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HOW THE HIGHER EDUCATION 'INDUSTRY' SHAPES THE DISCIPLINE OF LAW: THE CASE OF AUSTRALIA

MARGARET THORNTON*

This article argues that a constellation of factors combine to encourage law graduates to pursue a career in corporate law at the expense of alternative destinations. Most notable are the increasingly high tuition fees law students are charged, but the respective roles of government, the admitting authorities, law schools and the profession cannot be discounted. Each change in policy renders resistance more difficult. The proposed higher education changes contained in the 2017 Australian Federal Budget are exemplary. As it is already assumed that law can be offered cheaply while charging high fees, the Budget cuts could induce universities to increase the number of law students as well as the cost of discretionary law degrees, such as the Juris Doctor. This would not only increase competition for law-related jobs in the labour market, but it would also effect a more vocational orientation to the law curriculum.

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I INTRODUCTION

John Henry Newman, an iconic theorist of the *idea* of the university, believed that cultivation of the intellect was central to a university education. He argued that pursuing knowledge for its own sake contributed to the collective good by raising the intellectual tone of society as a whole.¹ While not endorsing the gendered, colonial, and classed times

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¹ I T Ker (ed), *John Henry Newman: The Idea of a University* (Oxford University Press, 1976) 154.

in which Newman wrote, one can only rue the fact that any semblance of the *idea* of the university has been lost as we confront the risk and uncertainty associated with the marketised university in what is now referred to as the higher education ‘industry’ — touted as Australia’s third most significant export after iron ore and coal, generating AUD\$21.8 billion in revenue in 2016.² The transformation of the *idea* of the university has been effected by a neoliberal policy of state disinvestment in higher education, whereby an increasing proportion of the cost has been shifted from the public purse onto students. In order to make up budgetary shortfalls, universities themselves have had to become market players, which has resulted in what Rob Watts describes as a culture of ‘market-crazed governance’.³ To signify the radical change in the *idea* of the university, managers have replaced professors as the university élite, a class that Watts wittily terms the ‘manageriat’.⁴ The market embrace has profoundly affected not just student aspirations, but what is taught and how it is taught, as I argue in relation to the discipline of law.⁵ As the overall aim of government higher education policy is to produce job-ready workers in order to maximise capital accumulation, the impetus is in favour of applied and functional knowledge, not the disinterested understanding of knowledge that Newman advocated.

The discipline of law not only graphically illustrates the market turn adopted by universities in Australia, Britain, the United States and elsewhere, it also illustrates the desire on the part of modern states to upgrade human capital by developing new knowledge economies. ‘Massification’ is the somewhat cumbersome descriptor that is applied to the dramatic increase of students in tertiary education, which is well illustrated in the case of law. There has been a striking increase in the number of law schools in Australia — from 12 to 40 — in the 30 years since the Dawkins Reforms (1988) were implemented.⁶ With a population of less than 25 million, this number is in stark contrast to that of Canada, which has 25 law schools (only three of which were established in the last

² Universities Australia, ‘Australia’s Education Exports at Record High’ (Media Release, 3 February 2017) <<https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Australia-s-education-exports-at-record-high#.WWLUWmdLcY1>>.

³ Rob Watts, *Public Universities, Managerialism and the Value of Higher Education* (Palgrave Macmillan, 2017).

⁴ *Ibid.*

⁵ I have elaborated on these issues elsewhere. See, eg, Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012); Margaret Thornton, ‘Legal Education in the Corporate University’ (2014) 10 *Annual Review of Law and Social Science* 19.

⁶ Hon John S Dawkins, *Higher Education: A Policy Statement (White Paper)* (Australian Government Publishing Service, 1988).

40 years) for a population of 35 million. After the Dawkins reforms, Australia created 16 new universities, which were former colleges of advanced education. Their vice-chancellors were keen to establish law schools in the belief that law could be taught cheaply to large numbers of well-credentialed students and the income deployed to subsidise the research-intensive parts of the university, particularly the technosciences. While it is acknowledged that a 'pure market' does not exist in higher education where sellers are free to offer whatever courses they wish at whatever price they wish, and where buyers are free to study whatever they wish wherever they wish,⁷ the normalisation of the discourse of the market has induced universities to emulate practices normally associated with private for-profit corporations. This includes spending money on marketing in order to project a positive image of the university to attract students, particularly high fee-paying international students. The reintroduction of fees in 1988, euphemistically referred to as a 'contribution' (the Higher Education Contribution Scheme (HECS), now FEE-HELP) began at a modest \$1800 across the board, but soon moved to a differential disciplinary schema with law at the top. The higher contribution by law students was predicated on the assumption that they would earn more on graduation by working in private law firms as opposed to humanities or science graduates, and would thereby be able to repay the higher HECS debt more easily.⁸

However, the theory stumbles in light of the fact that the Australian legal profession, with little more than 70 000 practising lawyers,⁹ is unable to absorb the ballooning number of new graduates. It also fails to take cognisance of the fact that well over 50 per cent of law graduates pursue alternative careers in government, business and finance, the community sector, the media, and a host of other destinations. Nevertheless, the assumption underpinning the curriculum, as well as the high fees, is that traditional private practice continues to be the primary destination for law graduates.

⁷ Watts, above n 3, 156 ff.

⁸ Milton Friedman, with the assistance of Rose D Friedman, *Capitalism & Freedom* (University of Chicago Press, 1962) 105.

⁹ Urbis for the Law Society of NSW, '2016 Law Society National Profile: Final Report' (Report, Law Society of NSW, 24 August 2017).

While I agree with Krook that the corporate law firms undoubtedly play a role in entrenching the belief that they represent the ultimate destination for law graduates,¹⁰ I disagree that their role is determinative. The roles of government, the profession, and law schools, all play a role in the production of law graduates as corporate new knowledge workers. The Group of Eight universities (Go8) like to believe that a conveyor belt exists between them and the corporate law firms which, in a neoliberal climate committed to profit maximisation, represents the apex of the legal employment hierarchy for new graduates. Accounts of successful lawyer alumni frequently appear on law school websites to underscore the desirability of corporate legal practice.¹¹ Furthermore, as tuition fees have spiralled upwards, a high-paying corporate job has become economically rational for students themselves.

In the US context, the correlation between rising tuition debt and the pressure to obtain a high-paying position as a lawyer is documented by Brian Tamanaha.¹² He points out that the rule of thumb that 'debt should never exceed starting salary' is already inapplicable as tuition debts for law students have spiralled.¹³ The same caution would appear to apply in the case of law students paying full fees in Australia, a point on which I shall elaborate.

The key role of the admitting authorities in determining the preferred destination for law graduates should not be overlooked, as it ensures the subordination of law schools to the legal profession by mandating eleven areas of knowledge (known as the Priestley Eleven) as a prerequisite for admission to legal practice.¹⁴ Generally speaking, these core areas — including criminal law, torts, contracts, property and equity — echo what has been taught since law schools were first established in universities in the 19th century and, unsurprisingly, accord with the dominant interests of men of property. Nowhere do social justice, legal history, theory, or critique figure in the compulsory canon, although a broadening of the curriculum was a corollary of the modernisation that had been occurring for more than a decade before the Priestley Eleven were mandated in 1992.

¹⁰ Joshua Krook, 'The Role of the Corporate Mega-firm' (2016) 4(2) *Griffith Journal of Law & Human Dignity* 65.

¹¹ Margaret Thornton and Lucinda Shannon, "'Selling the Dream": Law School Branding and the Illusion of Choice' (2013) 23(2) *Legal Education Review* 249.

¹² Brian Tamanaha, *Failing Law Schools* (Chicago University Press, 2012).

¹³ *Ibid* 111.

¹⁴ Margaret Thornton, 'Dreaming of Diversity in Legal Education' in Ron Levy, Molly O'Brien, Simon Rice, Pauline Ridge and Margaret Thornton (eds), *New Directions for Law in Australia* (ANU Press, 2017).

A raft of new subjects, such as discrimination law, racism, social welfare and poverty law were taught from the 1970s onwards, albeit as options, when social liberalism was in the ascendancy. However, the neoliberal turn has seen a prioritising of subjects that privilege property and profits once again, with a tendency to slough off the critical.¹⁵ If law is taught merely as a series of mind-narrowing rules, as Frank Carrigan suggests,¹⁶ the prospects for the transferability of legal skills diminish. Indeed, the proliferation of law schools has seen the Law Admission Consultative Committee adopt a more prescriptive approach to legal education by specifying additional requirements for admission, including the nature of the law degree, its duration and its content, together with modes of teaching and assessment.¹⁷ All these factors combine to exert a homogenising and conservatising effect on the discipline of law, just when the expansion in the number of law schools suggests that greater diversity would be desirable.

Each incremental change by government to strengthen the higher education industry renders resistance more difficult. The changes proposed in the 2017 Australian Federal Budget represent the latest iteration, the effects of which have the potential to cause law students to focus even more single-mindedly on conventional understandings of credentialism and vocationalism.

II THE 2017 BUDGETARY PROPOSALS

The Abbott Coalition Government proposed the deregulation of undergraduate fees in 2014, which would have enabled universities to set their own fees according to what the market would bear. The initiative would have accentuated the neoliberal imperative of privatising public goods. However, there was a public outcry at the prospect of undergraduate degrees costing AUD100 000 and the policy was put on the backburner.¹⁸ The changes proposed in the 2017 Budget were less dramatic but more insidious, involving a modest increase in fees, a lower threshold for repayment of loans and cuts to university

¹⁵ Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge, 2012), 59–100.

¹⁶ Frank Carrigan, 'The Law Schools of Rapidly Diminishing Returns', *The Australian Financial Review* (online), 9 August 2016 <<http://www.afr.com/business/legal/the-law-schools-of-rapidly-diminishing-returns-20160808-gqnday>>.

¹⁷ Law Admission Consultative Committee, Proposal to Admitting Authorities, *Accreditation Standards for Australian Law Courses*, February 2017.

¹⁸ See, eg, Paul Kniest, 'Federal Budget and Higher Education Policy: Masterly Inactivity or a Study in Ineptitude' (2016) 23(2) *NTEU Advocate* 16.

funding. An incremental approach to fee increases has shown itself to be politically palatable when there is initially strong opposition from students and the community.

The average cost of a Commonwealth Supported Place (CSP) for a four-year Bachelor of Laws (LLB) degree in 2017 was approximately \$43 983, but the reform proposed that fees would increase from 1.8 per cent each year between 2018 and 2021 to a total increase of 7.5 per cent.¹⁹ This would add approximately \$3000 to the cost of a law degree together with an adjustment for the Consumer Price Index. The budget was silent on the question of full fees, the setting of which is largely the prerogative of individual universities. A full-fee LLB can cost up to \$135 904 at Bond University, although the Juris Doctor (JD) is more commonly full-fee and I suggest that the indirect effect of the budget increase would encourage universities to increase both the cost of the JD and the number of enrolments.

The JD, which has replaced the LLB in both the US and Canada as the basic qualification for practice, was first introduced in Australia in the early 21st century. The number of JD programmes was accelerated after 2009 when a government prohibition on universities charging full fees for undergraduate courses was introduced. As the JD is characterised as a graduate degree, the prohibition was thereby circumvented.²⁰ The JD is now the only degree taught for admission to legal practice at both the University of Melbourne and the University of Western Australia Law Schools. The JD is nevertheless offered by another ten Australian law schools concurrently with the LLB. While there are some Commonwealth Supported Places (CSP) for JD students, the full-fee market has burgeoned. At the University of Western Australia, all places are CSP, whereas the University of New South Wales charged \$119 520 for a three year domestic place and \$131 040 for an international place in 2017.²¹ It is apparent that there is a wide variation between what law schools charge based on what they think the market will bear.

Despite the imperative in favour of privatisation, most Australian universities are still classified as public and are subject to a high degree of regulation. There are three not-for-profit institutions offering law degrees (Australian Catholic University, Bond, and Notre

¹⁹ Australian Government, *The Higher Education Reform Package* (Policy Proposal, May 2017) <https://docs.education.gov.au/system/files/doc/other/ed17-0138_-_he_-_glossy_budget_report_acc.pdf>.

²⁰ Donna M Cooper et al, 'The Emergence of the JD in the Australian Legal Education Marketplace and its Impact on Academic Standards' (2011) 21 *Legal Education Review* 23.

²¹ UNSW Sydney, *UNSW JD — Program Fees* (2017) UNSW Sydney Law <<http://www.law.unsw.edu.au/future-students/unsw-jd/cost>>.

Dame) and one for-profit law school (Sydney City School of Law at TOP Education Institute), which opened in 2016.

A second reform in the 2017 Budget relates to the lowering of the income threshold at which the repayment of FEE-HELP begins. From July 2018, it is proposed that the threshold will be \$42 000 instead of \$55 000,²² which will catch part-time and low paid workers. However, the rate of collection will be cut from four per cent to one per cent of income, which Professor Bruce Chapman, the architect of HECS, suggests will exercise only a minor effect on the majority of debtors.²³ Given the general availability of FEE-HELP as opposed to having to pay fees up-front, the impact would probably deter few students from enrolling in law.

More insidious is the likely effect on students of the third reform, which is a cut in direct funding to universities of \$384.2 million over two years, which will be in the form of an 'efficiency dividend' to the Commonwealth Grant Scheme of 2.5 per cent in 2018 and another 2.5 per cent in 2019.²⁴ The efficiency dividend is determined by completion and attrition rates, as well as student satisfaction rates, and any cuts would be likely to affect students disproportionately in less well-off institutions, which are generally located in outer suburban and regional areas. While the University of Sydney, Australia's oldest university, would lose \$15.7 million in cuts, the effect is unlikely to be catastrophic as its 2015 surplus of \$156.9 million²⁵ was greater than that of any other Australian university.²⁶ Nevertheless, the Go8 universities believe that the impact of the cuts will be significant for all students, as providers would lose more than \$1000 per student.²⁷

In a scathing critique of the cuts, Professor Greg Craven, Vice-Chancellor of the Australian Catholic University, argued that they would 'financially throttle' regional and newer

²² Above n 18, 15-6.

²³ Louise Watson et al, 'Federal Budget 2017: What's changing in Education?', *The Conversation* (online), 9 May 2017 <<http://theconversation.com/federal-budget-2017-whats-changing-in-education-77177>>.

²⁴ Above n 18, 11.

²⁵ Audit Office of New South Wales, *Report on Education 2017* (2017) <<https://www.audit.nsw.gov.au/publications/latest-reports/financial/volume-two-2016-focusing-on-universities/financial-performance-and-reporting>>.

²⁶ Julie Hare, 'Cuts "Hurt Strugglers, Punish the Profitable"', *The Australian* (online), 10 May 2017 <<http://www.theaustralian.com.au/budget-2017/budget-2017-higher-education-cuts-hurt-strugglers-punish-profitable/news-story/580de6ac4cf243dc88d3366c07d6ff75>>.

²⁷ Julie Hare, 'Students Set to Pay More for Less: Go8', *The Australian* (online), 14 June 2017.

universities,²⁸ which depend far more on government funding than the established universities. Thus Western Sydney University, which Craven describes as a 'great engine of social justice', depends on government for 41 per cent of its funding, compared with the University of Sydney, which receives 15 per cent from government.²⁹ The result of this inequitable funding model is that it favours those institutions with substantial endowments and positional goods acquired by virtue of age and location, while impoverishing others. Victoria University, for example, faces a cut of \$6.5 million, despite already having a deficit of \$12.6 million; job losses and a reduction in student services have been foreshadowed.³⁰

III HOW THE BUDGETARY PROPOSALS ENCOURAGE VOCATIONALISM

While the deferred repayment regime is intended to ensure equitable access for all students, the full-fee JD is likely to appeal more to middle class students than to those from low socio-economic backgrounds because of its high cost. Furthermore, as the FEE-HELP limit is approximately \$100 000, any fee differential above that is payable directly by the student. Research in the US and the UK, as well as Australia, has shown that fees are a strong deterrent to the poorest 10 per cent of students,³¹ despite the existence of FEE-HELP. It is therefore notable that increased tuition fees are causing class to be inserted by stealth into the discipline of law once again.

The disproportionate impact of a deregulated market is apparent in the US, where law school enrolments have plummeted since 2010, attributed to skyrocketing tuition and a bleak entry-level job market.³² When annual tuition fees were raised above US\$50 000 per annum by the Ivy League Law Schools, the non-elite schools felt compelled to follow suit to

²⁸ Greg Craven, 'End nears for sector as we know it', *The Australian*, 31 May 2017, 33.

²⁹ *Ibid.*

³⁰ Peter Dawkins, 'Cuts threaten reforms aimed at surplus', *The Australian* (online), 7 June 2017 <<http://www.theaustralian.com.au/higher-education/cuts-threaten-victoria-universitys-reforms-aimed-at-surplus/news-story/9d15a8e96b799870c36e4c7bfbbc7185>>.

³¹ Christine Mulhern, Richard R Spies and D Derek Wu, 'The Effect of Rising Student Costs in Higher Education: Evidence from Public Institutions in Virginia' (2015) *Ithaca S+R* <<http://www.sr.ithaca.org/publications/the-effects-of-rising-student-costs-in-higher-education/>>; Business, Innovation and Skills Committee, Great Britain Parliament House of Commons, *Government Report of Higher Education: 12th Report of Session, Vol 1* (2011); Ani Wieranga, Evelina Landstedt and Johanna Wyn, 'Revisiting Disadvantage in Higher Education' (Report, Youth Research Centre: University of Melbourne, November 2013) <http://socialequity.unimelb.edu.au/_data/assets/pdf_file/0004/1979536/revisiting_disadvantage_in_higher_education.pdf>.

³² Karen Sloan, 'Number of Students Enrolling in Law School Basically Flat', (2016) *The National Law Journal* <<http://www.nationallawjournal.com/id=1202774844249/Number-of-Students-Enrolling-in-Law-School-Basically-Flat>>.

show that they were competitive.³³ The rapid rise in fees and the collapse of the legal labour market as a result of the global financial crisis ('GFC') meant that students from non-élite institutions were confronted with substantial debts but were unable to meet their loan repayments because they could not obtain sufficiently well-paying jobs to service their loans.³⁴

While the situation may not yet be as dire in Australia because of the deferred repayment scheme, the 2017 budgetary reforms do not augur well for the discipline of law. Each time that fees are increased, the pressure on students to aspire to high-paying jobs on the corporate track is ratcheted up. This is despite the claim in the Budget that it will 'deliver a fairer and more sustainable higher education system that is more responsive to the aspirations of students'.³⁵ 'Massification' has also heightened competition for the relatively small proportion of corporate track positions available. For example, when Clifford Chance sought to appoint four to six summer clerks in 2015, it received 600 applications.³⁶ The private legal profession cannot absorb approximately 8000 new graduates each year, even though an increasing number of graduates are moving into alternative positions, such as in-house lawyering in private corporations.³⁷ The flood of new law graduates anxious to begin their careers in private law firms also fails to take cognisance of the reality that the demand by law firms for traditionally trained graduates is shrinking due to 'off-shoring' and other efficiency measures.³⁸ Furthermore, law is reported to be in the vanguard of technological innovation,³⁹ a scenario that is likely to complicate the situation further for entry-level lawyers.

The reduction in university funding also deleteriously affects teaching. Reduction in staffing invariably means a preference for large lectures over small-group teaching so that students

³³ Tamanaha, above n 12, 132.

³⁴ RW Bourne, 'The Coming Crash in Legal Education: How we got Here, and Where we go Now' (2011-12) 45 *Creighton Law Rev* 651; Tamanaha, above n 25.

³⁵ Australian Government, *Budget Overview* (2017) Budget 2017-18 <<http://budget.gov.au/2017-18/content/glossies/overview/download/Budget2017-18-Overview.pdf>> 19.

³⁶ Edmund Tadros and Katie Walsh, 'Too many law graduates and not enough jobs', *Australian Financial Review* (online), 22 October 2015 <<http://www.afr.com/business/legal/too-many-law-graduates-and-not-enough-jobs-20151020-gkdbyx>>.

³⁷ Mahlab, 'Mahlab Report 2016' (Report, Mahlab, 2016).

³⁸ William D Henderson, 'From Big Law to Lean Law' (2014) 38 *International Review of Law and Economics* 5.

³⁹ Richard Susskind, *Tomorrow's Lawyers: An Introduction to your Future* (Oxford University Press, 2013).

are afforded little opportunity to interrogate the knowledge being communicated to them. They are reduced once again to the status of passive learners who are expected to accept unquestioningly the views of the 'sage on the stage', and regurgitate them in exams, a model that law teaching moved away from some time ago.⁴⁰ An increasingly popular cost saving alternative is to offer courses on-line, a pedagogy that also lends itself more easily to doctrinal and applied knowledge, which invariably means a contraction of critique. Indeed, it is not the aim of higher education in a neoliberal climate to produce critically aware students, but a pool of skilled human capital to enhance competitiveness.⁴¹ This paradigm leaves little space for the pursuit of social justice concerns within the mainstream curriculum. While there are always individual students who want to make a difference, my argument is that concerns about rising debt and increased competition encourage students to seek, and law schools to offer, a more traditional doctrinally-oriented curriculum that is believed to appeal to prospective private law firm employers.

As the level of debt confronted by law students has soared, students have become more concerned about their employment prospects, so that the vocational sub-text remains in the curricular foreground. As ten law schools charge around AU\$100 000 for their full-fee JD, the pressure to secure a high-paying job on graduation has intensified. When the cap on undergraduate enrolments was lifted in 2012,⁴² universities were free to increase their enrolments based on demand. Thus, the combination of uncapped demand for the LLB together with expanded JD enrolments has served to increase the number of law graduates dramatically. However, this impetus is unlikely to slow down, for the effect of the budgetary cuts is likely to induce universities to increase the 'tax' that they already exact from their law schools to meet the further funding deficit. This is likely to engender pressure to raise the cost of full fee courses as well as to augment the student intake. We can therefore expect to see more JD and masters programmes. Initiatives to increase the proportion of international students enrolled in JD programs are already underway in several law schools in light of the higher fees they command. Fee increases invariably shift curricular demands

⁴⁰ Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Law Book, 1994); Cf Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537.

⁴¹ Mark Purcell, *Recapturing Democracy: Neoliberalization and the Struggle for Alternative Urban Futures* (Routledge, 2008).

⁴² Hon Dr David Kemp and Andrew Norton, Submission to Department of Education, Australia, *Review of the Demand Driven Funding System*, 2014.

to a greater focus on traditional market-based legal knowledge that is applied and functional; social justice, theory and critique do not fit this paradigm.

This is illustrated by a publication prepared for law graduates by Graduate Careers Australia and supported by the College of Law in Sydney, acknowledging the generalist nature of the law degree and the wide range of careers available; but the areas needing lawyers included banking and finance, property, corporate, commercial, and mergers and acquisitions,⁴³ that is, they were the conventional areas of corporate practice associated with profit maximisation. The inference is that issues of social justice affecting individuals, such as the high incidence of discrimination, harassment and bullying in legal workplaces,⁴⁴ is of little consequence as the cost of access to justice for those affected is largely beyond their ability to pay.⁴⁵ The profits engendered by corporate law firms justifies their domination of legal practice in a neoliberal context where capital accumulation is lauded.⁴⁶ Legal aid commissions, community legal centres and specialist legal services receive minimal support from the state, which means that only the very poorest citizens are eligible for aid.⁴⁷ This excludes multiple employees who might have been victims of corporate malpractice. Indeed, many ordinary citizens, including those in regional, rural, and remote (RRR) areas cannot afford access to legal services.⁴⁸ Neoliberalism has seen a turning away from the support for legal aid from the public purse, as with social justice initiatives more generally. While law is invariably a middle class occupation that supports middle class interests, it has also been associated with challenging oppressive government policies and righting wrongs.⁴⁹ Of course, there is nothing to stop such initiatives by committed law graduates, but it is undoubtedly more difficult to do so in a context of privatisation,

⁴³ Graduate Careers Australia, *Careers for Law Graduates*, Graduate Careers Australia (2008) <http://www.graduatemcareers.com.au/wp-content/uploads/2011/12/careers_for_law_graduates.pdf>.

⁴⁴ See, eg, Law Council of Australia, 'National Attrition and Re-engagement Study (NARS) Report' (Report, Law Council of Australia, 2014); Joanne Bagust, 'The Culture of Bullying in Australian Corporate Law Firms' (2014) 17(2) *Legal Ethics* 177; Paula Baron, 'The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours' (2015) 41(1) *Australian Feminist Law Journal* 87.

⁴⁵ Community Law Australia, 'Unaffordable and Out of Reach: The Problem of Access to the Australian Legal System' (Report, Community Law Australia, 2012) 3 ff.

⁴⁶ See, eg, David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2005) 159 *et seq.*

⁴⁷ Law Council of Australia, *Federal Election Policy Platform* (Law Council of Australia, 2016) 3.

⁴⁸ Productivity Commission (Australian Government), 'Access to Justice Arrangements: Productivity Commission Inquiry Report' (Report, Productivity Commission, 3 December 2014).

⁴⁹ Law Council, above n 47; Law Council of Australia, 'Federal Election Policy Platform' (Policy, Law Council of Australia, 2016).

corporatisation and debt.

Nickolas James acknowledges the dominance of vocationalism within contemporary legal education discourse that is supported by governments, universities, and law schools, but he is critical of the inability of those who question the focus on vocationalism without being able to stop it from gathering momentum.⁵⁰ His solution is to appropriate the concept of professionalism in order to 'hijack vocationalism's dominance'. James favours a broad understanding of professionalism that incorporates a commitment to social justice, as well as ethical reasoning and the public good. While the incorporation of this broad concept of professionalism within legal pedagogy is welcome, it is hard to see it supplanting vocationalism, which is the linchpin of the higher education industry. James does not address the problem posed by 'massification' of legal education that has given rise to the intensity of competition in the legal labour market, or the profound impact of the shift from free higher education to a user-pays regime, even if the impact on students is mitigated by the deferred repayment mechanism. Vocationalism is an ever-present sub-text for fee-paying students, which animates not only their employment aspirations, but also shapes the curriculum, particularly as determined by the admitting authorities. Most students will simply not enrol in feminist legal theory, welfare law or legal history if they think that such subjects are unlikely to carry the same weight with prospective employers as global business, corporate tax or international trade law.

IV CONCLUSION

Newman's *idea* of the university as a site of disinterested knowledge has been rendered passé as higher education has been seduced by the embrace of the market. Although many young people come to law school animated by a commitment to social justice and a desire to make the world a better place, the opportunities to do so have contracted as students are seduced by the lure of the corporate track. As 'rational egoists', they pragmatically recognise that such a choice is the best way to minimise their student debt. Higher education, however, is a preeminent public good and to halt the privatising imperative, Australia might have to consider following the example of Germany and Chile by abolishing fees, and as Labour Leader, Jeremy Corbyn, has pledged to do in the UK.

⁵⁰ Nickolas J James, 'More than Merely Work-ready: Vocationalism Versus Professionalism in Legal Education' (2017) 40(1) *University of New South Wales Law Journal* 186, 198.

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