiction) are subject to a national curriculum known as the "Priestley 11". This refers

to the 11 subjects that are required by the 1992 Uniform Admissions Committee, which was chaired by Mr Justice Priestley. There has been a lot of academic debate about the subjects and their prescribed content, but all law schools adopt the subjects as a core to their bachelor of laws (LLB) programmes. In the last 15 years there has been a growth in combined law degrees with business/commerce, arts, technology, journalism, science and many other combinations being common. In the last five years, graduate law degrees either called a JD or a MLLP (Master of Laws and Legal Practice) have become more common and these also comply with the Priestley 11 requirements for admission purposes.

In January 2000 the Federal Minister of DEST established a national body to improve Australian university teaching and learning, to be called the Australian University Teaching Committee (AUTC). Since its establishment, the AUTC has led a number of initiatives to enhance university teaching, including funding research into educational matters, especially with a technology focus, specific discipline based research (law being covered in 2003) and advancing outstanding teaching awards.

Recipients of the National Teaching Award for Law and Legal Studies receive a A\$40,000 grant and an opportunity to share their knowledge and experiences in a variety of ways. In 2003, the award was presented to Sally Kift (Queensland University of Technology); in 2002 no award was made; in 2001 the Kingsford Legal Centre Team (University of New South Wales); in 2000 Michael Adams (University of Technology Sydney); in 1999 Jeff Giddings (Griffith University) and Gabriel Moens (University of Queensland); in 1998 John Wade (Bond University) and in 1997 Nadja Spiegel (University of Queensland). At the ALTA Conference hosted at the Charles Darwin University Law School, Northern Territory, in July 2004, it is hoped to have all the award winners together to reflect upon the impact of the scheme and their fellow law teachers.

The AUTC funded a research report entitled *Learning Outcomes and Curriculum Developments in Law* by Professor Richard Johnstone and Dr Sumitra Vignaendra, which was released in January 2003 as a “stock take of legal education rather than a review or comparison of law schools”. This was to avoid the criticisms that had arisen from the 1987 Pearce Report on Legal Education. The recent 500 page report is available online and provides the best contemporary review of Australian legal education. It can be accessed at <http://www.autc.gov.au/pr/law/split_law.htm>. Of the 28 Australian law schools, 27 cooperated with this project. The authors therefore communicated with many of the stakeholders in the legal education environment. The report builds on the work of Eugene Clark in “Australian Legal Education a Decade after the Pearce Report” (1997) 8 *Legal Education Review* 121 and Craig McInnis & Simon Marginson *Australian Law Schools After the 1987 Pearce Report*, (1994, Australian Government Publishing Service).

At page 460 of the AUTC 2003 report, under the heading of *Teaching and Learning* it states: “Probably the two most significant changes to teaching and learning in Australian law schools since the late 1980s have been a greater concern with “student-focused” teaching and a strong trend towards “small class sizes”. It went on to state that “in keeping with other trends across the university system, law schools are also subject to

increased casualisation of teaching staff, the semesterisation of undergraduate subjects and a greater emphasis on the use of information technology (IT) in teaching.

It is this last point that I wish to expand upon for this paper. The Johnstone and Vignaendra 2003 Report comments that although law schools are using more IT, it is not always being used in a sophisticated way for teaching purposes. The use of IT in teaching, in particular, was seen as one way of promoting communication with students about the subject matter and thereby enhancing learning. There are clear resource issues in Australian law schools, which are inhibiting more radical developments in teaching methods and technologies. The whole of chapter 7 of the report is dedicated to “Globalisation and Information Technology”.

It is noted that comparative law and international law are generally not given much emphasis by many Australian law schools, due to the primary focus on admission into an Australian jurisdiction and the Priestly 11 requirements. There are attempts not to be parochial and to focus on national law, problem solving and general principles rather than detailed local laws. There are international based subjects, such as international litigation, international trade law, human rights and the like. As well, a number of international student exchange programs have been established, where credit is given for the overseas law studied at approved universities. There are no developed coherent and systematic strategies to address the demands that globalisation could impose on lawyers in the near future. It is a surprise that the Priestley 11 does not require any study of Public or Private International Law or even a comparative law subject!

The Use of Technology in Teaching

The second part of this paper is to briefly examine the impact of IT in the modern Australian law school and to comment on its benefits for preparing transnational lawyers. It is important to distinguish between IT that helps all lawyers to research (accessing legal resources) and IT that enhances the teaching and learning of a subject.

Legal scholarship and teaching naturally places a heavy reliance on specific legal resources, including legislation (both state and federal) and case law, as well as secondary materials, such as government reports and academic discussions. Information retrieval is a major skill that law students must master at the beginning of their studies. Australian law schools have been major players in the development of easy internet access to legal information, such as the Australasian Legal Information Institute “AustLII” <<http://www.austlii.edu.au>> and the international resources of the World Legal Information Institute “WorldLII” <<http://www.worldii.org>>. These databases have developed side-by-side with the commercial publishers, such as WestLaw and LexisNexis, which for a subscription, provide phenomenal legal resources from around the globe to your desktop computer. Many government agencies, parliaments, courts of all jurisdictions, have been willing to establish websites to publish draft bills, new acts or delegated legislation and judgments.

The time delay in a library receiving a hardcopy of a book from another jurisdiction, with its currency issues (both the timing of a latest edition to the cost fluctuation as the US dollar or Euro or Pound Sterling goes up or down in respect of the local Australian dollar currency), has been eased by electronic developments. Assessment tasks have started to

include more international comparisons as a component. Postgraduate scholarship tends to range across a large number of jurisdictions.

The impact of individuals' interest in flexible learning (ie the use a variety of different delivery methods) with the greater use of technology, has changed the way many law schools operate. Faculties and Schools have been developing policies over the last 10 years, to take into account changing communication methods including the evolving student population use of email (specifically the ubiquitous "hotmail account"), the growth in quality and stability of university-wide webmail systems, which is on top of the traditional academic "pop-mail account". At a university level, it has been observed that the development of policies, resources and support for centralised web-based conferencing tool, which are scalable. This means there is a system to transmit additional information in a closed environment. Rather than placing lecture notes on the web for all to access, the university system closes the information to only those enrolled into the specific subject, which provides greater control over materials. Other standard features include discussion boards (ideal for large class sizes with FAQs) and real-time chat rooms for distance (external) students and even innovations, such as anonymous role-plays (see: <<http://www.learningdesigns.uow.edu.au/exemplars/info/LD7/>> and the paper by Freeman and Capper on role plays demonstrating their educational value in disciplines <<http://www.ascilite.org.au/ajet/ajet15/freeman.html>>).

It is interesting to note that out of the 38 universities, seven (19%) have developed their own web-based conferencing tool, 10 (26%) have adopted Blackboard, and the largest software product is WebCT, which is used by 21 (55%) universities in Australia. All seem to have common features and can be used in a simple way (basic notices/announcements and materials in HTML or PDF or word etc) to sophisticated online learning exercises and problem-based techniques across the world.

Conclusion

Australian law schools need to have a greater and more enhanced use of IT to enable students to be able to enrol and actively participate in international forums. The benefits of being able to have students from a variety of countries logging into an online subject must be a priority for the creation of transnational lawyers. This will be a challenge to our existing learning and teaching strategies, as well as to the accreditation and admissions bodies that so often dictate the subject areas of knowledge and the way they are to be taught.

The next five years will be an ideal time for exemplars and case studies of how law schools can use the developments in the availability of primary legal resources with a growing base of pedagogical literature in respect of online learning in the law school arena. It will be important to document good practices and share across boundaries the new approaches to teaching our future transnational lawyers.