

Is There A Point to All This? One Practitioner's Perspective on Legal Education

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I've tasted quite a few flavours of legal education in six years of University and four of legal practice. I've studied Undergraduate Law in a face-to-face, formal university setting. I've racked up the obligatory postgraduate practice course, delivered online by the College of Law. I've had endless on-the-job training, ranging from informal drafts covered with red ink or sit-ins on negotiations or in Court to more formal mandatory in-house Continuing Legal Education. I've done my part in training the next generation at a few minor external seminars and internal talks. I have even written an article on legal training.¹

All this has taught me that it is impossible to go through any form of legal education without forming some kind of view on the process itself. What has surprised me is that my perspective on legal education has been in constant flux, depending upon the kind of legal education I am experiencing, the way it is being delivered (and who is delivering it) and what I thought I was doing with my studies at the time. I have had periods of actively resenting my legal studies, in particular during the first three years of my law degree and at College of Law; but I have had just as many periods of loving every minute of it.

The substance of what I learnt throughout my entire legal education was pretty much the same – law is law, however it is flavoured. And the result of all that legal education was unambiguously good: a first class honours degree, a medal, a good job, a decent salary and publications in a few minor law journals. Why then, do I still look back on First Year Law with a kind of wounded resentment and warn everyone I can off

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¹ Kate Harrison and Lauren Eade, 'Compliance Training: Online or Traditional Training Methods - Which Work Best?' (2002) 1 *Law Practice Management* 30.

studying for his or her Graduate Diploma of Legal Practice by distance learning? Why do I still fondly recall courses in Human Rights Law and Jurisprudence, when I have never once applied anything I learned in either course?

What it all boils down to, I think, is this: perspectives on legal education are necessarily dependent on expectations of what legal education will be like and more importantly, expectations of what it is for.

Great Expectations

By the time I entered law school I had been strongly conditioned against a career as a solicitor. I believed that Law came in three unappetising flavours: Family, Criminal and Conveyancing. None seemed an appealing way to spend 30 years or so. I suppose I might have realised that there was some kind of different law that was practiced in skyscrapers that didn't involve these three, but that was *in Sydney*. Nevertheless, the Bachelor of Laws degree was the so-called generalist degree of the nineties and since I wasn't quite sure what I wanted to do with my life, it would at least give me an awfully long time to think about it.

My expectations of law school were minimal. I hoped it wouldn't get too much in the way of my Arts subjects; I hoped it wouldn't be too boring, or too like *The Paperchase* (which I recall being shown in the first lecture, with *Rumpole of the Bailey* and *LA Law* being quite properly saved for the introductory ethics course later on). I was determined it wouldn't make me a lawyer. I repeated this last sentiment early and often, which probably endeared me to nobody, particularly as my chosen law school was state-of-the-art and had been designed to churn out fully qualified legal practitioners in record time.

As for the content of the course, Latin and English I had studied at school. I knew what to expect of those. But law? I knew there would be reading and plenty of it. I thought there might be tweed or pipes (none were forthcoming). But I did not even understand what laws were or where they came from. Exactly how they could be studied was something of a mystery.

Imagine my surprise at being faced with subjects (everyone's favourites: Criminal, Torts, Contract, and Property) straddling an uncomfortable divide between theory and practice. Reams of laws to be memorised and applied, but which might change at any minute and have to be memorised again, coupled with issues of policy and structure far away from the textual criticism I was used to. And I wasn't going to be a criminal lawyer, a negligence lawyer, a commercial lawyer, or a conveyancer. The whole thing managed to seem both pointless and terribly difficult.

What do I remember from early Law school? I remember missing the point quite a bit. I remember learning that 'v' was pronounced 'and', but

horribly misapplying laws of criminal responsibility, failing to appreciate the finer points of the development of the tort of negligence or even the reason why it was being taught (although in retrospect, the course was quite interesting).

I seemed incapable of arguing from the general to the particular. I had trouble determining whether offers had been accepted, didn't quite get *mens rea* and couldn't reliably tell *ratio decidendi* from *obiter dicta*. I pronounced legal Latin as if it were the genuine article - that is, incorrectly. Most humiliatingly, my essays - pride of my English student's soul - were marked down for lack of clarity. A lecturer advised me to use headings. I grudgingly complied. My marks went up overnight with no real change in content. It took three years for my long-suffering lecturers to get the point across, but I finally learned to write like a lawyer, or at least how to look like I am writing like a lawyer. Now, I am endlessly grateful for this. At the time, because Law was something I was enduring rather than a means of acquiring useful skills to be applied later for financial reward, it seemed nothing more than a particularly painful example of the hypocrisy of the Legal Establishment.

Suffice it to say that the study of law and I did not get on well for the first few years. I expected little and I got it in spades. Of course, my problems were entirely my own fault: firstly, I clearly had no idea what I was doing there, which meant there was no real reason to put myself through the drudgery of the core subjects other than bloody-minded determination. My suffering (imagined) was without meaning. Secondly, I had unwisely forced such dazzlers as Legal System and Method (Legal S&M to its friends) to compete for my attention with all the delights an Arts degree had to offer, from Creative Writing to Restoration Literature to Latin Text and Language II. Law subjects did not fare well by contrast. Perhaps different comparators might have changed my experience: after all, those of my cohort who studied Economics and Commerce seemed to love Law.

Expect The Unexpected

But of course things changed, or I wouldn't be where I am today. Bloody-minded determination forced me back to Law after a year off to take Honours in Arts and back to a very different world. Final year subjects were of a decidedly academic bent. Better still, electives finally entered the picture, so I could implement my time-honoured scheme of selecting subjects by lecturer rather than actual content (you couldn't go wrong with Kate, Neil or David). Finally, it was when I studied intellectual property law and spent all of six hours learning the subject which was to become the meat of my career: trade marks. In other words, there finally seemed to be some point in it all and I seemed slightly less pitiful at it. All

this with nothing more interesting to distract me.

Even so, the subjects I chose in my final years were not really the obvious ones for someone who would be neck-deep in corporate law scant months later. As far as I was concerned, finding fields of law that I was interested in did not equate to studying to become a lawyer. I chose swags of human rights subjects (to get Kate) and administrative law subjects (to get David) and nothing of the corporate persuasion that wasn't actively required by the Supreme Court to admit me to the lofty rank of Legal Practitioner, except Intellectual Property. In other words, I studied according to my own whims and I have never enjoyed legal study more than in those two years.

Because of my subject choices, I have spent the better part of my career to date in the practice of laws not even touched upon in my studies. That said, I would recommend a diverse subject range to anyone. Quite apart from the benefits of actually studying something one is interested in, the practice of Law is a notoriously varied beast. You never know what will come up, except that it will come up when you least expect it.

A case in point: in four years of Corporate Law, the one and only time I have directly applied the finer points of Law as learned in my studies was in relation to anti-discrimination and capacity laws as they apply to children. A client nobly wished to selectively enter into (and enforce) some contracts with minors, some under ten, and to refuse to enter into others. Sadly, the tortured state of contractual capacity laws made this impossible. Assisting corporations to discriminate against children was not exactly what I had in mind when I signed up for Child Law. However, the fact remains that the Law I learned in my feel-good, human rights subjects has in fact been more useful in my practice than all the years of Criminal Law, Torts, Property and Corporations Law I have under my belt.

What Can We Expect From Studying Law?

Studying laws expecting to apply them dooms the student to disappointment – no-one has any way of predicting whether a given legal issue will ever arise, or even whether the paperwork-laden path of the legal practitioner will be for them. Studying laws to get the full picture of the laws governing the land dooms the student to failure – the only thing that can be said about the Law as a collective body is that it is too big to be grasped in its entirety. What, then, is the purpose of studying Law? What can we expect of it?

After years of suffering legal education, muddling through it and ultimately coming to my senses and enjoying it, I can only think of one way to describe what anyone can expect of legal education. My primary school principal told us at every assembly that we were 'learning how to

learn,' presumably to deflect questions regarding why memorisation of the times tables (or, say, the foremost authorities on equitable transmissions or the types of consideration) was strictly necessary. I don't think this correctly encapsulates what students of the Law are doing every day when they turn to their lecturers, their texts, or their frustrating on-line education program. Students of the Law are acquiring a rudimentary form of knowledge which may or may not ever be applied, but which is certainly *able* to be applied in the real world, for the real benefit of others and for pecuniary reward. This is as true of academic lawyers and policy makers as it is of legal practitioners.

However, Mr Landrigan's platitude does point to the two things we are really doing when we study Law. Firstly, we are learning how to *find out* – that is, picking up the nuts and bolts of legal research and legal reasoning, which took me many years after the preliminary course in first year to fine-tune. At some point in everyone's legal career, the research can be delegated wherever possible to paralegals, research assistants, postgraduate students and whoever else is handy; but legal reasoning is a job we are all stuck with. Reasoning from the general to the particular, applying Law to facts, will remain a part of every legal profession from practice to academia until the end of time, so it's good thing we get taught all this in First Year Law.

Secondly, in picking up an elementary background in a wide range of 'core' and related subjects, we are acquiring a set of built in alarm systems. The purpose of these systems is to alert us to the fact that a legal issue may have more than one aspect and to help us determine when further advice is required. I am a trade mark lawyer, but what I can expect of ten years of legal education is that I should be able to see that a trade mark assignment may involve tax issues, that misleading and deceptive conduct might also amount to an equitable estoppel preventing enforcement of rights, that using a registered trade mark as a trading name will require incorporation or registration of a business name. I should be aware, when a petty bureaucrat refuses to register my client's service mark as a business name, that the bureaucrat's actions may put the business names regime at loggerheads with the *Trade Marks Act* and may therefore run foul of section 109 of *The Constitution*. If a client comes to me with a property issue, an incorporation issue, a family law issue, I should recognise it as such and either direct them to an appropriate practitioner or at least identify which text book I need to check.

The purpose of on-the-job legal education is to allow us to develop exactly the kind of specialised hammer we need to do our work. The purpose of formal legal education is to ensure that we are aware that despite the fact we have that hammer, not every legal problem is a nail. If I had known to expect this of my studies when I first started at University, my perspectives on legal education might have been rather rosier; as it is, I'm glad I worked it out before I started my Master's.