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 mine shaft. Although corporatization plays out differently in decentralized regimes with a substantial private sector, such as the United States, its impact on the legal academy in those places has been similarly profound. It is apparent that the dilemmas posed by corporatization for the legal academy require considered scholarly attention.

HIGHER EDUCATION AND THE NEW KNOWLEDGE ECONOMY

In the late twentieth 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 (1998/1999), and the IMF, that human capital needed to be upgraded, neoliberal governments seized upon the new commodity with alacrity. They drew 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 twentieth 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. 162–63), 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 United Kingdom, 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, Newman [1976 (1852)]; its diffusion and use value in the market were what was now important (OECD 1996, p. 14). Consequently, the commercialization of the fruits of research, or knowledge transfer (Gaze & Stevens 2011), 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 is that economic factors have assumed the position of the driver, rather than the beneficiary, of knowledge production (Lyotard 1984). 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" (Slaughter & Rhoades 2004), the "entrepreneurial university" (Slaughter & Leslie 1997), and the "enterprise university" (Marginson & Considine 2000), as well as "marketization" (Brown & Carasso 2013) and "privatization" (Morphew & Eckel 2009, Thornton 2012a). Indeed, enterprise or entrepreneurialism is now the "third mission" or "third stream" activity of the university, taking 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" (Evans 2004). The diagnosis arises, Bok (2003, p. 200) suggests, 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 (see **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). Although there have historically been a number of different models of the university—both public and private (Marginson & Ordorika 2011, pp. 101–2), their raison d'être has radically altered. Indeed, some prominent US 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 (Evans 2002, p. 38). Public universities have paid particular attention to leadership and service (Moran 2013, p. 1026), in addition to enabling access to the professions regardless of students' private wealth (Nance 2011, p. 1631). Privatization necessarily compromises these civic and public goods (Bourne 2011/2012, pp. 686–87; Thornton 2012a).

The ideological force of the contemporary privatizing imperative is such 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 a public rather than private good. Shore & McLauchlan (2012, p. 283) demonstrate this proposition 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 (2013, p. 337) highlights is the inequity of a preponderance of elite legal positions being in the hands of the offspring of the wealthy.

Neoliberal policies, in which the free market is revitalized as a key social institution, are 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, p. 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, both federal and state governments play a comparatively limited role in overseeing higher education (Areen 2011, pp. 1473–74). Nevertheless, although the US position is less consistent than that of most other countries, the market embrace is similarly impacting not only on teaching and research, but also on 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 nineteenth 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 approved (e.g., Martin 1986). Once 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 US schools promoted the pursuit of scholarship in an endeavor to overcome their trade school image within the wider academy (Walker 2014). 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).

In times of economic crisis when employment prospects plummet, the criticism of the academy becomes 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 2014) and, more recently, with the global financial crisis (GFC) of 2008. The new knowledge economy gave the applied approach a fillip, as it emphasizes "know-how" over "know-what" (OECD 1996), or what lawyers *do* (e.g., MacCrate et al. 1992).

Paradoxically, the neoliberal turn also emphasizes scholarship as well as the plea for more applied knowledge. The renewed emphasis on scholarship has arisen as a result of the heightened competition between law schools, which is manifest 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 that (*a*) there are too many law students, (*b*) law schools are too expensive, and (*c*) law schools devote too many resources to the production of faculty scholarship at the expense of preparing students for practice (Yellen 2013, p. 1392; Rhee 2011; Segal 2011). Tamanaha (2012) elaborates on these criticisms by drawing attention to überelite Ivy League law schools' rapidly increasing tuition fees to over USD 50,000 per annum, which caused other law schools, both public and private, to follow suit (Bourne 2011/2012, p. 652; ISBA 2013). The phenomenon is claimed to have been highly detrimental to students at nonelite 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, new universities, as well as older institutions that did not have law schools, viewed law as an attractive offering. 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 did the new universities view law as a prestigious professional discipline, but 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 upon graduation.

In the United States, the number of ABA-accredited law schools grew by one-third in the 50 years after 1963, whereas enrollments tripled (Kritzer 2012, pp. 210–11). Profitability rather than community need or social good therefore motivated the choice of law. Unsurprisingly, law schools were used as milch cows to subsidize other parts of universities (Bourne 2011/2012, p. 686; Newton 2012, p. 79; Tamanaha 2012, p. 127). This is graphically illustrated by the case of a new Australian law school where enrollments increased in one year 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 has tended to move away from a passive pedagogy in recent years toward small-group interactive learning (Keyes & Johnstone 2004, Le Brun & Johnstone 1994).

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 than the social sciences and the humanities in the new knowledge economy. In Australia, for example, the government contributes approximately 15% toward the cost of a Commonwealth-funded legal education position; in the United Kingdom, following the implementation of the Browne reforms in 2013, that figure has fallen to zero, although the United Kingdom has emulated the Australian 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 has caused students to be viewed as consumers, customers, or even clients (Askehave 2007, p. 725), and academic educators and their institutions have become service providers, so that the special relationship between teacher and student is 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, p. 308). The instrumental or consumerist focus is pronounced in the case of legal education (ABA 2014, pp. 9–10), in which legal educators have to accommodate the interests not only of students themselves as key stakeholders (Boon & Whyte 2010) but also of the legal profession (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 the sociolegal analysis, 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, p. 19), clusters of subjects, such as commercial, intellectual property, securities, and international trade law, are likely to be offered, largely from a how-to perspective to satisfy the practice-ready requirement (e.g., Rhee 2011). Research conducted in Australia, the United Kingdom, Canada, and New Zealand has revealed that "jettisoning the critical" is the inevitable result of corporatization (Thornton 2012a), although committed teachers attempt to resist its evisceration (Appleby et al. 2013, McGee et al. 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 was in addition to the compulsory postgraduate practical legal training (PLT) already required for admission. The inclusion of at least a modicum of PLT would appear to go some way toward meeting the objections of critics who claim that graduates of US law schools are lacking basic skills (Moliterno 2013, p. 429; Rhee 2011, pp. 327–33). 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 Urciuoli (2010, p. 169) argues, with the term 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 students/consumers desire in their legal education, as they are associated with modernization, success, and productivity (Urciuoli 2010).

Although faculty size has increased, this has not necessarily led to sustained curriculum enrichment, as less time and attention are devoted to teaching in the interests of scholarship and rankings (Bourne 2011/2012, p. 692; Yellen 2013, pp. 1394–95). As profit centers (Kissam 2003, pp. 217–18), law schools must be economically efficient, which invariably requires more to be done with less. Even though overall teaching loads have generally declined, the lecture method remains the preferred form of pedagogy. It suits the applied approach, as it encourages the transmission of prepackaged technocratic knowledge at the expense of critique and independent thought (Thornton 2007, p. 14). The propositional approach also suits flexible modes of delivery, such as intensive and online teaching.

The modes of assessment in vogue, furthermore, support a technocratic approach to known knowledge, particularly in the case of "mass-provider" universities (Keohane 1999, pp. 62–63). Short tests and end-of-semester examinations have tended to replace long research essays, as they are "quicker to mark," although skills of argumentation are acquired through essay writing (Nussbaum 2003, p. 273). Superficial, but quick, assessment tasks suit not only institutional and individual research agendas, but also 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 depoliticization of legal knowledge in accordance with the neoliberal agenda (Urciuoli 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 50% 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 past 25 years (Thornton 2012b).

In contrast to the assertion 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 (Levin & Alkoby 2012, p. 292; Nance 2011, p. 1647; Tamanaha 2012, p. 170). 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, or community sector, as well as pursue a host of other careers. Income-contingent loan schemes, such as FEE-HELP in Australia, relieve the pressure on students to pursue the most highly remunerated employment with large corporate 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 in terms of both their aspirations and what they might usefully be doing (Menkel-Meadow 2012).

The "too many lawyers" debate begs the question as to not only what a lawyer is 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 a liberal arts degree, that would 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 (Henderson 2013, p. 473). Ribstein (2010) has predicted the death of Big Law, the large national and global law

firms that continue to be the preferred destinations for law graduates. These firms are regarded as the most prestigious and offer the highest remuneration, but Big Law is concerned primarily with capital accumulation and the maximization of profits within a highly competitive market. Consequently, it may no longer be considered profitable to engage new graduates who need to be trained, when a firm can laterally recruit established lawyers with ready-made client bases (Henderson 2014).

Major structural innovations designed to promote competition have been implemented in legal practice, tipping the scales in favor of law as a business over legal professionalism. Such innovations include the incorporation of law firms, which allows nonlawyer ownership instead of partnerships, and listing on the stock exchange. These first occurred in Australia early in the twenty-first century (Mark & Gordon 2009) and have since followed in the United Kingdom (Sherr & Thomson 2013). The application of competition policy to legal services is compelling the legal profession to shed many of the restrictive and anticompetitive practices of the past and to open up areas, such as conveyancing, to nonlegal specialist providers. Such practices are causing Big Law to "unravel" (Ribstein 2010, p. 771), and they 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. Deregulation of the profession has yet to occur in all jurisdictions, but the movement is gathering force globally. Moreover, the changes are by no means confined to Big Law, as they are occurring generally across the profession.

Legal practice is also being transformed by a range of advances in the technological delivery of legal services, including subcontracting to cheaper overseas jurisdictions, such as India, and the increasing use of paralegals, e-discovery, and online dispute resolution (Susskind 2008, 2013). These initiatives together with business models and the growth of in-house corporate counsel all point to the need for fewer—not more—conventionally trained lawyers 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 2013, p. 486; see also 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, as Marginson & Ordorika (2011) demonstrate so persuasively. 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 of the international legal services market by the United States 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 US graduate model of legal education (Chambliss 2011/2012). Just as 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 2011/2012, 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 2011/2012, p. 2657). Richard Susskind (2013, p. 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. Admitting

authorities have failed 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 specializations. It is clear that the notion of practice-ready needs to be expanded from the ideal of the private practitioner of the nineteenth and twentieth centuries to a new set of competencies. Global thinking is undoubtedly a desirable competency for future lawyers, as are economic analysis, leadership, and project management skills (Holloway 2013, pp. 137–38).

No nation, law society, or law school guarantees a particular kind of job upon graduation, and with the possible exception of Japan (Chan 2012), restrictions are not placed on the number of law students or the number of lawyers admitted to practice. 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, certainly not in a contracting labor market. The vectors of supply and demand are expected to resolve the number of lawyers required for practice. New knowledge workers with legal qualifications are assumed to be adaptable and versatile in contributing productively to the economy. As a law degree equips graduates for a much wider range of positions than just traditional lawyering, it is clear that legal education needs to pay greater attention to differential markets for legal services (Pierce & Nasseri 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 simultaneously the returns from legal education and from legal scholarship. These two strands are associated with the traditional mission of the academy, which has been thrown into disarray by entrepreneurialism, or "third stream" activity (Shore & McLauchlan 2012).

The academic entrepreneur, or "technopreneur"—who embodies the requisite combination of technoscientific 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). Indeed, Tombs & Whyte (2003, p. 207) note that the trends in favor of applied and policy research have contributed to the overall dilution of critical and theoretical research.

Although it may be law's primary task to educate large numbers of practice-ready graduates cheaply to serve the new knowledge economy, law does not wish to be left behind in a paradigm where scholarship is extolled. Hence, 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 & Considine 2000, pp. 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 [1992 (1986), p. 19] argues in his iconic work that risk is unavoidable in the social production of wealth. 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) describes 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 "becoming monetised, and as this happens academic *values* are becoming transformed " (Burrows 2012, p. 368, emphasis in original). 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 2013, 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, including publication in international refereed journals, research impact, and the use of citation indices, although 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 of whether or not there is a state system of audit. What is notable is that the more scholarly the work, the less practical value it is deemed to have for the legal profession (McKay 2011/2012, p. 855).

Ranking Research

Virtually unheard of until the late twentieth 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 markets generally. Sameness inheres in the standardization of criteria for products competing in the same market, but there has to be a modicum of difference to set apart a product from its competitors for the purposes of marketing (Thornton 2012a, p. 43). In the higher education market, institutions that dare to be different in their basic mission 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. The homogenizing imperative leads to unevenness in knowledge flows and a brain drain away from developing countries (Deem et al. 2008, p. 93; Marginson & Ordorika 2011, pp. 87–89).

Although 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. Research is regarded as more prestigious than teaching in the new knowledge economy (despite the rhetoric). Publications are also believed to be verifiable and assessable on a universal scale, despite the Anglocentric bias. Furthermore, the quality (and/or quantity) of publications may be financially rewarded by a law school, university, and/or state.

Rankings include a mixture of opinion and quantitative indicators that renders the measurement of quality elusive (Thomas 2003; Yellen 2013, p. 1396). Despite their contested methodologies, however, rankings have secured a hold in the popular imagination (Sauder & Espeland 2009, p. 68). Students are more likely to be influenced by the ranking of a school than its offerings, even though rankings arguably measure no more than wealth and reputation (Bourne 2011/2012, pp. 690–91). Rankings are key drivers of law school behavior that 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 2011/2012, 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 2014, p. 2; Tamanaha 2013, pp. 331, 335). In addition to drawing in scholarship stars through merit scholarships (Bourne 2011/2012, pp. 665–67), faculties also recruit research stars to enhance law schools' 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. As Henderson & Zahorsky (2012) point out, "Snobbishness and elitism are the last socially acceptable prejudices." By contrast, 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.

Despite the appeal of difference and the desire by law schools to market themselves as possessing a distinctive brand (Ariens 2003, Broadbent & Sellman 2013, Thornton & Shannon 2013), rankings endeavor to compress schools into the same mold, a factor that runs counter to the desire for specialization and diversity (Marginson 2007, p. 118). Rankings 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 & World Report* down to the standardization and uniformity deriving from the accreditation process. However, a law school that is a century or more old has undoubtedly acquired a significant competitive edge in the labor market by virtue of its positional goods relative to a new law school that is struggling to be noticed.

The Ascendancy of Managerialism

Almost a century ago, Thorstein Veblen [1957 (1918), p. 198] noted how the incursion of business principles into universities weakens and retards the pursuit of learning. The intrusion of the values of the corporate world, particularly top-down managerialism with its forms of accountability and control, is always potentially in conflict within the academy (Marginson & Considine 2000, p. 65), as these values impact 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 that 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 brought with it not only 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 (Evans 2002, p. 99).

As "scholarship increasingly has become the coin of the realm" (Demleitner 2010/2011, p. 608), it is the role of research managers to ensure that academics are productive. In some cases, managerialism has also led to faculty losing control over core academic matters, such as teaching (Titus 2011/2012, p. 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 (CHEA 2010). The Australian Qualifications Framework is one of the most prescriptive, with distinct learning outcomes specified generically for degree levels (see **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 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 than tenured faculty to challenge orthodoxy. This trend is further underscored by instances of the "quasi-privatisation" of academic labor, such as the use of large research grants by faculty to buy themselves out of teaching obligations (Peters 2002, p. 31).

Academics have quickly internalized the audit culture, as 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" (Rose 1999, p. 155; see also Shore & Wright 2004).

Although the case for the mistrust of academic autonomy and the substitution of bureaucratic formalism may never have been properly made (Lorenz 2012, p. 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 and reshaping the norms of the university with a correlative negative effect on academic freedom (Collins & Skover 2012, Post 2012). Academic freedom is marginalized in an environment committed to economic rationality not only because it lacks use value in the market, but also because 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, pp. 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 that research priorities may now be specified, but the new knowledge economy may harbor the seeds of unfreedom. Commodification and the privatization of research may thereby insidiously normalize repression (Gerstmann & Streb 2006, Thornton 2009). 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 practice-ready graduates. It

means that the presuppositions of legal practice have the potential to dominate the law curriculum so that there is little scope for interrogation or critique.

CONCLUSION: WHERE TO NOW?

Legal educators confront a dilemma as to how best to proceed with legal education in the corporate university. 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 (Merritt & Merritt 2013, Tamanaha 2012). If a law school fails to adapt, it will wither and die (Collier 2013, p. 453), but adaptation represents a major challenge because auditing, rankings, accreditation, and quality assurance all encourage sameness. 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, p. 86). Law schools tend to take their curricular cue from the admitting authorities, despite the fact that 50% of graduates do not embark on conventional legal practice. Twining's (1996, p. 1012) observation of some years ago that American law schools all acted as though they were playing in the same hierarchically organized football league 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 advocate for an end to the accreditation straitjacket (Ribstein 2011, p. 1676). 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, pp. 331–33). It has been suggested that the third year of law school is dispensable because it does not add value (Newton 2012, pp. 88–89). In the United Kingdom, the reduction in the length of undergraduate degrees, including law, has been explicitly related to the benefits of the new knowledge economy for the nation state:

> 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)

Although one- to two-year courses of legal study were the norm in the United States until around 1870 (Spencer 2012, p. 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. Although Walker (2014) suggests that the push toward the JD in lieu of the LLB may have been a mistake, a number of US law schools, such as George Washington and Northwestern, have already moved to offering the JD in less than three years. In Australia, although the norm is still a five-year combined program (e.g., BA/LLB), there are many variations and summer intensives, and online offerings enable students either to

accelerate their program or to work part time while studying in accordance with the principles articulated by Broadbent & Allen (2011) above.

As an alternative to the conventional LLB, the UK Graduate Diploma in Law (GDL) enables any (nonlaw) university graduate to undertake a one-year course that focuses on the basic principles of law (Faulconbridge 2011/2012, 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 without admission to legal practice, are widely available and may better cater for the 50% of law graduates who do not intend to practice. However, it is well known that students like to leave their employment options open until they graduate, just in case. Hence, the majority prefer the status of a law degree, regardless of career path.

Just as we see mergers and acquisitions (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 collapsing 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-denomination 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 practice-ready in minimum time. This is already the case with the for-profit law provider BPP Law School in the United Kingdom (see **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, the role of scholarship is being distorted by commodification and competition. The pressures in favor of applied knowledge in the prevailing political economy have encouraged not just a delinking of teaching and research but a rivalry between them. Although 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 a secondary role to scholarship in the corporate university. Sociolegal scholars urgently need to address this seemingly intractable dilemma.

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