

CHANGE IN EDUCATION RESEARCH GROUP CONFERENCE

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THE STRUGGLE FOR IDENTITY IN A GLOBALISED WORLD

When asked to deliver the key note address to this conference on “Changing Identities - Changing Knowledges”, I was first drawn to the issue of changing identity, particularly as it impacts on Australia, and more particularly to students and educators in our society. It is my belief that today more than at any time in recent history we all must be on the same journey: the journey towards self-knowledge and an understanding of our place in the world.

While we all must deal with this as individuals, the role of teachers is to create an environment that will help students through the process. By teaching, teachers learn to be better, more creative teachers and to be more aware of their personal challenges and of the world at large. Teachers learn from students and from their learning. While this should always be an element of a formal classroom situation, it extends to the world at large and encompasses learning in the workplace and generally throughout our life. All learning should be constructive and must play a major role in the formation of identity.

I will attempt to develop this concept throughout my address this morning.

I left California, the state of my birth, some thirty years ago. At that time, California was in turmoil. We had just been through the various revolutions of the 60s - sexual, political and social - and the American identity had been taking a bit of a battering as a result of involvement in Vietnam as well as the somewhat uneasy position of being the “leader of the free world”.

I arrived in Australia to find a country whose identity was far more difficult to pin down. People did not put their hands over their heart when the national anthem was sung. People generally did not pledge allegiance to the flag at the beginning of each school day. Nor did I see the bumper sticker equivalent of “America, Love It or Leave It” as I had found all too common in the United States, although “all the way with LBJ” caused me some disquiet. This is not to say, however, that the fervour of the anti-war movement in Australia, or the anti-Springbok or uranium demonstrations were any less loud or virulent.

The absence of a easily definable identity that I experienced of Australians on arrival initially disturbed me, coming as I did from such an overtly patriotic nation. Notwithstanding my era of radical politics and tear gas during the 60s, such indoctrination runs deep.

But, the phrase most commonly mentioned when I asked people here to sum up Australian culture or identity was the “egalitarian fair go society”. To a young radical from Berkeley, this sounded suspiciously like socialism.

Whether or not Australia of the 1970s was actually socialist is not the subject of this address, but since my arrival, I have experienced many changes in Australian society. These changes are perhaps more noticeable to an outsider who grew up within a different culture and who must apply a different yardstick against which to assess the changes.

Thirty years ago Australians were not known as complainers. “She’ll be right mate” was the go. Research now shows that we have become the greatest complainers in just about every field on the face of the earth. Robert Hughes, an Australian who wrote *The Culture of Complaint* about America could perhaps now rethink and perhaps even more so after his experiences in West Australia. Is this because society has become more complex, or are we less sure of who we are?

We have seen what might be called the third wave of migrant diaspora to Australia which has made us one of the most culturally and linguistically diverse nations on the face of the earth.

Although, as I have said, I initially had difficulty with the lack of national identity I experienced here, my time at the Anti-Discrimination Board 25 years later, led me to believe that this lack of a rigid and easily definable national identity was probably the greatest saviour of Australian culture. It allowed us to be flexible and to accept, if not always totally embrace, the level of diversity that we now have. As established Australians taught migrants to give and expect a fair go, migrants taught established Australians to expand the meaning, and possibly the context, of the fair go. This in turn has helped provide Australia with sufficient maturity now to deal with the concept of reconciliation.

I arrived not long after the referendum which recognised Aboriginal humanity and allowed for the first time these original inhabitants of Australia to vote. More recently, the high court decision in Mabo, over half a million people walking across Sydney Harbour Bridge in celebration of reconciliation and the proud presence and acknowledgment of indigenous Australians in the Olympics have perhaps marked a turnaround in race relations. However, this must be viewed in the context of the rise of One Nation and a trend away from meeting our obligations under international treaties.

We in Australia have suffered, along with the rest of the industrialised world, a shrinking of the middle class and an increasing gap between rich and poor.

We have seen a diminution of the social safety nets that previously formed a major plank in the Australian psyche. Universal health care is now far from universal. Financial support for those presently not working continues to diminish in real terms while more stringent requirements, such as work for the dole, are being applied.

We no longer can look to the government to fund our retirement through the aged pension. We are now being encouraged, if not forced, to fund our own retirement through superannuation contributions and private investment.

Besides possibly exacerbating the poverty gap, this has shifted Australia from being one of the lowest per capita share investment societies in the developed world to being number one up there with America, and this in the last ten years or so.

We see mums and dads joining the institutional investors in buying shares in companies like Telstra and the GIO that we had previously thought we owned as taxpayers. We have also seen a vast move to demutualise those institutions that have had such a long and rich history in Australia as mutuals, and turn them into companies that we invest in rather than be a part of.

So what we have experienced is a major change in focus for many Australians who now have to be fundamentally concerned with the profits of companies they own shares in for their own economic survival as retirees. This focus on profit is very new to many Australians and, when taken with the demutualisation of Australian institutions, must have a profound effect on the way we see ourselves in this new globalised age.

We have also recently lost a great opportunity to better define the Australian identity in the failed referendum on the republic.

The major question that emerges is, what is the effect of all of this learning, whether self-initiated or reactive, deliberate or unavoidable, on an “egalitarian fair go” society, and to what extent is this simple concept still the basis for our identity as Australians?

How often does political ignorance or apathy masquerade as cynicism in this country?

And of particular relevance for this conference, what role does formal education, that universal panacea for all that ails society, play in shaping our identity?

It is interesting to note how many of those who marched against the Vietnam war, demonstrated against uranium mining or the Springboks, or against the anti-march laws in Queensland have ended up as the senior educators of today.

While I have held the position of lecturer in a university, I never formally trained as a teacher. Friends of mine in the teaching profession tell me that once upon a time the politicised intellectual elite chose to go into teaching because they had a vision of a better world. Their passion was to change the world by changing a child. But how do we value education today? My understanding is that the starting salary of teachers, and indeed salaries throughout the ranks of the profession, are certainly not commensurate with

the training required, nor the huge impact teachers have on the creation of our individual and collective identities. While I am perhaps preaching to the converted here, I find it deeply disturbing that the UAI required for entry into the teaching profession is at the very bottom of the rank. What does this say about the level of esteem we hold as a society for wisdom, identity and self-knowledge?

Having looked at learning and the formulation of national identity, I would now like to move into the practicalities of curriculum design and delivery in the changing national and trans-national context.

The trials and tribulations of legal education in Australia, despite its peculiarities, make legal education a good example of the stresses on formal education generally today. This is fortunate, as my experience with higher education is largely limited to this field. The old saying, "The more things change the more things stay the same" and the tension between market requirements and more idealistic educational values seem to be the fundamental issues which confront legal education, and I suspect education generally as we embark on this new millennium.

The Dawkins reforms to tertiary education were focussed on bringing universities closer to the market, and recognised that the higher education sector needed to have broader economic outputs. This has resulted in universities seeing themselves far more as service providers to a range of clients which include industry, rather than as public funded bodies providing liberal education.

On a very simplistic view, this presents two fundamental difficulties: firstly, the corporate world is moving at such a pace that the education sector faces the daunting task of producing graduates with relevance to a sector whose needs and criteria change, shift and evolve dramatically within the span of degree or post-degree study. Secondly, it is often difficult to define the industry for whom graduates are being prepared, let alone ascertain with any reliability that industry's needs. Taking law again as an example, the requirements of corporate law firms, suburban practices, barristers in their various specialties, corporate lawyers, lawyers working in the community sector and the vast number of law graduates now working in non-law fields like accountancy, consultancy, corporate governance and politics, present a phenomenon which would make it very difficult for targeted education programs to produce graduates with practical skills to meet industry needs.

This is also exacerbated by the fact that clients are no longer prepared to pay for the on-the-job education of junior lawyers in a firm. They expect value for money, and for lawyers to somehow emerge from law school in full bloom with all the skills necessary to deal with the clients' problems.

Are our law schools producing graduates who can meet these expectations? The view is at best mixed, and from the level of complaints against lawyers received at my office, the gap between employer/client expectations and graduate ability may be widening.

It was only a little over a hundred years ago that the Socratic method of teaching entered the world of legal education. Previously, “reading the law” was precisely that. A legal education was a process by which the privileged were given access to the cases and writings on the law so that they could be memorised. Understanding and critical analysis came largely with the introduction of the Socratic method.

It is only relatively recently that “reading the law” has disappeared from law schools, while the Socratic method, only newly ensconced, is under much critical attack as being unable to deliver graduates relevant to the practising profession.

Today those studying law are a far more diverse group than they would have been a hundred, fifty or even thirty years ago. Law students today are probably much more concerned about their employment prospects than ever before, partly due to the number of students graduating in law, the competitiveness of the job market and the cost of a legal education. Changes in curriculum have seen ethics courses introduced into all law schools, and international law is back in favour after a long sojourn in the elective wasteland. Clinical legal education, on-the-job learning and computer assisted learning programs have changed the face of legal education. However, much remains the same. The tension still exists between “black letter law” and those teaching “law and society”. Law schools still have first year courses which a writer has referred to as an “intellectual boot camp that transforms ordinary people into lawyers”.¹ This apparent need to make people “think like lawyers” is challenged by many in the marketplace who want to hire young lawyers with *practical* skills.

What I would now like to focus on briefly is the area of practical legal training or clinical training where the teachers and the students find themselves on the same learning journey both in understanding the societal context in which they work and in providing assistance to real clients.

Clinical legal education can provide an environment where teachers and students are exposed to the complexities of client problems. This is a vastly different arena than that provided by either the study of case law or the Socratic method of teaching, for example, contract. Problems presented to legal practitioners often canvass much wider sociological issues than the interpretation of a clause in a contract or a government regulation. Being confronted with these wider issues highlights the need for both highly developed problem-solving skills and often the need for law reform and possibly the development of social activism by both teachers and students.

So the ideological, sociological and cultural context in which the educator imparts knowledge in a clinical context, or even in the more traditional classroom, impacts directly on the way the student learns, and the way the

¹ Munneke, G.A. (2000) *Seize the Future : Forecasting and Influencing the Future of the Legal Profession*, ABA Law Practice Management Section, Phoenix, p.59

student communicates with the instructor. While this is clearly the case in legal studies, with its political, social and economic involvement in everyday life, it must also be true for other educational areas.

A further pressure on education today is that many of its critics say that it must become much more interdisciplinary. In law for example, practical legal problems often need problem-solving approaches which involve people with different skills, such as engineers, psychologists, financial planners and the like.

In addition, while the notion that knowledge of psychology would be useful to legal practitioners is not new, we are yet to see the development in Australia of a double degree in psychology and the law. This, notwithstanding the fact that legal problem-solving (coupled with the range of “non-legal” issues invariably involved) requires not only good cognitive skills, but a high level of what is now being called emotional intelligence.

Practical legal training or clinical training of lawyers is one way in which some of these issues can be addressed, but draw backs also exist. Clinical legal training is intensive and will not as presently structured be able to accommodate the number of students who wish to enter law studies into its program. Teaching staff need to be aware of the demands of practical training and the reality that it is a journey to be shared with the students, and that traditional academic hierarchies and power will produce a barrier, and perhaps a fatal barrier to positive learning in such an environment.

Practical legal training through its involvement with “real clients” also will assist educators and students to understand the day to day difficulties experienced by practising lawyers caused by the widely differing perceptions of their respective roles held by the practitioner and the client.

Clients, almost universally, seek the assistance of lawyers with one goal in mind, and that this to obtain justice. They do not turn their mind to the reality that the concept of justice is totally subjective and unique to every individual. They consider justice an outcome that they deserve, which is translated into something tangible such as staying out of gaol, getting the kids from the marriage, having the assets of an estate distributed fairly etc.

But what they really get when they go to a lawyer seeking justice is law, and law from a lawyer’s perspective is a process not an outcome. Unless these differences in perception are addressed early in the relationship between a lawyer and a client, dissatisfaction almost inevitably follows, coupled with complaints to my office.

Unfortunately, few if any law schools recognise in their curriculum this fundamental problem in the delivery of legal services, and attempt to prepare students to be able to meet the communication challenges inherent in it.

Justice is also a concept that is generally held to be universal, but due to its subjectivity, has many different cultural contexts which may be fundamentally

opposed. The rise of globalisation will very likely bring a number of these fundamental differences into stark relief.

Over the past twenty years or so, one economic philosophy has held predominance throughout the western world that has had an immense impact on public policy. This is of course the philosophy of “economic rationalism” which holds that market forces above all else should shape our economic and political decision making; a kind of economic positivism.

Economic rationalism has been a somewhat difficult phrase to combat. As The Honourable Jim Spigelman, the Chief Justice of New South Wales has said: “Economic rationalism is an unfortunate term as no-one would wish to come forward as an advocate for “economic irrationalism”².

In a recent speech, Justice Spigelman has gone on to warn against the treatment of “the market” as some sort of force of nature by drawing what should be the obvious point that complex markets are a human construct and more than anything else a construct of the law. Spigelman quotes the late American economist, Mancur Olsen, from his book, *Power and Prosperity* in the following terms:

There is no private property without government - individuals may have possessions, the way a dog possesses a bone, but there is private property only if the society protects and defends a private right to that possession against other private parties and against the government as well. If the society has clear and secure individual rights, there are strong incentives to produce, invest and engage in mutually advantageous trade and therefore at least some economic advance.

and

To realise all the gains from trade ... there has to be a legal system and political order that enforces contracts, protects property rights, carries out mortgage agreements, provides for limited liability corporations, and facilitates a lasting and widely used capital market that makes the investments and loans more liquid than they would otherwise be. These arrangements must also be expected to last for some time.

Without such institutions, a society will not be able to reap the full benefits of a market, to produce complex goods efficiently that require the cooperation of many people over an extended period of time, or to achieve the gains from other multi-party or multi-period arrangements. Without the right institutional environment, a country will be restricted to trades that are self-enforcing.³

² Spigelman, J. (2001) Opening Address, Law Society of New South Wales Law Term Dinner, Sydney, 29 January, www.lawlink.nsw.gov.au/sc/sc.nsf/pages/cj_300101

³ Olsen, M. *Power and Prosperity : Outgrowing Communist and Capitalist Dictatorships*, cited in Spigelman op.cit.

Thomas Friedman, amongst others, says much about the virtues of a market economy, particularly one run by the United States. He consistently makes the point that globalisation, in economic terms, needs sound regulation, strong safety nets to protect the disadvantaged and a vibrant localised social fabric to support the spread of globalisation and offer protection from its potentially amoral excesses.⁴

Of course, globalisation affects us in far more ways than in terms of economics alone. Education is increasingly becoming globalised as our markets expand and merge. Competition for talented teachers and graduates is now a phenomenon fuelled by increasing demand in a shrinking world. Technology, of course, will play a major role in accelerating this phenomena.

But what about its impact on culture? Jeremy Bentham, the father of legal positivism and a strong believer in the philosophical and economic role of private property, did much to shape English law in the 18th and early 19th Centuries. But Bentham, a lawyer, philosopher and economist, was only a follower of a more ancient English tradition that English law is based on the law of property.

It was only a hundred or so years ago that under English law, rape was a matter that could only be prosecuted by the husband or father of a female victim and the action was actually one in damaged goods.

It is always useful to attempt to stand back from any system and take a closer look at its underlying premise to determine the intended and unintended consequences of that premise. This is particularly so with a legal system based on the role of property in a rapidly globalising world.

As globalisation has accelerated the rate at which English language and the US dollar have become the dominant vehicles for commerce in the world, so too has English law become dominant as a vehicle to define the relationships between the players in the expanded market.

The impact of this is far reaching. Intellectual property law and environmental law are only two areas in the ascendancy throughout the world whose application will have a deep impact on all of us. These are also two of the main areas of law which are both fundamental to globalisation and must dramatically change and develop as a result of globalisation.

As English law is based on the law of property, its main concern is with the identification of ownership of property and its exploitation. Even when law attempts to regulate the exploitation of property, it is almost exclusively directed at individually owned property, or that owned by corporations, who are legal persons who live forever without the requirement of morality.

⁴ Friedman, T. (1999) *The Lexus and the Olive Tree : Fast Food and Fanaticism*, Harper Collins, London

The laws that govern the behaviour of many indigenous cultures around the world, which are based on collective responsibility rather than individual ownership, are under great threat as a result of globalisation. How will these cultures survive in a world which increasingly does not even have the legal language to incorporate them, let alone the moral commitment to their survival?

This brings up another major challenge for the future of education: how to deal with the tensions experienced by educational institutions which must exist in a market economy, subject to the pressures of globalisation with the concomitant need to create local networks and community support systems, while both increasing the level of specialisation offered and yet embracing the social and cultural context of indigenous communities so as to avoid cultural imperialism. A true “all things for all people” conundrum.

Indeed, the future of education presents such a problem that one of my earlier points about the need for problem solving as a prime educational goal for lawyers, might need be applied more generally.

Humans appear to be the only life form that acts collectively for altruistic purposes. While individually we may be competitive and may be driven by what Richard Dawkins has referred to as the “selfish gene”, collectively we are greater.⁵

As Matt Ridley states in his book, *The Origins of Virtue*:

Our minds have been built by selfish genes but they have been built to be social, trustworthy and cooperative ... Human beings have social instincts. They come into the world equipped with predispositions to learn how to cooperate, to discriminate the trustworthy from the treacherous, to commit themselves to be trustworthy, to earn good reputations, to exchange goods and information, and to divide labour. In this we are on our own. No other species has been so far down this evolutionary path before us, for no species has built a truly integrated society.

and

Trust is as vital a form of social capital as money is a form of actual capital.⁶

In the educational community and the community generally, we can only strengthen the social fabric in which we live through increasing our self-knowledge and our understanding of the world. One focus for us here in Australia would be to establish our collective identity around strong values such as the “egalitarian fair go” society that I experienced so strongly when I

⁵ Dawkins, R. (1978) *The Selfish Gene*, Granada, London

⁶ Ridley, M. (1997) *The Origins of Virtue*, Penguin, p.249

arrived here thirty years ago and which now faces great challenges brought on by globalisation.

Finally, in this opening address for your conference on Identity, Knowledge and Education, I am reminded of Montaigne, who would have preferred students to go to school to learn wisdom rather than to accumulate knowledge. In *Consolations of Philosophy* De Botton created an examination in Montaignean wisdom using excerpts from Montaigne's writings with his own added questions.⁷ I would like to mention several of these here by way of conclusion.

Montaigne states:

1. I know of a squire who had entertained a goodly company in his hall and then, four or five days later, boasted as a joke (for there was no truth in it) that he had made them eat cat pie; one of the young ladies in the party was struck with such a horror at this that she collapsed with a serious stomach disorder and a fever: it was impossible to save her. (Essays I.21)

Question: Analyse the distribution of moral responsibility."

2. Consider these two quotations:

I want death to find me planting my cabbages, neither worrying about it nor the unfinished gardening. (Essays, I.20)

I can scarcely tell my cabbages from my lettuces. (Essays, II.17)

Question: What is a wise approach to death?

3. If only talking to oneself did not look mad, no day would go by without my being heard growling to myself, against myself, "You silly shit!" (Essays, I.38)
The most uncouth of our afflictions is to despise our being. (Essays, III. 13)

Question: How much love should one have for oneself?⁸

What I have attempted to do in this rather eclectic paper is to raise a number of the conundrums faced by all who are involved in education today, with particular reference to formal education. My premise is not particularly surprising nor is it new. It has been to draw the distinction between the accumulation of knowledge as an educational goal, and teaching people how to think and have a high level of self-knowledge to assist them to simply become better people and to add value to the world. Not a small task.

⁷ De Botton, A. (2000) *The Consolations of Philosophy*, Hamish Hamilton, pp.154-156

⁸ Montaigne, cited in De Botton op.cit. pp.155-156

I suspect that your task in this conference, and in your professional and personal lives, will be to attempt to find a way through the shores and reefs of demands for increased performance and improved service provision, yet develop in yourselves and those with whom you share learning some of Montaigne's wisdom. I know mine is.

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