
Book Reviews

Editor: Angelina Gomez

A HISTORY OF AUSTRALIAN LEGAL EDUCATION

A History of Australian Legal Education, by David Barker, Federation Press, 2017, 288 pages: ISBN 9781760021429. Softcover \$59.95.

The story of the development of Australian legal education over more than 150 years since the mid-19th century is incredibly complex. In part, this is a consequence of Australian federalism: for every trend in one jurisdiction, variations emerge in another – and in due course, especially in recent times, all are overlaid by attempts, often more heroic than successful, to extract or impose national approaches or national standards. In part, the complexity is a consequence of the array of stakeholders and, consequently, of the multiplicity of bodies vying for influence over the development of legal education. And in part it is a consequence of the wide range of themes and issues that might be thought to fall within the ambit of, or touch and concern, legal education: its goals and purposes, its relationship to legal practice, its economic and social impact, its subject matter or curriculum, how it is taught and by whom, how it is funded, who controls it, and much more. When you add these elements together, and put them in the context of the dramatic growth and transformation of legal education and legal practice from the latter part of the 20th century, it is a volatile mix.

Having been in the thick of many of these developments, David Barker, a former law dean and irrepressible long-time mover and shaker in the field, is well-placed to undertake the challenging task of recording their history. His study had its origins in a later-in-life PhD thesis, which provided a good opportunity for him to immerse himself in the detail, yet without losing focus on a range of broad themes, and also to draw upon his own mature reflection and long experience, including in the UK. Consequently, he navigates the complexity of the situation very well. Indeed, Professor Barker has done us a great service in putting together an account of the developments in legal education across the whole of Australia, including overviews of the history of every one of our breathtaking multitude of law schools. It is path breaking work, not previously attempted, and he should be congratulated for converting previously fragmentary information into a coherent whole.

THE LITERATURE

The book does show signs of its origins as a PhD thesis, with a chapter on a review of the relevant literature, which might have been better placed as an appendix, and another chapter on the major inquiries and reports into legal education in Australia, which might have been better incorporated into a more deliberate and contextual chronology of developments. Both of these chapters are, however, interesting in their own right.

The literature review is a useful vehicle for getting an overview of historical developments, especially our UK antecedents, although Professor Barker's references to the writings of Pollock and Maitland prompted the thought that the relevant literature is not just the literature about legal education as such. Just as influential is the literature on our understanding of law and the legal system, as this becomes the received wisdom for students and scholars and in turn influences the future shape of what is taught (see especially Susan Bartie, "Towards a History of Law as an Academic Discipline" (2014) 38 MULR 444). The way that Professor Barker bounded his literature review is entirely understandable, but it did make me think that, even in this context, one could also explore with profit the impact of, for example, the writings of Oliver Wendell Holmes, the great debates at Yale and Columbia in the 1930s and 1940s about legal realism, and, closer to home, the jurisprudential riffs of thought leaders like Julius Stone and the controversies around the critical legal studies movement.

THE INQUIRIES

The chapter on the major inquiries and reports – dubbed by Professor Barker as the “four pillars” of Australian legal education (the Martin Report 1964, the Bowen Report 1979, the Pearce Report 1987, and the Australian Law Reform Commission Report 2000) – is also a useful lens through which to view ongoing (indeed, as Professor Barker puts it, in many cases “timeless”) issues and controversies. These reports contain many insights, and themselves had an impact on future thinking that cannot be measured by a simple calculus of recommendations accepted or rejected. Thus, for example, the Pearce Report is famously remembered for its recommendation that, following the expansion of the number of law schools in the 1970s and 1980s, there was no case for any further growth (and, indeed, that the ideologically racked and divided Macquarie Law School be closed down) – a recommendation almost immediately superseded by a dramatic doubling of the existing numbers. Yet, as Professor Barker points out, the report was important in recognising – indeed in legitimising and encouraging – diversity and innovation in Australian legal education, and in drawing attention to what was central to a quality legal education.

THE LAW SCHOOLS

Putting aside these two chapters, the heart of Professor Barker’s book, and his major contribution, is his narrative, across four chapters, of the remarkable story of the growth of the number of law schools in Australia, from our colonial beginnings to the present day, and their transformation from modest teaching institutions to, in many cases, powerhouses of education, research and community engagement.

To tell the individual stories of the foundation and development of every one of our 40-odd¹ law schools is a considerable achievement, although any narrator of these stories inevitably courts danger in the degree of compression required: first, it can make some of the stories a little hard to follow (I found this especially so in relation to the early colonial developments,² though the incompleteness of the records always poses a challenge); secondly, those with more intimate knowledge of their own law schools will undoubtedly quibble with the selectivity, and indeed the accuracy, of some parts of the chronicles; and, thirdly, snapshots of the present (even an accurate count of the number of law schools) are prone to be out of date even before the book is published.

Having said that, however, I reiterate that Professor Barker has navigated a very complex story with confidence and assurance, revealing at the same time the early emergence of persistent themes such as the tension between vocational training and a liberal education, and the chronic underfunding of legal education – the latter being a legacy, initially, of primitive conceptions of teaching and learning, and, later, of perceptions of legal education as essentially a private benefit rather than a public good.

THE INSTITUTIONS

The history of Australian legal education is of course not just a history of our individual law schools. Thus, Professor Barker has rightly provided a chapter on the wide variety of institutional bodies that have played or sought to play a role in shaping how law is taught and how lawyers are made: admission boards, professional peak bodies, associations of law teachers, law deans and law students, advisory bodies such as the Law Admissions Consultative Committee and the International Legal Services Advisory Council (ILSAC), and most recently, the Australian Academy of Law.

¹ The count is controversial and contestable, depending on whether one counts related law schools as one or two and whether one includes the private TOP Education Institute Sydney City School of Law (not mentioned by Professor Barker) and NSW LPAB Law Extension Course.

² I would have loved a definitive resolution of whether the accolade of “first” should attach to Sydney or Melbourne, both of which have claimed it at different times, depending on whether one focuses on initial legislative provision, actual law teaching or institutional structures. This ambiguity was nicely captured when a somewhat bemused NSW Chief Justice Spigelman, ruminating generally on how all aspects of life had speeded up, observed at Sydney’s celebration of its sesquicentenary in 2005 of law teaching at the university that those who had gathered only in 1990 to celebrate the law school’s centenary could never have imagined how quickly half a century would pass!

Here, the complexity of the situation, especially with its federal overlay, descends almost into chaos. Professor Barker – the mildest of critics – expresses some disappointment at the poor record and ephemeral nature of some of these bodies, and some frustration at the muted recognition of the achievements of others. Many developments are still in the making, for example the impact of the Council of Australian Law Deans (CALD) Standards for Australian Law Schools, and the promising work of the Australian Academy of Law, which, as Professor Barker observes (having himself been an important early advocate for this body), has been slow to develop but which, as a unique and timely forum for bringing together judges, practitioners and educators, is currently hitting its straps.

The question remains, though, of why some institutions succeed and some fail. No doubt the answer lies in the complex interplay of many forces, including political factors (which led to the demise of ILSAC) and even the composition of some bodies themselves, especially peak bodies, where common interest can struggle to prevail over the narrower sectional interests of individual members. Professor Barker makes some observations about these matters, though his account is more descriptive than analytical or critical. But what is really interesting about this chapter, and indeed about the narrative history of the law schools, is the particular interplay between the institutions and the individuals who have played a leading role in seeking to achieve their goals. History, as we know, may be viewed from many different perspectives. Professor Barker tends to favour the institutional over the individual, so that the impact of the force of personality is rather downplayed. Again, this is understandable; it is not a biographical study, and his choice of certain individuals for special mention is already necessarily selective. A different history remains to be written about the great figures of the past in the development of Australian legal education, especially those, like Jethro Brown,³ who are little known or recognised today.

REFORM, INNOVATION AND PERSISTENT THEMES

Professor Barker then very usefully turns to look more closely at reform, innovation and transformation in Australian legal education. This chapter underlines how much has changed in recent years, and mostly for the good: for example, the introduction of the CALD Standards for Australian Law Schools, which evince a concern not only with course content but also with much broader matters such as student and staff well-being, law school governance, and commitment to the rule of law, professional responsibility and community service; the development of much greater professionalism and innovation in teaching, with a compelling focus on learning outcomes; greater access to legal education; and development of the wonderful electronic database AustLII, the achievement and worldwide transformative significance of which is, I think, a little understated. The chapter also deals importantly with education beyond the law schools, and in that context considers the controversy that has long surrounded the NSW Legal Practitioners Admission Board's Law Extension Course – concluding, as many would agree, that, despite the persistent criticism of its pedagogy and quality, there is good reason to retain this course as alternative form of access to the profession for those for whom a university education is either uncongenial or (despite the proliferation of law schools) unattainable.

In his final chapter, Professor Barker returns to the broad themes he outlined at the outset, particularly the long-standing and ongoing tension between professionally-oriented legal education and education in the law as an academic discipline, a tension that is overlaid by the further issue of where law graduates go and how important are the generic skills that equip them for careers beyond the law.

This chapter does not attempt to extend the analysis any further – it is more by way of summary, and the reader is left to draw his or her own conclusions about the broad themes from the earlier narrative history – but none of this diminishes Professor Barker's achievement in undertaking and accomplishing the writing of that history. The tension between professional and academic, or

³ Years after the full flush of feeling that my founding colleagues and I had reinvented the concept of law school in the early years at UNSW, I came across an article by Jethro Brown from the early part of the 20th century that advocated our core ideas, especially teaching law in a social context, active engagement in small groups, and more continuous assessment: see W Jethro Brown, "Law Schools and the Legal Profession" (1908) 6 *Commonwealth Law Review* 3.

vocational and liberal, education, remains with us, as do many other related issues, such as whether we have too many law schools (see “From the Law Schools: Does Australia have too many law schools?” (2016) 90 ALJ 777), how their quality should be assured and by whom (see “From the Law Schools: What Makes a ‘Good’ Law School?” (2017) 91 ALJ 628), and how law schools should respond to the needs of a profession itself in radical transformation. It would be unfair to expect Professor Barker to have served up to us a definitive resolution of these issues, though he does conclude that law schools can and should meet the twin objectives of professional training and a liberal education. His main, and significant, achievement is to have provided us with important raw material from which we can form our own views and on which other scholars can build.

CONCLUSION

We all tend to see legal education through the lens of our own experience. My journey has been from, as a student in the 1960s, the painful infliction of passive lectures, before and after a day’s work as an articulated clerk, from busy practitioners;⁴ to, as a young lecturer in the 1970s, the excitement of rejecting this model in establishing the first new law school in NSW in over a century; to, as a law dean in the 1990s and beyond, endeavouring to find and unlock the shared ethos that defined my law school and its mission; to, as a leader in the discipline in the 2000s, attempting to raise the standards and standing of the discipline as a whole, nationally and internationally, and to embed an overarching goal or purpose, not only of achieving academic excellence, but also of infusing the discipline with the spirit of law reform and social justice.

A reviewer must be careful to review a book as written, not the book that he or she might have written or would have wished to see. I therefore only very cautiously note that there is little in the book about the ethos of law reform and social justice, which I personally think has become a universal imperative for law schools and legal education. But aside from this point, in the light of my experience outlined above, this book did resonate with me. It put my experience in a broader context, it helped me to better understand the antecedents of where we are today, and I learnt many things that I did not previously know. How one evaluates the story of the past and the snapshot of the present is another matter. Some, such as my colleague Margaret Thornton, are highly critical, especially of the privatisation of legal education (M Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012)). Professor Barker, on the other hand, more a chronicler than a critic, is not overly judgmental. Yet, it is fair to say, this was not his major purpose. His major purpose was rather to trace the development of Australian legal education from the earliest times to the present day. As Chief Justice Kiefel observes in her Foreword, in doing so Professor Barker has provided a valuable resource for all those interested in its further development.

That further development will continue to be complex. How regulation and self-regulation can best be harnessed to assure and enhance quality remains a work in progress. But our law schools and our legal educators have a great and noble mission. Professor Barker’s book provides an important substratum of information that can only assist in the pursuit of that mission.

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⁴ Perceptions differ of course and are very subjective. Chief Justice Spigelman, in the speech referred to above (see n 2), refers to this period as one of Sydney’s “golden eras”.