Warning: Law School Can Endanger Your Health!*

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Making Elite Lawyers: Visions of Law at Harvard and Beyond by ROBERT GRANFIELD (New York, Routledge, 1992) pp vii, 248; *Making It and Breaking It: The Fate of Public Interest Commitment during Law School* by ROBERT V STOVER (Urbana, IL, University of Illinois Press, 1989) pp xxviii, 146.

1 INTRODUCTION

Australian law schools are now producing an astounding number of law graduates.[1] Most of them will want to practise law at some point, and many will prefer to work at least for a period in one of the larger city law firms that specialise in corporate and commercial legal work. An equally remarkable development of the last eight years or so has been the growth in number of law schools.[2] These changes attest to more than just the willingness of universities post-Dawkins to provide places for law students (and presumably, to garner some prestige for themselves by establishing new law schools). What also is remarkable is the perceived merit and value of a university qualification in law among many school leavers and the growing number of mature age students. So what is so appealing about going to law school? What do students expect to achieve or gain? Is it the subject-matter and the intellectual training provided by the universities that attracts students, or must we look to the career opportunities and benefits associated with having a law degree? What images of law and the legal profession thus shape their expectations and confront their law courses and law teachers? And perhaps most interestingly, and the question raised directly by both Stover and Granfield, how are the values

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[1] Statistics compiled by the Centre for Legal Education, Sydney, reveal that in 1994, some 21 665 law students were enrolled as undergraduates in Australian law courses. Compared with the 29 428 practising lawyers in Australia, this means that currently enrolled law students equal in number nearly three quarters (74%) of the number of practising lawyers in Australia. See Centre for Legal Education, *Newsletter* (July 1994).

[2] At the time the Pearce Committee presented its Final Report (1987), there were 13 law schools in Australia. See *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (convenor: Professor Dennis Pearce) (1987) 5 vols. In 1994, the Centre for Legal Education survey covered 25 law schools.

and aspirations of law students affected by their law school experiences? In particular, in what ways do their law school years influence subsequent career orientations and professional involvements? In other words, what does law school do *to*, as well as *for*, its students? Clearly, answers to these questions will provide a better understanding of the current demand for law places and the resources relevant to meeting this demand. They will also assist us in evaluating the contribution by today's law schools to tomorrow's legal profession and to meeting legal need in the future.

So why choose law school? As a sixteen year old applying for a place in law at the University of Adelaide in the early 1970s, I can recall being motivated by a number of considerations. While I could not perhaps have articulated my primary motive much beyond 'wanting to help people', it was prominent in my selection thinking. While there surely were other, more self-regarding considerations at stake, these were undoubtedly hazy and not particularly extreme. I did know, in a very general sense, that some people were different, and suffered social disadvantage as a result; I also understood that while people could commit criminal offences, there were often mitigating circumstances, and felt that there were very few instances of these people who did not present the possibility of redemption. The law presented an apparent means of redressing these injustices and inequalities. In some senses then, I suppose I was idealistic.

It is, of course, tempting for anyone who went through adolescence and university in the 1960s or 1970s to cast doubt upon the extent of altruistic inclinations among the students of the 1980s and 1990s. Yet both Harvard and Denver law schools, as revealed by Granfield's and Stover's studies, contained significant numbers of entering law students with similar, rather vague, commitments to social and individual justice. But something happens to many of these (usually) young idealists during their time at law school. Before Stover's and Granfield's books, other studies of law school socialization have drawn attention to certain ill-effects of legal education. In a study by Pipkin, referred to by Granfield, law students were found to experience 'anxiety, stress, boredom, cynicism, and psychological defenses incompatible with later ethical practices'.[3] Similar reactions are not uncommon among later year law students at Monash. Moreover, in a survey of Australian law graduates, cynicism was the personal value reported by most graduates as having being affected negatively by their legal education. In contrast, only ten per cent of those surveyed attributed an increase in idealism to their time in law school.[4] Indeed faculty concerns of this kind have undoubtedly played a part in prompting the extensive curriculum review process now drawing to a close at Monash. From an immediate educational point of view, these findings ought to be disturbing. Clearly, no law teacher wants to have dissatisfied students if it can possibly be helped. If for no other reason, it makes teaching unpleasant.

[3] R Granfield, *Making Elite Lawyers* (1992) 8.

[4] These findings, from a survey commissioned for the Pearce Committee, are discussed in D Weisbrot, *Australian Lawyers* (1990) 138.

However, the significance of these kinds of unhappiness among law students is much broader and long-term than this. The progressive loss of idealism among law students identified by Granfield and Stover influences not just subject choice at law school and extra-curricular involvements, but also the sorts of jobs sought after graduation. In other words, the distribution of legal services is also at stake; it is not simply a problem regarding the values and mores of the future legal profession. It is difficult to remain idealistic towards any field of practice if the structural and institutional supports are missing. Corresponding with this diminution of idealism among law students, Granfield observes, is a growing acceptance of, and preference for, corporate law practice. Arguably, while economists might view this trend simply as the expression of a market preference by individual law students, this analysis is deficient and the trend should not go unexamined by the profession. Everywhere at present, it seems, there is ample reminder of the public relations problem faced by the legal profession.[5] While remaining intriguing figures in popular culture (witness the 'info-tainment' surrounding the OJ Simpson trial, and the success of programs such as *LA Law*), lawyers are hardly popular, and are being challenged for being greedy, uncompetitive, expensive and little concerned with the problems of the underprivileged. While it is not uncommon to hear reminders from legal profession spokespersons of the numbers of practitioners offering free or low cost advice and assistance to the needy,[6] two notorious facts challenge the potency of this defence: the extent of unmet legal need related to the high costs of justice, and the high salaries of lawyers working in big corporate law firms. Few people, it may safely be ventured, are likely to attribute the degree of professional altruism actually shown by some lawyers to the corporate sector of the legal profession. In the light of these public perceptions of the profession, the loss of student idealism and an apparent correlation with a preference by an increasing proportion of

[5] Evidence of self-consciousness on this issue is to be found in the 'President's Page' of *The Australian Lawyer*, the journal of the Law Council of Australia. For example, in the September 1994 issue, outgoing President John Mansfield made his final message the theme of the image of lawyers, and looked at measures for redressing the critical perceptions of the profession held by the media and others in the community: 'Targets in the Conflict', *Australian Lawyer* (September 1994) 3. This theme was picked up the following month by incoming President Stuart Fowler in his first 'President's Message', entitled 'It's What We Do that Counts': *Australian Lawyer* (October 1994) 3.

It is ironic, of course, that demand for law places should have continued unabated over the past few years despite there being some basis in fact for complaints by legal professional bodies of 'lawyer-bashing' by the media and other critics. The irony is particularly acute when it is realized that the legal profession, while being perhaps the most criticized professional group in the community, remains for that same community one of the most desirable professions for its offspring to pursue.

[6] For example, in Mansfield, ibid, Law Council President Mansfield wrote:

> In the last year or so I have been both surprised and delighted at the cross-section and spread of the number of lawyers who provide their services to the community as part of their professional commitment, without fee, and most often in areas where self-interest is entirely absent. I am sure that most of you reading this will recognize in yourselves some part of this fact. We should feel good about ourselves.

On the notion of *pro bono* legal work and the difficulties members of the public have with this concept (and by implication, the challenge facing the legal profession in changing public perceptions) see R Evans, 'Will the Real Pro Bono Please Stand Up?' (1994) 68 *Law Institute Journal* 1128.

law students for corporate law practice ought to concern the profession deeply.

Of course, as Granfield and Stover both acknowledge, the agenda raised by this loss of idealism does not just involve the law schools. It is not simply a question of what law schools are doing to their students. Both books point to the ways in which the values and practices of the profession shape the student culture, the attitudes and expectations students bring to law school, and how they affect legal education and subsequent career choice. This broader appreciation of the processes at work in legal education and professional orientation, derived from a sociological perspective, becomes useful to legal educators in making theoretical and practical sense of their circumstances. It requires that the responsibility for the quality of law graduates and practitioners be shared with others. It does not, however, absolve them of their obligations to their students, and indeed begs fundamental questions lying at the heart of legal education. Among other issues, the structure and content of the curriculum, and the pedagogical culture of a law school become relevant to questions regarding the law student's orientation to her future clients, her future profession, and the community at large.

In this review article, I propose to outline and discuss both Granfield's and Stover's accounts of law school socialization, drawing comparisons to the Australian context wherever possible. It will be seen that I share their fundamental assessment of the situation (yet not uncritically), and concur in many instances with their specific observations and prescriptions. The two books represent examples of empirical work in respect of legal education and the profession which, unfortunately, have no parallel in Australia. Such close detailed studies are also needed in Australia. In so far as generalization seems possible, my purpose in part is to consider the implications of Granfield's and Stover's analysis for legal education more generally, and in particular, to examine some ways in which law schools might organize themselves differently to preserve student idealism and conceptions of practice in areas other than corporate law. In a profession whose commitment to *materialism* is renowned and whose ethical record is hardly beyond reproach, an inquiry into the preservation and encouragement of idealism, different conceptions of legal practice and ethical attitudes among law students should need no further justification.

2 LAW SCHOOL: GETTING THERE

Granfield's book adds to the growing number of works dealing with the Harvard Law School experience from a law student's perspective. Over the years, we have seen a number of personal accounts such as *The Paper Chase*[7] and *One L*,[8] with perhaps the most recent personal account being Richard

[7] J J Osborne, *The Paper Chase* (1971).
[8] S Turow, *One L* (1977).

Kahlenberg's *Broken Contract: A Memoir of Harvard Law School.*[9] To my knowledge, Granfield offers us the first sustained sociological account of what befalls students when they enter those hallowed walls. The degree of literary and scholarly interest in Harvard Law School testifies to the accuracy of the comment on the dustcover that Harvard is 'more than a law school; it's a cultural icon'. A powerful feature of the Harvard experience which distinguishes it from virtually every law school in America is indeed the extraordinary amount of 'cultural capital' it confers upon its graduates; in Granfield's words, Harvard 'bestows a mantle of eminence upon all its alumni'.[10]

This undeniable feature about Harvard should incline us to be cautious in terms of drawing parallels between Granfield's observations and conclusions and our own experiences in Australia. Until relatively recently, at least, when each state of Australia possessed one, essentially local, law school, there was little reason for prospective law students to consider leaving their home state to pursue a legal education.[11] Besides the differences in state laws and rules governing admission to practice, from a student's perspective there was little evidence, for example, that law firms in Adelaide would look more favourably upon a graduate from say Sydney or Melbourne law school. An Oxbridge qualification may have provided an exception, or perhaps a post-graduate degree from another state or overseas, but generally, local legal employers were happy enough with the local product.[12] Nevertheless, the mystique that Harvard holds for many of us aside, there remains much in Granfield's book which warrants consideration in terms of the extent to which there are generic features of law school experience which influence the sorts of graduates we produce and the kinds of careers they follow.

As the title of his book indicates, Granfield makes his central concern the effect upon students of being at Harvard Law School. He does also, however, recognize that outside influences constitute a significant context within which

[9] R Kahlenberg, *Broken Contract: A Memoir of Harvard Law School* (1992). For a personal account of life at a Canadian law school, see R K Wilkins, '"The Person You're Supposed to Become": The Politics of the Law School Experience' (1987) 45 *University of Toronto Faculty of Law Review* 98. The fascination for outsiders of Harvard law school as an American institution seems endless. See E Kerlow, *Poisoned Ivy: How Egos, Ideology, and Power Politics Almost Ruined Harvard Law School* (1994).

[10] Granfield, op cit (fn 3)124. Indeed, how else do we explain the sight of adolescents and young adults strolling around Australian campuses and shopping centres in 'Harvard' windcheaters.

[11] On the patterns of law school attendance of Australian law students, see Weisbrot, op cit (fn 4)139.

[12] In Australia, as I shall argue later, there is reason to assume that for many law firms, social characteristics, rather than specific attributes of legal education (eg academic reputation of place of study, level of performance), remain a predominant consideration in the recruitment processes of law firms. While there will very often be a correlation between social attributes and the capacity to study abroad at somewhere like Oxford, the latter is relatively uncommon and so hardly a prerequisite for employment at the so-called 'prestige' big firms. This is not to suggest, however, that attendance at a prestige institution does not bestow attendant social advantages upon potential employees, whatever one's background. On the allure of Oxford and Cambridge universities for Australians, see H Trinca, 'Oxbridge Aussies', *The Australian*, Magazine, (10–11 December 1994).

the formal curriculum and teaching practices take place. While then it is a study of the socialization processes operating within a highly prestigious educational institution over a three year period, the factors at work are not purely attributable to the law school and its teachers. Even so, implicit in Granfield's argument, as indeed in Stover's thesis, is the proposition that law school constitutes an extremely powerful socializing agent, one which is strongly oriented towards, and functional in respect of, the practising profession and particularly the corporate, large firm sector of the profession. To any legal educator, this raises an interesting question, namely the potential influence she or her law school can have in the law school and subsequent career of the law student. My own feeling, while not so strong as to produce resigned indifference, is that it would be wrong to exaggerate our influence as teachers. There is something sufficiently mundane about what we do, and recalcitrant about the 'raw materials' we work with, which renders what we achieve relatively modest in nature. Any sense of marvellous alchemy about one's work is inclined to be rare, and on occasions, almost certainly delusory. Thus it makes sense to consider a range of external as well as internal factors when assessing the impact of legal education.

Admitting the Right People

In evaluating the social contribution of law schools, it would be quite wrong to ignore the contribution made by the principal 'raw material' of legal education, the law students. Little if any real attention is given to the question of admissions in either book. Who gets admitted should be enormously important. Any institution is reciprocally influenced by its members, just as it has real consequences for its members. Any law teacher who views herself as immune to student demands regarding subject content, academic standards, assessment practices or teaching style is not only professionally irresponsible but also disturbingly oblivious to often (but by no means always) subtle patterns of influence. The question of who gets admitted to law school is quite conceivably related to the career choices made by law graduates, and may influence student attitudes on such matters as helping the socially disadvantaged or law reform.

As Professor Monroe Freedman has suggested, it would be quite wrong to attribute the relative lack of law student and graduate interest in public interest legal careers and pro bono work simply to the moral failings of legal education. The social backgrounds and personal reference groups outside university of law students must bear a significant portion of responsibility for these outcomes:

> What happened, then, to all those others who entered law school with the sole goal in mind of righting social wrongs? Those people never existed. Law school did not destroy their sense of social justice, because they never had it in the first place. . . . We admit people into law school principally on the basis of their technical skill. . . . We give virtually no weight in the law

school admissions process to a candidate's manifest concern with social problems.[13]

The admissions issue is an extremely important one, with potentially far-reaching effect upon the professional outcomes question, in addition to those factors considered by Granfield and Stover. To echo the observation made by Howard Erlanger in the introduction to Stover's book, there is still relatively little systematic information about this aspect of university legal education.[14] An unpublished 1990 survey conducted by Dr Gay Baldwin of commencing law students at Monash University reached some statistical conclusions which seem to point to the predominantly and increasingly elitist nature of legal education as measured by certain social background characteristics. In terms of school attended, nearly three-quarters of entering law students (74.6%) had attended private schools (including Catholic schools), an increase since 1982 when just over sixty per cent (61.2%) of law students came from these schools. Measured by fathers' occupation, whereas in 1982, 70.5% of law students had fathers with professional, managerial or paraprofessional backgrounds, this figure had risen to 76.7 % by 1990. Perhaps the significant observation to be made here is the degree of overrepresentation measured against the incidence of these occupational groups in the Victorian population. Only 23% of males fell into this category in the 1986 Census. Monash law students thus constitute in socio-economic terms a far from representative group compared to the general population, and there are signs that they are becoming less so. This trend needs to be monitored as part of any coherent development of admission policies with an access equity position. Clearly, we need more information and discussion on these issues.

3 LAW SCHOOL: THE SOCIALIZATION PROCESS

Law School and Ideological Transformation

For Granfield, the decline over three years of law school in student interest in alternative law careers points to a powerful transformative process at work. Law students become immersed in a heady, seductive brew of personal and social influences in the law school setting, contributing to a re-orientation away from public interest work and a concern for social injustice towards a more corporate, 'professional' and 'career' set of concerns. The metaphor of 'immersion' suggests a resemblance between the law school experience and a religious ceremony of conversion, in which powerful symbols are deployed strategically to bring about a fundamental change of identity and outlook. In many respects, this is Granfield's essential argument, although he recognizes the complexities and contradictions involved in law school socialization and indeed attempts to examine the processes by which conversion is attempted, as well as the sources of resistance to them. In both respects, it certainly would

[13] Quoted in Stover, *Making It and Breaking It*, (1989) xxii.
[14] Id xxiii.

have been possible to go further than Granfield does. He might have identified with greater specificity the processes of conversion and resistance, providing a wider range of examples of exchanges and influences that lend themselves to a conversion effect, as well as giving more thought to how law schools might re-position themselves to encourage more public-spirited forms of legal practice. At times, in other words, one senses in Granfield's selection of examples and analysis the occlusion or omission of a potentially richer, more complex account of the processes at work.

Law school provides its students with a strongly *ideological* experience, Granfield suggests. Legal education exposes students to a set of symbols concerning law which portray everyday social life in particular ways. Legal education, in other words, provides an authoritative account or representation of human affairs which sets boundaries about what exists, what is feasible, and what ought to be done. While others previously have linked the persuasive powers of legal education to the loss of student idealism and to growing cynicism among students, 'little attention has been directed at understanding the ways law students make sense of and interpret their law school experiences, the legal knowledge they acquire, and their occupational choices'.[15] In particular, the connection between the law school experience and a preference for kinds of practice other than public interest practice is central to Granfield's study:

> By focusing on students' lived experiences at Harvard Law School, this book seeks to illustrate how the process of schooling and interactions with faculty, other students, and job recruiters create a student culture that emphasizes the accommodation of corporate law firm practice, and the creation of ideological frameworks that are antithetical to the promotion of social justice.[16]

Granfield thus extends an invitation to consider the methods by which one particular conception of practice, and indeed the world, is rendered dominant and legitimated by different aspects of law school experience. Given the relatively high levels of social altruism expressed by entering law students, the kind of conversion described in these and other studies is quite striking. Not surprisingly then, Granfield finds a lot of personal conflict in and between law students as they attempt to reconcile or accommodate contradictory feelings and messages in their environment.

The ideological resources and devices available in the law school setting at Harvard for students to reach tolerable, and workable, positions on personal and professional issues are perhaps what most interests Granfield. They also beg questions for teachers at other law schools about the way we treat the students under our stewardship. Because as teachers we are purveyors of legal knowledge, we contribute to a cultural code about law and lawyering which 'separates what is thinkable from what is unthinkable'.[17] It needs always to be asked in analyses of this kind, taking the present case, whether or not law

[15] Granfield, op cit (fn 3) 8.
[16] Ibid.
[17] Id 15.

teachers are willing, consenting participants in this process, or perhaps alternatively, are better viewed as unwitting 'cultural dopes'[18] participating in a greater ideological exercise. Assuming more the latter than the former, Granfield invites us to become more self-aware about what we do, to examine our contribution to the production of lawyers through our pedagogic processes and subliminal messages. The implicit as well as explicit agenda of law teaching is connected to the kinds of professional attitudes and work realized after graduation by our students. Law teachers are more responsible than they realize, he suggests.

There is nothing particularly novel in the suggestion that professions tend to operate quite conservatively in terms of the way they socialize and initiate new members to membership and rights of practice. This is certainly as true of medicine as it is of law.[19] It might be argued however, in the case of law, that the social consequences of this conservatism are more pervasive than in the case of medicine because of law's permeation of so many aspects of everyday life. In both cases though, this institutional tendency towards replication can be called the 'reproduction thesis'. Few would be surprised either that, partly as an outcome of conservative 'reproduction' processes, professionals often work in close collaboration and cooperation with the dominant social, political and economic interests of the day. For obvious reasons, this is even more likely to be true for law and business than for medicine. Economic incentives are obviously central to this alignment. We might call this the 'alignment thesis'. The significance of these tendencies in the case of law, following the assumption by law schools of the primary responsibility for training lawyers, is arguably underlined by the apparent tension between the goals of professional training and the espoused liberal humane values of the university, values reasserted in many law schools recently through the growing importance of interdisciplinary scholarship.[20] It is not easily apparent how one reaches a stable or at least predictable accommodation between norms of collegiality, specialized theoretical and craft knowledge, and disinterest (the values of professionalism) *and* a commitment to generating knowledge of

[18] This notion is taken from the work of ethnomethodologist Harold Garfinkel. It refers to the tendency in some social scientific accounts to represent individual action as highly or even completely determined by cultural influences, beyond the scope (and hence control) of the individual actor. See generally Garfinkel's *Studies in Ethnomethodology* (1967). Implicit in the use of this term is a criticism of any such account for giving insufficient weight to the autonomous capacities of individual actors.

[19] Studies in the sociology of the professions literature provide adequate confirmation of this basic proposition. See, for example, R Dingwall and P Lewis (eds), *The Sociology of the Professions* (1983); E Friedson, *Professionalism Reborn* (1994); A Abbott, *The System of Professions* (1988).

[20] A recent examination of the values of the university has been provided in J Pelikan, *The Idea of the University: A Reexamination* (1992). The relationship between professional goals and needs and current trends in legal scholarship and pedagogy has been the subject of considerable academic comment following US Judge Harry Edwards' criticism of the 'growing disjunction between legal education and the legal profession' in US elite law schools. See H T Edwards, 'The Growing Disjunction Between Legal Education and the Legal Profession' (1992) 91 *Michigan Law Review* 34. See the Symposium on this theme in (1993) 91 *Michigan Law Review* 1921. The debate generated by Judge Edwards' remarks points to the hotly contested nature of this issue now and for the foreseeable future.

social significance from a position of non-alignment and critical reflection (the values of humanities and social science research). The present law school therefore stands at a cross-roads of a kind; it constitutes a 'contested terrain' on which scholarly values increasingly challenge professional conventions and demands.[21]

Yet, at least so far, the match seems scarcely to be equal. What Granfield suggests is that this terrain is rather uneven and slanted towards dominant professional interests. The autonomy of legal education, in terms of its institutional ability and inclination to pursue legal knowledge according to scholarly principles and standards, is overshadowed by a set of structures and ideological practices which favours professional interests. While at least some law teachers recognize the reality of the 'reproduction' and 'alignment' principles and the constraints upon open-minded inquiry implied by them, Granfield seems to suggest that the odds are stacked steeply against them being able to challenge the corporate, large private firm image of 'real law practice'. His account of the processes by which professional ideological hegemony is achieved in the law school setting becomes of critical importance to an understanding of how different notions of legal practice and the social obligations of lawyers might be preserved and taught more effectively.

The picture presented of Harvard law students is somewhat diverse, but also surprisingly contradictory in nature. Its contradictions emerge in large part, Granfield says, from the nature of the socialization experience which presents students with an alien and, initially at least, hostile environment measured against what is treasured and familiar to them at the start of their law school careers. This is particularly so of the more altruistic students, for whom the adjustments to the norms of 'real law practice' present the greatest incongruity and affront to deeply held values. For these students, Granfield says, law school can be like a boot camp, one that 'attempts to dissolve a student's previous conceptualizations of the world and replace them with a set of values consistent with the ideology of professional culture'.[22]

Perhaps the most intriguing paradox is his finding that in spite of such alienating experiences, 'the overwhelming majority expressed the feeling that law school had been positive and enriching'.[23] Clearly most students, by the end of the third year anyway, experienced what law school offered them as being personally valuable. It has to be remembered in this context that a legal education at a law school like Harvard is extremely expensive by international standards, so that one could expect the student consumer tastes to be rather sharp and demanding. The paradox deepens when it emerges that more third year students viewed law school as radicalizing than first or second year students. Yet it was these very same students whose career choices were

[21] I have made this point in relation to clinical legal education. See A J Goldsmith, 'An Unruly Conjunction?: Social Thought and Legal Action in Clinical Legal Education' (1993) 43 *Journal of Legal Education* 415. I argue in that article that these positions are not necessarily incommensurable, and that there is the potential for commonalities of interest to be recognized, and hence for scholarly and pedagogical cooperation within the law school between academic 'theorists' and 'practitioners'.

[22] Granfield, op cit (fn 3) 41.

[23] Ibid.

overwhelmingly targeting the corporate legal field.[24] While we may question the degree of commitment to the socially disadvantaged produced by a Harvard law education for the majority of students, there can be little doubt from Granfield's study that vast numbers of these students were ultimately satisfied with what the school offered. How students get to this point of equilibrium forms an important part of Granfield's ideological analysis.

'Thinking Like a Lawyer'

The Pearce Committee's 1987 report on Australian legal education also dealt with the issue of law graduates' experiences and degree of satisfaction with their legal education. While many areas of dissatisfaction emerged from the findings, including an insufficient attention to skills development and the context of law, there was near consensus among those graduates surveyed that Australian law schools were successful in teaching 'how to think like a lawyer'. The aptitudes encompassed by this phrase included knowledge of substantive law, identification of legal issues, conduct of legal research, analysis of legal materials and fact finding.[25] In discovering the law as a new language, form of reasoning and set of argumentative practices, the students studied by Granfield were provided with a new set of terms and concepts which was alien and unsettling, but one that was also authoritative and which permitted new approaches to even familiar issues. This new *legal consciousness* required a different form of sense-making with profound significance. Three legal techniques, Granfield suggests, contributed to a process by which most students replaced 'a justice-oriented consciousness with a game-oriented consciousness'.[26] First, students came to recognize that legal justifications for particular case outcomes frequently emerged from ambiguous circumstances, often in which there were alternative justifications available. They came to recognize that justifications offered in support of particular outcomes often possessed no quality which was self-evident or logically defensible. In these circumstances, good arguments were ones that worked on the day, rather than ones that clearly derived from some logical or rational scheme.[27]

A second technique acquired by students involved drawing connections between cases. Law students developed a capacity to identify certain features of cases, either for the purpose of arguing a material resemblance or for the

[24] Id 43.

[25] This section of the Pearce Report is discussed in some detail in Weisbrot, op cit (fn 4) 128–36.

[26] Granfield, op cit (fn 3) 52.

[27] One recognizes in this analysis at least a resemblance to the writings of Critical Legal scholars, and neo-pragmatists such as Stanley Fish, on the indeterminacy of meaning of legal language. While for CLS scholars, the absence of intrinsic meaning threatens the rationality and legitimacy of the legal system, scholars such as Fish tend to see legal practice as a game constrained not by language or rationality in any formal or universal sense but rather by the tacit conventions of particular communities of professionals. Granfield's analysis owes more to CLS than Fish, I suspect, given the pervasiveness of CLS at Harvard during the time of his study and his reliance upon *ideological* analysis, a common hallmark of CLS scholarship. For a sense of the differences between ideological analysis and Fish's position, see S Fish, 'The Law Wishes to Have A Formal Existence' in A Sarat and T Kearns (eds), *The Fate of Law* (1991).

purpose of drawing a material distinction. Again, the question of similarity or difference in this context emerged from no necessary attribute of the cases in question, but rather from situational factors organized essentially according to which side or argument one was representing or supporting. For example, an attempt to extend a duty of care obligation to a particular set of facts would require 'finding' similarities or resemblances with the facts and circumstances of an authoritative decision of a relevant court. On the other hand, resisting such an extension would involve pointing to differences which would support distinguishing the two sets of facts.[28]

The third technique is intimately related to the first two, and concerns the ability to argue. Again, the virtues of this skill are pragmatic above all else, depending on 'winning the game'. What is right, just, true or good does not depend on any essential, logical or morally appropriate feature of the problem at hand, but whether in the circumstances the application of legal technique 'works'. Thus, a capacity to argue was linked to situational, contingent considerations. To acquire and appreciate these particular skills was to learn what it means to 'think like a lawyer'. It is, says Granfield, part of the process by which law students 'reconceptualize their consciousness in ways that are compatible with professional culture'.[29]

Granfield describes the 'culture of cynicism' produced by this 'game' view of the world. Instead of developing moral capacity and judgment, the ability to argue converse propositions, and the overarching importance of winning relative to other possible goals, leads to a sense of professional accomplishment and identification, but also, he suggests, to a certain boredom with the techniques and substance of law school offerings. What was effectively squeezed out for many students was an obvious and important connection between legal methods and social justice. This criticism is echoed in a recent article by Deborah Rhode:

> Faced with a steady succession of hard cases and unstable distinctions, students quickly learn that 'there are no answers but just arguments'. 'Thinking like a lawyer' too often translates into suspension of judgment: the result is agnosticism, relativism, or cynicism, and a retreat into role that denies personal responsibility for professional choices.[30]

Those who did not become cynical were often those who came to law school later in life, bringing with them the perspectives and concerns acquired in other spheres of life, for example as trade unionists, welfare workers or community activists. For them, law offered something of instrumental importance in the pursuit of their pre-entry social agendas. These students more

[28] Again, this technique points to the strategic character of law. In essence, this means that law can be seen as a malleable resource, at least to some extent, with the result that parties can actively engage in constructing accounts of legal meaning and significance without reference to any 'natural' state of affairs or system of values. The artificial aspect of any system of categories or classifications was a point central to several of the works of French social philosopher Michel Foucault, eg in *Discipline and Punish* (1977).

[29] Granfield, op cit (fn 3) 60.

[30] D L Rhode, 'Institutionalizing Ethics' (1994) 44 *Case Western Reserve Law Review* 665, 735.

effectively resisted the socialization effects possible with younger students by associating together, avoiding the mainstream student law school culture.

The conduct of classes and the nature of student-student interactions are also treated by Granfield as key features of what he calls the 'moral transformation of law students'.[31] In describing the dynamics between students and teachers in lecture classes, Granfield finds Garfinkel's notion of 'status degradation ceremonies'[32] and Goffman's concept of the 'total institution'[33] useful to describe the effect of the exchanges in which law teachers challenge and block students' pre-existing world-views, pushing them individually and collectively to 'think like a lawyer'. Inevitably the challenge to pre-existing perspectives and the subjection to peer and superior pressure resembles in part at least a degradation and accommodation of one's identity in the face of the forceful demands of a new institution. At issue, it emerges from Granfield's analysis, is the pervasiveness and power of the so-called Socratic method, in which students are called on by the teacher to explain and analyze issues before the rest of the class.[34]

While it is only possible to infer its significance in terms of altering the way law students see the world, Granfield is able to link this style of teaching and classroom interaction to a common in-class practice among students of 'turkey bingo'. Here we see the real power of informal student censure regarding forms of class discussion that do not conform to established ways of 'thinking like a lawyer'. Indeed, silence seems to be the preferred objective for those playing this particular game. Students prepare bingo cards containing the names of students thought likely to speak out in class. The first person to cross off their students' names on their cards indicates the outcome by a pre-determined signal that the game is up.[35] Such interventions in class were generally disapproved of by other students because of their perceived cognitive and moral 'lack of fit' with the terms and values of the 'legal mind'. Acceptance or acquiescence, or at least the appearance of deference, towards the authority of the class teacher is necessary in order to avoid attention of this kind. As Granfield notes, this represents a pretty effective form of collective intimidation for those whose ideological positions are not strongly established. In such an environment, intellectual conformity is coercively encouraged, rather than arrived at through a process of open dialogue and persuasion. It would be interesting in the Australian context to conduct an empirical study of informal student-centred socialization processes inside and outside the classroom to explore whether similar silencing procedures were at work.

[31] Granfield, op cit (fn 3) 72.
[32] See Garfinkel, loc cit (fn 18).
[33] E Goffman, *Asylums* (1961).
[34] This version of the Socratic method came to characterize the intimidatory atmosphere of first year law school in *The Paper Chase*, and other first-hand accounts of law school life. See eg fn 9 supra. Duncan Kennedy sees it as an integral part of the socialization process of law school education in which the law school prepares students for a life of diligent (and yes, often well-paid) servitude. See D Kennedy, 'Legal Education as Training for Hierarchy' in D Kairys (ed), *The Politics of Law: A Progressive Critique* (1982).
[35] Granfield, op cit (fn 3) 81.

Learning 'Real Law' in an 'Unreal' World

One of the most interesting discussions in Granfield's *Making Elite Lawyers* concerns the transformation of law student conceptions of what law is and its relationship to the outside world. Here what is striking about the changes effected in law school is the very narrow conception of relevant attitudes, values and skills. As the student learns to 'think like a lawyer', her ideas about relevance and connection to real life issues become progressively attenuated and circumscribed. Ironically, as the students acquired what Granfield calls an 'ideology of pragmatism', students increasingly shied away from open, explicit involvement in and career commitment to non-corporate work, defining 'real legal work' and the types of subjects useful to practice in academically narrow terms. Even summer jobs became opportunities to move into a particular form of practice with an eye to future job opportunities. Law school subjects which did not further these aspirations appeared irrelevant; indeed the book's very failure to address the poverty law clinic at Harvard and its contribution to legal education at that school might well indicate its marginal significance for most students. 'Pragmatism' among the students, it would appear, is not something that stoops to developing a wide range of legal skills or social applications for those skills apart from those which are conveyed by conventional classroom teaching. People skills presumably are confined to knowing how to interact with a very select group. This, apparently, is 'real law' Harvard style.

'Turkey bingo' was just one, informal group learning tactic by which boundaries to legal discourse became defined and reinforced. The Socratic method of class interrogation and the general climate of fear in first year subjects also added to this emergent sense of 'realism'. What is remarkable is how these alienating and frightening experiences get re-interpreted by law students, resulting in the absorption of a collective identity as 'professional'. In place of confusion there is inserted an appreciation of complexity, which is seen by the student as the acquisition of legal professional competence. To quote one of Granfield's students:

> I have begun to question some of the things I thought were right and good. I have begun to see more gray areas. Things are much more confusing than they once were. I don't see this as indoctrination, but a learning and developing process.[36]

Following Goffman, Granfield suggests that the changes occur over time and gradually; the production of a professional identity is 'less a matter of measurable changes than an ongoing process of redefining social situations'.[37] Law students become unwitting as well as witting interpreters at law school. In the process, a 'pragmatic' or 'realist' world-view shared with other law students replaces previously held, 'simplistic', even 'naive' perspectives.

As Granfield notes, one dimension to the re-interpretation process involves the capacity to draw distinctions between one's personal, subjective views

[36] Id 83.
[37] Ibid.

and preferences and the views and attitudes appropriate to professional behaviour. There is an implication or message contained within legal discourse that the two realms are essentially distinguishable and discontinuous. The formal subordination of professional role to client interests, permitted by this separation, however is not total in every case; the lawyer culture within and outside law school recognizes the appropriateness of forms of public interest law. But what constitutes the 'public interest', Granfield tells us, undergoes a substantial re-definition. Often, it becomes a spare time activity, something to be fitted around a 'real' legal career. In other cases, medium or large firms undertake a small number of prominent cases on behalf of plaintiffs in sometimes controversial areas of law, permitting students and young lawyers to rationalize the dual nature of their espoused commitments. Indeed, it would appear, some recruiting firms recognize the pertinence of work of this kind to new members of the profession, enabling them to explain to prospective employees how it is possible to practise public interest law in a corporate law firm.[38] For the ambitious, but troubled, liberal student with some measure of social conscience, this must prove very welcome news indeed.

Gender in Law School

Access to legal education and the profession arises as an issue in Granfield's work in respect of the particular impact of law school upon women and persons from working-class backgrounds. The issue of gender is highly pertinent to analyses of legal education today given the high numbers, even majorities, of women among law students at Australian law schools.[39] It is only within the last decade or so that women have ceased to be a clear minority of law students. It will surprise few to learn that women more than men in Granfield's study became more interested in social change, viewed themselves as radicalized, and developed a stronger sense of empathy by reason of their law school experiences. Similarly, women students were more inclined to find the classroom experience oppressive than men, and to regret the lack of emphasis on issues of social inequality in legal analysis. A substantially higher proportion of women than men found law disabling in terms of developing competence in social justice concerns.

However, the gender issue is more complex than this. There was a substantial number of women law students who found law school aggressive in certain respects but still fundamentally fair and empowering. These students are referred to as 'equity feminists', in contrast to the 'social feminists' who were inclined to view law school as essentially sexist and dehumanizing.[40] A recent study of women's experiences at the University of Pennsylvania law school adds some interesting material to the debates in this area. The Pennsylvania study also found that there was a significant proportion of women

[38] *Id* 90.
[39] At Monash, women have constituted the majority of law students since 1989 (Statistics compiled by my colleague, Peter Balmford).
[40] Granfield, op cit (fn 3) 106.

students who accepted the messages given at law school. In fact, like Granfield's study suggests about the type of changes in student outlook over time, women's tolerance of the medium and the message increased between first and final year:

> First year women students report the most discomfort.... Third year women report an increased tolerance and decreased awareness of gender bias, while the responses of the men remain stable from their first to third years. By their third year, women are far less concerned with gender tensions and more likely to report that faculty and peers are 'sensitive' to issues of gender.[41]

While the authors still conclude that the law school they studied presents 'a hostile learning environment for a disproportionate number of its female students', caution needs to be exercised in drawing adverse inferences concerning the overall role played by law schools in the light of these findings. Some good things are happening, it would seem. We need to better understand the ways in which gender bias is being addressed successfully as well as unsuccessfully at law schools for the purposes of making any further changes in this area.

While gender concerns are now better acknowledged and addressed in law schools and law firms, because of the relative success of equity feminists and some social feminists in gaining places at law school and in firms, the seductiveness of 'thinking like a lawyer' as well as the status hierarchy provided by the legal profession keeps the pressing of gender issues within manageable limits. Although Granfield suggests that the gains made by women in law school and practice have been considerable, they have tended not to be at the expense of the fundamental definitions of legal work and the distribution of material rewards. Hardly surprisingly, women have advanced furthest by accommodating themselves to the conventions of predominantly male legal practice.

Class Betrayal

One group for whom perhaps the cultural experience of law school demands the greatest adjustment is working-class students, by whom Granfield seems to mean persons from the 'lower social classes'.[42] A surprising omission from a book of this kind by an American sociologist is a specific analysis of race; equally surprising these days is that Granfield seems to treat the notion of 'working-classness' as essentially self-evident and unproblematic. Presumably in his view, the feelings of personal inadequacy and 'identity ambivalence' he found among so-called working-class law students would also extend to black or native students, yet we can only guess about this from what he gives us. Certainly there is no specific treatment of race issues which might enable distinctions to be drawn from issues of socio-economic status. What makes working-class students of particular interest to scholars of law school

[41] L Guinier, M Fine, J Balin, 'Becoming Gentlemen: Women's Experiences at One Ivy League School' (1994) 143 *University of Pennsylvania Law Review* 1, 59.
[42] Granfield, op cit (fn 3) 111.

socialization (such as Granfield) is not just that law school offers the prospect of social mobility and hence will involve profound processes of identity change. What is clearly more intriguing to him, yet which remains largely implicit in the study, is the fact that a group of students from relatively deprived backgrounds should seek to join their social 'betters' in highly paid, corporate legal work, rather than use law school and legal practice as a means of redressing social problems and inequalities at a grass-roots level.

According to Granfield, working-class students are twice as likely as other law students in their first year to cite altruistic grounds as their primary reason for attending law school. The process by which many of these students begin to shed their obvious class connections and to emulate the mores and attitudes of the middle-class students becomes a central consideration. While this process of identity reconstitution is surely interesting, the study does not attempt to explore the fact that the overwhelming majority of working-class students (61%) did not list altruism as their primary reason for choosing law school. Roughly a third of all students, working-class as well as upper and middle class students, cited material rewards as their primary motive. Nearly two-thirds of working class students were unlikely from the very beginning to share the sorts of concerns that Granfield implicitly regards as 'normal' if not indeed 'appropriate' in some sense for students with these class origins. In other words, the 'moral transformation' of working class law students had already occurred, in most instances, before they crossed the law school threshold.

While access to legal education is not a central concern of the study, and would require indeed its own study because of the complex issues it raises, it cannot be ignored entirely in a book which problematizes the failure of law students to commit themselves to public interest law. We must evaluate the social role of law schools very differently, and more fundamentally, once we accept the premise that the overwhelming majority of law students, while often initially disoriented by legal discourse and law school, is conspicuously predisposed at the point of entry towards the conventional values, attitudes and aspirations of the legal profession. Judgments of institutional failure, and consequent calls for very different forms of legal education, become more difficult in a climate of ready and unquestioning conformity. If the failure of the legal profession as a whole to address issues of social injustice concerns us, we must consider very closely those factors which incline working-class students to the selection of law for reasons other than altruism. While the attractions of materialism are obvious enough, the degree of 'forgetfulness' practised by these students towards their class origins remains nevertheless intriguing. Those who wish for a greater 'social justice' orientation among law students must attempt to understand this phenomenon, especially in the light of recent attempts to increase access equity by many law schools. Granfield's findings suggest that we may be quite wrong in some of our assumptions on this issue.

Keeping Up Appearances

The moral dimensions of legal practice aside, Granfield tells us, legal practice for students becomes all too quickly and self-evidently a game. It matters little whether one sees law practice as craft or science; it becomes clear to students that success in such an interpersonal and interest-laden activity depends upon the ability to perform tasks in ways clearly recognizable to other players (conceptually and procedurally), ways that are purposeful yet also artful. It does not pay to be completely transparent about motives or likely strategies, for one can count on the gamesmanship of others involved to take advantage of such openness while failing to reciprocate in terms of motives, intentions or opportunities. Complete openness and honesty in this sense was quickly understood to be antithetical to one's client's interests.

The skills of feint and brinkmanship come to define the essence of many legal competencies. Rhetorical abilities divorced from discussions of moral significance, and indeed social consequence, are quickly valued. Granfield's account of the acquisition of modes of legal reasoning in classroom discussions fits this pragmatic account of legal practice quite closely. Cases were discussed in radically decontextualized ways, the primary objective appearing to be the reconciliation of particular decisions and factual circumstances with the general fabric of law. Intellectually, many students found this exercise ultimately stimulating, but game like in its inattention to real-world consequences and its adhesion to ritualistic moves. 'Taking sides' becomes like joining a sporting team.

Part of the 'game' for working-class students at least, lay in pretending one's origins are other than they are. Law school was experienced by them as more stressful and they expressed greater feelings of inadequacy. Granfield describes the initial feelings of some working-class students as being a kind of 'stranger in paradise' syndrome,[43] as they harbour feelings of unfamiliarity and remoteness. While this might be thought likely to propel many students towards either proving themselves through examination success or dropping out, at Harvard, according to Granfield, they learn to 'make it by faking it'.[44] 'Faking it' requires a process of behavioural change, involving 'learning the values, dispositions, and manners associated with the elite environment in which they find themselves'.[45] There was perceived stigma in being known to be different in terms of origins, Granfield observed. Thus many students engaged in 'impression management' in order to conceal their presumed and actual differences from those they wished to join. Standards of attire and grooming became relevant, as did other personal attributes which can convey social membership.

Such behaviour, as inauthentic and regrettable as it might seem, indeed is also intelligently adaptive. Students being interviewed for jobs discovered the importance placed by prospective employers upon 'fitting the culture' of the firm in question. A capacity to recall or locate formal legal knowledge was

[43] Id 119.
[44] Id 115.
[45] Ibid.

taken for granted. Instead stress was placed on topics by which interviewers might ascertain the social character of the student. For obvious reasons, working-class students found interviews based around these issues rather threatening, and particularly frustrating given the sense of merit and achievement such students are entitled to feel by reason of their membership of the law school community. As a former state school student among a predominantly private school based student body at law school, I can recall the intense frustration I felt while being interviewed for articles at one of the 'establishment' Adelaide law firms. In response to questions from a senior partner, I could not claim close connection to a well-known sharebroker with the same surname, nor could I admit to playing particular sports at school, such as cricket (I preferred tennis), football (I played hockey) or rowing (my school did not offer rowing). These were all sports traditionally offered and valued by private schools. In these and probably other ways, I suppose I must have sufficiently demonstrated my lack of 'fit' with the corporate culture of that firm, for no offer of articles was forthcoming. This was my first lesson in the sociology of lawyering. Formal legal knowledge constitutes only a small part of being a lawyer. More important is *belonging*, or at least *appearing to* belong.

Fortunately at least for working-class students at Harvard, they are complemented in their efforts at 'impression management' by the 'collective eminence' bestowed on them by reason of being *Harvard* law students. Granfield's study makes interesting reading regarding the extreme degree of privilege in terms of access to potential employers provided by the Harvard mantle. In contrast to the normal situation facing Australian law students seeking employment, law firms chase Harvard students by having, first, to negotiate with the law school authorities for interview access *at the law school.* Law firms seeking Harvard recruits must agree to interview every second or third year student who puts his or her name down for an interview. Having agreed to this framework, *the law firms* can then arrange interviews. Perversely, this collective identity and sense of superiority across class lines is forged, Granfield suggests, through a process of symbolic rejection of the character of their law school experience. Like soldiers who survive a horrific battle, a sense of bonding among students emerges from the shared nature of the stressful experience presented by law school. Survival is a mark of inherent superiority and a guarantee of a destiny of greatness. It must seem only fitting then to these students that law firms should kneel down before them in this way.

4 JOINING THE PROFESSION: INSIGHTS AND ACCOMMODATIONS

Redefining Public Interest

Having addressed the widespread student orientation towards corporate private law practice, Granfield spends considerable time examining how actual choices of firms and jobs gets reconciled with previously or concurrently articulated interests in public interest law and social justice concerns. Here he invokes the social psychological notion of *cognitive dissonance*[46] to try and capture the sense of ambivalence and tension felt by many involved in decisions to do with career. In order to cope with contradictory feelings and conflicting interests, Granfield notes, law students have resort to what he calls 'contrary linguistic repertoires for talking about their [legal] life'.[47] Avoiding the perception that one had sold out and that money had become a major preoccupation were central elements of the 'ideological work' undertaken by law students in coming to terms publicly and privately with career choices. Constructing pejorative stereotypes of law students and attributing them to others (but *never* oneself) became one important strategy. The 'corporate tool' stereotype was the example often used to distinguish one's own position in a favourable manner. Few if any students admitted to any of the hallmarks of this stereotype: a commitment to naked greed as a motivation for practice, and a preparedness to subordinate oneself completely to the demands of one's firm.

Several justifications were mentioned by students in accounting for their preference for corporate practice. The range and cogency of explanations offered testify to the considerable articulacy and rhetorical skill one might well expect of Harvard law students. Necessity was a common justification. Amassing debt through student loans loomed large in student explanations for choosing corporate practice. They claimed the size of their debt left little or no alternative. This may soon happen in Australia. With talk of introducing or increasing fees for courses in Australian universities and the present reality of an education tax (through the Higher Education Contribution Scheme) on undergraduate and postgraduate students, a 'consumer' mentality towards education among Australian students may well flourish, and conceivably permit similar rationalizations by law students for not choosing

[46] 'Cognitive dissonance' may be explained as the psychic discomfort felt through the recognition of inconsistencies in one's cognitive field. An example is knowing that smoking is bad for one's health, yet continuing to smoke. Another case might be a lawyer with socialist ideals, who works for a law firm representing landlords engaged in evicting tenants. The theory of cognitive dissonance hypothesizes that cognitive inconsistency of this kind, or *dissonance*, causes discomfort and will incline the person to try and find ways of avoiding dissonance and achieving *consonance*. It is further suggested that persons experiencing cognitive dissonance will actively avoid situations (people, information etc) which reinforce awareness of the inconsistency causing discomfort. The guilty smoker will tend to keep her habit a secret, or only associate with smokers; as for the socialist lawyer, he will probably seek another job, or may instead, as an interim measure, approach his job in a desultory way. See L Festinger, *A Theory of Cognitive Dissonance* (1957).

[47] Granfield, op cit (fn 3) 144.

public interest jobs. But necessity is not the parent of *all* invention. As Granfield points out, a high income job after graduation fuels more than just a capacity to repay debt; it also permits an up-market lifestyle which tends for many people to form a measure of social worth.

Another rhetorical device available to students was the view that it is possible to be more effective on behalf of social change by working within a corporate law firm. The networks to which such firms can offer their employees access give credence to this claim in a society which, it has been observed, understands itself largely in terms of interest group pluralism.[48] Of course, it remains uncertain how many law students who phrase their career decisions in these terms actually go on to exercise the sort of influence they foreshadow when joining corporate firms. One suspects that the road to corporate legal success is littered with discarded noble intentions. Corporate loyalties, professional pressures and self-interest without question erode altruistic motivations. This is an example of an area raised by the book's analysis which would bear further detailed examination. Granfield is clearly (and rightly) sceptical about the outcomes that follow from these accounts. In response to a black law student who stated he thought his money and position from practising corporate law would enable him to act in a fairly free way to assist black people, the author tersely suggests: 'while this student may engage in public service activities as a corporate lawyer, it is unlikely that such activities will threaten the values of corporate America'.[49] It would seem nevertheless beneficial for legal scholarship to concentrate more on the forms of corporate legal practice, to discover more about how and why the activities of corporate practice reinforce rather than challenge predominant values.[50] Until a solid, empirically informed understanding of this kind is available, students will remain vulnerable to the existing folk mythology about corporate practice. Equally, law teachers committed to promoting diverse forms of practice will continue to run the risk of being beholden to blunt, inaccurate representations of their students' most favoured choice of practice.

[48] Lobbying by large corporations and interest groups is a pervasive, high budget exercise at the federal level in the US, compared to Australia. The influence of these entities upon federal policy in many areas is undoubtedly assisted by the more frequent practice (in the US) of exchange of personnel between the private sector and government.

[49] Granfield, op cit (fn 3) 155.

[50] Robert Gordon, in his review of Richard Kahlenberg's *Broken Contract*, takes issue with knee-jerk critiques of law student preferences for corporate law practice, making the point that such criticism is ill-informed and insufficiently discriminating unless it is based upon a close understanding of what exactly it is corporate lawyers do. Gordon continues:

> Surely this is exactly where knowledge is most needed — students need help in discriminating among firms and between firms and other job sites. The most important ethical and social choices a lawyer makes in her lifetime are the choices about what kind of work she will do and what kinds of interests for which she will work. . . . Why, for example, is it more valuable for Kahlenberg to work in the 'public sector' than for a firm? Without the necessary specific descriptions of lawyers' practices, it is hard to understand why working in the public sector would be more valuable, as Kahlenberg plainly thinks it would be.

(Gordon, 'Bargaining with the Devil: Review of Kahlenberg, *Broken Contract: A Memoir of Harvard Law School*' (1992) 105 *Harvard Law Review* 2041, 2057).

Getting 'Good' Work

Another revelation concerning how students explain career choices was the importance attached by Granfield's students to professional development, in particular to obtaining 'good legal work' and belonging to 'good firms'. Students placed great importance upon the kind of legal work offered by corporate firms because of its perceived importance and contribution to the development of a sense of legal competence and craft. 'Good' firms were those that offered an attractive blend of socially conscious work and regular corporate work. This rationale in student thinking about jobs is consistent with a more disturbing finding by Granfield that Harvard students 'often feel ill-equipped to practice law'.[51] There was a widespread perception among students of the inadequacy of law school preparation for prospective practitioners, and of the need to supplement it as quickly as possible. The deficiency was seen to lie especially in the traditional skills associated with handling cases and running trials. The larger firms were seen to offer superior training facilities for remedying these deficiencies. Thus the decision to work in a corporate legal environment offered a solution to the ideological tension identified by Granfield, by appealing to the training inadequacies of law school as a justification for this course of action.

How valid these projections about corporate practice would turn out to be if studied empirically is another question that may be answered in the future. Granfield expresses doubt regarding the amount of supervision many new corporate lawyers receive, but chooses to focus instead on the potency of the belief among law students that corporate environments provide superior instruction. Nevertheless, how such a widely shared belief could survive a conspicuous divergence between claim and experience is not considered. Nor is it readily apparent that public interest law practices are generally able to offer superior opportunities for supervised on the job training. Enormous workloads and diminishing resources characterize public sector legal jobs as least as much if not more than private practice. As anyone with experience in community law centres can attest, the pressures upon staff usually vary between considerable and enormous, and 'burn-out' is common. In such an environment, the concept of careful instruction of new employees with an eye for the development of true legal craft and appropriate professional values is not just unrealistic; it also seems crazy. This consideration, of course, is additional to the relative paucity of such positions, which imposes an even greater constraint upon job selection.

Thus it is far from clear that the rationalizations offered by students so ill fit the apparent realities as to make them totally senseless. By concentrating upon the pervasiveness and strength of these beliefs, as well as their consequences for the types of practice chosen, Granfield fails to address the accuracy of these beliefs, and hence to consider how justifiably constraining law students experience their career choice situations. His analysis tends to reveal a deep theoretical scepticism towards the answers offered, as if they

[51] Granfield, op cit (fn 3) 160.

merely concealed a fairly untainted self-interestedness towards the practice of law. There is a detectable reluctance here by the researcher to empathize with the subjects of study. While Granfield's ideological analysis is openly indebted to the work of the Frankfurt School,[52] and thus purports to recognize the social construction of all knowledge claims, his account lacks phenomenological depth. Granfield in many respects assumes the social reality against which he explores the 'ideological work' of his law student subjects. The unexamined reality behind this study is that corporate law firms exhibit an essentially singular form of professionalism that is 'compatible with corporate and entrepreneurial interests'.[53] While he accepts Gramsci's point that the hegemony of any system of ideas is never complete and must be re-worked and argued constantly, law students and, it would seem by implication, practitioners remain for him pretty much 'cultural dopes' of professional legal ideology. The fundamental orientation and ideological pull of corporate law practice are never really in doubt for Granfield.[54] Student concerns about indebtedness and the importance of developing craft skills seem real enough to me to warrant a less dismissive approach than Granfield accords them; for him, these explanations simply exist as examples of 'rudimentary ideological parlance' acquired in law school.[55]

5 GETTING OVER, AND GETTING ON WITH IT

Re-assessing the Law School's Position

Putting to one side the role played by the job market and the characteristics of entering law students, the progressive disinclination of law students towards public interest forms of practice during law school raises important questions about the role of the law school. As Rhode recently observed, 'each law school models, or fails to model, professional values along multiple dimensions, and the ethics it practices [sic] are not necessarily those it professes'.[56] Do law schools deliberately display little sympathy or patience for public interest practice in the curriculum or scheduling of classes? Or is the law school's contribution more subtle than this? If it is more subtle, how does it operate? What is the constellation of policies and practices which leads to this result? Is it attributable to the effects of professional ideology as suggested by Granfield, or are the choices and inclinations of law teachers less cohesive, and more situationally determined, than an ideological analysis might suggest? If we are to reach a better understanding on this question, we need to look more deeply at the overt and covert institutional commitment of law schools (curricula, hiring, teaching policies, research policies, admission procedures, relationships with the profession etc) as well as at the teaching

[52] Id 2.
[53] Id 167.
[54] Compare Gordon, fn 50 supra.
[55] Granfield, op cit (fn 3) 203.
[56] Rhode, op cit (fn 30) 734.

philosophies and practices of law teachers. The coincidence between the phenomenon of 'surviving law school' and giving up on public interest practice ought to both intrigue and concern us as teachers.

Stover, like Granfield, points to the considerable force in the messages disseminated to students by practising lawyers and other students. The law school as mentor, role model and teacher must compete with some powerful alternative sources of influence and instruction. In a field of different perceptions of public interest practice, Stover concludes, the profession and students more effectively purvey the myth of public interest ineptitude than law schools.[57] Even so, it is questionable how far law schools in the US or Australia go in effectively promulgating the virtues and opportunities of this kind of practice. Granfield's comparison of students at Northeastern University with Harvard law students found a striking degree of similarity in both orientations to career and practice *and* law school policy and administrative attitudes. At Northeastern there was found to be a 'cultural and ideological struggle' between the school's foundational commitment to social activism and the pressures to offer a conventional law school curriculum. This resulted in Northeastern policy adopting a 'both ways' perspective on curriculum offerings and career options.[58] In other words, conventional legal opportunities as well as public interest careers were made available.

For Stover, the failure by law schools to better promote public interest law cannot be attributed to deliberate policy. Rather, he suggests, it is an example of 'demand-responsive neglect', in that 'the law school would increase its meagre public interest emphasis if student demand justified it'.[59] However, given an absence of demand of this type, it becomes, in effect, the 'default setting' of law school curricula and related policies that becomes powerfully determinative in terms of what students do get exposed to and come to regard as normal, a point well made by Stover:

> In the meantime, students learned very little about public interest practice unless they made special efforts to interact with the small number of professors, courses, or student organizations likely to provide the relevant information. In contrast, they learned a great deal about conventional business practice, unless they made deliberate efforts to avoid the profusion of information on that subject.[60]

Without deliberate policies and actions directed towards diversification in legal education so far as models of practice are concerned, it seems from this analysis that law schools effectively license and 'normalise' corporate law practice as the preferred or superior professional model. In Australia, it might be said, we are even further disadvantaged in responding to this challenge,

[57] Stover, op cit (fn 13) 87.
[58] Granfield, op cit (fn 3) 197.
[59] Stover, op cit (fn 13) 87.
[60] Ibid.

in that we lack conspicuous examples of public interest law schools and articulated pedagogical philosophies for such an orientation.[61]

One question raised by Granfield's conclusion (and implicit in Stover's analysis) is just how possible is it for a law school committed at some level to public interest forms of practice to tackle the combination of structural and ideological factors that push most law students towards broadly commercial kinds of practice? How can law teachers confront, and at least substantially modify, the self-interested notion of 'legal justice', with its ethic-less sophistry and gamesmanship attitude towards the practice of law? How might we avoid producing, as Granfield puts it, 'dubious advocates for less powerful groups in society'.[62] The deep-seated nature of this challenge does not escape either Stover or Granfield, yet there is something more impatient, more categorical, and less-developed in Granfield's response than in Stover's. Loan forgiveness schemes and mandatory pro bono requirements for graduation seem important yet obvious suggestions. It is also difficult to disagree with Granfield's suggestion that ways need to be found to make law schools less insular learning environments.[63] By this is meant providing students with greater exposure to interdisciplinary scholarship, rather than granting greater access to the mainstream practising profession, whose influence is already substantial. However, Granfield urges us to go much further than this:

> Promoting greater public interest commitment may involve not only challenging the values of the legal profession, but those of the larger society as well. Such efforts, in the long run, would benefit not only America's unrepresented population, but would also allow individual lawyers to fulfil their idealistic goals and, by so doing, elevate the public image of the entire legal profession.[64]

The relationship between the legal profession and the community is a matter of almost continuous debate, and is frequently characterized by controversy. As well as the discussions generated by television programs such as *LA Law*, accounts of lawyers' shortcomings in the media are not hard to find. In response to Granfield's exhortation, however, it does seem rather overdrawn to locate the role of the law school too centrally in explaining this predicament or in solving it, by seeing it as a significant engine of social change. Our per-

[61] The notion of 'public interest' is not as pervasively employed or understood in discussions of legal practice or education in Australia as in the US, or indeed the UK. Recent literature on this topic includes J Chambers, Greenberg (eds), *Public Interest Law Around the World: Report of a Symposium held at Columbia University in May 1991* (1992); K O'Connor, L Epstein, *Public Interest Law Groups: Institutional Profiles* (1989). On public interest law practice from a UK perspective, see J Cooper, R Dhavan (eds), *Public Interest Law* (1986). Thus, it is not surprising that no Australian law school should have overtly aligned itself with public interest law practice, in contrast to such US law schools as New College, San Francisco and the former Antioch law school, Washington DC. For a realistic, but hopeful address to law students on public interest law, see L Cole, 'The Crisis and Opportunity in Public Interest Law: A Challenge to Law Students to be Rebellious Lawyers in the 1990s' (1994) 4 *Boston University Public Interest Law Journal* 1.

[62] Granfield, op cit (fn 3) 201.

[63] Id 207.

[64] Ibid.

sonal preferences, enthusiasms and opinions aside, countering the structural and ideological pressures upon law students to adopt a corporate law world-view cannot feasibly remain the sole responsibility of law schools. A broader strategy, involving public education at an earlier stage in life in notions of legal citizenship and stewardship, is required. However, strategies and tactics of resistance to this powerful tendency, of the kind described by Stover and Granfield, still need to be considered if law schools are to avoid uncritical collaboration with the current legal 'establishment'. For example, among growing concerns about the inadequate attention given to ethical training of lawyers, there potentially lies support for the view that legal education should offer its students more altruistic, value-centred conceptions of legal practice.[65] Access to justice is also re-entering the political agenda.[66] As legal aid systems struggle and falter, as legal need among the middle-classes as well as certain ethnic and language minorities becomes more evident and compelling, questions about the current division of labour, ethical orientations and work priorities of members of the profession are likely to become controversial. In this context, a re-examination of the lawyer-client relationship becomes necessary. In Australia, it may be argued, we have been far too slow in structuring theoretical, moral and practical issues in legal education and training around this crucial issue.[67] A re-orientation of legal education around this theme, supplemented by an awareness of unmet legal need, might well provide support to those whose inclinations naturally favour public interest practice, as well as help imbue other students with greater public-spiritedness in their professional lives.

A Public Interest Culture

A starting point ought to be the creation of an environment at law school in which alternative models of legal practice are encouraged and developed. Without such an environment, as both Granfield's and Stover's studies suggest, there is little chance that students with anything less than iron-clad commitments to public interest practice will be able to resist the stringent structural and cultural demands to conform. Not surprisingly, those students who were best able to preserve different conceptions of legal practice in law school were those who joined alternative law student groups such as chapters of the National Lawyers' Guild, an organization with a social activist policy and program. In addition to offering general peer support to students who did not aspire to corporate law practice, these groups introduced students to members of the profession who offered different role models to those prevalent in corporate practice. Given the potency for law students of practitioner

[65] See A Kronman, *The Lost Lawyer* (1993).

[66] See, for example, the recent report (May 1994) by the Sackville committee on Access to Justice.

[67] The lawyer-client relation has generated a wealth of pedagogical literature in US legal education. Perhaps the best known text is D Binder, P Bergman, S Price, *Lawyers as Counselors: A Client-Centred Approach* (1991). In Australia, we are only just beginning to see the development of advocacy materials, so that our own client interviewing materials seem still some way off.

role models as authentic, credible examples of what it means to 'be a lawyer', contacts of this kind are immeasurably important.[68]

Another source of strength in preserving student commitments to alternative careers and values lay in identifying with a physically removed reference group.[69] In a country like Australia, where most law students attend law school in their home cities, this possibility is more relevant than in the US, in that students are not confined to mixing with their law school peers. However, the active contribution of the law school itself is still required, and should go beyond simply the toleration or encouragement of groups such as the National Lawyers' Guild in its midst. The fact is that students who live in or close to home during law school are particularly likely to be exposed to messages from parents, family friends etc about the world and legal practice which very often will be consistent with the corporate world-view. Law schools, as part of universities, owe it to their students to challenge these orthodoxies, in part by demonstrating the existence, strengths and weaknesses of different possible approaches to practice. The failure by university law schools to provide viable alternatives to dominant conceptions of practice is tantamount to an abnegation of its scholarly and pedagogical responsibility.

In other words, law schools should be doing more to encourage what Stover calls 'public interest subcultures'.[70] We know from sociological studies of youth and other community subcultures that these subcultures offer a variety of interpretations and alternative perceptions of the world which render the adoption of a minority or otherwise unconventional approach to life more tenable.[71] These alternative accounts form a resource, in addition to peer support, which permits sense-making of one's context in a particular field, and hence survival, whether that field be petty crime, truancy, marijuana smoking or the practice of law. Through the introduction of clinical programs in poverty law and other areas of public interest practice, requirements of public interest placements and/or pro bono legal work for graduation, and an active speaker program from members of the public interest communities,

[68] This point was brought home to me in a discussion with Peter Gabel, President of New College, San Francisco, in September 1994. New College Law School places particular emphasis upon its students developing supportive, mentor-like relationships with members of San Francisco's extensive progressive legal community. New College is perhaps unusually fortunate in having such a community of practising lawyers on its doorstep, whereas similar schools in other cities may not be so lucky. Nevertheless, if alternative models of practice are to have any prospects of appealing to students, links of this kind seem crucial. The viability of non-conventional legal education is sufficiently challenged without neglecting potential alliances of this kind. It should be added that relationships of this kind might well prove mutually supportive, in as much as law school facilities (including student labour) could be made available to assist in the conduct of some cases, eg test cases where there is otherwise a dearth of resources to mount a case.

[69] Stover, op cit (fn 13) 105.

[70] Id 109.

[71] Howard Becker's study of marijuana smokers, *Outsiders: Studies in the Sociology of Deviance* (1963) is a seminal study of this kind. On subcultural theory more generally, see M Brake, *Comparative Youth Culture: The Sociology of Youth Cultures and Youth Subcultures in America, Britain, and Canada* (1985) and D Hebdige, *Subculture: The Meaning of Style* (1979).

law schools might begin to fashion a credible alternative or alternatives to the corporate world view.

Through scheduling, promoting and resourcing decisions of this kind, law schools can begin to challenge the orthodox account of worthwhile forms of practice, as revealed by these two studies. For example, it should not be the case that corporate or commercial subjects are routinely timetabled to fit in with compulsory subjects, while students interested in other subjects find it nearly impossible to fit their preferences in with their compulsory classes. Much greater flexibility is needed here. By according institutional recognition and legitimacy to the alternatives outlined, law schools publicly endorse approaches to practice that are self-consciously social in their orientation. By their very divergence from dominant forms of practice, these alternative models would inevitably pose different questions about the professional responsibility of lawyers to the community at large as well as to their clients when engaged in different forms of practice. Strategies of this kind enable law schools to avoid the inexcusable error of uncritically contributing to the reproduction of current professional attitudes and practices.[72]

A number of these suggestions fit with Stover's exhortation that law schools lead by example by 'demonstrating to their students and to the private bar a commitment to serving the underrepresented'.[73] For example, Stover suggests, faculty as well as students might do some pro bono practice or participate in some other form of public interest work. Law students are unlikely to find alternative professional role models among faculty members without some demonstrable commitment by faculty to community-based forms of practice, whether it be in the fields of corporate, welfare or some other area of law. A requirement or deliberate policy of encouragement of this kind might therefore openly recognize a broadened notion of practice, one not confined to membership of a firm or a legal service, but nevertheless tangibly linked to the provision of legal assistance and guidance to the law-needy.

Law teachers might object, however, that they are already engaged in such work. It might well then be asked how their involvements influence their teaching, and whether the techniques and values of their particular practices enter the classroom for the purposes of discussion and analysis. In other words, law teachers should be encouraged to enunciate the connections between values and actions in legal practice, in ways that connect to their pedagogical activities. Law teachers should deliberately address questions of practice in their teaching, introduce 'real life' examples into class discussions, and point out the rich but often recalcitrant factual context that surrounds actual case law and legal disputes. It is also necessary to bring into account the ethical as well as technical dilemmas of law practice. Consideration of doctrine, tactics and technique needs to take place in conjunction with discussions which demonstrate the morally charged, value laden nature of real legal problems. Pedagogical approaches of this kind threaten to undermine the gamesmanship view of legal practice and ought at least to present students

[72] Pelikan, op cit (fn 20) 105.
[73] Stover, op cit (fn 13) 117.

with a more complex, difficult type of pragmatism or realism to that found by Granfield at Harvard.

One way of demonstrating a law school's commitment to public interest law practice arises from an analogy drawn by Stover with a program at the Case Western University medical school. In this program, medical students at the commencement of their studies are assigned to follow a mother during the last trimester of pregnancy, to be present during labour and the birth, and then to act as a trainee paediatrician for the infant.[74] Law students could, Stover opines, be assigned to indigent families over the course of their law studies, firstly to identify their legal needs and to facilititate the provision of legal services by qualified lawyers, but in later years at law school, to actually engage in performing a variety of legal services for the assigned family, such as drafting wills, preparing tax returns and negotiating with creditors and landlords. Clearly, programs of this kind require great attention to organizing and supervising assignments. Such an undertaking for any law school would obviously be resource-intensive, and may therefore find it difficult to obtain official endorsement. It might be possible, however, to demonstrate more completely the off-setting benefits of legal education organized along these lines. The value of the legal services provided would conceivably include the preventive gains provided when, for example, client families are enabled to avoid falling irretrievably into debt through the provision of assistance in getting their affairs in order, or when welfare applicants better understand the system for assessing eligibility and distributing welfare payments. If legal aid bodies can be persuaded of the logic, additional funding for this concept might become available.

New Knowledge, New Strategies

If law students' appreciation of social conditions and inequalities is to be enhanced, they need also to be exposed to a broader conception of legally relevant knowledge. We cannot otherwise expect students whose dominant law school experience is shaped by a 'game' view of the practice of law, developed essentially in the classroom, to recognize the complex and often recalcitrant features of social life which challenge instrumental legal analysis of problems. Nor can we expect students encouraged to equate appropriate behaviour with legality to necessarily appreciate the richer normative considerations that surround many legal applications and which frame whole classes of legal strategies and interventions. Humane understanding and sociological insight into legal problems do not naturally surface from the close study of conventional legal materials; they need to be supplemented by explorations of materials from other disciplines in the humanities and social sciences which nevertheless contextualize and generally deepen students' understanding of legal issues and phenomena.[75]

One way of 'making law schools less insular learning environments'[76] is to ensure that law schools do not become the kind of 'interpretive community'

[74] Id 118.
[75] See fn 21 supra.
[76] Granfield, op cit (fn 3) 207.

that lacks a diversity of horizons and outlooks on social and legal issues. The obligation of law schools as part of universities to pursue knowledge independently, and not simply reinforce the current professional world view raises the issue of the nature of the research undertaken and the kinds of appointment made to faculty positions. Until faculties make relevant in recruitment decisions diversity of background experiences and training in disciplines other than law in the building of faculty profiles, the kind of law school communities established are unlikely to differ from the conventional model and thus to challenge the pre-eminence of corporate legal practice. Thus recruitment and research policies need to reflect a pluralist commitment of this kind. To make this argument is not to state that doctrinal scholarship has no place, nor that law schools should become 'second-rate' graduate schools in the humanities and social sciences (as Judge Harry Edwards fears). It is, however, to argue for legal scholarship and pedagogy to recognize the diversity of the student body, of those whom the law serves (or rather, ought to serve), and increasingly, of the legal profession.

Granfield argues that the Northeastern law school experience points to the importance of law schools interested in public interest law establishing a 'uniform student culture and a curriculum that reflects this commitment'.[77] Should we in Australia attempt such a thing? This prescription derives from a different notion of law school politics than is readily conceivable in Australia. In the US, there have been a number of public interest law school experiments, not all of which have survived, but from which at least there have been some survivors. These survivors, among which we can presumably still count Northeastern, while perhaps modified and even contracted in some respects, nevertheless provide tangible standing examples of law schools where there has been a sustained institutional commitment to public interest law at least to the extent that these ventures have been formally encouraged to take their place in law school life. In contrast, the recent burst of new law schools in Australia seems to have produced no equivalent of a Northeastern, an Antioch, or a New College of Law, the Macquarie law school history notwithstanding. It is not even clear that these law schools, at least in some instances, have taken on board the moderate recommendations of the Pearce Committee report,[78] by giving greater emphasis to legal skills or to the incorporation of perspective material in law courses. There is a strong pragmatism behind the founding of Australian law schools which has resulted in some pretty obvious compromises in order to gain acceptance from the legal profession. While it can be argued that the state bar admission rules in the US dictate to a large extent what can be taught at law school, the fact that these

[77] Ibid.

[78] There are encouraging signs of perspective subjects and materials playing a greater part in legal education in Australia at present. Monash University's curriculum review process has expressly endorsed the importance of subjects addressing issues and employing materials that raise theoretical and policy questions. Undoubtedly the principal influence of this kind has come from feminism, rather than, say, from Critical Legal Studies or Law and Economics. Indeed the Department of Employment, Education and Training (DEET) has contributed to the institutionalization of feminism through its recent grants to two feminist legal academics to produce gender-sensitive legal teaching materials.

exams exist independently of the law schools in a formal sense may partly explain the ability of certain (admittedly few) law schools to resist the strongly normalizing thrust of professional influence.[79] One does not need to attend an American Bar Association accredited law school in order to qualify for admission, whereas in Australia there are few viable alternatives for those intent on legal practice to attendance at a recognized law school.

Granfield's suggestion therefore is unrealistic for the Australian setting. Rather the issue should be put in terms of how existing law schools can be brought to a point at which at least, like Northeastern, there is an institutionally backed alternative to corporate legal practice. While Northeastern strikes some like Granfield as essentially flawed and disappointing, for others of us, such diversity and open dialogue on matters of pedagogical and practical significance is rather exciting. Some ideas for advancing more diverse commitments within law school have already been canvassed in this review. It seems likely that significant change in this area will come from building upon some small but persistent signs of change in curriculum development and recruitment that have been visible in some law schools in the last few years.

The question of law student orientations cannot be left without some attention to the issue of *job markets*. In addition to ensuring that law students are fully advised as to the different fields of legal practice, there must also be recognition that the market for public interest lawyers is not easy. Here the law schools could play a more active role, Stover thinks. More might be done in terms of establishing public interest agencies and law centres within or under the aegis of the law school itself. In our own setting, Monash University's partial sponsorship of the community-based Springvale Legal Service, and the University of New South Wales' Kingsford Legal Centre offer precedents which might be extended or emulated by other law schools. While these agencies are more likely to function as training than as long-term employment sites for those interested in public interest law, they can sometimes offer work on a locum or short-term contract basis. Other avenues are also worthy of investigation:

> Law schools might attempt to stimulate demand for public interest lawyers by joining with bar associations to sponsor and fund public interest law firms, by goading large private firms to hire attorneys whose efforts would be devoted entirely to public interest practice, or by similar efforts to raise the consciousness and commitment of the private bar to the profession's public interest obligation.[80]

One senses in Australia that initiatives of this kind have not yet been seriously conceptualized, let alone attempted in even a modest form. It is time ideas of this kind were put on the agendas of legal education, professional

[79] There are real limits to how far resistance can go, however. Practically speaking, the law schools assume the major task of preparing students to sit professional examinations. Unless law students are able to pass the state bar, there will be a clear disincentive for them to attend law schools with low bar exam pass rates. This places extraordinary challenges upon schools such as New College, which try and sit Janus-like, facing both their radical constituencies (staff, students) and the state bar associations which demand consistency of performance from those they certify for practice.

[80] Granfield, op cit (fn 3) 120.

training and legal service delivery. It is not beyond the bounds of possibility that if law schools placed more emphasis on public service and ethical behaviour, the legal profession's continuing legitimation problem from public dissatisfaction with legal services might push it towards such a path in partnership with the law schools. Law schools should be prepared to take proposals of this kind to government as well as to the profession. Encouraging strategies and initiatives of this kind will undoubtedly prove difficult. Nevertheless, the latent consonance between the objectives of a university education, and a reconfigured notion of professional practice which places emphasis on public service, make the effort seem worthwhile.

6 CONCLUSION

Both these books, it may be argued, present predictable arguments by disillusioned observers of contemporary legal education. What should be surprising about a couple of academics trained in social sciences in the 1960s and 1970s arguing there has been a loss of idealism and commitment to the interests of the underprivileged among recent law students? But to locate the critique in a generation and set of values 25 or more years old should not warrant its unthinking dismissal. The overtly proselytizing stance of Stover, and the less proscriptive yet more theoretically critical account of Granfield, raise some pertinent questions about the impact of legal education upon the professional commitments of lawyers and the distribution and availability of legal services. In general, they question and challenge the notion that law schools are presently doing enough to ensure the future professional well-being of their students.

Both books successfully focus attention on a range of processes and practices during the law school that constitutes the socialization experience for law students. In an era of increasingly reflexive institutions, there is precious little evidence in Australia at least that law schools are inclined to self-conscious analysis of student socialization and its contribution to professional formation. Law schools might profitably ask questions about the forms of classroom interaction permitted, and the attitudes towards practice that they encourage, about the emphasis given in the curriculum to public interest areas of law, about the opportunities for exposing students to unmet legal need and the ideal of service in legal professional life, and about their representation of the different practical and ethical interpretations of the lawyer-client relationship. The role of faculty members as teachers and researchers, as well as the availability of support networks for students interested in non-corporate forms of practice, also require consideration in this context. Until law schools address the question of their formative contribution to the production of law students, matters will continue to operate in much the same manner as before, subject mainly to the powerful influences of the profession and admission policies.

I have tried to suggest that the questions raised by these works do not mandate active proselytizing of a radical political stance towards practice. Instead, they provide a framework for the law school to re-examine its obli-

gations towards the ideals of the university and the wider community as well towards professional practice. Such a re-examination would seem to require law schools to exhibit a commitment to a pluralism of perspectives towards practice, one which remains critical yet tolerant and perhaps even somewhat indulgent towards non-traditional approaches. It would also seem to warrant a more explicitly values-based approach to legal teaching, one which focused on needs and interests as well as outcomes. Legal practice should not be viewed by students simply as a game to be played, when the nature of the benefits and their distribution in such an approach are so questionable, and the consequences are so real.

Lastly, two powerful messages for law schools emerge from these books. The first concerns the multifactorial nature of law student socialization. It is not simply a dyadic relationship between law teacher and law student. Because law students are exposed to powerful messages from the realm of legal practice and elsewhere, both authors remind us as law teachers of the importance of remaining modest about our pedagogical capacities in the face of such impressive contenders for influence in the process of professional formation. Our capacity to serve as role models to our students is limited and should not be taken for granted. Until we appreciate the limits of our influence, we cannot begin to assess adequately our responsibility and obligations to our law students. Until such time, we are also unable to review intelligently how legal education might be altered or reformed to enable law schools to play a more critical, formative role in the professional education of lawyers.

We are also reminded of the limited conception of legal knowledge promoted in many law school curricula. The relative influence of the profession upon professional formation raises by implication doubts about the significance of formal legal knowledge presently taught in law schools. The emphasis on case law, and in particular, the analysis of appellate doctrine using analogical reasoning, does little to acquaint the majority of law students with the contextual knowledge (techniques of argument and strategy, tacit and explicit values, folk-wisdom etc) that law students will acquire through exposure to practising lawyers on summer placements in private law firms, in clinical settings and during articles. The boredom and cynicism that seems to set in after a year or so of exposure to conventional law school subjects and courses ought to push legal educators and scholars to explore the inadequacies of existing legal curricula and approaches to knowledge. It is surprising this has not happened already given the typical experience of clinical teachers, who are frequently told by students that their offerings are the 'best thing I have done at law school'. These students are also not slow in offering specific criticisms of their classroom based subjects, in terms of lack of relevance and simple 'boredom'. They at least, while sharing with Judge Harry Edwards a recognition of the necessity of grasping doctrine,[81] recognize that this skill is not sufficient to the challenges of their professional futures.

[81] See fn 20 supra.