Legal Education in the Corporate University

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Abstract: State disinvestment in higher education has been a notable characteristic of neoliberalism all over the world and the corporatization of universities has been the typical response. It has led to a proliferation of law schools with students paying high fees. Corporatization has also engendered a culture of relentless competition between universities, which manifests itself in league tables and rankings. The pursuit of prestige has compelled law schools to prioritize research over teaching, which poses a dilemma for what is taught and how it is taught. The contradictions of the corporatization thesis are graphically illustrated by the experiences of Australia, which might be described as the canary in the mineshaft. While corporatization plays out differently in decentralized regimes with a substantial private sector, such as the United States, its impact on the legal academy has been similarly profound. The dilemmas posed by corporatization for the legal academy require considered scholarly attention.

HIGHER EDUCATION AND THE NEW KNOWLEDGE ECONOMY

In the late 20th century, Lyotard (1984) observed that knowledge had become the revolutionary trading commodity, replacing land, raw materials and cheap labor. Encouraged by world policy institutions, including the OECD (1996), the World Bank (1998) and the IMF (1998), which endorsed the view that human capital needed to be upgraded, neoliberal governments seized upon the new commodity with alacrity. They received intellectual support from conservative economists such as Hayek (1960, 1976) and Friedman (1962) (Olssen & Peters. 2005).

As key knowledge producers, universities were catapulted into the vanguard of the new knowledge economy with the result that higher education quickly became a major industry, second only to health care in the United States by the end of the 20th century (Ortmann, 2006, p 146). As the earning potential of the sector began to be realized, state investment in education decreased in accordance with the neoliberal philosophy of privatizing public goods (Urciuoli 2010, pp. 162-3), thereby compelling universities to pursue an entrepreneurial path. This resulted in an exponential increase in the number of full fee-paying students, both domestic and international. Indeed, higher education became a significant export industry for a number of countries, particularly the U.K., Australia and France.

It was inevitable that the research role of the university would also be a central plank of the new knowledge economy. Knowledge could no longer be pursued for its own sake as propounded by the iconic theorist of the university, John Henry Newman (1976 [1852]); it

was its diffusion and use value in the market that was now important (OECD 1996, p. 14). Consequently, the commercialization of the fruits of research, or knowledge transfer (Gaze & Stevens), became a key strategic issue for both governments and universities (Shore & McLauchlan 2012, p. 268).

What is distinctive about the role of knowledge in the contemporary university everywhere is that economic factors have assumed the position of "the driver, rather than the beneficiary of knowledge production" (Lyotard 1984, 47). Advertence to the "corporate university" itself signals a preoccupation with the market, the application of business principles and top-down managerialism. Cognate terms include "academic capitalism" and the "entrepreneurial university" (Slaughter & Rhoades 2004; Slaughter & Leslie 1997), the "enterprise university" (Marginson & Considine 2000), as well as "marketization" (Brown with Carasso 2013) and "privatization" (Morphew & Eckel 2009; Thornton 2012a). Indeed, enterprise or entrepreneurialism has now become the "third mission" or "third stream" activity of the university, which takes its place alongside teaching and research (Shore & McLauchlan 2012).

In light of the dramatic impact of corporatization, it is not unusual to find reference to universities being "in a state of crisis" (e.g., Cooper et al. 2002), "in ruins" (Readings 1996) or in their "death throes" (M. Evans 2004). The diagnosis arises, Bok suggests (2003, p. 200), because the world of commerce often comes with a "Faustian bargain" in which universities have to compromise their basic public good values at the expense of monetary rewards. As the pursuit of such rewards has become a normative goal of higher education (Shore & McLauchlan 2012, p. 282), the private has become intimately intertwined with the public and vice versa, for the neoliberal state is also committed to supporting for-profit providers in terms of subsidies and accreditation. In Australia, for example, for-profits have benefited from students being able to access FEE-HELP, the government-funded income-contingent student loan system (http://studyassist.gov.au/).

So profound have been the changes in higher education that it may be we can no longer properly invoke the term "the university" for what has become a curious hybrid — a "multiversity" (Keohane 1999) or an "edu-business" (McGettigan 2013). While there have historically been a number of different models of the university — both public and private (Marginson and Ordorika 2011, pp. 101-02), their raison d'être has radically altered. Indeed, some prominent U. S. public law schools, such as the University of Virginia School of Law, are now entirely privatized (Groshoff 2012, p. 391). At the other end of the spectrum, private for-profit institutions have mushroomed (Breneman et al. 2006).

Whether public or private, universities have traditionally claimed to epitomize the public good in terms of their role in safeguarding and transmitting culture (Readings 1996), as well as performing a democratic and egalitarian role by adding to the store of humane and intellectual accomplishment within society (G. Evans 2002, p. 38). Public universities have paid particular attention to leadership and service (Moran 2013, 1026), in addition to enabling access to the professions not conditional on private wealth (Nance 2011, p. 1631). These civic and public goods have all been compromised by privatization (Thornton 2012a; Bourne 2011-12, pp. 686-87).

Such is the ideological force of the contemporary privatizing imperative that it has been suggested that the meanings of public and private in higher education discourse have been inverted so that profit has come to signify public rather than private good. This is demonstrated by Shore and McLauchlan (2012, 283) in an ethnographic study conducted at

the University of Auckland. A striking example of the normalization of the private in the United States relates to the alleged failure of Critical Legal Scholars to speak out against the deleterious impact of exorbitant law school fees, despite the claimed commitment of the "Crits" to social justice (Tamanaha 2013). The inevitable result of the privatizing imperative that Tamanaha highlights is the inequity of a preponderance of elite legal positions being in the hands of the offspring of the wealthy (2013, p. 337).

Neoliberal policies, in which the free market has been revitalized as a key social institution, have been implemented through what has come to be known as new public management (NPM), which involves a combination of free market rhetoric and intense bureaucratic control (Lorenz 2012, 600). It is one of the paradoxes of neoliberalism that government control over universities has increased as public funding has declined (Thornton 2012a, p. 18). NPM developed in the United States in the 1980s and spread to other parts of the world, with New Zealand pioneering many of the institutional reforms (Kelsey 1996). NPM has been able to effect a transformation of the academy most completely in countries with a national system of higher education. In the United States with its substantial private sector and powerful Ivy League, a comparatively limited role is played by either federal or state governments in overseeing higher education (Areen 2011, pp. 1473-74). Nevertheless, while the U.S. position is less consistent than most other countries, the market embrace is similarly impacting not only on teaching and research, but also the hallmarks of meaningful legal education, namely, academic freedom, tenure and faculty governance (Groshoff 2012, p. 448).

A DYSTOPIAN RELATIONSHIP

The tension between the legal academy and the legal profession has a long heritage. It can be traced back to the Middle Ages when the teaching of law in the great universities of Europe was restricted to scholarly subjects such as Roman law, legal history, canon law and jurisprudence (Wieruszowski 1966). The training of lawyers for practice took place under the domain of the Inns of Court in London and was the subject of articling or apprenticeship elsewhere. When the creation of law schools within universities was first mooted in the 19th century, there was fear that the university enterprise would be tainted if law schools turned out to be mere "trade schools", and protracted debates sometimes ensued before a law school was established (e.g., Martin 1986). Once law schools were established, the practicing bar also began to question the content of legal education (Spencer 2012, p. 1971), especially as there was a suspicion that the aim of the Langdellian law school was to produce professors, not practitioners (Moliterno 2013, p. 426). During the 1920s, elite U.S. schools promoted the pursuit of scholarship in an endeavor to overcome their trade school image within the wider academy (Walker 2013, pp. 3-4). This orientation was likely to elicit complaints from the practicing profession and from students who wanted to be "practitioners not professors" (Stevens 1983, p. 269).

At times of economic crisis when employment prospects plummet, the criticism of the academy has become more vociferous and there is pressure to include more practical skills and applied knowledge in the law curriculum, as occurred at the time of the Great Depression (Walker 2013) and, more recently, with the global financial crisis (GFC) of 2008. The applied approach received a fillip with the new knowledge economy as it emphasizes "know-how" over "know-what" (OECD 1996), or what lawyers *do* (e.g., MacCrate Report 1992).

The neoliberal turn has caused the scholarly dimension to once again be emphasized also, concurrently with the plea for more applied knowledge. The focus, however, is on

academic research and scholarship as opposed to the content of the law degree itself. The renewed emphasis on scholarship has arisen as a result of the heightened competition between law schools and is manifested in the pursuit of prestige, marketing and academic capitalism. This has caused law professors to be hired primarily on the basis of their scholarly credentials (Spencer 2012, p. 2051), thereby inviting further disapprobation of the academy by the legal profession.

The widely repeated criticisms we now hear are (1) there are too many law students; (2) law schools are too expensive; and (3) law schools devote too many resources to the production of faculty scholarship at the expense of preparing students for practice (Yellen 2013, 1392; Rhee 2011; Segal 2011). A sustained critique by Brian Tamanaha (2012) elaborates on these criticisms by drawing attention to the role of the "überelite" Ivy League law schools in rapidly increasing tuition fees to over USD50,000 per annum, which caused other law schools, both public and private, to follow suit (Bourne 2011-12, p. 652; Illinois State Bar Association 2013). The phenomenon is claimed to have been highly detrimental to students at non-elite schools as they found that they were unable to obtain legal employment at an appropriate level of remuneration to service their student loans.

The intractable tension between the legal profession and the legal academy has therefore been revived, but corporatization has endowed it with a neoliberal gloss.

The Neoliberal Legal Academy

The corporatization of the university has resulted in a proliferation of new law schools and an exponential increase in the number of law students. As government funding for public universities contracted, law was viewed as an attractive offering by new universities as well as older institutions that did not have law schools. Australia and the United Kingdom exemplify this thesis as Colleges of Advanced Education and polytechnics were declared to be universities overnight in 1989 and 1991 respectively (Thornton 2012a, p. 13) Not only was law viewed as a prestigious professional discipline by the new universities, there appeared to be a virtually unstoppable demand for law places that attracted well-credentialed students who could be charged high fees (Broadbent & Allen 2011, p. 236). According to neoliberal guru, Milton Friedman (1962, pp. 105-6), high fees are justified for those likely to earn high incomes on graduation. In the United States, the number of ABA-accredited law schools grew by one-third in the 50 years since 1963, while enrolments tripled (Kritzer 2012, pp. 210-11). Profitability rather than community need or social good therefore motivated the choice of law, and is a recurring theme in the corporatization narrative. Unsurprisingly, law schools were used as milch cows to subsidize other parts of the university (Bourne 2011-12, p. 686; Newton 2012, p. 79; Tamanaha 2012, p. 127). This is graphically illustrated by the case of an Australian new law school where enrolments in one year were increased from 200 to "somewhere between 500 and 700" Thornton 2012a, p. 101). University managers generally believed that law required minimal resources and could be taught cheaply through the large-lecture method. This ignored the fact that law teaching had tended to move away from a passive pedagogy towards small-group interactive learning (Le Brun & Johnstone 1994; Keyes & Johnstone 2004).

In those countries where higher education is a state responsibility, law teaching receives significantly less funding than STEM subjects (science, technology, engineering and mathematics), which are valued more highly in the new knowledge economy. In Australia, the government contributes approximately 15 per cent towards the cost of a Commonwealth-funded law place; in the United Kingdom, following the implementation of the Browne

reforms in 2013, the figure is zero, although the U.K has emulated the income-contingent loan system for students (Broadbent & Allen 2011, p. 231). Both countries are notable examples of the shift from free higher education to a user-pays regime, which underscores the dramatic impact of the market on law schools; even though fees are significantly lower than in the United States.

The corporatization of universities caused students to be viewed as "consumers", "customers" or even "clients" (Askehave 2007, p. 725), while academic educators and their institutions became "service providers" so that the special relationship between teacher and student was reduced to one of contract. Predictably, the commodification of higher education has had the effect of shifting the balance away from notions of the public good, including the mission of increased access and upward mobility for less advantaged students (Slaughter & Rhoades 2004, 308). The instrumental or consumerist focus is pronounced in the case of legal education (ABA 2013, p. 8), in which legal educators have to accommodate not only the interests of students themselves as key stakeholders (Boon & Whyte 2010) but the legal profession as well (Boon & Webb 2010). In order to demonstrate "relevance" and "usefulness" in accordance with the new knowledge imperatives, there is pressure for a more applied orientation in the law curriculum, or what Arthurs (2013) refers to as "legal fundamentalism". This allows little space for theory and critique associated with a liberal legal education.

The requirements of the admitting authorities engender expectations as to what subjects should be prioritized in the law degree (Kissam 2003, p. 205). As the interdependence of higher education and business is a crucial prong of the new knowledge economy (Slaughter & Rhoades 2004, 19), clusters of subjects such as commercial law, intellectual property, securities and international trade law, are likely to be offered, largely from a "how-to" perspective to satisfy the "practise-ready" requirement (e.g., Rhee 2011). Research conducted in Australia has revealed that "jettisoning the critical" is the widespread result of corporatization (Thornton 2012a), although committed teachers will always attempt to resist its evisceration (McGee, Guihot & Connor 2013; Appleby, Burdon & Reilly 2013).

The introduction of a fees regime in Australia led some law schools to include more applied skills, such as drafting, into their curricula to enhance the attractiveness of their graduates in the legal labor market (Thornton 2012a, p. 82). This course of action would appear to go some way towards meeting the objections of critics who claim that graduates of U.S. law schools are lacking basic skills (Moliterno 2013, 429; Rhee 2011). However, what skills are desirable is no longer clear, particularly as the increasing diversity in firm formation and delivery of services signifies the diminishing scope for law graduates to become lawyers in traditional private practice. The discourse of "skills" also carries a subtext with it, as Urcuioli (2010, p. 169) argues, often being "used interchangeably with capacity, knowledge, expertise and so forth". Skills tend to play a special role in the neoliberal labor market and are privileged over critical and theoretical knowledge. Skills are what student/consumers desire in their legal education as they are associated with modernization, success and productivity (Urciuoli 2010).

While faculty size has increased, this has not necessarily led to sustained curriculum enrichment as less time and attention is devoted to teaching in the interests of scholarship and rankings (Yellen 2013, pp. 1394-5; Bourne 2011-12, p. 692). As profit centers (Kissam 2003, pp. 217-8), economic efficiency is the key rationality of law schools, which invariably requires more to be done with less. Even though overall teaching loads have generally declined, the lecture method remains, or has again become, the preferred form of pedagogy. It

suits the applied approach as it encourages the transmission of pre-packaged technocratic knowledge at the expense of critique and independent thought (Thornton 2007, p. 14). A propositional approach also suits flexible modes of delivery such as intensive, block and on-line teaching.

Modes of assessment in vogue also support a technocratic approach to known knowledge, particularly in the case of "mass-provider" universities (Keohane 1999, pp. 62-3). Short tests and end-of-semester examinations have tended to replace long research essays as they are "quicker to mark", although it is through essay-writing that the skills of argumentation are acquired (Nussbaum 2003, p. 273). While superficial assessment tasks that are quick to assess suit institutional and individual research agendas, they also suit the desire for applied knowledge sought by law firms and business. A similar observation could be made about the outsourcing of assessment tasks (Everett 2010). In this way, pedagogical practices contribute to the depoliticizing effect of legal knowledge in accordance with the neoliberal agenda (Urcuioli 2010). Legal education thereby becomes less a site of intellectual enrichment than one of credentialism.

Educating Lawyers for What?

As a result of the proliferation of law graduates, "too many lawyers" has become a common refrain in many parts of the world (Katvan et al. 2012). Despite the prevailing orientation of legal education, it is notable that less than fifty per cent of law graduates currently obtain positions as lawyers in traditional private law firms in the United States (Tamanaha 2012, p. 114). This is also the case in Australia where the number of law schools has trebled over the last twenty-five years (Thornton 2012b). In contradistinction to the asseveration that there are "too many lawyers", some commentators believe that there are too few as legal services are not equally available to all in accordance with the values of a liberal democracy (Pierce & Nasseri 2012). Indeed, there is a widespread shortage of lawyers in rural, regional and remote (RRR) areas (McDougall & Mortenson 2011) and the less well-off generally cannot afford access to legal services (Tamanaha 2012, p. 170; Levin & Alkoby 2012; Nance 2011, p. 1647). Rather than take up less well paid positions in small firms or move to country towns, law graduates embark upon alternative careers in the public, corporate and community sectors, as well as pursuing a host of other careers. Income-contingent loan schemes, such as FEE-HELP, relieve the pressure on students to pursue the most highly remunerated employment with corporate and global firms. Nevertheless, the majority of students embarking on a law degree usually have some form of traditional private legal practice in mind, suggesting a 'misallocation' both in terms of their aspirations and what they might usefully be doing (Menkel-Meadow 2012).

The "too many lawyers" debate not only begs the question as to what is a lawyer in a rapidly changing world (Abel 2012), but also whether the primary goal of a law school is to train students to become traditional private practitioners, or to give them a broad, liberal legal education, comparable to an Arts degree, to equip them for a wide range of occupations. This point is underscored by the fact that the future of legal practice for which law students are being prepared is no longer clear (Ribstein 2011, p. 1651).

The demand for traditionally-trained graduates in law firms is shrinking and may even be in decline (Henderson 2013b, p. 473). Ribstein (2010) has predicted the death of "Big Law", the large national and global law firms, which continue to be the preferred destinations for graduates. These firms are regarded as the most prestigious and offer the highest remuneration but Big Law is primarily concerned with capital accumulation and the

maximization of profits within a highly competitive market. Consequently, it is no longer considered profitable to engage new graduates who need to be trained when it can recruit established lawyers laterally (Henderson 2013a).

Major structural innovations designed to promote competition have been implemented in legal practice, which tip the scales in favor of law as business over legal professionalism. Such innovations include the incorporation of law firms, which allow non-lawyer ownership instead of partnerships, and listing on the stock exchange. These first occurred in Australia early in the 21st century (Mark & Gordon 2009) and have since been followed in the U.K. (Sherr & Thomson 2013). Such practices are causing 'Big Law' to 'unravel' (Ribstein 2010, p. 771) and provide further evidence of the way neoliberalism is reshaping legal practice by accepting that capital accumulation should supplement, if not supplant altogether, traditional notions of legal professionalism. The application of competition policy to legal services is compelling the legal profession to shed many of the restrictive and anti-competitive practices of the past and to open up areas such as conveyancing to non-legal specialist providers. Deregulation of the profession has yet to occur in all jurisdictions but the movement is gathering force globally. The changes are by no means confined to Big Law, but are occurring across the profession more generally.

Legal practice is also being transformed by a range of advances in the technological delivery of legal services, including sub-contracting to cheaper overseas jurisdictions, such as India, the increasing use of paralegals, e-discovery and on-line dispute resolution (Susskind 2013, 2008). These initiatives together with business models and the growth of in-house corporate counsel all point to the need for fewer conventionally-trained lawyers — not more — in the legal service industry. Although the legal labor market may not currently be the most propitious for law graduates in first world countries mired in the old ways of thinking, it is described as "booming" for Indian law graduates (Henderson 2013b, p. 486; Ballakrishnen 2012).

Flows of information, technologies, policies and capital have all increased so that global higher education has become a "relational field of power shaped by inequality and hierarchy" (Marginson & Ordorika 2011). Whereas the teaching of law was once jurisdictionally specific, cross-border legal practice has encouraged the growth of global programs, exchanges and study abroad initiatives, all of which favor the better endowed institutions. Globalization has also encouraged foreign nationals to acquire legal qualifications in English-speaking countries, particularly in the United States (Silver 2012). The domination by the United States of the international legal services market has led to the JD competing with the LLB as the basic law degree required for admission to legal practice in other parts of the world, such as Australia (Cooper et al. 2011). At the same time, international alliances between law schools are challenging the U.S. graduate model of legal education (Chambliss 2011-12). Just as the elite corporate law firms have moved to effect strategic global alliances, elite law schools are also competing for global status, aiming to teach the best students in face-to-face settings (Chambliss 2011-12, pp. 2620-24).

In light of the transformation of the legal profession, it is apparent that the dominant "one size fits all" model of legal education is no longer appropriate (Faulconbridge 2012, p. 2657). Richard Susskind (2013, 137), the noted theorist of the nexus between technology and law, is critical of law schools for not looking to the future in devising an appropriate legal education for today's students. Primary responsibility for standardization cannot be sheeted home to law schools for, despite the revolutionary changes that have been occurring, admitting authorities throughout the common law world still require students to know more

or less the same things. There has been a noted failure on the part of admitting authorities to acknowledge the rapidity of change occurring through digitalization, globalization, hierarchization and specialization. Complex problem-solving competencies appropriate for global transactions require a range of skills and different specializations. It is clear that the notion of 'practise-ready' needs to be expanded from the ideal of the private practitioner of the 19th and 20th centuries to a new set of competencies. Global thinking is undoubtedly a desirable competency for future lawyers together with problem-solving, economic analysis, leadership and project management (Holloway 2013, pp. 137-38).

No nation state, law society or law school guarantees a particular kind of job on graduation and, with the possible exception of Japan (Chan 2012), restrictions are not placed upon the number of law students or the number of lawyers admitted to practise. Furthermore, no university wishes to limit its intake of law students in light of the profitability of legal education. Law students might aspire to be lawyers but they have no entitlement to a position in a corporate law firm or to employment generally and certainly not in a contracting labor market. The number of lawyers required for practise is expected to be resolved through the vectors of supply and demand. New knowledge workers with legal qualifications are assumed to be adaptable and contribute productively to the economy however they can. Since a law degree equips graduates for a much wider range of positions than traditional lawyering, it is clear that legal education needs to pay greater attention to differential markets for legal services (Pierce & Nesseri 2012).

THE AUDIT CULTURE

The embrace of the new knowledge economy has not only exacerbated the tension between the legal academy and the legal profession; It has engendered a new source of disharmony within the academy itself. I allude to that between teaching and research, which has arisen from the pressure to maximize the returns simultaneously from legal education and legal scholarship, the two strands associated with the traditional mission of the academy, but thrown into disarray by entrepreneurialism, or 'third stream' activity (Shore & McLauchlan 2012).

The academic entrepreneur, or "technopreneur", who embodies the requisite combination of techno-scientific knowledge and business acumen (Kenway et al. 2006, p. 42), has become a key player in the implementation of 'third stream' activity. The technopreneur is expected to vie for venture partnerships with business and industry to encourage knowledge transfer and boost the knowledge economy. Industry-based research may have serious consequences for academic freedom when principals endeavor to influence research findings (Thornton 2009). Although the amount of money secured through contract research is likely to be publicized as a matter of institutional pride (Collins & Skover, 2012, p 389). Tombs and Whyte (2003, p. 207) note that the trends in favor of applied and policy research has contributed to the overall dilution of critical and theoretical research.

While it may be law's primary task to educate large numbers of "practise ready" graduates cheaply to serve the new knowledge economy, it does not wish to be left behind in a paradigm where scholarship is extolled. Legal academics are no longer free to be dilettantes, dabbling in research over the summer as the mood takes them. They must also be entrepreneurial, identifying opportunities and competing with others in securing large research grants, which are important signifiers of quality in an economically rationalist environment. Competitive bidding for research funds ensures an institutional culture of compliance (Marginson and Considine 2000, p. 142-44) as universities are anxious to

maximize their research income as well as to enhance their status and brand name through research. The pressure on legal academics to perform is therefore intense, but the dilemma for them is how to maximize their research and scholarly outputs without unduly compromising their teaching.

Risky Business

As it is the economic rather than the cultural value of the knowledge produced that is most highly valued within the new knowledge economy, academic capitalism is haunted by risk. Ulrich Beck argues in his iconic work that risk is unavoidable in the social production of wealth (1986, 19). The neoliberal state and the corporate university seek to guard against risk by demanding transparency and accountability through auditing, the key dimension of NPM, which has become so widespread that (Power 1997) alludes to an "audit explosion".

All activities, however disparate, must be measured in the corporatized university through quality audits, within supposedly commensurable value scales (Atkinson-Grosjean & Grosjean 2000). As the audit culture is closely imbricated with the market, academic value is described as being monetized through metrics (Burrows 2012). Not only must the quality of teaching and student satisfaction be measured, but the quality of research must also be measured and assessed. Regular research audits purport to go beyond mere quantification to show that academics are productive and are expending research money wisely, particularly when funded by the taxpayer. This involves ranking and measuring publications, which are benchmarked against one another according to an international scale (Bowrey 2013). Competition associated with auditing is a powerful driver of law school behavior, particularly when funding is attached to the outcome. The audit culture engenders anxiety and insecurity which encourages academics to discipline themselves in the interests of productivity (Bowrey 2012, p. 294). In this way, metrics constitute a form of 'quantified control' (Burrows 2012, p. 368).

Government research assessment exercises have taken off in countries with a national system of higher education. The quality of research and researchers is rendered calculable through systems of audit such as the Research Excellence Framework (REF) in the United Kingdom and the Excellence in Research for Australia (ERA). These systems purport to measure quality through a range of metrics, such as publication in international refereed journals, research impact and the use of citation indices. Attempts at devising appropriate bibliometrics for law, such as the ranking of law journals have been highly contentious (Bowrey 2013). Competition in pursuit of the "world class" descriptor is fierce, regardless as to whether there is a state system of audit or not. What is notable is that the more scholarly the work the less practical value it is deemed to have for the legal profession (McKay 2011-12, 855).

Ranking Research

Virtually unheard of until the late 20th century, rankings now animate the hearts of university research managers everywhere and have quickly become normalized within academia and the community more generally. They illustrate the contradictions of sameness and difference that beset corporatization. Sameness inheres in the standardization of the criteria, while difference is restricted to outcomes in the application of the criteria, thereby giving rise to the ranking of institutions. Those institutions daring to be different, in their mission, for example, can expect to be stigmatized (Sauder & Espeland 2009, p. 73).

Despite the drawback of rankings for diversity, universities everywhere, including those in Asia, are currently enthralled by rankings and aspire to become "world class" (Deem et al. 2008). This is despite the American and Anglophone imperatives that inhere within ranking regimes, which leads to an unevenness in knowledge flows and a brain drain away from developing countries (Deem et al. 2008, 93; Marginson & Odorika 2011, 87-89).

While teaching indicia, such as staff/student ratios and a range of institutional factors are included in the computation of law school rankings, the overwhelming focus of international league tables is on research "outputs". Not only is research regarded as more prestigious than teaching in the new knowledge economy (despite the rhetoric), publications are verifiable and assessable. Furthermore, their quality (and/or quantity) may be financially rewarded by law school, university and/or state.

Rankings include a mixture of opinion and quantitative indicators that renders the measurement of quality elusive (Yellen 2013, 1396; Thomas 2003). Despite their contested methodologies, however, rankings have secured a hold in the popular imagination (Sauder & Espeland 2009, 68). Hence, students are more likely to be influenced by the ranking of a school rather than its offerings, even though rankings arguably measure no more than wealth and reputation (Bourne 2011-12, pp. 690-91). Rankings become key drivers of law school behavior which have affected the possibility of collaboration between law schools, undermined a focus on the public good and detracted from a commitment to the teaching role. Law schools aggressively vie with one another for the best students in order to strengthen their position in the market and enhance their prestige (Bourne 2011-12, p. 685), which has arguably contributed to the marked increase in tuition fees in the United States (Yellen 2013, p 1397). The irony is that the students who pay the most tend to be the ones whose income potential is the lowest (ABA 2013, 9; Tamanaha 2013, 331, 335). In addition to buying in scholarship "stars" through merit scholarship (Bourne 2011-12, p. 665-67), research "stars" are also recruited by faculties to enhance a law school's rankings (Tamanaha 2012, p. 44).

However hollow rankings might be as a measure of quality and regardless of methodological disagreements as to their efficacy (Korobkin 2006), there is a correlation between the status of a law school and the ability to obtain employment in a top law firm because of their sway in the popular imagination. As Henderson and Zahorsky (2012) point out, "Snobbishness and elitism are the last socially acceptable prejudices". In contradistinction, an empirical study by Sander & Yakowitz (2012) found that, generally speaking, grades were a more significant predictor of success in employment than the status of the school attended, although this appears to exclude the Ivy League law schools.

Despite the appeal of difference and the desire by law schools to market themselves as possessing a distinctive "brand" (Broadbent & Sellman 2013; Thornton & Shannon 2013; Ariens 2003), rankings endeavor to compress schools into the same mold, a factor that runs counter to the desire for specialization and diversity (Marginson 2007, 118). They perpetuate the myth that competition between institutions is conducted on a level playing field and that disparities in resources, age and location are of little consequence. Moran (2006, p. 391) puts the myth of untrammeled competition perpetuated by the influential *U.S. News and World Report* down to the standardization and uniformity deriving from the accreditation process. However, a law school that is a century old or more has undoubtedly acquired a significant competitive edge in the labor market by virtue of its positional goods compared with a new law school that is struggling to be noticed.

The Ascendancy of Managerialism

Almost a century ago, Thorstein Veblen noted how the incursion of business principles into universities weakens and retards the pursuit of learning (1957, p. 198 [1918]). The intrusion of the values of the corporate world, particularly top-down managerialism with its forms of accountability and control, are always potentially in conflict within the academy (Marginson & Considine 2000, 65), as they impact on independent thought.

NPM is essential to the corporatized university's ability to implement the productivity prescripts. As suggested, efficiency, transparency and accountability are key aspects, which have led to a range of quality assurance, auditing and reporting measures (Brennan & Singh 2011). To this end, it is noteworthy that administrative/managerial staff now typically outnumber full-time faculty (Groshoff 2012, p. 408). Indeed, in light of the crucial income-generating role of universities, there has been an explosion in staff at the "executive" level, who control faculty budgets and tell academics what to do, for which they are highly remunerated. The result is that managers have replaced professors as the elite within the corporate university (Cabal 1993). This inversion of power and status has not only brought with it greater surveillance and control over academic staff but also a notable contraction in collegiality, although this is less marked in the older and more prestigious institutions (G. Evans 2002, p. 99). As "scholarship increasingly has become the coin of the realm" (Demleitner 2010-2011, 608), it is the role of research managers to ensure that academics are productive.

In some cases, managerialism has led to faculty losing control over core academic matters altogether, including teaching (Titus 2011, 109). Indeed, the bureaucratization of learning and teaching is now pervasive (Baron 2013, p. 285) as most countries have government agencies or private member associations to undertake quality assurance (Council for Higher Education Accreditation). The Australian Qualifications Framework is one of the most prescriptive with distinct learning outcomes specified generically for degree levels (http://www.aqf.edu.au). Discrete quality assurance regimes for teaching and research also militate against the possibility of addressing the rising tension between them.

NPM has also impacted on the constitution of legal knowledge through practices of efficiency and cost-cutting. It has brought about an intensification of academic work by cutting the number of tenured faculty and replacing them with cheaper casual or contract staff (Tamanaha 2012, pp. 44, 52), a move that Giroux (2009, p. 681) suggests is designed to limit faculty power. Casual staff with one eye to the renewal of a contract are less likely to challenge orthodoxy than tenured faculty. This trend is further underscored by instances of the "quasi-privatization" of academic labor, such as the use of large research grants by faculty to buy themselves out of teaching obligations (Peters 2002, 31).

The audit culture has been quickly internalized by academics. Failure to accept its prescripts can result in disciplinary action, or even dismissal. Bowrey (2013, p. 309) argues that auditing quickly morphed into a management tool in Australia as a result of its high degree of bureaucratization. Far from instilling confidence and certainty in accordance with its promise, auditing generates "an expanding spiral of distrust of professional competence" (Shore & Wright 2004; Rose 1999, p. 155).

While the case for the mistrust of academic autonomy and the substitution of bureaucratic formalism may never have been properly made out (Lorenz 2012, 607), the diminution of the role of the academic expert has become an inescapable reality of NPM in the neoliberal academy. New forms of governmentality are constantly emerging, which are reshaping the norms of the university with a correlative negative effect on academic freedom

(Post 2012; Collins & Skover 2012). Academic freedom is marginalized in an environment committed to economic rationality because it not only lacks use value in the market, but dissent is likely to run counter to the prevailing hegemonic discourse of neoliberalism. Once knowledge has been commercialized, it "masquerades as independent thought" and "[g]enuine knowledge suffers an opaque death" (Collins & Skover 2012, p. 386).

Polanyi (1951, 43-45) percipiently noted long before the corporatization of the modern university that freedom is central to the advancement of knowledge, whereas applied knowledge requires subordination. Hence, the freedom to pursue one's own research interests, regardless of epistemological standpoint, may be severely compromised by managerialism and academic capitalism. Not only do we find research priorities may now be specified, but the seeds of un-freedom may lurk within the new knowledge economy so that repression is insidiously normalized as a result of the commodification and privatization of research (Thornton 2009; Gerstmann & Streb 2006). Polanyi's insight regarding applied knowledge has significant ramifications for the status of the law degree as may be seen by the pressure on law schools to produce practise-ready graduates. It means that the presuppositions of legal practice have the potential to dominate the law curriculum, leaving little scope for interrogation or critique. This is already occurring as a result of the increased pressure in favor of "practise-readiness.

CONCLUSION: WHERE TO NOW?

How best to proceed with legal education in the corporate university has created a dilemma for legal educators. As preparing their students for gainful legal employment is a crucial aim of law schools, many commentators take the view that the reality of the market and the "real world" must be acknowledged (Tamanaha; Merritt & Merritt 2013). If the law school fails to adapt, it will wither and die (Collier 2013, p. 453), but adaptation would seem to be a major challenge as auditing, rankings, accreditation and quality assurance all encourage sameness, not difference. Conformity exercises a centripetal pull within legal education even when a new law school sets out with a conscious attempt to be different (Carrigan 2013; Menkel-Meadow 2012, p. 163; Thornton 2006). Carrigan (2013, p. 314) argues that the reversion to a trade school mentality intent on instilling mechanistic skills is a tragedy that "parallels the destruction of the civilizing mission of universities".

Homogeneity has long been a characteristic of admission requirements to the legal profession. Admitting authorities continue to replicate the same cluster of subjects as prerequisites for admission as they did a century ago, with little cognizance of the way the profession is changing in terms of deregulation, competition policy and globalization (Arthurs 2013, 86). Law schools tend to take their curricular cue from the admission authorities, despite the fact that fifty per cent of graduates do not embark on conventional legal practice. Twining's observation that American law schools all act as though they are playing in the same hierarchically organized football league (1996, 1012) remains pertinent. The fact that business schools are prepared to accept diversity, at least in some jurisdictions, has encouraged critics of contemporary legal education to suggest that the accreditation straightjacket needs to go (Ribstein 2010-11, 1649). However, far from relaxing the criteria, the new knowledge economy has entrenched the standardizing imperative as I have sought to show.

One area where change is being debated in the United States relates to the length of the law degree, particularly as to whether the standard three-year course of study for law is justified (Gulati et al. 2001; Rhee 2011, p. 331-33). It has been suggested that the third year

of law school is dispensable because it does not add value (Newton 2012, pp. 88-9). In the United Kingdom, the reduction in the length of undergraduate degrees, including law, has been explicitly related to the benefits for the nation state arising from the new knowledge economy:

> The government favours two-year degrees, as did its predecessor, under which such degrees in law were piloted. This is being promoted not in educational terms but in terms of reducing student debt, speeding up the acquisition of qualifications and earlier entry to the world of work and, explicitly, as part of the widening participation agenda (Broadbent & Allen 2011, p. 239).

While one- to two-year courses of study were the norm in the US until around 1870 (Spencer 2012, 1969), reverting to a shorter JD would seem to add grist to the mill of those who suspect that the JD does not really measure up as a doctorate in light of its minimal research requirement. To reduce the length of the degree and add more skills would necessarily entail truncating any research element even further. While Walker (2013, p. 5) suggests that the push towards the JD in lieu of the LLB may have been a mistake, a number of U.S. law schools, such as George Washington and Northwestern, have already moved to offering the JD in less than three years. In Australia, while the norm is still a 5-year combined program (e.g., BA/LLB), there are many variations and summer intensives and on-line offerings enable students either to accelerate their program or to work part-time while studying in accordance with the principles articulated by Broadbent and Allen above.

As an alternative to the conventional LLB, the UK Graduate Diploma in Law (GDL) enables any (non-law) university graduate to undertake a one-year course which focuses on the basic principles of law (Faulconbridge, 2012, p. 2652) in accordance with the applied approach. Alternative programs, such as the Bachelor of Legal Studies, which enable the selective study of legal phenomena but do not qualify the student for admission to legal practise, are widely available and would perhaps better cater for the fifty per cent of law graduates who do not intend to enter private practice. However, it is well known that students like to leave their employment options open until they graduate and most prefer the status of a law degree, regardless of career path.

Just as we see mergers and amalgamations (M&A) occurring regularly in domestic and global law firms in order to maximize profits, so also can we expect to see a similar incidence of coupling, uncoupling and collapse in a volatile law school environment in which competition is the modus operandi. The elite will not only survive but thrive, leaving the rest "to scrap in a new market swamped with cheap degree providers" (McGettigan 2013, p. ix). Competition from lowest common denominator for-profit institutions will inevitably induce a reduction in the length of the standard law degree as for-profits undercut their rivals in terms of both flexibility and fees. Students then need study only the basic subjects for admission to ensure that they are "practise-ready" in minimum time. This is already the case with the for-profit law provider, BPP Law School, in the U.K.: http://www.bpp.com/about-bpp/aboutBPP/law-school.

A race to the bottom is likely to revive the trade school image that law schools have sought to slough off for so long. A technocratic approach to basic legal knowledge invariably mutes the questioning and critical voice, as suggested. A rules-oriented approach to the study of international trade law, for example, is unlikely to facilitate an interrogation of the impact of the actions of a multinational corporation on developing countries.

The emergence of a vibrant body of sophisticated legal scholarship is to be welcomed in a discipline that was initially so reluctantly accepted by the academy. However, this

scholarship is now being distorted by commodification as well as by being set against teaching. The pressures in favor of applied knowledge in the prevailing political economy have encouraged not just a de-linking of teaching and research but fostered an antipathy between them. While students complain of "debt servitude" (Tamanaha 2013, p. 319) and the legal profession complains of inadequately trained graduates (e.g., Newton 2012, these stakeholders fail to appreciate the insidious power of league tables in a culture of relentless competition. For a law school to be accorded a low ranking and assessed as 'below world standard' in the latest league table could lead to its collapse and closure. With the Damoclean sword looming over the heads of faculty, it is not surprising that legal education plays second fiddle to scholarship in the corporate university. While there is some resistance to scholarly reflexivity in the legal academy, this seemingly intractable dilemma is one that socio-legal scholars urgently need to address.

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