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LAW & HUMAN DIGNITY

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THE DESERVING AND THE UNDER-SERVED: A COMMENT ON THE OVERSUPPLY OF LAW GRADUATES, DIVERSITY IN THE LEGAL PROFESSION AND ACCESS TO LEGAL REPRESENTATION

MARIE ISKANDER*

Panic about the oversupply of law graduates is not a new phenomenon and has been an ongoing concern for decades, dating back to the 1970s. Despite this, the sizes and numbers of law schools have multiplied in recent years, heightening anxieties about graduate employment prospects. Although the increasing sizes and numbers of law schools has made the law degree more accessible to students from a variety of backgrounds, there continues to be significant unmet need for legal advice and representation for a broad range of Australians from various socio-economic backgrounds. Therefore, while the idea of who is 'deserving' enough to study law has shifted, there remains a significant proportion of our community that is 'under-served'.

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I INTRODUCTION

Over ten years ago, when I was still in high school, the students in my class were asked to write down a list of university degree preferences alongside the ideal careers we were aspiring towards. Having decided that I wanted to become a lawyer at the ripe age of 11 years' old, without hesitation, I wrote that I wanted to study a law degree at university and become a lawyer. The teacher then went around the classroom, stopping to read each student's answer and then paused at mine, saying: 'Oh darling, you'll need [high marks] to get into law school and you're not going to get that. You should *pick something else*'. Fast forward to over a decade later and I have thankfully achieved my dream of becoming a lawyer in the public sector, but not without being told time and time again during my degree, or in the process of applying for jobs as a graduate to *pick something else*.

Many law students and law graduates have become all-too-familiar with how dismal the graduate employment market has become for aspiring lawyers. This depressing impression has stemmed from the non-stop barrage of news stories which serve as a recurring reminder of how there are not nearly enough employment positions to cater for the oversupply of law graduates. As a result, the idea of using a law degree to *pick something else* by way of a non-legal career has become an increasingly common selling point used by several new and old law schools. Many are now perpetuating the idea that the law degree has become an increasingly generalist degree, with transferable skills to other industries and professions, and that it is no longer inevitable that those who undertake a law degree will become lawyers.¹

During my term as the Vice-President (Education) of the Australian Law Students' Association ('ALSA') in 2015,² we conducted an open survey which found that of the 106 students and graduates surveyed, 69 respondents said that the most pressing concern they

¹ 'Law students and graduates are now being told to broaden their career prospects beyond becoming lawyers. Carolyn Evans, the dean of Melbourne University's law school, said: 'What I would say is that people should be aware when they go into law school, they're going in at a time of rapid change.' "There is structural change in the legal profession and uncertainty in the Australian economy,' Professor Evans said. '[Students] can't assume because they have a law degree, they'll have a job as a lawyer.": Edmund Tadros, 'Law Degree, The New Arts Degree, Students Warned', *The Australian Financial Review* (online), 14 February 2014 <<http://www.afr.com/news/policy/education/law-degree-the-new-arts-degree-students-warned-20140213-jgegs>>.

² The Australian Law Students' Association ('ALSA'), 'National Advocacy Survey', (2015). Results on file with author.

were facing related to gaining employment after law school.³ When asked in a separate question whether respondents believed there was an oversupply of law graduates in the current market, an astounding 88.67 per cent of responses received said ‘yes’, whilst a mere 3.77 per cent said ‘no’.⁴ Thus, despite several law schools’ attempts to comfort prospective law graduates, the marketing rhetoric about *picking something else* has done little to assuage employment concerns.

Although some new law schools have claimed that the degrees they have on offer are more accessible to students from certain regions or backgrounds,⁵ some organisations are sceptical as to whether universities are simply finding new ways to create revenue.⁶ Moreover, despite the overwhelming number of graduates desperate for legal work, recent reports highlight that there continues to be a significant unmet need for legal advice and representation by a broad range of Australians from various socio-economic backgrounds.⁷ Clearly, despite the increasing sizes of law schools around the country, access to justice continues to be a significant issue.

Therefore, by drawing upon survey results received by ALSA — as well as other published pieces — this paper seeks to examine the current oversupply of law graduates, evaluating various areas of concern arising from the current market. The paper also seeks to explore the impact (or lack thereof) that the current oversupply of law graduates may be having on issues pertaining to access to justice and access to legal education. It will also comment on whether the panic around graduate numbers is justified, or if this is just another false alarm brought about by the media.

³ The exact question asked was ‘What do you believe are the most pressing issues facing law students and law graduates today?’ Some responses indicated a number of issues. The most significant issues raised were graduate employment, mental health, tertiary fees and quality of teaching.

⁴ The exact question asked was ‘Do you believe there is a current oversupply of law graduates in the current market?’ Of 106 responses received by ALSA, 94 answered ‘yes’, 4 answered ‘no’ and there were 8 ‘other’ responses which were received.

⁵ See, eg, Felicity Nelson, ‘New Law Schools May Leave Grads Stranded’, *Lawyers Weekly* (online), 29 September 2015 <<http://www.lawyersweekly.com.au/news/17221-new-law-school-may-leave-grads-stranded>>.

⁶ See Lara Bullock, ‘New Law Schools Must Have Right Intentions’, *Lawyers Weekly* (online), 15 August 2016 <<http://www.lawyersweekly.com.au/news/19350-new-law-schools-must-have-right-intentions>>.

⁷ Australian Government Productivity Commission, ‘Access to Justice Arrangements – Volume 1’, Productivity Commission Inquiry Report, No. 72, 5 September 2014 <<http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>> 247.

II HISTORY REPEATING OR RECYCLED RHETORIC? RESPONDING TO THE ONGOING CYCLE OF AN
OVERSUPPLY OF LAW GRADUATES

By the mid-1970s, the number of law graduates had markedly increased and the number of law schools had doubled.⁸ As a result, towards the end of the 1970s and early 1980s, many commentators began to talk about a ‘flood’ or ‘over-supply’ of graduates,⁹ and began to forecast ‘pessimistic’ employment figures for graduates as a result.¹⁰ Almost two decades later, by September 1992, in an article in *The Australian* titled ‘Law Dean Warns of Graduate Glut’, Professor Bob Williams of Monash University foreshadowed that the growing number of law students could become a ‘potential catastrophe’.¹¹ Five months later, Queensland’s Attorney-General stated in the *Courier Mail*, in February 1993, that as a result of the increasing number of law graduates, Australia was set to face the same situation as California ‘where large numbers of lawyers are wandering around ... looking for work’ by ‘ambulance chasing’ or touting.¹² Around this period — namely the early 1990s, before many of today’s undergraduate law students were even born — a ‘panic about law school numbers set in’ and ‘the professional elite worried that supply of law graduates would soon exceed demand’.¹³ Over two decades later, bringing us to recent times, the same ‘panic’

⁸ David Weisbrot summarises:

In 1960, there were six university law schools in Australia – one in each state capital. By mid-1970s the number had doubled, with second law schools established in Victoria and Queensland, three new law schools in New South Wales and another established at the Australian National University in Canberra ... The number of university law students in Australia more than doubled between 1950 and 1965 (to 3039) and then trebled between 1965 and 1980 (to 8981) before funding cuts resulted in a slight dip (of about 200 places) over the course of the 1980s, to 8662 in 1989:

David Weisbrot ‘Recent Statistical Trends in Australian Legal Education’ (1990-1991) 2 *Legal Education Review* 219, 219, 222

⁹ See, eg, Ross Cranston, ‘Law and Society: A Different Approach to Legal Education’ (1978) 5 *Monash University Law Review* 54, 56.

¹⁰ See Weisbrot, above n 8, 226. Weisbrot notes, however, that: ‘Notwithstanding the palpably increased anxiety among law students, recent graduates have a remarkable employment record. The Graduate Careers Council of Australia found that in the years 1983-1987, over 96 per cent of law graduates were in full-time employment within months after graduation’.

¹¹ C Jones, ‘Law Dean Warns of Graduate Glut’, *The Australian*, 9 September 1992 quoted in Christine Parker, ‘An Oversupply of Law Graduates? Putting the Statistics in Context’ (1993) 4 *Legal Education Review* 255, 255.

¹² J Gagliardi, ‘Queensland Faces Jobless Lawyer Glut’, *Courier Mail*, 5 February 1993 quoted in Christine Parker, ‘An Oversupply of Law Graduates? Putting the Statistics in Context’ (1993) 4 *Legal Education Review* 255, 255.

¹³ Christine Parker and Andrew Goldsmith, ‘“Failed Sociologists” in the Market Place: Law Schools in Australia’ (1998) 25(1) *Journal of Law and Society* 33, 37.

arising from the oversupply of law graduates continues, all the while law schools continue to multiply and expand.¹⁴

As a result, some commentators have gone so far as to accuse universities and Australian law deans of closing their eyes to the crisis in the job market and exacerbating it further by enrolling students 'much faster than the overall growth of their respective universities'.¹⁵ Late last year, Dr Frank Carrigan, a senior lecturer at Macquarie University, penned a piece in the *Australian Financial Review* accusing law deans of holding out 'the promise of a legal career, while adding to the unemployment queue'.¹⁶ He continued by stating:

Thousands of students are undertaking a degree that will result in broken dreams. They believe the lie that the magic of the market will (somehow) deliver job opportunities if only they get their foot in the door of the legal academy.¹⁷

The head of the Council of Australian Law Deans, Professor Carolyn Evans, responded to this criticism by reinforcing the standard rhetoric that a law degree is incredibly flexible and it 'teaches a range of transferrable skills' which thereby still makes it a 'good investment for many students'.¹⁸ This idea that a law degree is capable of teaching transferable skills for other professions and industries is not a new one. Writing over 20 years ago, Professor Francis Regan commented 'there are more students currently studying to be lawyers in Australia than there are lawyers practising law',¹⁹ and went on to say that:

Law is increasingly used in much the same way that a BA [Bachelor of Arts] was used 20 years ago. That is, it is used as a basic qualification for interesting and well-paid

¹⁴ 'The total number of law graduates in Australia reached 12,742 in 2012 up from 6149 in 2001. Currently 13 law schools in NSW': Bridget Brennan, 'Law Firm Adlawgroup asking Junior Lawyers to Pay \$22,000 for Job; Fair Work Ombudsman Investigating', *ABC News* (online), 23 June 2015 <<http://www.abc.net.au/news/2015-06-23/junior-lawyers-asked-to-pay-22,000-for-a-job/6568174>>; See also, Nelson, above n 5.

¹⁵ Frank Carrigan, 'Law Schools Sell Graduates Down the River', *Australian Financial Review* (online), 8 August 2016 <<http://www.afr.com/business/legal/the-law-schools-of-rapidly-diminishing-returns-20160808-gqnday>>.

¹⁶ Frank Carrigan, 'Law Deans are Due for a Reality Check', *Australian Financial Review* (online), 18 August 2016 <<http://www.afr.com/business/legal/glaring-omissions-in-claims-of-no-legal-graduate-glut-20160817-gqunu9>>.

¹⁷ *Ibid.*

¹⁸ Carolyn Evans, 'Law School is still the best bet for a graduate job that pays well', *Australian Financial Review* (online), 11 August 2016 <<http://www.afr.com/opinion/law-school-is-still-the-best-bet-for-a-graduate-job-that-pays-well-20160811-gqppz8n>>.

¹⁹ Francis Regan, 'Lawyers, lawyers and more lawyers' (1996) 21 *Alternative Law Journal* 184, 184.

jobs. It is particularly useful for entry into careers in public service or industry where legal skills are valued.²⁰

Notwithstanding this standardised line being fed to us about the law degree being increasingly versatile, or that one can undertake a law degree to pursue a non-legal career, many law students do not appear to be buying it. In ALSA's National Advocacy Survey (2015),²¹ of 106 students and graduates surveyed, almost 80 per cent indicated that they wished to use their law degree to pursue a legal career, whilst only 6.6 per cent answered 'no' to this question.²² Thus, contrary to the marketing ploys being used by law schools to sell the idea about how transferrable their degrees are, many students in their survey responses questioned the value of their law degree.²³ When asked how respondents believed the oversupply of graduates would affect them, one respondent, putting it bluntly, said that '[t]oo many law graduates devalues my degree and creates a too-competitive market'. Another respondent stated that the oversupply of law graduates had forced them 'to consider careers that do not involve specifically legal work' and this has meant that they now 'value [their] degree less'. That same respondent went on to note that: '[a]lready having an Arts degree, I do not feel like I entered the [Juris Doctor] hoping to simply broaden my knowledge base further without actually being prepared for real job prospects'.²⁴

²⁰ Ibid.

²¹ ALSA, 'National Advocacy Survey', above n 2.

²² The exact question asked was 'Do you intend on using your law degree to pursue a legal career?' Of 106 responses received by ALSA, 84 answered 'yes', 7 answered 'no', 5 answered 'maybe' or that it depended on other factors, like actually securing employment first, 6 responded with unsure. There were 3 'other' responses, and 1 respondent left the question blank.

²³ See Stefanie Garber, 'Law Students Question Value of their Degree', *Lawyers Weekly* (online), 4 August 2015 <<http://www.lawyersweekly.com.au/news/16923-law-students-question-the-value-of-degree>>.

²⁴ Other notable responses we received to the question 'How do you believe the current number of law graduates is affecting or will affect you?' include: 'It hugely impacts me. It makes every piece of assessment far more competitive, it adds exponentially to the amount of stress I feel. It greatly affects my work/life/study balance. Ironically, this also impacts on my grades'; 'The job market is so packed with law graduates. I will have to work longer, harder and for less money in order to get ahead of other students. While competition breeds motivation and innovation etc, the high number of law students is putting an unreasonably (sic) burden on graduating law students (even those with good results)'; and:

Yes, [i]t is basically impossible to even be considered for a summer clerkship without having an average mark of 80% or above. I have little hope of obtaining a job as a lawyer, and am instead looking to find a job as a law clerk. I was surprised to find that secretarial roles are now being advertised to law graduates, and I find that extremely dismal. I believe that 6 years at university should have qualified me for more than an entry level job.

Although the law degree undoubtedly teaches an array of skills which may be used in various industries — from critical thinking to practical problem-solving skills — the notion that it has become an increasingly generalist degree not only devalues the degree itself, but also calls into question whether the exorbitant financial, personal, and emotional expense of undertaking a law degree is justified. Regardless of whether it can be used for non-legal careers or not — as is evident by the responses received in ALSA's survey — it is clear that most students who undertake a law degree do so with the hope of becoming lawyers. With all of that in mind, law schools may need to either adjust how they market their degrees, or how much they charge for them.

III A GENUINE 'CRISIS' OR UNFOUNDED 'PANIC'?

The issue surrounding the oversupply of law graduates reached an all-time high in June 2015, when it was reported that an Adelaide law firm proposed charging law graduates a mandatory fee of \$22 000 for a post-graduate placement in the firm.²⁵ Representatives of the firm made statements to the effect that they were responding to an oversupply of law graduates who were 'desperate' for work and believed the company's supervised positions were an 'investment',²⁶ as the fee was said to cover the cost of 'supervision, mentoring and education programs, leading to an unrestrained practising certificate.'²⁷ Many advocacy groups, such as ALSA,²⁸ and other state-based law societies criticised the scheme as being exploitative. Although the proposal was eventually withdrawn,²⁹ the fact that a scheme like this was even proposed reveals a much deeper-seated issue about the current employment market for law graduates.

The increase in unpaid positions or exploitative business practices, much like that adopted by the aforementioned Adelaide law firm, appears to be a direct response to the oversupply of law graduates. Some graduates are so *desperate* for work experience they are willing to engage in various unpaid positions, even in the private sector. Many respondents to ALSA's National Advocacy Survey lamented how competitive the employment market has become

²⁵ See Brennan, above n 14.

²⁶ *Ibid.*

²⁷ 'Adelaide Law Firm Adlawgroup Backs Down on Charging Junior Lawyers \$22 000 in Exchange for Job', *ABC News* (online), 22 September 2015 <<http://www.abc.net.au/news/2015-09-22/adelaide-law-firm-adlawgroup-backs-down-on-22000-fee-for-interns/6793732>>.

²⁸ Brennan, above n 14.

²⁹ 'Adelaide Law Firm Adlawgroup Backs Down on Charging Junior Lawyers \$22 000 in Exchange for Job', above n 27.

as a result of the increasing number of graduates and the pressure on students to undertake extra work and activities while studying — in some cases full time — to remain employable. In particular, when surveyed students and graduates were asked about whether they had engaged in unpaid work experience, 66.03 per cent said they had,³⁰ with 60.37 per cent of respondents indicating in a follow-up question that they had felt pressured to undertake an unpaid position.³¹ One respondent went so far as to say that as a result of the oversupply of graduates, ‘it is near impossible just to get an unpaid clerkship.’³²

While it is not uncommon for students to volunteer in the public sector or with community legal centres, due to their chronic underfunding, the increase in firms or businesses also adopting unpaid opportunities appears to be highly problematic. In ALSA’s submission to the Productivity Commission in 2015, we found that ‘a growing number of larger and mid-sized law firms’ were ‘moving away from remunerating students and graduates in favour of offering unpaid positions’.³³ This trend is problematic for a number of reasons. In particular, the more competitive the market becomes, the more the idea of undertaking unpaid work to remain competitive will become the norm and will create significant issues relating to social mobility and access to the legal profession. In relation to such financial concerns, one respondent to ALSA’s survey stated:

I am not in the financial position to work unpaid (as idont [sic] get Centerlink [sic] or HECS help). This puts me at a severe disadvantage in gaining experience in the legal field where other students who live at home can do volunteer experience.

Such a trend has the potential of creating additional barriers to accessing the legal profession, thereby limiting access to those who can afford to undertake unpaid work experience and thwarting the diversification of the legal profession.

³⁰ The exact question asked was: ‘Have you ever engaged in unpaid work experience?’ Of 106 responses received by ALSA, 70 answered ‘yes’, 34 answered ‘no’, and there were 2 ‘other’ responses, including one which stated: ‘Whilst working in a paid position in a law firm I was often pressured to work unpaid’.

³¹ The exact question asked was: ‘Have you ever felt pressured into undertaking an unpaid position?’ Of 106 responses received by ALSA, 64 answered ‘yes’, 36 answered ‘no’, and there were 6 ‘other’ responses, including one which stated ‘I have been pressured to accept a role for below minimum wages for the sake of experience’.

³² This was a response in relation to the question that asked: ‘What do you believe are the most pressing issues facing law students and law graduates today?’

³³ Australian Law Students’ Association, *Submission to the Productivity Commission: Workplace Relations Framework*, September 2015, <http://www.pc.gov.au/_data/assets/word_doc/0020/193214/subdr0291-workplace-relations.docx>, 5.

Despite growing concerns (and ‘panic’) relating to securing employment in law, commentators have continued to criticise the argument that ‘there are too many law students’, claiming that such an argument is ‘fundamentally flawed because it assumes that all law students become lawyers, without sufficiently defining the term “lawyers”’.³⁴ In particular, Professor Carolyn Evans has continued to argue that law students are ‘better off’ compared to other graduates, stating:

These are difficult times generally for young people seeking to enter the job market across many professions. Digital disruption and the rapid pace of change mean that today’s secure and stable employer may have disappeared within a couple of years while some industries that look as though they are struggling, may reinvent themselves and thrive for decades to come. That is why a flexible degree like law that teaches a range of transferrable skills is still a good investment for many students ... In a complex, difficult world in which graduates will not see the same stability in employment that previous generations have enjoyed, law graduates still have better prospects than most young people.³⁵

Notwithstanding the continued and ongoing rhetoric surrounding the oversupply of law graduates of the last several decades, law schools have continued to expand their intake of new students, and the number of new law schools continues to increase.³⁶ Despite this rise in law graduate numbers, the profession still faces a significant issue by way of diversity in the legal profession as well as access to legal representation.

IV THE DESERVING: ACCESS TO LEGAL EDUCATION AND THE SHIFTING MAKE-UP OF THE LEGAL PROFESSION

An interesting question that is frequently raised every time a new article is written in relation to the oversupply of law graduates is: who deserves to go to law school and who does not? The more we continue to discuss limiting intakes to cut the size of law school numbers the more I query whether that means unfavourably limiting access to legal education by those who may not have fit the ‘typical’ mould of a lawyer just a few decades ago. For instance, writing in the early 1990’s, David Weisbrot commented that the ‘Australian legal profession does not reflect the socio-economic class, ethnicity or gender

³⁴ Parker, above n 11, 256.

³⁵ Evans, above n 18.

³⁶ See, eg, Nelson, above n 5.

composition of the society at large',³⁷ and instead found that 'the social background of young lawyers' is quite 'elite'.³⁸ He went on to say that:

University law students typically come from homes which are significantly more affluent than the norm; most attended selective or elite, private secondary schools, their parents mainly have professional or management backgrounds, and many already have family connections in the legal profession.³⁹

[...]

Law students whose parents were born overseas were less likely to attend elite private schools, and their fathers typically had less formal education and lower occupational status. Migrant lawyers would also tend to lack the family and personal contacts in the profession that so many Australian-born lawyers have and thus miss out on an "important basis of social support role models and easier access to jobs in the profession".⁴⁰

To some degree, the oversupply of law graduates in the market can be linked to the creation of more accessible law degrees and programs, which have attracted the admission of law students from a widely diverse array of socio-economic, geographic, and ethnic backgrounds. Although the creation of such programs and newer more accessible law schools may potentially be contributing to, or exacerbating, the current oversupply of graduates, it has also had the capacity to significantly shift the makeup of the legal profession, making it more diverse than it was just two decades ago. The more we discuss limiting the intake of law students into law schools — and potentially limiting access to a legal education by those from rural areas, lower socio-economic backgrounds or from migrant families (much like mine) — the more I think perhaps we are perpetuating the idea that such students do not "deserve" to have access to a legal education, in the same way that their significantly more affluent counterparts may.

While my high school teacher's scepticism about my ability to obtain the necessary marks to get admitted into law school may have been harsh, having not attended either a selective or elite private secondary school or having come from a family of lawyers, I did

³⁷ Weisbrot, above n 8, 227.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid 232.

not have access to the same resources or connections in the law that the 'typical' law student Weisbrot refers to may have had access to twenty years ago. Despite my relentless and persistent hard work in high school, I missed the cut-off for a law degree at the University of New South Wales ('UNSW') by a few points, and it was only due to the incredibly accessible 'internal transfer program' that I was eventually able to get admitted into the UNSW Law, and eventually graduate in the top 15 per cent of my cohort. A number of universities have now jumped on board to create a variety of programs which render the law degree incredibly more accessible to those who may have missed the necessary Australian Tertiary Admissions Rank ('ATAR'), or the previous Universities Admissions Index ('UAI'), to get into law school. Some have also created programs which take into account a range of other circumstances, including programs for rural students, Indigenous students,⁴¹ and students from low socio-economic backgrounds.

Despite the creation of all of these programs, some students and graduates remain sceptical about the accessibility of the law degree. For example, when respondents to ALSA's National Advocacy Survey were asked whether they believed a law degree is accessible to students from a variety of backgrounds, only 16.98 per cent of respondents indicated that they believed that the law degree is 'very accessible' to students from a variety of backgrounds. Interestingly enough, 33.96 per cent believed the law degree is *reasonably accessible* and an equal 33.96 per cent believed that the law degree's accessibility is limited; while 13.20 per cent highlighted that they believed the law degree was 'not' accessible to students from a variety of backgrounds.⁴²

⁴¹ Parker and Goldsmith, above n 13, 42-3. Writing in 1998, Christine Parker and Andrew Goldsmith highlighted:

Very modest gains have also been made in increasing the participation of indigenous Australians in legal education. Up to 1990 there had only ever been twenty-one Aboriginal or Islander graduates of Australian law schools. From the mid-1980s a number of universities have introduced discretionary admission and pre-law programs for indigenous Australians that appear to be improving their participation and success rates. In 1997 there are approximately 150 indigenous law students in Australia, but if they were present in numbers proportionate to their representation in the community there would be 666. At the University of New South Wales Law faculty there is extensive support for indigenous students in the form of a preparatory pre-law programme and a full-time tutor for indigenous students throughout the degree. Numbers have grown from 0.81 per cent of the student population in 1984 to 2.09 per cent in 1994, yet even there, only 60 per cent of commencing indigenous students manage to progress through the whole degree. Clearly much still needs to be done to ensure successful access to legal education for indigenous students and others from low socio-economic backgrounds.

⁴² The exact question asked was "To what extent do you believe a law degree is accessible to students from a variety of backgrounds?" Of 106 responses received by ALSA, 18 believe the law degree is very accessible, 36 believe the law degree is reasonably accessible, 36 believe that the law degree's accessibility to students from a variety of backgrounds is limited, 14 believe the law degree is not accessible. There were

In a follow-up question, respondents were asked whether their law school provides alternative or equitable pathways into law school for students of diverse backgrounds. Sixty respondents said 'yes', with some going on to elaborate upon the types of programs their law schools offered.⁴³ For example, one respondent said: 'Yes through adding ATAR points for people from certain backgrounds, running university courses to replace ATARs and allowing people to easily transfer from lower ATAR entry programs'. Other respondents were sceptical about the value of these alternative or equitable pathways/programs, with one respondent stating:

Yes. There are multiple bonus point schemes and alternative pathways. I feel as though the bonus point schemes are too generous however. I'm noticing that people who have gotten in through this method *are dropping out of law school anyway* (emphasis added).

Some respondents went so far as to say that gaining 'access' to law school is not the problem and that those from diverse backgrounds may 'face discrimination by way of social integration'. That same respondent went on to state:

The culture of law school is elitist. This is evident in the cost of participation in many of its flagship events – you *either need to volunteer for an incredible amount of time* or pay prices of \$100+ to attend some events (emphasis added).

Despite the increasing accessibility of the law degree on one hand, some commentators have noted that fewer law-related jobs — coupled with the increasing fees attached to law degrees (and graduate law degrees, such as the Juris Doctor degree) — mean that law students no longer perceive law school as a 'great opportunity', and are instead exposed to 'terrible risk of both economic loss and personal and professional disappointment'.⁴⁴ For example, in terms of the costs associated with a law degree, a Commonwealth Supported

two 'other' responses, with one of these responses saying: 'Entry to the course is not the barrier, feeling out of place, underprivileged etc is the barrier for people from these backgrounds'.

⁴³ The exact question asked was 'Does your university or law school provide alternative/equitable pathways into law school for students from diverse backgrounds?' Of 106 responses received by ALSA, 60 respondents said 'yes', with some identifying the programs that their universities offer; 2 respondents said 'no'; 26 respondents were not sure of whether there were such programs at their university; 4 respondents had 'other' responses, including one who stated in caps: 'I AM NOT AWARE. HOWEVER, IF YOU ARE FROM A DISADVANTAGED BACKGROUND, AND YOU MANAGE TO GET INTO LAW AND GRADUATE WITH DEBT AND NO JOB WHAT IS THE POINT. YOU'RE WORSE OFF THAN BEFORE!' There were 14 respondents who left their responses blank for this question.

⁴⁴ Carrie Menkel-Meadow, 'Crisis in Legal Education or the Other Things Law Students Should be Learning and Doing' (2013) 45 *McGeorge Law Review* 133, 133.

Place in the combined Bachelor of Arts/Laws program at the University of Sydney is said to cost approximately \$45 180 on its own,⁴⁵ with an additional \$8 820 for the further practical legal training course.⁴⁶ This figure, of course, does not take into account the high costs associated with undertaking a Juris Doctor, which is estimated at \$37 000 *a year* for a full-time domestic student.⁴⁷

Thus, while an increase in the number of law students at law schools, as well as a multiplication of law schools, may have shifted the make-up of students now undertaking a law degree, the oversupply of graduates, the increased competitiveness of the market, and substantial financial investment makes it increasingly difficult for some graduates to enter the market or attain employment. As highlighted in the preceding section, ALSA made submissions to the Productivity Commission in 2015 on the issue of unpaid internships and raised the concern that ‘the current employment market for law graduates and the heightened anxiety around jobs has also created an equity issue for students that cannot afford to work up to 3 or 4 days a week unpaid versus those who can.’⁴⁸ This was raised as a concern due to the fact that getting admitted as a legal practitioner requires students to undertake practical legal training which, in some cases, may involve long hours of unpaid work to satisfy the requisite amount of mandatory days to qualify in the program. Therefore, in some cases, with an increasingly competitive employment market for law graduates, students who are financially stable, live at home, or have connections in the law are much better placed to obtain employment than those who are not. As one respondent highlighted in their survey response, the current oversupply of law graduates makes it ‘difficult to become employed’. That same respondent went on to say:

I have a lot of friends, who have family and friend connections in the law world that receive “side-door” entry into many paralegal, paid and clerkship positions. When you have to compete with that environment already in a cut-throat industry, you really begin to worry about your prospect of employment.

⁴⁵ University of Sydney Law School, ‘Combined Law - The Sydney LLB - Costs and Fees’, *University of Sydney*, last updated 30 September 2015 <<http://sydney.edu.au/law/fstudent/undergrad/fees.shtml>>.

⁴⁶ College of Law, ‘Program Fees’, *College of Law* <<https://www.collaw.edu.au/what-we-offer/law-students-and-graduates/fees-and-payment-options/fees/>>.

⁴⁷ University of Sydney Law School, ‘The Sydney Juris Doctor (JD) – Student Contribution Rates, Costs and Fees’, *University of Sydney*, last updated 6 October 2015 <<http://sydney.edu.au/law/fstudent/jd/fees.shtml>>.

⁴⁸ ALSA, above n 33, 7-8.

In relation to the creation of a new law school last year, Elvira Naiman, managing director at legal recruitment firm Naiman Clarke Legal, suggested that reducing ATAR entry requirements into law schools may not assist some graduates, highlighting that large law firms 'have a "strong bias" towards graduates with degrees from "sandstone" universities'.⁴⁹ She went on to state:

[G]raduates coming out of an absolutely unknown entity with a considerably reduced ATAR - I just don't know where these graduates are going to be getting the right - or any - graduate opportunities, which are already so limited in number.⁵⁰

Thus, with the increasing fees attached to law degrees and the increasing difficulties associated with obtaining employment, some have argued that it makes 'much less economic sense to invest so much time and money in legal education'.⁵¹ While access to legal education has improved due to the increase in accessible and equitable programs, there still remains significant barriers to some students from diverse backgrounds accessing a legal career or obtaining employment as a lawyer.⁵²

V THE UNDER-SERVED: UNMET LEGAL NEEDS OF THE COMMUNITY AND ACCESS TO LEGAL REPRESENTATION

In Samuel Taylor Coleridge's famous poem, 'The Rime of the Ancient Mariner', after finding himself shipwrecked, the sailor famously laments that there is 'water, water every where/nor any drop to drink'. Much like the woeful situation in which the sailor found himself, it appears that this famous quotation aptly reflects the current employment market for graduate lawyers. Although there may be 'lawyers, lawyers everywhere', there are a significant number of vulnerable clients in need of legal assistance or representation, who are unable to access it. The problem, of course, boils down to the issue of funding whereby 'many of the underserved populations are of financial need' and they 'simply cannot afford

⁴⁹ See Bullock, above n 6.

⁵⁰ Ibid.

⁵¹ Brian Tamanaha, *Failing Law Schools* (University of Chicago Press, 2012) 118.

⁵² An exception to this may be specific employment programs which target Indigenous law graduates and students. See, eg, Gilbert and Tobin, *Cadetship Program* <<http://me.gtlaw.com.au/working-with-gt/indigenous-employment/cadetship-key-dates/>>; and Allens Linklaters, *Indigenous Legal Internship* <<http://www.allens.com.au/careers/join/indig.htm>>.

to hire private counsel, and an unemployed lawyer can hardly afford to work for free'.⁵³ The chronic underfunding of important government funded legal services continues to remain a key concern,⁵⁴ as the Productivity Commission found in their recent *Access to Justice Arrangements* (2014) report:

Disadvantaged people face a number of barriers in accessing the civil justice system, which make them both more susceptible to, and less equipped to deal with, legal disputes. If left unresolved, civil problems can have a big impact on the lives of the most disadvantaged ... differences in personal resources and capabilities mean that the most vulnerable Australians may still find the system inaccessible.⁵⁵

Despite the valuable legal representation and advice that organisations such as the Legal Aid Commission or the Aboriginal Legal Service provides, the Productivity Commission found that there still remains 'pressing service gaps' whereby there has been 'a growing "justice gap" for the disadvantaged' namely 'those who would take private legal action to defend their rights, but do not have the resources to do so'.⁵⁶ In particular, the Productivity Commission found that the nature of matters which have fallen into this gap include employment law, tenancy law, and family law matters, including domestic violence, and care and protection of children.⁵⁷ As the Productivity Commission opined in the 'Overview' of their report:

The present means tests used by the LACs [Legal Aid Commissions] are restrictive, reflecting the limited funds available. The income tests are below many established measures of relative poverty. It is not the case that people are 'too wealthy' to be eligible for legal assistance, but rather that they are 'not sufficiently impoverished'.⁵⁸

Although the Australian Federal Government responded to the Commission's report by proposing to provide \$1.6 billion for Legal Aid Commissions and community legal centres,⁵⁹ many organisations were sceptical about this proposal arguing that the government's

⁵³ Angela M Burton, 'Underemployed Attorneys and Underserved Communities: Getting to the Corps of the Problem' (2014-15) 43 *Hofstra Law Review* 157, 162.

⁵⁴ See Australian Government Productivity Commission, above n 7.

⁵⁵ *Ibid* 24.

⁵⁶ *Ibid* 30.

⁵⁷ *Ibid*.

⁵⁸ *Ibid*.

⁵⁹ Australian Government Attorney-General's Department, *Response to the Productivity Commission's Report into Access to Justice Arrangements* 29 April 2016 <<https://www.ag.gov.au/LegalSystem/Pages/response-to-report-into-access-to-justice-arrangements.aspx>>.

response will 'do little to narrow the justice gap facing struggling Australian families'.⁶⁰ Others, at the time, argued that the proposal was 'disingenuous' and that community legal centres were still facing a 30 per cent cut to funding from July 2017, and similar cuts over the following two years, under the National Partnership Agreement for Legal Assistance Services.⁶¹ Thankfully, after significant lobbying by peak bodies, the community legal sector and every state Attorney-General, the Federal Government announced in April 2017 that it would 'restore \$55.7 million to the sector over three years, including \$16.7 million for Aboriginal and Torres Strait Islander legal services'.⁶² While this announcement of course was welcomed, particularly amidst fears in the sector that they would need to significantly reduce their existing services, the sector could still benefit from a significant injection of funds to ensure the legal needs of the most vulnerable members of our community are better met.

It seems rather perverse that in a climate where there is clearly an excess of law graduates willing to work and provide legal advice and representation, there continues to be a significant number of Australians in the community who are unable to access such representation. In addition to ensuring law graduates are appropriately trained to provide competent legal advice and representation, there remains the significant issue that some graduates simply may not be able to afford to take the necessary voluntary roles at community legal centres; for example, to be able to acquire the necessary training to work in the public sector, or for a public interest or not-for-profit organisation. Ultimately, despite the fact that there is plenty of legal work to go around, without adequate government funding and support, it will be very difficult to find a way to meet the legal needs and demands of those who are under-served in the community.

Interestingly, despite issues raised in submissions to the Productivity Commission pertaining to an oversupply of law graduates in the market, the Commission were of the

⁶⁰ Melissa Coade, 'Government's Access to Justice Response Attracts Backlash', *Lawyers Weekly* (online), 3 May 2016 <<http://www.lawyersweekly.com.au/news/18492-government-s-access-to-justice-response-attracts-backlash>>.

⁶¹ Pro Bono Australia, *Government "Disingenuous" Over Community Legal Funding*, 29 April 2016 <<https://probonoaustralia.com.au/news/2016/04/government-fund-community-legal-aid/>>.

⁶² Henry Belot and Louise Yaxley, 'Federal Government to reverse community legal funding cuts in May budget', *ABC News* (online), 24 April 2017 <<http://www.abc.net.au/news/2017-04-24/federal-government-to-reverse-community-legal-funding-cuts/8465420>>.

opinion that they did not see the increasing number of graduates as a justification for ‘any constraint on student numbers for law degrees’. The Commission went further and stated:

The available evidence indicates that this increase in graduates may not equate to an excess supply in the legal market, that law students do not necessarily enter the legal profession and that incomes of starting graduates are relatively unaffected by growth. Indeed, increased entry fosters competition in the profession and therefore improves the responsiveness of firms. *This can improve access to justice* (emphasis added).⁶³

Therefore, while the Productivity Commission remains hopeful that the oversupply of graduates may increase access to justice by those members of the community who are currently ‘under-served’, it remains questionable whether this will indeed be the case. Such a position by the Commission shifts the crisis away from the oversupply of graduates as a problem and highlights the real issue as one relating to resource allocation. This reformulation of the problem was posed by one commentator, writing in relation to the American oversupply issue, who stated: ‘The dilemma is not (just) that we are generating too many lawyers for the jobs available in the market. Rather, we are not sending enough lawyers into the places they are needed most’.⁶⁴

As such, more pressure needs to be exerted on the respective Federal, State and Territory governments to provide adequate funding and resources for legal services to ensure the significant legal needs of the community can be met, while also ensuring a greater proportion of law graduates who are driven by a desire to serve the community will have the means to do so.

VI CONCLUDING REMARKS

With the ongoing concerns associated with the oversupply of law graduates and the saturation of the employment market for lawyers, many question whether we should start talking prospective law students out of attending law schools and cautioning them against incurring all the expenses that come with a law degree — knowing full well how competitive and difficult the job market currently is.⁶⁵ Notwithstanding these concerns, if my high school teacher had told me of all of the associated risks of studying law and the

⁶³ Australian Government Productivity Commission, above n 7, 247.

⁶⁴ Burton, above n 53, 162.

⁶⁵ Ibid 158.

serious difficulties associated with finding employment post-graduation, this *still* would not have deterred me from working as hard as I could to get into law school in the hopes of one day becoming a lawyer. Benjamin H. Barton, speaking in relation to the American job market, echoes these sentiments, stating:

These graduates will have faced a tremendous headwind on their way to law school. Members of their family and their college classmates will have sent them *Wall Street Journal* articles and links to law school scamblogs, all of which begged them not to go to law school. Between their more realistic understanding of the cost of law school, their job prospects, the pain of repaying debt, and what most lawyers actually do and earn, *the students that come to law school will really want to be there. They will be the students that have always wanted to be a lawyer* (emphasis added).⁶⁶

Rather than selling an idea that prospective students should undertake a law degree to pursue a non-legal career, law schools should endeavour to make prospective law students more aware of some of the long-term burdens and risks associated with studying law. Transparency by law schools and universities may help ensure that the students undertaking a law degree 'really want to be there', rather than simply allowing entry to those who are under the false pretence that a law degree will lead to a highly successful and lucrative career at a big law firm. Students, and eventually graduates who will work hard to make their dreams a reality may also be the same future lawyers who will find creative and innovative ways to provide legal services to those who are currently 'under-served', and create new organisations which may collaboratively address some of the systemic issues arising from our current legal system and employment market.⁶⁷

As is made clear in this article, 'panic' about an 'oversupply of law graduates' is not a new phenomenon, nor is it unique to the Australian market. Much like the market has adjusted in the past, there may still be hope that the future of the legal profession, while significantly bigger, will adapt. It may also be far more diverse, inclusive, and considerably more representative of our Australian society than it previously has been. At the end of the day, isn't that an outcome we all deserve?

⁶⁶ Benjamin H. Barton, 'A glass half full look at the changes in the American legal market' (2014) 38 *International Review of Law and Economics* 29, 38.

⁶⁷ See Menkel-Meadow, above n 44, 134.

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