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AUSTRALIA: THE NEW
CQU LAW DEGREE

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ABSTRACT

In the past year, two new law courses have commenced in Australia, reflecting distinctive features. One is the Juris Doctor degree taught at the University of Melbourne Law School, as a post-graduate course, after the model established in the United States of America. The other is the Bachelor of Laws degree at Central Queensland University, taught almost wholly online, with a potentially shorter course, confined substantially to core subjects. The author reviews the potential advantages of the latter innovation: especially the outreach to regional and rural communities, offshore needs and opportunities for ethnic communities and other groups who have not so far been attracted to study law. Amongst particular problems in the online course that need to be addressed, are the necessity to ensure real student participation; the special needs to secure staff with particular teaching skills; the need to offer supplementary mentoring, interaction and professional engagement; and to be alert to the signals of student stress, which is an increasingly recognised incident of legal education in Australia. The author concludes that there is a need for more innovation and experimentation in the provision of legal education in contemporary Australia and that each new course is to be welcomed and carefully evaluated.

* Adapted from remarks at the launch of the new law degree course at the Central Queensland University, Rockhampton, Queensland, 9 May 2011.

** Justice of the High Court of Australia 1996-2009; President of the New South Wales Court of Appeal 1984-96; Judge of the Federal Court of Australia 1983-4; Chairman of the Australian Law Reform Commission 1975-84; Deputy President of the Australian Conciliation & Arbitration Commission 1975-83.

PRESENT AT THE CREATION

The formal launch of an innovative law course, containing novel and distinctive features, is an event worthy of attention by the Australian legal profession.

There is a natural tendency in human affairs to think that the familiar is good; that the well-established is better; and that the training that produced a person as estimable as oneself, is best of all. It is important that practitioners of the law should resist such thinking.

In Australia, law courses do not secure the accreditation essential to an entitlement to prepare lawyers for admission to legal practice, unless they conform to specified fundamentals. They must contain instruction in prescribed subjects (“the Priestley eleven”). They must secure the approval of statutory accreditation bodies. Yet, within the parameters set by these obligations, there is room for experimentation and innovation. Such qualities are essential if the tertiary sector of education in Australia is to meet the requirements of education and skills training for the Australian lawyers of the future.

My own legal education took place at the Law School of the University of Sydney in 1959-61. The law course followed two years full-time instruction in the Faculty of Arts. It included a year of full-time instruction in the first year of the law course. Thereafter, there were three years of part-time instruction, offered equally by full-time academics and part-time legal practitioners. The latter hurried to the classes, before and after court, to impart knowledge and to prepare their audience, mostly of articled clerks, for a lifetime of service in the legal profession.

Several of academic teachers of that time were truly outstanding, including Professors Julius Stone, David Benjafield, William Morison, Patrick Lane, Ross Parsons, Gordon Hawkins, Ilmar Tamello, Tony Blackshield and Harry Whitmore. The impact of law teachers on their students is often only fully appreciated years or decades after the classes have broken up. Some analysts, seeking to explain the innovative characteristics of the High Court of Australia under Sir Anthony Mason and afterwards have (correctly in my view) ascribed part of the credit to the innovative instruction of Professor Julius Stone. He was one of the great scholars and teachers in Australia. He was an agent of academic influence¹. He opened the minds of his students to new and more realistic views about the law and legal practice.

One of the articulated clerks sitting in the classroom in 1958 at the Sydney Law School was John R. Peden. He was a grandson of Sir John Peden KC, Professor of Law and Dean of the Sydney Law School two decades earlier. Like his grandfather, John Peden was to pursue a life as a teacher of law. He became the first Dean of a new Law School at Macquarie University in Sydney, where I was later to serve as Chancellor.

Writing in 1972 on professional legal education, John Peden (who tragically was to die too young) asked the following questions and made the following observations²:

“What should be the goals of legal education? For what type of end product should we aim? The predominant and continuing aim of most systems of legal education has been the preparation of the

¹ See Helen Irving, Jacqueline Mowbray and Kevin Walton (Eds), *Julius Stone: A Study in Influence* (Federation, 2010).

² John Peden “Professional Legal Education and Skills Training for Australian Lawyers”(1972) 42 *Australian Law Journal* (ALJ) 157 at 169.

lawyers for practice. In recent years, however, it has been more generally recognised that legal education should also be concerned with public policy and law reform. Furthermore, lawyers' roles have also expanded, and the education of tomorrow's lawyers must keep pace with those wider roles.

These include the traditional roles of advocate and adviser where the lawyer's attitude to social and moral questions obviously influences his responses to problem situations. As a draftsman, the lawyer influences legal processes and social consequences. ... Lawyers in judicial and quasi-judicial tribunals, in common law countries, chosen largely from the Bar, directly influence the interpretation and implementation of the law. A higher percentage of legislators, administrators and other persons responsible for the formulation of government policy have degrees in law than in other professional schools. ... Law teachers are contributing more to legal development through their writings and participation on Law Reform Committees."

It was the recognition of the growth in the variety of opportunities in law – working not only in Australia but nowadays increasingly overseas – that has led to moves away from inflexible law courses comprising mainly compulsory subjects, such as I undertook. This change has encouraged the development of law courses in Australia that permit variety, individual specialisation and a degree of flexibility. Professors H.D. Lasswell and M.S. McDougal of the Yale Law School, at about the time of my undergraduate training, urged that the functions of legal education were to awaken every student to the need to view law in a social context and to acquire skills to deal prepare them to with legal problems. Law is a problem-solving profession. That feature requires a distinctive component of ethical sensitisation, given that virtually every serious problem in the law has a number of potential solutions.

At about the time that John Peden was writing his critique and predictions for Australia, a committee on legal education in the United Kingdom, chaired by Lord Justice Ormrod, reported in similar terms³:

“... [T]he most striking feature of the legal profession is the enormous width of its spectrum, both in function and subject matter, combined with the relatively narrow limits within which many individual practitioners actually operate. ... In spite of [the] great range ... the elucidation of difficult “points of law” will be an exceptional task for all but the experts, be they judges, counsel or solicitors. The work of most lawyers, in fact, consists in a multitude of factual variations on a relatively small number of legal themes. ... [The profession] has to meet ... roles ... which are so varied and require such different qualities, that the profession will always need to recruit men and women of widely different character, temperament and intellectual attainment.

... [N]o system of education and training before qualification could possibly cover the whole of it, except in an utterly superficial and useless manner. The process of acquiring professional knowledge and skills is continuous throughout the lawyer’s working life. ... The professional lawyer requires a sufficiently general and broad-based education to enable him to adapt himself successfully to new and different situations as his career develops; an adequate knowledge of the more important branches of the law and its principles; the ability to handle facts, both analytically and synthetically, and to apply the law to situations of fact; and the capacity to work, not only with clients, but also with experts in different disciplines.”

During my legal training, in most parts of Australia, including Queensland and New South Wales, a large proportion of future lawyers was not prepared for practice in universities at all. They received instruction in professional courses, offered by a State Barristers’ Admission Board or Solicitors’ Admission Board. These bodies then had an annual intake of nearly 1,000 students nationwide, with a total enrolment, at any given time, of between 2,000 and 3,000 students. The

³ *United Kingdom, Report of the Committee on Legal Education (Ormrod Report)*, CMND. 4595, 1971, pars. 88ff.

Boards graduated approximately 200 lawyers each year. A large proportion of these graduates were public servants, studying part-time.

This professional system of admission to legal practice had begun in Australia in 1848, although it was not until 1966 that systematic courses were offered. The creation of university law schools in Australia, as an alternative, did not occur until the latter part of the nineteenth century. The traditional training of barristers in Australia was a reflection of the large legal heritage received here from England. In that country, for centuries, barristers did not receive their legal instruction in universities. They attended the Inns of Court in London where they received a mixture of formal instruction and apprentice-like opportunities to observe experienced practitioners at work, performing their professional tasks. This was still a feature of my years as a law student and articled clerk.

With the advent of university instruction in law, competing models for legal training began to emerge. From the United States of America and Canada came the North American model which envisaged a wholly post-graduate law degree. From Britain came a model involving an undergraduate law degree, sometimes (as in my own case) combined with two years of an otherwise incomplete undergraduate degree in a generalist discipline, usually the Bachelor of Arts. Australia, for more than a century, followed the British model, in legal education as in so many other things legal. Now, the University of Melbourne has adopted the North American pattern, obliging its law students first to complete a generalist degree and to undertake legal studies as a graduate student for the *Juris Doctor* degree. Other Australian law schools are now considering copying “the Melbourne model”. A number have already implemented the *Juris Doctor* option.

Self-evidently, the introduction of the new post-graduate requirement provides competition in the professional market, where alternative preparation for a life in the law is offered. Obviously, a longer period of training is involved when law becomes a post-graduate degree. Not all students, or potential lawyers, can afford these extra requirements. The added expense has a special significance in the law because of the fact that studies of the composition of undergraduate law students have shown for many years that such entrants tend to come in greater numbers from particular backgrounds and not to reflect the diversity of the general Australian population.

Thus, in studies of the educational backgrounds of law students undertaken in 1965, it was shown that only 32% had attended public schools. This was despite the fact that, at that time, 70% of all Australian students were educated in such schools. In 1965, 29% of law students had attended Roman Catholic schools and 34% had attended other private schools⁴. These figures contrasted with the intake of university students intending to enter the teaching profession. Of these, 64% received their school education in public schools; 17% were from Roman Catholic schools; and 15% from other private schools.

Professor John Goldring's survey of law students in 1976 found that 42% of law students had a relative or family friend who was a solicitor; 24%, a barrister; and 15%, a judge⁵. Allowing for some overlap between these groups, the social cohort entering law school certainly did not

⁴ Julian Disney, John Basten, Paul Redmond and Stan Ross (Eds), *Lawyers*, Lawbook Co., Sydney, 1977, 141.

⁵ John Goldring, "Admissions Policy" in *Legal Education in Australia* (1976), 30. Quoted in Disney et al, above n4, 140-141.

match that of society at large. In my own case, although I attained very good results in the school leaving certificate and attended selective public schools, I found it next to impossible to secure articles of clerkship in the large Sydney law firms. In 1958, without family connections, this proved very difficult⁶.

It is because law is not an ordinary occupation, but one in which (as John Peden recognised) the values of practitioners can influence the rules by which society lives, that the intake of lawyers is a matter of legitimate interest to society and to fellow citizens. For most of my service on the High Court of Australia, I was the only Justice whose entire education had been in public schools⁷. Although more than 65% of Australians are still so educated, most of Australia's judges, and nearly all of the Justices of the High Court of Australia, have been educated elsewhere. Such disparity could not but influence the values that are reflected in judicial decision-making. Some lawyers might contest this assertion. However, in my opinion, those who dispute it need to go back and read the instruction of Professor Julius Stone about the "leeways for choice"⁸ that are enjoyed by judicial decision-makers in the common law system. And the ways in which early family and educational influences affect professional values throughout life.

Legal education is in a constant state of development and change. Sometimes the changes are dramatic. The shift of legal education from the case book method, pioneered in the nineteenth century by Professor C.C. Langdell at Harvard Law School, to a closer attention to the task of

⁶ A.J. Brown, *Michael Kirby: Paradoxes/Principles*, Federation Press, Sydney, 2011, 46ff.

⁷ *Ibid*, 206-207.

⁸ J. Stone, *Social Dimensions of Law and Justice*, Maitland Publications, Sydney, 1977, 149. The expression was adapted from the writings of Karl Llewellyn.

textual interpretation, simply follows the alteration in recent decades in the relative importance from judge-made law and enacted law. It is a change that can only continue⁹. Australians must constantly ask, what are the other shifts that are occurring, that need to be reflected in a contemporary law course.

It is against the background of this understanding of the purposes of legal education and its traditions in Australia and elsewhere, as well as recent developments affecting the contents of law courses, that I address the creation of the new law course at Central Queensland University (CQU). At the outset, I express my opinions: the new JD course at the University of Melbourne Law School is to be welcomed. So is the new CQU law course. The special features of the latter are that the course is substantially taught online and the course is an undergraduate one, shorter in potential duration and total subjects than most other such law courses presently on offer. Within the constraints established by the applicable accreditation standards, it is desirable that diversity should be a feature of the contemporary Australian legal education scene. Innovation and multiple options are desirable. Sticking unquestioningly to past or present models is not necessarily in the best interests of the legal profession or of the citizens and future clients and users of legal services. Professional opinion and the market place for educational services will respond as they see fit to the new options.

⁹ Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Belknap Press, Harvard, Cambridge, 1993), 169, 183.

ADVANTAGES OF THE NEW CQU COURSE

The new CQU law course with its special features offers a number of advantages in the teaching of law:

- 1) *Serving regional and rural needs:* The emphasis on online instruction is designed to respond to several demands that arise in regional and rural Australia. In the vast physical distances of Australia, especially the States of Queensland and Western Australia, the need for law courses to cater for government and other employees, working in remote districts such as police and those engaged in resource extraction, acknowledges of the particular difficulties that can arise for such students in attending physically at a distant location to undertake lectures. The fact that the CQU course will provide its instruction online makes enrolment and participation possible for undergraduates who might otherwise find it difficult, or impossible, to enrol in a law course;
- 2) *Importance of supports for students:* Apart from employment impediments, there are difficulties that some students experience in living away from family and friends, usually at a young stage in their lives. Many students perform better in their studies if they are living and studying in close proximity to their families and other supporters. Studying in places remote from home and friends will frequently add emotional burdens. These will be missing if a course can be undertaken online and effectively brought to the student rather than vice versa;
- 3) *Retaining regional and rural talent:* One hope of the CQU degree is that, by catering online to students in remote regional and rural districts, in the vast outback regions, it will prove easier to retain talented and qualified employees in regional and rural Australia. If a student is forced, for study reasons, to move to a metropolitan

centre, there is always a risk that his or her link with a place of origin will be lost. To some extent, bringing the university to the student may prove a way to overcome this drift to the cities. This is a serious problem for retention and engagement of professionals in remote communities;

4) *Utilising new information technology*: The basic concept behind the online undergraduate course in law is to use technological facilities that are now available and increasingly familiar, especially to younger generations. I have participated in webcam lectures from my chambers in Sydney to students of the Charles Darwin University in the Northern Territory. The undergraduate law course in that university is offered overseas to many students, physically present in Asia and the Gulf region. Immediate contact is provided visually by camera and Skype. Oral and text links are instantaneous. They permit questions to be asked in real time. These can be subject to an expectation of a 24 hour response at a maximum, which is said to be the norm at CQU;

5) *Catering for special cultural needs*: Particular categories of students may also find online courses more attractive to them and congenial to their cultures and backgrounds. Indigenous students and students from backgrounds that otherwise lack connection with tertiary education may, it is hoped, respond well to a technology of instruction that does not require them to speak up in class where they may feel tongue-tied and intimidated. There is something about the democracy of online communications that may make them more suitable for such students. Anything that can contribute to increasing the numbers of law students and legal practitioners from less privileged ethnic, social and educational backgrounds is to be encouraged. We have not graduated many

lawyers from these backgrounds in Australia. The CQU course will represent a nationwide experiment to reach out to such groups as have not so far been well represented in university law courses and consequently in the practising legal profession;

6) *Continuity and change in curricula*: A course in Jurisprudence (or Legal Values) is a compulsory subject in the CQU curriculum. This subject is not one of the Priestley eleven compulsory core subjects – although why my distinguished former colleague in the New South Wales Court of Appeal, Justice Priestley, omitted it, I cannot tell. Gaining instruction in the theory and application of the value choices that have to be made in the law is an essential ingredient, in my view, to preparing the ethical lawyer of the future. Such a course demands of its students that they reflect upon the choices that arise in judicial and other legal decisions, in constitutional and statutory interpretation and in everyday administration of the law. Only those who are aware of the choices, and of the theories that can inform selection of the applicable values, will approach this part of the legal discipline with eyes open to the obligations and opportunities that face lawyers. Although Legal History is not presently offered in the course at CQU, any more than in most Australian law schools today, I again make an appeal for its re-introduction into law courses, or at least as an identifiable component of the teaching of particular legal subjects¹⁰. It is impossible, for example, to understand Australian constitutional law fully, or the operation of our constitutional documents, without a thorough grounding in the constitutional history of Australia and, earlier, of the United Kingdom. This provides the backdrop against which our law has been written and without knowledge of which it

¹⁰ M.D. Kirby, “Is Legal History Now Ancient History” (2009) 83 ALJ 31 at 39-41.

is impossible to elucidate the constitutional text¹¹ and other public laws; and

7) *Supplementing online with practical outreach*: Although students undertaking the CQU course online will lose the considerable advantage of regular physical interaction with teachers and other students, steps are to be taken to provide other forms of actual contact that can supplement the online instruction. Thus, mentors in country and regional Queensland are being sought to provide support and supplementary professional experience, so as to allow practical insights into the operation of law and environments in which the emotions and challenges of legal practice can be experienced, shared discussed and understood. The training of future lawyers, at least those who will participate in the daily work of the practising legal profession, requires not only instruction in laws and rules, but also in the conventions, traditions, courtesies and ethics of the legal profession. These require a measure of subtlety, dialogue and full explanation and examples if they are to be successfully imparted¹².

The values that CQU embraces for itself are harmonious with the foregoing objectives. They include good communications; an emphasis on problem solving; experience in critical thinking; capacity in information literacy; exposure to team work; engagement with cross-cultural experiences; and commitment to ethical practice. No doubt, on

¹¹ A good illustration is *Combet v The Commonwealth* (2005) 224 CLR 494 where the history of the appropriations power was traced. See also *White v Director of Military Prosecutions* (2007) 231 CLR 570 (courts martial) and *New South Wales v The Commonwealth* (Work Choices Case) (2006) 229 CLR 1 (industrial arbitration). See (2009) 83 ALJ 31 at 41.

¹² Gino Dal Pont, "Respect in Trying Circumstances: Maintaining Civility and Respect in Dealings Between Lawyers Can Be A Challenging Necessity", *Law Institute Journal (Vic)*, April 2011, 76; cf. K.A. Nagorney, "A Noble Profession? A Discussion of Civility Among Lawyers" 12 *Georgia Journal of Legal Ethics* 815 at 816-7 (1999); *Garrard v Email Furniture Pty Ltd* (1993) 32 NSWLR 662 at 667, per Kirby ACJ.

occasion, the University, like any institution or individual, will fail to attain perfect scores on these and other values. But it is to be welcomed that these are the standards that CQU sets for itself and propounds to the world. By setting such standards, the University exposes its teachers, administrators, support staff and leaders to criteria by which they can be judged, and to which they can be held accountable.

CHALLENGES FOR THE CQU COURSE

Launching an online law course obviously presents many novel challenges. These include:

1) *Upholding participation:* In a physical class, it is possible for a vigilant teacher to observe non-participation and to seek to remedy this by engaging the student in dialogue and responsiveness. It will be important that this facility is not lost by online instruction. Through CQU's "Moodle" software, the participation of individual students can be assessed. Through webcam links, online mooting and professional role play can be introduced and assessed. In the High Court of Australia, from the 1980s, special leave hearings linked to distant cities of the Commonwealth were regularly undertaken with the aid of telecommunications. The technology is fully functional, instantaneous and virtually equivalent to being present in a distant courtroom. The same technology is becoming cheaper and more accessible for educational purposes. Already, such linkages are effected in established law schools, for example in the James Cook University connections between different campuses in Queensland, the most decentralised State in the nation;

2) *Student feedback:* It will be essential to obtain and monitor student feedback about any teething problems that arise in the introduction of an intensive online course in the law. In the theory of

things, so long as standard time limits are observed in lecturers' responses to students' queries, the online technique should be even more interactive than much regular classroom dialogue, at least when I recall how that dialogue was conducted in my time. Still, it is inevitable that particular problems will arise. The CQU Law School and the University should make it their business to seek student comments and regularly to discuss consumer satisfaction with the course, so that problems and difficulties can be ironed out and quickly addressed under the protocols of the school. User friendly mechanisms should be put in place to permit complaints or suggestions to be assessed and followed up, without actual or apprehended risks of adverse consequences for a student making such communications. Success in the new technique of instruction will depend upon an interactive dialogue between the providers and recipients;

3) *Mentors and chat rooms:* To repair as far as possible, the lack of regular physical interaction with teachers and other students, CQU will need to give thought to providing supplementary opportunities for electronic and physical interaction and dialogue. It is difficult online, and at long distance, to replace the vibrant, exciting and often emotional contacts provided by universities through participation in student societies. This is part of the "entire university experience" for undergraduates who physically attend for instruction at a university campus. This feature of university life should not be exaggerated. Many students (including myself) never availed themselves of sporting facilities provided on the campus. Many never join student societies. It is not compulsory. I myself failed to do so until, by chance, I became involved in the activities of the Student Law Society and Representative Council

at the University of Sydney¹³. Imaginative thought should be given to ways in which students, receiving their instruction online, can be involved in a wider range of student services and activities, so as to avoid participating in a course that is wholly de-personalised. Sometimes it is a matter of knowing whom to approach and where to go that makes the difference between comfortable assurance and blundering and blustering for fear of admitting ignorance. Nevertheless, many especially young people, today conduct intense emotional relationships of various kinds through the range of social networks that are now in place. A lot of attention should be paid by the CQU Law School and the University to enhancing this aspect of the university experience and to providing more than electronic instructional communications between the students and the teachers in the institution;

4) *Equity and outreach*: If the CQU law course is simply viewed by its students as a shorter and quicker way to obtain professional legal qualifications, in a minimum of time and at a cheaper cost, it will have failed to attain the objectives of social equity and broader outreach that it has set for itself. The background and aspirations of enrollees should be studied so as to monitor the success of the course in attracting participants from indigenous communities and minority ethnic and social groups that have so far generally been omitted from the catchment of many Australian law schools. Results should be reported, monitored and followed up. CQU should remember that equity cuts both ways. Although government subventions for legal education are at the bottom of federal contributions, this has meant significant cost

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A.J. Brown, above n6, 50ff.

burdens on would-be law students, including those who make relatively low demands upon university costs and facilities¹⁴;

5) *Staff selection and development:* Just as the experience of students will need to be evaluated, so will the selection of staff and their experiences in relating to online instruction and students. Maintaining enthusiasm for legal education may, in some ways, be easier in circumstances of regular interaction with the familiar personalities of students and teachers. Responding to students to their instruction is one of the emotional rewards of being a teacher. Those who are required to teach online and who are deprived of direct special interaction with students may need special skills, possibly additional training, and strong protocols for online communications so as to maintain the interactive and personal character of the engagement. Because the new course is so innovative and different from traditional law teaching, it should be constantly evaluated and checked, including by feedback from the teachers themselves. It should be reported to the national legal profession which will be watching this innovation;

6) *Library resources:* Although it may be expected that most of the materials used in instruction in the new course will themselves be available online, there will be needs, from time to time, to provide access to legal materials that are only available from libraries in hard copy. For the provision of these materials, appropriate arrangements for inter-library loan will be needed, under proper and easy conditions, that are made known to the students and involve reasonable costs and minimal bureaucracy;

7) *Physical interaction:* CQU intends to conduct invigilated examinations in regional centres to ensure the integrity of grading outcomes and for the maintenance of high standards in the new course.

¹⁴ Clair Chaffey, "The Fight for Funding", *Lawyers Weekly*, 29 April 2011, 10.

University graduation ceremonies sometimes constitute the sole time that many students come physically to the one place and meet each other at the end of their studies. Some consideration might be given, in the particular case of the CQU online course, to supplementing physical interactions of students and staff in appropriate ways at regional functions, including at student functions, in which the engagement of the students with the University can be experienced, otherwise than on a screen or at a graduation ceremony. In a State as large as Queensland, that might necessitate a number of regional events to which students could be invited, perhaps with partners or friends. Especially where young law students are completing their formal studies and approaching the rude shocks of professional training and early responsibilities, the provision of opportunities amongst novitiates for exchanging experiences is an important aspect of an effective education¹⁵. It will also be in CQU's own interest, in building an active base of *alumni*, to encourage occasional physical involvement of this kind;

8) *Student health and wellbeing*: One new consideration that certainly needs to be taken into account by CQU is the growing evidence of the stress levels to which university students, particularly law students, are susceptible in contemporary Australia. Stress amongst law students appears to be much higher than amongst other tertiary students, including those pursuing professional courses in medicine. Sometimes, exceptionally, the stress can lead to instances of emotional breakdowns amongst students and young graduates and even suicide. However, imperfectly, physical proximity to other students, teachers and supporters may disclose evidence of stress that can be followed up and addressed with special assistance and support. This may prove more

¹⁵ K. McGuicken, "Bursting the 'Ally McBeal' Bubble: The Realities of Your First Year in Practice", *Proctor* (Qld), March 2011, 23.

difficult in a case where communications are limited to impersonal online engagement. Isolation and lack of immediate or proximate supports may add to the pressures facing law students unless special initiatives are undertaken¹⁶; and

9) *Overseas outreach*: Although the CQU degree is, at the outset, to be available only to Australian resident students, there is no reason why, in due course, it should not be offered (with or without modifications) to international students. The Charles Darwin University degree is offered offshore online. Increasingly, Australian law degrees include subjects with international and transnational components. The common law system operates in many of the countries that surround Australia, including in the Gulf States, the Indian subcontinent, South-East Asia, Papua New Guinea and the Pacific Islands. Instruction through the medium of the English language and ready access to teachers online, may provide an educational product that is attractive. It may become another export of services in which Australia has a comparative economic advantage. There is a huge and growing market for lawyers in the region beyond Australia. Increasingly, legal work for Australian firms is performed offshore at cheaper rates than can be offered to their client by Australian firms. Australian tertiary institutions should be working imaginatively to tap these significant potential markets for legal education.

No doubt, there are other tests and trials that will need to be undertaken as this new course is introduced, trialled and perfected. In a conservative profession, such as Law, critics of innovation are easier to

¹⁶ Anthony Lester, Lloyd England and Natalia Antolak-Saper, "Health and Wellbeing in the First Year: The Law School Experience" (2011) 36 *Alternative Law Journal* 47. Cf. Martin Seligman et al, "Why Lawyers Are Unhappy" 23 *Cardozo Law Review* 33 (2001); Judy Allen and Paula Baron, "Buttercup Goes to Law School: Student Wellbeing in Stressed Law Schools" (2004) 29 *Alternative Law Journal* 135 at 141.

find than supporters. Supporters will be needed if the course is to flourish. In a sense, the innovator has to be more successful than the compliant, that merely copies well-worn techniques which are 'tried and true'. With heightened enthusiasm and strong commitments to diversity, equity and outreach and to regional and rural communities, the new CQU course can appeal to a market that is presently not effectively served in Australian legal education.

The market to be pursued is not merely that of the would-be lawyer who regards a law course as an irksome necessity before the cash registers begin to chime their agreeable harmony. The CQU law course will be a success if it attracts students who are presently, effectively, put outside the reach of legal education. Particularly if it attracts students from indigenous, ethnic and other minority or disadvantaged communities who are not presently well represented in the Australian legal profession.

Compared with the education costs of faculties other than law, the infrastructure costs of law schools tend to be low. To some extent, their incomes cross-subsidise other more cost intensive courses and activities within contemporary universities. This fact has been increasingly noted in the United States where observers have begun to criticise the rapidly escalating tuition fees of popular law schools¹⁷. Intuitively, online university courses should have significantly lower per capital costs and the student contributions. The costs of common facilities that are not in fact physically shared may need adjustment. The fee structure for law students at CQU may therefore require close attention to ensure that the *Milch Cow* phenomenon, criticised in the United States, is firmly hit on the head in Australia and tuition fees contained in an equitable way.

¹⁷ David Segal, "Law School Economies: Ka-Ching!", *New York Times*, 16 June 2011.

Especially so at a time when recruitment of legal studies may be outpacing job creation¹⁸.

CONTRIBUTING TO LAW'S SPECIAL VOCATION

Law is a special vocation. Potentially, it is a noble one. Certainly, it is a necessary one in a modern society. Necessarily, it is concerned with the twin aims of upholding order and justice in society. The alternative to the rule of law is the rule of brute power, force or the uncontrolled influence of money or birth.

The two new law courses on offer in Australia, the *Juris Doctor* at the University of Melbourne and the *Bachelor of Laws* at Central Queensland University, will each produce lawyers for the future, qualified to meet the needs for legal services in Australia and beyond. Respectively, they each tend to serve the requirements for lawyering that were described forty years ago in England by Lord Justice Ormrod's Committee¹⁹. Inevitably, in another forty years, it will be found that students who graduate from each course will gravitate to occupations and activities that might not have been predicted at the outset of their careers. Thus, many law graduates from law schools in sandstone universities may end up grappling with "factual variations on a relatively small number of legal themes". Some graduates from an online law course may become senior practitioners, judges and even High Court Justices. The Hon. Michael McHugh made such a transition after completing the Barristers' Admission Board course half a century ago. In the law, individual capacity will often shine through.

¹⁸ *Loc cit.*

¹⁹ Ormrod Report, above n3, 88.

Still, the main hope for the teaching of law online at CQU must be that it increases the diversity of the candidates entering the law and its profession. In diversity of entrants lies the hope of diversity of values and experience, interests and motivations. And that can only serve to strengthen the capacity of Law, as a discipline, to rise to the challenges that will face it in the century ahead.
