forward planning required for successful external teaching is greater than with teaching full-time students. It is a continuing challenge but carries its own rewards, which will be elaborated at the Seminar.

(3) Continuous feedback to students for the purpose of improving performance.

Conclusion

Macquarie Law teachers should continue in their efforts to ensure that our students, the majority of whom intend to enter private practice, government service or the business world, do receive the education and training that I have described. We owe a duty to present and future generations of students to ensure that our degrees are accepted by employers as meeting their standards. It is a liberal curriculum when compared with other Law Schools, both as to content, structure and optional courses. But I reiterate that our degrees are the major component in the qualification for practice. I am strongly opposed to any attempt to water down the proportion of our curriculum directed to professional practice. We cannot afford to put at risk the acceptance of our degrees by the Supreme Court or by prospective employers of Macquarie law graduates.

LEGAL EDUCATION AND LEGAL PRACTICE: "What's Wrong with the Law School?"*

Brian Kelsey

The impetus of the Law School, when it opened in 1971, was towards liberation. Liberation from lectures, textbooks, examinations with a commitment to small-group teaching, varied assessment, wide-ranging inquiry into the law as a social and political process, all within an easy framework encouraging free communication between teacher, student and administrator.

Here was a professional school that was "different", a school that sought an escape from the rigid, authoritarian scholasticism of Australian law schools, that attracted those of open mind and promised them freedom. The integrity and cautious idealism of the first Dean gave cause for hope that high expectations would for once be realised, that democratic diverse and

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convivial learning could flourish and be of creative benefit not only to those within the school but to the community beyond.

Five years later, it is clear that, these ideals, far from being realised, are in danger of extinction, in principle as well as in practice.

The symptoms of decline are obvious. Class sizes increase each session. Assessment is reverting to exam-dominated methods. Communication has been cut off or allowed to run only in channels clearly defined at the top. Students have been directed away from the "radical" courses to the commercial and business subjects, into which resources are being channelled at an increasing rate. Student interests receive short shrift, and open hostility is expressed to students by some staff members at School meetings. Suggestions for change are met by an administrative brick wall, or shunted off into committees where the real issues become obscured or forgotten. There is widespread dissatisfaction among students with standards of teaching and considerable resentment among many teachers at the lack of effective participation in decision-making and at the barriers that are erected against any innovation. Survival and self-preservation have become the main concerns. We have become domesticated. At a deeper level, there is a feeling of boredom and frustration, particularly among the students. It may be no greater than that experienced by students in other faculties, but is the more intense because of the expectations raised. The lack of diversity in teaching methods and assessment, the obsession with theory and the accumulation of pre-digested knowledge, the waste of effort and intelligence concentrated on useless research papers (the new word for essays), all contribute to a feeling of futility. It all seems part of an apparent conspiracy to keep the student tame, to perpetuate his dependence on the institutional framework of the *status quo*. It is the harder to bear in an environment which once held out the promise of adventure, experiment and dissent.

How and why did it happen? The first can be clearly traced back to last year to two decisive events - the easing out of Curt Garbesi, and the debate (for want of a better word) over assessment.

Professor Garbesi was one of the first members of the School. American and radical, he brought to the school ideas of the law and approaches to teaching which shocked the establishment and led to his eventual isolation. He had real attachment to the innovations the School sought to express and inspired affection in his students. He was a good teacher and he was original. He had to go. And he went. It was done nicely, of course, and few ripples were caused. But the knives were out and it was done.

In the debate over assessment, power was more blatantly exercised. Some of us, believing assessment to be a prime obstacle to genuine educational experience, proposed its abolition in one optional subject, as an experiment. We spoke strongly against grading, and one of us canvassed among his students their choice of self-assessment. Naive that we were, we

believed a reasoned debate would follow. After all, we are an academic community.

What we in fact got was abuse. We were accused of putting an end to the Law School, of working against the students, of destroying the degree, subjected to personal abuse, and a scare campaign was concentrated on the students to convince them their degrees and careers were on the verge of extinction. One teacher was summoned out of class, angrily confronted by a superior with a memo which the teacher had written offering self-assessment, and told that if this got out to the judges it was the end of the Law School. And presumably of the teacher.

Eventually they won the battle with a committee, the neatest tactic yet devised to stifle debate and diffuse interest. It was turned into a committee for assessment, not against it, sat for a year and produced nothing.

Two severe blows for an open school. Symbolic, I think, of the slow but steady movement back to an impersonal, conservative, managed form of education which the Law School once asserted it sought to escape.

The second, more important, question is why did it happen. If the prime responsibility rests on any shoulders, it rests upon those of us who assumed that innovation and originality have a momentum of their own, that new ideas will flourish without nurture and attention because of their inherent goodness. We failed to recognise that life is not static, that unless affirmative action is taken to protect and advance a break with tradition, the power of the establishment will reassert itself in the interests of the *status quo*. The conventional mechanisms for preservation come into operation, not from the malice of individuals, but because the assumptions of those who hold office dictate the preservation of the hierarchy and the respectability which is its main support.

The interests of an academic establishment and of students are fundamentally divergent. Students are a means through which the ambitions of the academic in other spheres are realised. A conventional Law School is not really interested in students. It exists to serve the dominant interests of society, the judges, the profession, and the commercial social and political forces to whose interests the legal system is devoted. A Law School which challenges these assumptions, which seeks to liberate the energies of students and teachers into critical and useful channels, is, within the framework described, an aberration. It is vulnerable and unless that vulnerability is recognised and actively protected against the pressures and manipulations of the power-elite, it will wither and die.

Our Law School is in the process of doing just that.

The question is: what can and ought to be done. I suggest the following:

Let there be much less grumbling in the corridors to sympathetic ears, more assertions of view to the unsympathetic, an articulation of discontent, a willingness to challenge the manoeuvrings of power, a refusal to accept

the centralisation of authority, a demand for changes that will encourage and disperse the vast resources of everyone in the School and break the rigid, pacifying hierarchy we have too long supported.

We can no longer just complain. The fact of complaint is evidence of inaction. If a free, democratic and stimulating School is our ideal, we must put our values where our words are, and rejecting the claims of power, act out what we wish to see achieved.

REFLECTIONS ON KELSEY : THE TRIUMPH OF CONSERVATISM*

While Brian Kelsey's admirable article on the fate of liberated legal education at UNSW tells us a great deal about a significant phase in Australian legal education, its brevity precluded the development of certain further points of major importance. In what follows an attempt is made to further develop the necessary critique of the circumstances in which the political struggle will continue within Australian law faculties. For whatever the overall situation is, and however severe the defeats suffered by progressive forces at the newer law faculties (in terms of the overall conservative nature of the curriculum and the number of conservative academic staff appointed) there remains the indisputable fact that such forces have survived - "bloody but unbowed" - and have created bases which can now be consolidated and from which further gains may be made in the future. This is not to deny the rampant conservatism and authoritarianism which exists throughout Australian legal education; it is however to state that important gains have been made in the last five or six years. Most of legal "education" may still be a gross insult to the intelligence, but it will never again go back to the Stone Age from whence it has been recently wrenched. Never, that is, unless the present national creep towards fascism turns into a gallop.

It is important to understand that, as Kelsey pointed out, the Law Faculties serve capitalism, their most important function. For when the structures of capitalism required a new, more creative reform-oriented legal education than could be offered by the entrenched conservatives of the conventional universities (such as Sydney, Melbourne, Adelaide) it was certain that the "logic" of capitalism would produce a UNSW Faculty with its almost self-conscious zeal for reform. And certain too that some progressive elements would be brought together at other centres - Monash, La Trobe, Macquarie - thus developing the legal cadres which would lend legal

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* From CRITIQUE OF LAW EDITORIAL COLLECTIVE, CRITIQUE OF LAW: A MARXIST ANALYSIS, 127-31 (U.N.S.W. Critique of Law Society 1978).