

new academics wanted to use the social sciences to overthrow the profession's intellectual orthodoxy, the positivist school of black-letter law, and to redefine the mission of law schools. That mission, they contended, was not merely to replicate the profession but to transform it and to develop new empirical and critical perspectives on law, the legal system and the profession; and to share them with present and future policy makers, scholars, administrators, and informed citizens in all walks of life. The movement to democratise the governance of law schools, then, was part of a larger project of transforming law as an intellectual discipline, as a profession, and as a technique of social ordering.

Students tended to be a political drag on the intellectual revolution in Canadian law faculties. While eager to gain the democratic right to decide things for themselves, they were not much inclined to exercise this right to explore the foundations and frontiers of law. When the idealism of the 1960s was ultimately replaced by neo-conservatism and market discipline in the 1980s and 1990s, students began to reconceptualise themselves as consumers, with consumers' motivations and consumers' rights.

Legal education remains subject to influences emanating both from the profession and from the university. Although these influences seldom take the form of explicit directions, law schools respond to them in part to avoid negative consequences, in part to gain institutional advantages, but in part because internal constituencies align themselves opportunistically with or against the profession or the university. Thus, the internal political dynamic of Canadian law schools is often destabilised by the competing visions of legal education.

Most western, industrialised countries have been experiencing the combined effects of globalisation, technological change, and the retreat from the welfare state. Almost all Canadian universities are public institutions. However, government grants have been moving down an increasingly steep gradient; students are having to pay higher fees; and greater reliance on corporate donations, contracts, and 'partnerships' is being encouraged, even required, as a matter of government policy.

Potentially more dangerous to universities is an anti-elite, anti-intellectual populism which is likely to express itself in demands to reduce funding for 'academic' activities in general and for research in particular, in the abolition of tenure and research leaves, in increased teaching loads, in enhanced transparency and attacks on traditional institutional autonomy, and in the ruthless translation of students into empowered 'customers' or 'consumers' of higher education, with economic and possibly legal power to force institutions to respond to their wishes. Within their universities, law faculties find themselves in a somewhat ambiguous position. Because they were not yet firmly established during the expansionary 1960s, law schools tended to receive inadequate per capita grants for teaching and they generally do not attract large research grants. On the other hand, law schools have been experiencing rapidly rising unit costs. Because they tend to be small faculties, still often regarded as marginal by larger and better-established parts of the university, law schools have limited capacity to influence the increasingly strident debates over internal resource allocation.

On the other hand, law schools do have certain advantages. Most of them have so far been able to sustain both the size and quality of their enrol-

ments. Because of their connection with the profession, they have been able to attract at least some financial support. And because they have always been run 'on the cheap', law schools are able to adjust to their declining fortunes somewhat more easily than historically privileged faculties.

Canadian law professors confront an awful choice. Since they cannot do much about the real source of their discontents, should they focus scarce talents and energies on sustaining law schools as long as possible, by all expedient means, including pandering to students and the profession, until better times arrive? Or should they commit their critical skills and intellectual talents to efforts to alter the larger political economy, despite the absence of institutions, processes and constructive strategies through which legal academics and other citizens can work for a brighter future?

### **Privatising the universities**

J Kelsey

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For most of the 20th century, privatisation of state universities seemed inconceivable. As we move towards the new millennium, some would still argue that state universities are not being privatised. In the sense of selling off physical assets or enterprises, that is largely, though not wholly, true. The process of shifting from a state-centred to a market-driven system of university education, which is what the term 'privatisation' describes, has been more subtle, incremental and ad hoc. While the operational details and extent of this shift have varied across countries, the justifications have coalesced around three common themes.

The first involves a standard application of new institutional economics and new public management theory to the universities. Universities

are deemed, like all enterprises 'owned' and run by the state, to be unaccountable, inefficient, and unresponsive to consumer demand. The solution is to expose them to the rigours of the market, require them to do more for less, and reorganise on private-sector lines. To achieve this, the concept of education must also be privatised. Tertiary education must be redefined as primarily a private good, a commodity to be bought and sold in an artificially constructed education market driven by the forces of supply and demand.

A second common argument is that the traditional model of the university can no longer meet contemporary economic and social needs. This argument describes access to education as a universal right and a legitimate expectation for all. A society's well-being depends on educating its people, especially women and the disadvantaged, and providing appropriate educational opportunities throughout their lives. In wealthier countries this has prompted a massive increase in tertiary participation, placing unprecedented pressure on a system which historically served a privileged minority. A tertiary education system for the future must therefore serve the needs of age-groups, across many locations, who have diverse interests, backgrounds and qualifications, as well as varying constraints on their time.

A third justification draws on the ubiquitous demand for fiscal restraint. Per capita spending on tertiary education is far higher than primary or secondary and caters for a small and privileged group. Yet the social returns from education are greater at the primary and secondary level than at tertiary. Barriers to access mean the tax-paying poor subsidise university attendance by the rich, who secure ongoing economic and status gains.

Many of these arguments pose a dilemma for those who have expressed similar criticisms of the status quo but who reject the market-driven solutions which are currently proposed. Seemingly unconnected changes to tertiary education policies across many countries display a remarkable congruity. Applied consistently, the broad privatisation agenda creates the conditions for a deregulated international education market which, once established, will be extremely difficult to re-regulate or contain.

Once education has been subsumed within the free trade paradigm, it stops being a means to convey unique identities and cultural values, an arena of much-needed contest and critique, and an activity valued for itself. It is transformed into a tradable commodity to be bought and sold on world markets like any other good or service. 'Free trade' in education services means there is no boundary at which internationalisation ends so that the local can be protected.

Globalisation may create new synergies and potential for collaboration. It also erodes local institutional autonomy and academic freedom to determine the substance and style of what universities do. Underpinning the privatisation and internationalisation agenda lies a deep ideological belief in the virtue and infallibility of global markets and a corresponding intolerance of alternatives. Universities provide a repository of historical knowledge, a source of critique, and a breeding ground for competing ideas which challenge the portrayal of neo-liberalism as immutable and indisputable orthodoxy. As such, they present an obvious target for radical market-oriented restructuring.

As storehouses of knowledge, universities are not simply museums for information. The national community of the present and the future requires a repository of knowledge, history, and culture which will endure. That same community requires research, teaching, and publications to move social thinking forward; the kind of thinking which the market may not follow. The real assets of universities are not their land, bricks, and mortar, but their international reputation and their academics' minds. These risk being devalued or lost under a market regime. As government funds are spread more thinly, universities will be forced to rely on further cost-cutting efficiencies and higher student fees. Instability and unpredictability of tuition and research funding will make planning extremely difficult.

The combination of significant increases in participation and capped budgets also suggests reduced entry standards, larger classes, lower-quality teachers, and cheaper teaching techniques. Elite institutions and law schools may respond by capping numbers and branding themselves at the top-end of the market, thereby bidding up their price with serious consequences for equity.

In responding to these trends, it is not enough simply to defend the status quo. Many of the arguments for restructuring have validity. The challenge is to acknowledge current deficiencies and address them in a constructive way. Effective strategies must recognise the inter-connected global, national, and institutional aspects of privatisation agenda and identify where the tension and contradictions with national tradition, politics and commitments lie.