

THE MAKING OF A NEW LEGAL EDUCATION IN NEW ZEALAND: WAIKATO LAW SCHOOL

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I. INTRODUCTION

The formal establishment of the Waikato School of Law on 1 July 1990 marked the opening of the first new School of Law in New Zealand in over ninety years. The impetus for the new School came initially from the University of Waikato and was supported by the local legal profession and the Council of Legal Education. While each of these institutions had its own reasons for wanting this new development in legal education, there was a consensus that a new type of legal education was necessary.

In this article I shall examine the precise nature and form of the new legal education represented by the Waikato Law School. I shall present the context within which the School was established, analyse the expectations of the various groups who assisted with the formation of the School, and describe the institutional framework that was constructed to realise these expectations. I shall then reflect on the first three years' experience of the School, and what lessons can be drawn from this for the School and legal education in New Zealand generally.

II. THE CONTEXT WITHIN WHICH THE WAIKATO LAW SCHOOL WAS ESTABLISHED

The discourses that surround legal education centre on the issue of what is the appropriate role for the lawyer within society. Those who see the occupation of the lawyer primarily being the delivery of legal advice to clients tend to support a *skills-based* professional education and training. Those who see a broader role for the lawyer as an active participant within the legal system and the larger community, tend to support a *conceptually-centred* professional education. Legal education in New Zealand for many years reflected the former approach. Initially, control of legal education lay in the hands of the judges and it was only in the late nineteenth century that the university colleges started to teach law. Even then, tuition was conducted primarily by practitioners, who were employed to teach part-time students in the evening because both teachers and students worked during the day in law firms.¹ However, certainly from the mid-1960's there were growing calls to provide a more liberal legal education. These came from

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¹ Weston, "Early Law Tuition in Canterbury" (1958) 34 NZLJ 71.

the growing number of full-time academically qualified law teachers, who taught a growing number of full-time students, and who were anxious to gain professional recognition for their skills from both the profession and the university authorities.² By the late 1980's, these developments had gathered pace.³ The establishment of the Waikato School of Law was a conscious attempt by the New Zealand Council of Legal Education to move towards a new form of legal education that reflected a conceptual, contextual and critical approach to the study of law and the legal system, while providing the students with a professional qualification.⁴

Since 1984, New Zealand society experienced and is continuing to experience a period of radical change to all its institutions, including its tertiary educational and legal institutions, although they are amongst the last to be affected. This period is not dissimilar to that experienced during the 1890's when the foundations of what came to be known as the welfare state were being laid. Part of those foundations was the establishment of universities and the provision for legal education within them. The primary responsibility of the state for the social well-being of all its citizens was acknowledged in the 1890's but developed more comprehensively from 1935. Acceptance of this social responsibility by the state has been a distinguishing feature of New Zealand society over the past fifty years.

This basic assumption of an active state role has been reflected within the design of all economic and social institutions, including the educational and legal systems. While it is easy to see the primacy of the state in the provision of education, it may also be argued that the legal system has reflected the proactive role of the state. For example, the abundance of legislation and the underdevelopment of common law legal principles may be seen as indicative of an active state which quickly moved to provide remedies where they seemed unavailable under the common law. Also, the reliance by the individual on the state to resolve disputes over allocation of resources, rather than pursuing legal rights through the courts, has had an influence on the development of the legal system. Employment law and family law provide two obvious examples of this development.

² Northey, "Legal Education and the Universities" [1962] NZLJ 9; Denham, "Legal Education" (1966) 2 NZULR 130; Sim, "Legal Education in New Zealand: A Symposium: The Ormond Report and Legal Education in New Zealand" (1973) 3 Otago Law Review 76; and Haslam, "F W Guest Memorial Lecture: Some Reflections on Legal Education in New Zealand" (1970) 2 Otago Law Review 113.

³ Richardson, "Educating Lawyers for the 21st Century" [1989] NZLJ 86.

⁴ Council of Legal Education, *Report of the Fifth Law School Working Group* (1989).

It is this primary role of the state however that has been concertedly challenged since 1984. The market, as opposed to the state, has been asserted as the more appropriate mechanism for the allocation of resources. The implementation of this new ideology in all aspects of life is fundamentally changing the nature of New Zealand society, including the provision of education and legal services.

It was then within challenging times that a new approach to legal education was introduced. An approach that reflects the old values of social as opposed to individual responsibility as being of dominant importance would appear to contradict the larger policy environment. It may be argued however that the essence of being professional is to consider matters beyond the individual alone. The legal professional person must provide a competent legal service to her or his client, but advice tendered should always be in the context of the ethical rules and practices that accompany the legal rules. The behaviour of lawyers who responded to the new ideology by putting their clients, and on occasions their own financial well-being, above all else has brought the legal profession into disrepute. It has also raised the questions of who should teach this aspect of professionalism and how it should be taught. Academic institutions have not seen the teaching of legal ethics as their primary responsibility, as it is difficult to teach professional responsibility unless it is related to practical legal situations. The more conceptual the degree course becomes the more difficult it is to teach professional responsibility. Yet it is difficult to argue that a degree that is intended as a professional qualification should not address this issue.

The new policy environment, with its emphasis on individual rights and the market approach to resolve conflicts of interest, also increases the need for a higher level of legal literacy in the community. The move towards decentralisation of the delivery of services and the introduction of formally contracting for all services has created a new demand for a different type of legal education. "Voluntary" community organisations require professional services now if they are to get the funding to continue to deliver their service. School trustees, for example, are learning that higher standards of professionalism are required in the administration of schools. All organisations that receive public funding are finding that the compliance requirements demand higher levels of expertise. Since a failure to comply may have financial as well as legal consequences, legal knowledge is required for the conduct of a whole range of activities. The much-heralded age of deregulation that was meant to accompany the ascendancy of the market has proved illusory. What has happened in effect is a reregulation of the community. The nature and consequences of this are beyond this article,

but its impact on the type of legal education that is now required is relevant in this context.

While the Waikato legal education project was conceived before the full effects of the new policy environment became apparent, its conception was influenced by a desire to provide a different type of legal education. The difference was expressed in terms of a much more inclusive approach to legal education. Legal rules and principles alone are no longer sufficient. Legal education should now include a knowledge and understanding of the cultural, social, economic and political contexts in which laws are made and administered. The bicultural context, in particular, is now an essential element of the new law degree. Waikato Law School is expected to provide a legal education that acknowledges the new demands on legal educators to produce an education that will train people to be not only lawyers, but legal professionals.

III. EXPECTATIONS OF THE WAIKATO LAW SCHOOL

Since the establishment of the University of Waikato in 1964, there had been a lobby led by members of the legal profession in the region to establish a law school.⁵ Finally, in 1987, members of both Waikato and Auckland Universities met with members of the legal profession and the judiciary and decided that the time had come to support the establishment of a new law school at the University of Waikato. The dominant factor in this decision was the shortage of law graduates to meet the demand from the profession for new graduates, especially in the regions south of Auckland. Waikato University established a committee that produced the report *Te Matahauriki* ("the horizon where the earth meets the sky/the meeting place of ideas and ideals").⁶ This report, which incorporated the University's submission to the University Grants Committee and the Council of Legal Education for approval to establish the school, clearly identified three objectives for the Waikato law degree. First, it was to provide a professional legal education, in the sense that it complied with the requirements to practice law. Secondly, it was to provide legal education through teaching law in its context, which meant introducing students to the social, economic and political environments within which the law was made and practised. Thirdly, the Waikato law degree was to develop a bicultural approach to legal education, which meant that the Maori perspective had to be reflected in all aspects of the curriculum and the activities of the School.⁷

⁵ See Wilson, "Waikato Law School: A New Beginning" (1990) 14 NZULR 103, for an account of the history of the establishment of Waikato Law School.

⁶ *Te Matahauriki: The Report of the Law School Committee* (1988).

⁷ *Response to Vice-Chancellor's Request to Provide Input into Council of Legal Education Report* (1989).

The Council of Legal Education considered the University of Waikato submission, together with a submission from Massey University, in the context of reviewing the supply and demand factors affecting legal education; the arguments to expand the numbers of students in existing law schools; and the future direction of legal education.⁸ Included in the Report was a brief history of legal education in New Zealand which concluded with the following observation:

Despite all these changes, the modern New Zealand law school retains the mark of its heritage. It is strongly oriented towards training for the legal profession. At the same time, it recognises the historical divergence between “theoretical” training on the one hand, and “professional” training on the other, a divergence which can be traced back to the earliest forms of legal education in New Zealand. It is much influenced by the struggles of its former Deans and academic staff (some of whom still occupy senior positions in the Universities) to win recognition for the “academic” standing of legal theory, both from the legal profession and from the university system as a whole; and to obtain levels of staffing comparable to those prevailing in other disciplines. It is, in other words, a distinctive institution, if not one which should necessarily be held up as the model when the shape of any new law school is under consideration.⁹

The Council was therefore conscious that the past influences the future, and it recognised the difficulties facing a School that attempted to provide an alternative legal education. The Report nevertheless supported a different approach to the traditional “black letter law” education that characterised the four existing law schools. It recognised that law graduates have traditionally pursued careers other than the practice of law, and referred to the fact that over the period 1966-1987 the number of practitioners had doubled but that it appeared a third did not practice law.¹⁰ It also recognised that the existing law schools did not fulfil the needs of some students, in particular women and Maori students, and that an opportunity for them to pursue a more relevant legal education was required.¹¹

The Council of Legal Education, the University Grants Committee and the then Labour Government all eventually supported the University of Waikato application for a new law school. An attempt to incorporate the expectations of the various constituencies that contributed to its formation is reflected in the first goal of the School in its statement of objectives which reads:

⁸ *Supra* note 4.

⁹ *Ibid*, 20.

¹⁰ *Ibid*, 8-9.

¹¹ *Ibid*, 18.

To provide the students with a legal education that gives them the skills of legal reasoning and analysis; that gives them an understanding and awareness of the relationship between the law and society; and that enables them to contribute to the development of New Zealand jurisprudence, that will be distinguished by its recognition of Maori culture and laws as a full and legitimate part of the New Zealand legal system.

IV. THE INSTITUTIONAL FRAMEWORK OF THE WAIKATO LAW SCHOOL

1. *Academic structure*

It was essential that the goals of the School were reflected in the structure of the LLB degree. The Council of Legal Education had made this task easier through the reduction of the number of compulsory professional courses from 17 to 6, which provided greater scope to introduce optional courses and to concentrate on teaching law in context. The University of Waikato regulations and practices were not so flexible and originally required the four-year LLB degree to contain 28 courses, instead of the normal 22 to 24 courses contained in other New Zealand LLB degrees. A compromise of 25 courses was negotiated between the University and the School, which has had a distorting effect on the organisation of the courses in the degree. This early encounter with the University bureaucracy quickly introduced the School and the University to the realities of translating the theory in Te Matahauriki into practice. The Law School discovered it needed to maintain a “Janus-like” stance to satisfy the requirements of both the legal profession and the University.

The degree structure that emerged from the negotiations with the University and the Council of Legal Education is as follows:

Law I

Legal Systems

Legal Method

Law and Societies

Plus four courses chosen from those offered for bachelors degrees other than a Bachelor of Laws, provided that at least two of the courses must be in one of the subjects specified as a major subject for one of the bachelors degrees offered by a School of Studies other than the School of Law.

Law II

Public Law A

Public Law B

Jurisprudence

Plus three courses chosen from those offered for bachelors degrees other than a Bachelor of Laws, provided that at least two of the courses must be at the Part II level and must be in one of the subjects specified as a major subject offered by a School of Studies other than the School of Law.

Law III

Crimes
Torts
Contracts
Property (including Equity)
Corporate Entities
Dispute Resolution

Law IV

The equivalent of six full year courses which include the following:
Civil Procedure; Commercial Law; Company Law; Competition Law; Employment Law; Environmental Law; Evidence; Family Law; Intellectual Property Law; International Law; International Trade Law; Law and Information Technology; Maori Land Law; Revenue Law; Treaty of Waitangi Jurisprudence; Welfare Law; and Women, Law and Policy.

The Regulations require students to pass all of their Law I courses before they proceed to Law II, and all of their Law II courses before they proceed to Law III. There is provision for the exercise of the Dean's discretion if students fail courses. There is also an Honours degree option which is available to students who at the end of their Law III year have achieved a high standard of performance. They are required to enrol in two Honours seminars during their Law IV year and to complete a dissertation.

The School also offers LLM and M Jur degrees and will be offering Post Graduate Diplomas in Commercial Law, and Maori and Indigenous Law, with a planned Post Graduate Diploma in Disputes Resolution. There is one further development that Waikato Law School is pioneering and that is the combined degree in law and a non-law major. This degree consists of the total number of law courses, with an option to substitute two optional law courses with a non-law course, plus the courses required for a major in Management Studies, Humanities, Science, Social Sciences, and Computing and Mathematical Sciences degrees. The combined degree was approved with difficulty through the Vice Chancellor's Curriculum Committee and the Council of Legal Education. The reasons for the objections are still not entirely clear, but this experience highlighted one of the contradictions within university educational bureaucracy, that one's competitors determine whether or not a new degree can be introduced. The combined degree is an attempt to fulfil the original expectations of the creators of the School, namely, to develop an integrated law and non-law programme. The combined degree differs from conjoint degrees offered by other law schools in that the degree is a planned programme of study and not a series of cross credits between two separate degrees. There is still considerable resistance to the whole notion from the other law schools, and the pressures towards conformity are considerable. This attitude is not surprising and the Council of Legal Education foreshadowed such difficulties often associated with new enterprises.

The structure of the LLB was designed to reconcile the competing demands of the School's founders for a professional, bicultural, interdisciplinary LLB degree. The main distinguishing characteristic of the Waikato degree is that it does not include an intermediate year. The Waikato Law School decided that if it was to remain true to the interdisciplinary objective it had to integrate the non-law courses with the law courses. It has endeavoured to accomplish this through requiring students to complete both level I and II non-law courses as part of their Law I and Law II course programme. The educational advantage of such a scheme is that the students are exposed to non-law subjects at a higher level, while at the same time being able to prepare themselves better for the employment market by completing a combined degree within the minimum time.

The entry of students directly into Law School has required a different approach to the admission criteria. The objectives of the School also require that an opportunity be given to students who may not normally be admitted to law school. The current admission policy requires all students to be "academically prepared". This releases the School from the arbitrary decisions that result from a fixed grade entry qualification, but requires a close scrutiny of the students' academic capability. There is no point in admitting students who cannot cope with the work. The School does not have a quota system for categories of students, such as Maori, mature students or Pacific Islands students as do the other schools. The Admissions Committee looks at the academic qualifications, relevant work experience and non-tertiary qualifications of the students where there is no formal tertiary qualification. The School has had only three years' experience at admissions policy and procedures. The emerging pattern is that students normally require 285 marks in their Bursary exams if they apply from secondary school, and B/B+ if they come with another degree or university courses. The precise level of entrance depends to a large extent on market demand in a particular year. The result of this admissions policy is a School profile which includes nearly 58% women students, 20% Maori students, and nearly 40% of "mature" students who include graduates and students with no tertiary qualification. The number of students with no tertiary qualification is quite small, approximately 10%.

The first and second years of the Waikato law degree are also characterised by the emphasis on public law, as opposed to private law courses which are the norm in other New Zealand law schools. This structure was designed to provide the context within which the private law operates. The first two years have a high level of integration in terms of course material. The courses are intended to build on each other to give the student a thorough

understanding of basic legal concepts, structure and institutions; an introduction to legal skills, including writing, research, reasoning, analysis, computer literacy, and advocacy; an introduction to the relationship between law and culture, law and policy, the state and the individual, and the legal mechanisms to protect the individual from the arbitrary use of power by the state institutions; and an introduction to legal theory.

It is intended that by the time the students graduate from Law II they have a good understanding of the context within which the legal system operates, including the influence of the dominant culture and its effect on Maori culture. Included within the first two years are the Council of Legal Education professional courses, Legal Systems and Public Law. Public Law was divided into two courses primarily to comply with the University of Waikato requirement for 25 courses, and also to provide an opportunity to explore constitutional and administrative institutions, processes and principles in some detail. Another noteworthy feature of the first two years is the inclusion of Jurisprudence at the second year. This is something of an experiment, but it was judged important that such a course be compulsory and that it be introduced as part of the "context" for students before they moved on to the private law courses in Law III.

The Law III year contains the remainder of the Council of Legal Education professional courses of Crimes, Torts, Contracts and Property, and also includes two additional new courses that are unique to the Waikato degree. They are Corporate Entities which provides the students with an introduction to the concepts of incorporation which are necessary if students are to understand the relationship between law and the present economic system, and a course on the Theory and Practice of Dispute Resolution. The latter is intended to underline the importance of the changing role of the lawyer in the settlement of disputes. It is intended as a practical course that illustrates through the examples provided in Crimes, Torts, Contracts, Property and other parts of the law such as Family and Employment law, the various alternative methods available to resolve disputes. The course is designed to develop practical negotiation skills and to encourage students to think laterally.

There is a concern that too much may be expected of the students in this year and that there is not enough time to cover all the material. Corporate Entities and Dispute Resolution were intended as half courses to minimise this problem but only experience will determine whether the students can cope with the work. The "too much" work criticism is reminiscent of earlier criticisms that everything must be covered within the course of the degree. The Waikato Law School recognises that it is impossible ever to give a

complete coverage of all material, and therefore concentrates on teaching concepts, principles and relevant case-law. Case work is still a very important element in the teaching materials, but it is the quality of the decision that is important, not the number of cases cited. For this approach to be successful, it requires a high level of legal understanding, and just as importantly very good teaching skills from the staff. This was emphasised at the time of staff appointment and most staff last year placed the development of their teaching skills as a high career development objective for that year. Assistance is available to staff from the Teaching and Learning Development Unit, which has helped staff to develop some very innovative teaching methods. The School has also assigned to one of the staff the special responsibility for teaching development.

The fourth year of the Law degree is designed to give students the opportunity to specialise in specific areas of the law. While there are no compulsory courses, suggested programmes of study are designed to ensure students do not end up with an eclectic array of courses that are of limited use to them when seeking employment. The fourth year's programme is intended to make available options that prepare students for the traditional general practice of law; a speciality practice of law; policy analysis in either local or central Government; employment within the various parts of the justice system; work with community and lobby organisations that require professional expertise; and further graduate study in legal education. The Honours programme is available during this fourth year and is designed to enhance the programme of study chosen by the student. It is also intended in the future to introduce a clinical education component into the fourth year programme but there is much planning to be done on the appropriate type of clinical experience and how it will be resourced.

2. Curriculum and Teaching

While the structure of the degree is important, it is the content of the curriculum and teaching that will have a greater influence on the success of the programme. A detailed account of the curriculum is beyond the scope of this article. A lack of appropriate materials was the major challenge faced by the staff. However, in order to honour the commitment to include the Maori perspective within all courses and not only Maori-specific courses, the staff developed their own materials. This process has identified the need for research in a variety of areas, but it has also demonstrated that inclusion of the Maori perspective can be achieved with perseverance and commitment. The development of the curriculum is an on-going process, with the main constraint being the time available for the staff to devote to it.

The curriculum also demands high levels of coordination and cooperation amongst the staff. The structure of degrees requires categories to be created that are essentially arbitrary. For example, the requirement of 25 courses makes no rational sense in terms of legal education. It is primarily an accounting device to enable the funding of the degree. The challenge for the staff is to be aware of the artificiality of the categories, and the dangers of "ownership" of a particular course. Ownership is a problem when it impedes development of the programme as a whole. At the same time respect must be accorded to staff fields of expertise and an opportunity given to staff to pursue such fields. There are no easy answers to this process. It requires commitment to the objectives of the degree, which assumes an integrated programme, the time and willingness to discuss the curriculum, and how it relates to both student and staff needs.

Time has been identified as the main barrier to effective curriculum and staff development. A lack of time is partially due to a lack of staff resources, but also to inefficient time management. Ways to try to ensure that the most effective use is made of time has become a School priority. The ways experimented with to use time more efficiently include different methods of teaching to free staff for concentrated periods of time for research; and attempts to organise the management and administration of the School's affairs in such a way as to ensure that academic staff concentrate more on policy matters while professional general staff handle the administrative activities.

The School has a balance between small and large group teaching within each year's courses. In the larger compulsory courses, team teaching is encouraged to enable staff to concentrate on specific areas of the course, which has the advantage of enabling them to organise their time better to provide for the separation of teaching and research time. It also enables the students to relate to different teachers. The importance of the student/teacher relationship is recognised and the innovations in teaching are designed to improve the quality of the contact time. There is a wide range of teaching styles within the School and the fashionable Socratic teaching method is neither encouraged nor discouraged. The staff are encouraged to develop an effective teaching style with which they feel comfortable. The School is however emphasising computer-assisted learning, which is designed to make the actual time of teaching contact more productive. It is not a substitution for formal contact between student and teacher. Student study groups and cooperative peer group learning are encouraged amongst students. Support for these forms of learning has come particularly from Maori students and women students, who appear to respond better to cooperative forms of teaching.

The staff member in charge of teaching development, Kaye Turner, has accurately summarised the progress and importance of teaching to the success of the Waikato LLB degree in the following terms:

It is probably in the successful realisation of participatory teaching and learning in all classroom settings, both those involving small numbers of students, and those involving large numbers, that the School's capacity to "deliver" legal education which supports and encourages values of cooperation, professionalism and excellence in a bicultural framework will eventually depend. Teaching and learning, too, are at the centre of the working out and working through of the tensions and contradictions inherent in the School's foundation goals, principles and objectives.¹²

Although the School's efforts in experimenting with different forms of teaching are in their infancy, it has been a School priority to concentrate on excellence in its teaching. Too often this is assumed to mean research is sacrificed for teaching. The assumption at Waikato Law School is that it is impossible to teach well unless teaching is informed by good quality research. The very different curriculum has required staff to undertake research in new areas. Since research is only recognised if it is expressed in writing and published in approved forums, it is essential that the School gives the staff an opportunity to publish. In order to do this, the staff need quality time to write and publish. Hence the important emphasis on effective time management. The value attributed to teaching and research is a matter of University policy. The University is increasingly recognising the value of good teaching and the Law School continues to affirm its importance.

3. Administration

The demands of the new managerialism that pervades universities today has increased the number of administrative tasks and the time required to fulfil them. The University of Waikato has a devolved administrative structure, and each School is bulk funded and responsible for the expenditure of those funds on the provision of agreed educational services. There is also a notional form of contracting for central services. The institution is in the process of determining the nature of the relationship between the Schools and the central administration. While this process requires a full discussion on its own, for the purposes of this article it is relevant because of the increased demands it has placed on all the staff.

¹² Wilson, "The Challenge For Aotearoa/New Zealand Legal Education: The Development of An Indigenous Jurisprudence and the Waikato Programme", a paper presented at the Conference on Emerging Educational Challenges for Law in Commonwealth Asia and Australasia: The Implications for Legal Education, Hong Kong (1992) 27.

The School has yet to determine finally the precise nature of its administrative structure because this must evolve with the School. The decisions taken so far have been to employ six professional administrative and technical staff, one of whom is the School manager. The academic staff have organised themselves into teams with an emphasis on individual members being responsible for specific tasks. There are six teams, each of which concentrates on a specific set of activities, namely, academic programmes, research and publications, student support, staff support, infrastructure services, and school promotion and development. The teams report to a monthly plenary staff meeting. There is also a monthly Board of Studies meeting that specifically considers University academic policy matters. Each of the teams has administrative but not secretarial support. The staff are expected to do their own word processing and have computer literacy. All staff have their own personal computer and the School employs a full-time computer consultant.

Experiences with a team-based administrative structure have been mixed. This has been because of the difficulty to distinguish between policy and administration; a tendency to want to control and own decision-making processes; and a reluctance of some staff to act independently in the performance of a task and a tendency to rely on more hierarchical committee-based structures. The required administrative staff support was not in place when the system started so some staff justifiably felt overwhelmed; and there are the normal problems of getting acceptance for anything that is new, especially the feeling of uncertainty of what is to be done and who is to do it. The motivation for the team-based structure was in response to the staff experience of having too little time to arrange meetings, and their desire for more involvement in administrative decision-making.

It is too early to assess whether this current arrangement will be more time efficient and lead to better decision-making. It does have the advantage of involving more staff in decision-making, but only if they wish to be involved. Since time is such a valuable commodity, staff have to decide where their energies are better placed - in the classroom and at their research, or within the School's administrative structure. It is impossible to separate these functions, but a rethinking of their relationship is being necessitated by the new managerial pressures placed on the University.¹³

¹³ See Moodie, "The Androgynous Professional" *Campus Review* (September 1993) 8-9, for a discussion of the challenges the new managerialism places on university decision-making.

V. REFLECTIONS ON THE FIRST THREE YEARS OF THE WAIKATO LAW SCHOOL

1. *Withdrawal of Establishment Funding*

The challenges and contradictions that have faced the School in its short life have come from outside as well as within the programme itself. As has been previously explained, Waikato Law School was established during the cusp of the transition from a social welfare-based society, in which the state played a central role, to an individually-based society, in which the state's role was to be more passive. The educational objectives and structural arrangements for the School reflected the former environment. It was assumed that it was the responsibility of central agencies such as the University Grants Committee and the Council of Legal Education to spearhead a change of emphasis in legal education. Likewise it was assumed that the state had a responsibility to fund this new development. While the Council of Legal Education and the University of Waikato provided the academic framework and direction for the Waikato law degree, the then Labour government committed \$10 million over a four year period to fund this new development. Most of the money was to fund the law library. Although it is argued that legal education is less expensive than other forms of tertiary education, the costs of a good law library are considerable and the quality of legal education is related to the quality of the library.¹⁴ An essential precondition of the approval of the Council of Legal Education and the University Grants Committee for the University of Waikato to proceed with the establishment of the School of Law was the Government commitment of extra funding.

The election of the National Government in September 1990 was accompanied by a change of tertiary education policy. Although the Labour Government had shown signs of retreating from the market driven policy, the new National Government was determined to finish the process of dismantling the social welfare state.¹⁵ While the University of Waikato was moving with speed to prepare for the opening of the School of Law in March 1991, the National Government was moving with equal speed to remove the funding for the School. Unfortunately, or perhaps fortunately, the Government did not convey its intentions to the University until 19

¹⁴ Supra note 4.

¹⁵ See James, C *New Territory: The Transformation of New Zealand 1984 - 1992* (1992) for a general review of the policy changes during this period; and Boston, "The Funding of Tertiary Education: The Rights and Wrongs" in Boston J and Dalziel P (eds), *The Decent Society? Essays in Response to National's Economic and Social Policies* (1992), for an account of the changes in tertiary education policy introduced by the National Government.

December 1990, when the Minister of Education sent a fax to the University notifying it that the funding had been removed. The press release conveying this decision stated:

At a time when every education dollar has to be well spent, I question the decision to open a fifth law school, especially when many law students who graduated last year have not been able to find jobs in which they can apply their legal training, Dr Smith said. In the future decisions to fund new schools in law or other disciplines would lie with the universities and not with central government.

The facts that high unemployment meant all occupations were experiencing higher levels of unemployment, and that the Waikato Law School's programme was intended to redress this precise problem by providing a degree that enhanced the career options of law students, were obviously not considered relevant factors by the National Government.¹⁶ It is an interesting question whether the Universities should produce only enough students to replenish the vacancies created in the legal profession through death, retirements or career changes. Such an approach would appear to support monopoly control of legal services by the current members of the legal profession and run counter to the general market driven policy approach of the National Government. The basis for the public justification of the decision to withdraw funding was that in future new developments must be funded out of existing university resources. Whatever the merits of this policy approach, it ignored the legal contract between the previous Government and the University of Waikato to fund this new development.¹⁷

There has been much speculation about the real reasons behind the decision. Requests under the Official Information Act for documents relating to the decision were unanswered by the Minister of Education, although the Department of the Prime Minister and Cabinet did reply that it had no documents on the matter.¹⁸ This may have been true since these decisions

¹⁶ There had been much criticism of the fact that the Universities graduated more lawyers than graduates in agriculture, forestry, horticulture and veterinary science combined and were therefore not assisting the economic recovery. This statistic resulted from research published in Crocombe, G T, Enright, M J, and Porter, M E *Upgrading New Zealand's Competitive Advantage* (1991) 103. While such figures and their interpretation could be contested (for example, there are four times more science graduates than law graduates, and the assumption was that all lawyers practice law rather going into a variety of other occupations, including business), this research made good political rhetoric and was used to justify the funding decision on numerous occasions.

¹⁷ The University had sought a legal opinion on whether the National Government was legally bound by the contract with the Labour Government. The opinion indicated that there was a case to be answered. However, the University decided not to pursue this claim.

¹⁸ Letters dated 14 March 1991 and 14 August 1991 from the Minister of Education's Private Secretary stating that enquiries were being made and the Minister would reply

were made by a small *ad hoc* group of officials and Ministers. Whatever the real reasons, the action has been interpreted as an attempt to prevent a form of legal education that would have been challenging to policy decision-makers. It could be argued that the emphasis on biculturalism, and introducing new legal analyses such as feminist legal theory, were not consistent with the National Government's priorities. The irony of the Government's decision was that it was attempting to destroy a new form of legal education that redressed many of the criticisms of the lack of relevance of current legal services.

Although the action of the Government was in breach of its contract with the University, the University decided not to challenge the decision in court and the funding was lost.¹⁹ The University did decide however to continue with the Law School development, though there were critics of this decision within and outside the University. The problem was that, while the Government thought it had effectively closed the Law School by withdrawing its funding, this took no account of the reality that twelve staff had been employed and 1100 students had applied for the 350 places that were available for tuition in both Law I and Law II courses to be taught in 1991. It also took no account of the considerable planning for this development by the University and the support for it within the community. The School therefore opened at the scheduled time in March 1991. This traumatic start to the life of the school has had remarkably little effect on the pace of the development of the School. The School will graduate its first LLB degree students in February 1994. This is a tribute to the support from the University, and also to the commitment of the staff.

at his earliest opportunity. He did not so reply and a decision was made not to pursue the matter but to put all energy into the establishment of the School. A letter dated 21 March 1991 from Simon Murdoch, Director of the Advisory Group, advised that the Department had no material on the Law School.

¹⁹ The University eventually accepted \$1million as compensation for the general loss of funding that had resulted from the Government's change in funding policy. The University was careful not to accept this as a settlement of the outstanding claim for loss of the establishment funding for the Law School. \$1.1million already paid to the University by the Labour Government as a progress payment was also retained by the University. The University therefore received a total of \$2.1 million for the School of Law and most of this sum has gone towards the costs of the Library. The costs of running the School have been substantially met through EFTS funding and students' fees. Once the School's graduate programme is fully implemented it is intended that the School should generate enough income to cover all its costs. See *On Campus* (4 February 1991) for an account of the funding situation at the University of Waikato when the Law School funding was withdrawn.

2. *Effects of National Government Policy*

Although the School has been able to achieve its major objective of graduating its students on schedule, this has not been without difficulty. Apart from the withdrawal of the establishment funding, the National Government tertiary education policy, especially the introduction of the study right/non-study right funding regime, has increased student fees. This increase in fees adversely affects mature students, who are mainly women and Maori. Thus, two of the main potential student groups for the Law School have had an additional barrier erected to prevent them from pursuing a law degree. This policy will be fully implemented in 1994 so it is too early to assess the effects of the policy on the student profile. There is some evidence that students are seeking part-time study or dropping out for a year to earn money to return. This does have implications for the programme which is designed for full-time continuous study. While the funding regime has not yet affected the curriculum, it has the potential to affect the inclusion of those groups which have traditionally been excluded from the study and practice of law, namely women and Maori.

Apart from the direct impact of the increase of student fees, the changes in funding have had two other discernible consequences for the School's programme. The first is the impact of the new managerialism on the administration of academic matters. For example, the ever-increasing search for greater efficiency has led to proposals to restructure the University year to provide for continuous teaching organised over three semesters. Without entering into a debate on the merits or otherwise of semesterisation, such a proposal will require a major rethinking of the best mode of delivery of the knowledges required by our type of programme, that endeavours to reconcile the sometimes competing demands of a professional, contextual, bicultural legal education. This rethinking may be timely, but it requires a clarity of vision regarding the objectives of the Waikato LLB degree. There is no reason to depart from the School's original objectives of a professional, contextual, and bicultural legal education, but there may be a need to sharpen the focus of the degree.

This need for clarity of vision is compelled by the second consequence of the National Government's policy, which is the greater competitiveness for students and funding within the tertiary education sector generally. Universities and law schools must now promote themselves to recruit students who provide the most financial benefit to them. At the moment these groups include graduate students and international students.²⁰ The fact

²⁰ Waikato Law School has admitted 50 international students, mainly from the South Pacific and Malaysia. The School has appointed academic advisers for each student,

that Waikato Law School is newly established is both a competitive advantage and disadvantage. It is an advantage in that it is easier to adapt to the new demands of the market, and a disadvantage because there is always a suspicion of a new product until it is proven. The law is also a conservative occupation that does not easily adapt to change. The School however has had its supporters because from the outset its degree has reflected the needs of the modern legal practice, which include not only a "black letter" law training, but also a flexibility to provide the legal services demanded by clients.²¹

3. Legal Professionalism

Where Waikato Law School decides to position itself within the legal education market will depend on a reconciliation of the type of legal education with which it feels academically comfortable, and the need to attract students which will to some extent depend on the ability of the Waikato graduates to compete on the employment market. The concept that may assist with this reconciliation is legal professionalism. If the School is aiming at a broader employment market then it must produce students with generic legal skills which can be used in a variety of contexts and environments. The School must also promote the needs for these skills, and demonstrate that a greater degree of legal literacy is required by all sections of the community. The School must then concentrate on educating the new legal professional, who may or may not be found in traditional legal practice. The Waikato LLB degree is already well positioned to meet the new types of demand for legal services.

The future will determine whether this assessment of the type of legal services required is correct, but as much as one can anticipate the demands of future markets, the Waikato LLB programme is well positioned to service a particular need for legal services. It is acknowledged that this assessment would appear to be at variance with much of the early criticism of the Waikato law degree. This criticism concentrated on the biculturalism of the

and with the assistance of the Ministry of Foreign Affairs and Trade, provides a tutor to assist students with their study skills. The needs of these students are different from other students and a strategy is being developed to ensure that there is sufficient flexibility in the curriculum to enable them to pursue courses of relevance to their own cultures.

²¹ For example, the Hamilton/Bay of Plenty District Law Society has supported the School's computer training of its students by donating \$40,000 to establish the School's computer laboratory, and the School has provided computer training courses for local practitioners. The compulsory course on Dispute Resolution is also providing valuable skills that are now a required part of legal practice. (The School has gratefully received other generous donations from individuals and from Tainui).

programme and the fact that feminist legal theory would be taught.²² It ignored the other aspects of the programme, such as Waikato having the only LLB that requires a knowledge of corporations, or the fact that knowledge of these areas is now necessary to be able to service the legal needs of clients in a professionally competent way. Criminal law, Family law, Environmental law, and Treaty law are examples of areas of the law where new knowledges have become essential. The issue is really one of the relevance of the knowledge to the education of the legal professionals of the future. Waikato Law School argues that such knowledges are now essential to the provision of quality legal services.

4. Professional Legal Training

In 1988, the Institute of Professional Legal Studies (IPLS) course was introduced through four branches in Auckland, Wellington, Christchurch, and Dunedin. It represented the separation of conceptual and skills-based legal education. The profession now had primary responsibility for the skills-based training, and the universities for the conceptually-based legal education. Since both forms of education are inter-related, the organisational link remained the Council of Legal Education. The introduction of new programmes is never easy and the IPLS course attracted its share of criticism and was reviewed at the request of the Council of Legal Education in 1990 by Christopher Roper.²³ The Roper Report recommended changes to the content and delivery of the courses, which were implemented, though the recommendations relating to the organisational structure and administration of the IPLS were deferred. At this time in New Zealand, there was a debate on the best mode of delivery of educational services generally, which had been provoked by the Hawke Report.²⁴ Essentially the debate involved the relative merits of centralised and decentralised organisational and administrative structures for education service delivery. The IPLS had a central administrative structure but the delivery of the actual courses was devolved to the branches, which were situated in the centres in which there was a law school. Roper had recommended the maintenance of this structure.

²² It is difficult to document these criticisms because they are normally made in conversation - often at dinner parties! I have received as Dean requests for reassurance that the Waikato LLB is of the same standard because of the number of Maori students and the commitment to develop a bicultural approach to legal education.

²³ Roper, C *Report of a Review of the Institute of Professional Legal Studies* (1990).

²⁴ Hawke, G R *Report of the Working Group on Post Compulsory Education and Training (Hawke Report)* (1988); see also *A Response to the Report of the Working Group on Post Compulsory Education and Training by the Waikato Branch of the Association of University Teachers of New Zealand* (October 1988).

Waikato Law School participated in the Roper review, though the School had not commenced its degree programme until 1991. It supported the retention of the decentralised branch mode of delivery, and assumed that a branch would be established in Hamilton. The branch structure was supported because it provided students who could not travel because of financial or domestic reasons with an opportunity to study for the professional programme. When Waikato Law School made a formal request for a branch to be established in 1994, this request resulted in another review of the number and location of branches of the IPLS.²⁵ This Report, which is known as the McQueen Report, recommended that the IPLS course be delivered in three centres only, namely, Auckland, Wellington and Christchurch. Consequently students from Otago and Waikato Law Schools would have had to travel to these other centres. This would have seriously disadvantaged the students and would have compromised the ability of both those Schools to recruit students.

The recommendations were contested by both Otago and Waikato Law Schools,²⁶ and the Council of Legal Education eventually decided to reject the recommendations of the McQueen Report.²⁷ Although the Otago branch was to continue and a new branch was to be established in Hamilton, the Council also decided to seek a report for its 1994 meeting on the feasibility of the course being contracted out, in line with a Waikato Law School proposal. The IPLS's move to centralise its course has now led to a more fundamental rethinking of the role of the IPLS itself. It is at least arguable that the Council of Legal Education should function as the agency to credential institutions to provide the professional course. There is no reason in principle why the IPLS should have the monopoly on the delivery of such courses.

This whole recent episode about the appropriate provision of skills-based legal training is another chapter in the tensions created by the demands for the provision of both skills and conceptually-based legal education. The two are inextricably linked through the necessity for those who practice law or law-related activities to acquire both forms of knowledge. The way in

²⁵ McQueen, H *The Report of a Review of the Branch Structure of the Institute of Professional Legal Studies* (1992).

²⁶ See the *Otago Submission The Case for Rejecting the Recommendations of the McQueen Report*, which analysed in detail the false assumptions and lack of evidence for the recommendations; and also the letter from the Dean of Waikato Law School to the Director of the IPLS dated 2 February 1993, which supported the Otago submission but offered two solutions, either the formation of a branch at Hamilton or the contracting out of the course to Waikato Law School.

²⁷ Council of Legal Education Minutes (1993).

which this knowledge is delivered and the institutions through which it is delivered is where the discourse centres and will continue to be centred.

5. A Bicultural Approach to Legal Education

The development of a bicultural approach to the LLB degree has proven to be the most challenging aspect of the programme. It has been challenging because the concept of biculturalism is ill-defined, both generally and by the University,²⁸ and because the external policy environment that had been supportive of the concept when the School was established, changed with the election of the National Government. The current environment is not so much one of opposition, but one in which active support is not forthcoming from the state for these initiatives. As has already been stated, the emphasis on biculturalism has been a major source of criticism of the School and has been used to undermine its credibility, through questioning the competency of the students, especially the Maori students. This is a form of racism and must be condemned, and it could be damaging not only to the School, but more importantly to the ability of its Maori students to gain employment and the opportunity to use their skills for the benefit of their people.

It is therefore an essential task of the School's bicultural approach not only to provide a relevant curriculum that is inclusive of Maori and Maori customs and values, but also to provide for students the best legal training in the English-based, but New Zealand-developed, common law system. In this way Maori students obtain understanding and knowledge of the dominant legal system, while Pakeha and other students obtain knowledge of the effects of the existing system on Maori and the fact that Maori have their own lore and values that regulate aspects of Maori life. The purpose of this approach is to enable students more effectively to challenge the existing legal system's exclusion of Maori, while also enabling them to use the system, where possible, for the benefit of Maori. A difficult task is facing this generation of young Maori lawyers, who must be both proficient users

²⁸ Biculturalism is most commonly defined to mean an equal partnership. This concept of partnership is derived from the obligations incurred under the Treaty of Waitangi. If partnership was interpreted to mean immediate numerical equality in the Law School context, that is, 50% of staff and students being Maori, and all courses being taught in the Maori language as well as in English, then the School was established under false pretences and given a task in which it must immediately be perceived as having failed. Since it seemed unlikely this was the interpretation applied by the University, the School interpreted the objective to mean that this was the goal to be achieved. As Dean, I had assessed that the School needed a 20 to 30-year development plan which involved the training of Maori students to become future staff members, and research to provide the materials in the Maori language and in English that could be progressively introduced into the curriculum. Many students did not support this progressive policy but wanted the goals to be achieved within the first 12 months.

of the system and continually challenging it. It is not surprising that many Maori students resisted this approach, which is seen as the Pakeha legal value system coopting the Maori. Some students had enrolled in the School in the mistaken belief that they would be taught only Maori law and resisted learning anything else. The fear of cooption was real for some students and underscored the need for Maori themselves to provide the students with this knowledge. Unfortunately Waikato Law School is currently not in the position to fulfil that need. I would also argue that it would not be appropriate for the School to attempt to do what can only be done effectively by Maori elder scholars within the culturally appropriate environment.

Criticism of Waikato Law School's attempts to develop a bicultural approach came then, not only from Pakeha, but also most loudly from some Maori. This is not surprising since there were unrealistic but understandable expectations of what the Law School could achieve within the first year. The Law School was also perceived by some to be the next site of struggle in a campaign to raise awareness of the injustices inflicted on Maori through the non-observance of the Treaty of Waitangi. While as a political tactic this was conventional behaviour, it was somewhat ironic that the criticism and campaign was launched against the one University and Law School in New Zealand that has seriously attempted to redress the injustices inflicted on Maori.

The focus of the criticism was the lack of provision for Maori language in law courses. Some students demanded the right to be taught and examined in Maori. Biculturalism was interpreted as bilingualism by these students. The incident that highlighted the student demands occurred in 1991 when two students wrote one question of their Public Law A examination paper in Maori, which had to be translated before they could be marked and assessed. Neither the teacher nor the assessors were competent to examine in Maori. Unfortunately the students did not give notice of their action, so there was no time to organise a translation. The students argued that it was their right to respond in Maori and therefore notice was not required. Whatever the merits of this argument, and they are considerable in the context of a bicultural policy environment, the practical fact remained that an appropriate method of assessment had to be found.

What was appropriate was contested²⁹ and highlighted the basis of the dilemma for the School. From the School's perspective it needed a publicly

²⁹ The Chief Examiner informed the Registrar and Academic Registrar of the matter and sought permission to have the papers translated by the Chairperson of the Maori Language Department before they were sent to the assessor.

credible method of assessment, otherwise the competence of its students would be suspect and their employment opportunities curtailed. Since the School was teaching a degree programme that included the professional courses prescribed by the Council of Legal Education, and the questions answered in Maori were in the examination of one of these courses, the School was required to ensure that the assessment met the standards applied by the Council. The students on the other hand were more concerned with asserting their right to use their language, and to answer the examination questions in a more political than legal context, though it is difficult to separate these contexts on occasions and what needs to be shown is competence in both. Thus the objectives of both parties were understandable within their own contexts.

The issue went to an inquiry which was called for by the Council of the University. The Report of the Inquiry supported the actions of the Dean, criticised the University's general handling of the matter, and recommended another translation and marking of the questions.³⁰ This will be the third translation and marking, which at the time of writing has not been completed. It was also recommended that the University implement a policy on the use of Maori language in assessment. As it was already undertaking the development of this policy prior to the inquiry, it is difficult to see what has been achieved by the whole process. The original inquiry was also meant to look at the whole issue of biculturalism within the University, which could have been a useful exercise because the Law School might have been able to derive some guidance and assistance from the process. This aspect of the inquiry has not yet taken place and the School still awaits a conclusion to the whole matter.

The School has survived this difficult period in its short life, and attempts at understanding the various points of view have been facilitated by the School's kaumatua. In essence the differences appear to centre on methods and tactics, rather than ultimate objectives, though the objectives of the Law School it may be argued are not entirely clear either because they are expressed in the vague language of biculturalism which can mean many different things to different people. There is also a line of argument that the concept itself is no longer useful. The students were using the time-honoured student tactics of confrontation and challenge, against a group of people who essentially agreed with their arguments about the importance of the preservation of the Maori language. The University, which has had a long-standing commitment to what has come to be called biculturalism, was trying through the establishment of the Law School to acknowledge in a

³⁰ See *Report of the Committee of Inquiry into the Conduct of the Examination in Public Law at the University of Waikato in 1991* (1993).

practical way the ideological aspirations of Maori. The positive side of the incident was that it raised the issue for debate and discussion, which the Law School and the Department of Women's Studies took advantage of to sponsor a seminar series on Biculturalism, Justice and the Politics of Difference.³¹ The negative side of the incident is that some time has been lost in the development of the policy, because such incidents absorb energy and resources. The future challenge in this area will lie in the reconciliation of the demands of professionalism and biculturalism. It may be that they are irreconcilable, but all the same progress may be made in acknowledging the legitimacy of Maori values and lore in the context of Maori life.

VI. CONCLUSION

The Waikato LLB degree endeavours to meet the expectations of its founders - the Maori community, the University and the Council of Legal Education - and its students by providing a programme of study in which the law and the legal system are taught within their cultural, social, economic, and political context, and with an emphasis on the teaching of legal principle and legal skills. The degree is distinguished in the New Zealand context by its curriculum and course sequence, notably its emphasis on public law over private law; the integrated arrangement of the law and non-law courses over two years; the emphasis on Maori materials within all the courses; the introduction of new compulsory courses such as Corporate Entities and Dispute Resolution; and the retention of Jurisprudence as a compulsory course.

Waikato Law School is also characterised by the priority accorded to the development of teaching methods and skills; the relatively high level of resources it has committed to the assistance of Maori students; the emergence of a large number of international students enrolled for the degree and the assistance available to these students; and the conscious emphasis on the development of a New Zealand jurisprudence. This concept of a New Zealand jurisprudence is at the heart of the Waikato Law School. It is not a concept that lies easily within the context of a legal system that has developed from the common law, or within a society that is struggling to find its own unique identity. Gault J recently described jurisprudence as:

³¹ This seminar series highlighted the obvious point that not all Maori share the same interests, even when defined in terms of pakeha. Biculturalism as a concept still assumes that differences within the two cultures can be subsumed within the larger concept of biculturalism. This is too simplistic an approach to biculturalism and is one of the reasons for the difficulties with the whole concept as a means of redressing Maori grievances. The papers presented in the seminar series will be published in 1994.

the study and knowledge of the law, its sources, its integrity and utility in society. It is not possible to contemplate the law in those terms without regard to its setting. ... The true picture is of an emerging national identity in which the dominant influence of British heritage is adapting to, and merging with, Maori, Polynesian and other values in lands with their own peculiar attributes.³²

New Zealand society is in a period of enormous change in which basic values are being questioned and in some instances replaced with a value system, especially an economically-centred value system, that for many people is very alienating. The challenge for the Waikato Law School is to play a relevant and constructive role in the development of a New Zealand jurisprudence, that reflects not only the current economic policy, but that is inclusive of the social and cultural values and experiences of all people within the New Zealand community.

³² Gault, Rt Hon Justice T M *The Development of a New Zealand Jurisprudence* (1992) 1-2.

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