Reviews

The Modernisation of Legal Education

by Judith Lancaster; Centre for Legal Education, Sydney, 1993; 79 pp, softcover.

Judith Lancaster is not out to court modern university bureaucrats, nor to applaud the role of the modern state as regulator and overseer of tertiary legal education in Australia. Instead, Lancaster argues that at the heart of the current malaise afflicting legal education in Australia is an ethos based on perpetual economic growth and state interventionism. For Lancaster, those are the root causes of the malaise. In short, rather than blame the individual law schools themselves, as some have done in the past, Lancaster argues that we need to extend the scope of our examination to appreciate that legal education in Australia suffers from the 'growth-oriented "over-administration"' characteristic of the modern bureaucratic state as it seeks new ways and means of production. Once the state moves from its role as referee in allocative functions to become an actor in productive activity – as it has in the sphere of tertiary education – decision making becomes 'doubtful'.

In an effort to understand the lack-lustre, enervated, technically-oriented, standardised legal curricula that she claims are commonplace in Australia, Lancaster examines the three independent review committee Reports into legal education since the 1960s. They are *The Committee of Inquiry on the Future of Tertiary Education in Australia, 1964* (The Martin Report); *The Committee of Inquiry into Legal Education in New South Wales, 1979* (The Bowen Report); and *The Commonwealth Tertiary Eduction Commission Review of Australian Law Schools – A Discipline Assessment, 1987* (The Pearce Report). Lancaster's observations centre on the nature of the decision-making processes adopted by these three review committees: the expert model assumed by the Martin and the Bowen Reports; and the corporatist 'consensual' model used by the Pearce Report.

Lancaster describes how legal education policy in Australia has shifted back and forth between these two basic models because none of the Reports has been seen to achieve the desired results. The initial swing from the expert model assumed by the Martin Report to the more objective approach adopted by the Bowen Report was checked by the assumption of a consensual mode of decision making. Yet the perceived inadequacies of the Pearce Report, in turn, prompted a return swing to the less participatory model now employed by the National Board of Employment, Education and Training. As a result, according to Lancaster, we have instability, caution, and conformity in legal education instead of innovation and experimentation. The oscillation between expert and consensual decision making is the result of neither 'too much' nor 'too little' democracy. Rather, it is due to 'the demands of the growth-oriented liberal model of policy-making which calls on decision-makers to serve the state's overwhelming commitment to continual modernisation'.

Lancaster's analysis draws on the work of political scientists, sociologists, and academic lawyers, many of whom are concerned about the role and function of the over-administered state. Readers unfamiliar with the work of Offe, Frug, Birkenshaw, Piccone, and Luke, to name a few, might find Lancaster's argument difficult to follow as she assumes a greater background knowledge and a more technical vocabulary than some of her legal academic colleagues, who would find her work of interest, would possess. This is unfortunate. Lancaster weaves quite a different story about the weaknesses of legal education in Australia than those that some of us have heard or have told.

Lancaster uses Macquarie Law School as a tool to examine the efforts of the Pearce Committee, focusing particularly on the issue of participation in decision-making. Given that Lancaster is a Macquarie Law School graduate, given that she has, quite understandably, been influenced by the work of some Macquarie staff, and given that the subsection discussing Macquarie may appear motivated by a desire to defend the Law School against the perceived attacks of the Pearce Report, some, perhaps less charitable, readers might conclude that this book is an apologia for Macquarie Law School. This, too, is unfortunate. It too easily dismisses her account.

In questioning the conclusions drawn by the Pearce Committee, Lancaster is not alone in her support for Macquarie. Overseas scholars such as Professor Schlegal have questioned some of the (what he claims are) 'essentially conservative' deliberations and determinations of the Pearce Committee. (For example, see (1988) 13(2) *Legal Service Bulletin* 71.) Schlegal did agree with the Pearce Report's conclusion that Australian legal education is too concerned with transmitting authoritative rules of law. Yet he also found that the Pearce Report failed to see its problem through because, on the one hand, it acknowledged the importance of teaching law more theoretically and practically in a socio-legal context, yet, on the other hand, it condemned the work at Macquarie Law School as well as overlooked the contribution that clinical legal education can have if one admits the importance of policy studies in law curricula.

Lancaster's analysis takes us beyond Schlegel's as she attempts a systemic examination of the problems which impoverish legal education in Australia. Like Lancaster, Schlegal applauds some of the efforts of the Macquarie Law School, noting that, in time, Macquarie Law academics might be commended for indicating the direction in which legal education should travel rather than castigated for the dissension which might have resulted from attempts to work to a centralised law curriculum.

Many teachers of law and legal education in Australia are aware of the need to understand how the construction of legal knowledge affects their practice and their theories of legal education. Such an understanding is deepened when one knows about the various factors which have directed legal education; knowledge of the deliberations and recommendations of the various reports on legal education in this regard is crucial. But these alone are not enough. Understanding the critiques of these reports helps place their contribution in context. Lancaster's account, though at times rather impenetrable, adds to these critiques. It makes provocative and challenging reading for both legal academics and university administrators.

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