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REASONS FOR THE TENSIONS BETWEEN THE CULTURES OF LAW SCHOOL AND LAW OFFICE

Professor John Wade*

Introduction
This paper identifies a catalogue of reasons for tensions between two cultures, bracketed broadly under the heading of “formal university law school” and “professional legal practice”.1

The paper suggests that some of these conflicts are remediable, some are inevitable and some are beneficial.

Background
In many countries including USA, Canada and Australia, there appears to be tension between what occurs at law schools, and what occurs in various parts of the legal profession. This tension manifests itself in two-way criticism and name-calling. The conflict is often given the unhelpful label of “practice versus theory” or “the practical versus the academic”. Obviously this divide is not restricted to the world of law.

Like a mountain, this conflict can be looked at from many angles through a variety of eyepieces. Each produces a different perspective on the how and why of the division between practice and theory. Which perspectives(s) are discovered or emphasised inevitably influences possible responses.

The practice-theory divide is quoted endlessly as a hurdle, an inevitability, a beneficial tension, an unnecessary myth or conflict readily resolved. William Twining suggests that one of the educational truisms of the 1990s is “that standard distinctions between academic and

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1 A conscious attempt has been made to avoid the category “academic” as this word has developed a pejorative meaning aligned with “irrelevant”, particularly in Australia: see D Weisbrot, Australian Lawyers Melbourne; Longman Cheshire (1990) at 146-148; J H Wade, “Legal Education in Australia – Angst, Anomie and Excellence” (1989) 39 Journal of Leg Ed 189; D Weisbrot “Recent Statistical Trends in Australian Legal Education” (1990-91) 2 Leg Ed Rev 219 at 242-251.
practical, theory and practice, liberal and vocational are false dichotomies that are mischievous as well as misleading”.2

The writer does not savour the conflict, but would like to see the possible causes of conflict identified more precisely so that possible responses to each cause can then be considered.3 The writer’s own experience over the last ten years has included working as a law teacher, a family lawyer, consultant, and educator with practising lawyers, and developing a fascination concerning legal styles of language behaviour and thought (or lack thereof). I write from a position of respect and affection for members of both cultures, with a certainty that constant change is ethically necessary and productive of a sense of meaning.

Two or Many Cultures?

There is obviously no single culture within the practising legal profession or within law schools.

Diversity among law schools can be measured by such factors as declared aims of staff and students, actual educational goals achieved, class sizes, teaching methods, variety of elective subjects, content of curriculum, methods of assessment, access to teachers, staff:student ratio, perceived professional and academic “status”, external funding and research grants, geographical site, research projects of staff, socio-economic background of students, mature age and minority entry programs and diversity of educational backgrounds of staff. One well known article placed law teachers into five categories – namely the traditional legal scholar, the practitioner scholar, the clinical law teacher, the interdisciplinary scholar and the activist.4 However, the diversity of conscious and subconscious ideologies adopted by law teachers is undoubtedly capable of many more subdivisions than five.5

In similar fashion, the legal profession is far from being a uniculture.

Within the legal profession there are ideological, financial, and lifestyle differences between large and small firms; country, suburban and city practices; generalised and boutique firms; barristers and solicitors.

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3 See C Moore The Mediation Process San Francisco: Jossey Bass, 1996. (One helpful model of analysis is that there are five causes of conflict arising out of differences of values, facts, relationships, interests and structures.)


To quote David Weisbrot:

In their leading study of Chicago lawyers, Heinz and Laumann concluded that ‘any profession will surely include disparate parts, but we doubt that any other is so sharply bifurcated as the [legal profession].’\(^6\) They allow that ‘one could posit a great many legal professions, perhaps dozens’\(^7\) but ultimately find that the key distinction is between those lawyers who serve corporations and those who serve individuals and their own small businesses. While the former activity is more prestigious and lucrative, it ‘is, ironically, the less independent ... [since] corporate clients to a large degree dictate the nature of the work done.’\(^8\) Heinz and Laumann found this divide almost total:

Different lawyers, with different social origins, who were trained at different law schools, serve different sorts of clients, practise in different office environments, are differentially likely to engage in litigation, litigate (when and if they litigate) in different forums, have somewhat different values, associate with different circles of acquaintances, and rest their claims to professionalism on different sorts of social power. For the most part, these lawyers find themselves unable to cooperate in the formal organisations of the bar. Only in the most formal of senses, then, do the two types of lawyers constitute one profession.\(^9\)

Within this dichotomy there is, of course, still significant differentiation. For example, Nelson challenges the view that there is a single ‘corporate law firm’ type or culture. Instead, he offers four types of corporate firms, with variables based on organisational structure (traditional or bureaucratic?) and practice (generalist or specialist?).\(^10\) Within each firm, there is further differentiation. Nelson identifies three types of corporate lawyer, graphically dubbed ‘finders, minders and grinders’\(^11\) – referring to entrepreneurial lawyers, managerial lawyers and employed (non-partner) lawyers, respectively. Consequently, an entrepreneurial-type partner in a large, corporate firms of solicitors may have much more in common with business executives or bankers or

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\(^{7}\) *Id* at 5.

\(^{8}\) *Id* at 380.

\(^{9}\) *Id* at 384.


\(^{11}\) *Id* at 118.
entrepreneurial partners in large accounting firms than with suburban, small-firm solicitors or government lawyers or legal aid lawyers – or even the ‘grinders’ in his or her own firm.

In Australia, Tomasic\textsuperscript{12} divides lawyers into three types by the clientele serviced: individual-client lawyers, organisational-client lawyers, and mixed-client lawyers; and into four types by reference to work: property lawyers, litigation lawyers, commercial lawyers and generalist lawyers. Tomasic suggests that a tenuous unity is maintained in the profession, with the value of ‘cynical realism’ – rather than any true sense of community or devotion to a service ideal – bridging the gulfs between lawyers with different work experiences.\textsuperscript{13}

The degree of tension and conflict between each part of the two groups differs as do the reasons for any tension and conflict.

\textbf{University Culture}

Before considering university law schools in particular, it may be helpful to summarise the unique features of university culture generally (sometimes beloved or despised). These six differences set out by Moses and Roe may help to explain some of the unease between the world of commerce and the university generally. Moses and Roe state:\textsuperscript{14}

In the American literature on higher education institutions there is some consensus\textsuperscript{15} that universities are characterised by (1) goal ambiguity, (2) professional staff, (3) high level of autonomy of sub-units, (4) part-time decisionmakers, (5) environmental vulnerability and (6) undifferentiated functions.

\begin{enumerate}
\item \textit{Goal ambiguity}
\end{enumerate}

Universities have different constituencies – students, staff, the administration, the community, government, employers. Generally, there is a lack of agreement on the importance of a variety of goals among these different constituencies. The goals of a


\textsuperscript{13} D Weisbrot Australian Lawyers Melbourne: Londman Cheshire, 1990 at 7.

\textsuperscript{14} I Moses & E Roe Heads and Chairs: Managing University Departments (St Lucia: Uni of Queensland Press, 1990) at 9-12.

\textsuperscript{15} J V Baldridge, D V Curtin, G Ecker & G L Riley Policy Making and Effective Leadership (San Francisco: Jossey-Bass, 1986).
university used to be phrased in vague and high sounding terms and published in university calendars. Goal ambiguity is typical of universities, and in times of scarce resources some groups within, and external to, the university may promote achievement of specific goals at the cost of others. For example, (a) the government and students might regard quality of teaching as having higher priority than research, whereas academics and their universities would value research more highly. Or (b) ‘The Administration’, employers and the community may wish to increase universities’ service to the community and consultancy work. But academics and students might fear that this can only be done at the expense of academics’ contribution to university life, teaching or research.

In addition to the complexity of purpose, we also have limited measurability of the goals. The present discussion in Europe and Australia of performance indicators and what can be measured illustrates this. Certainly the “value added” to the individual student by the university through research output is often quantified. Performance indicators like number of research grants attracted, number of publications, number of successful higher degree students, etc are widely used to rank departments or institutions.16

In contrast, the major goals of laws firms are far clearer and more readily measurable at the end of each month – to obtain clients, to bill and collect from clients and to provide efficient and informed legal services, so that satisfied customers return again.

2. Professional staff

Professionals are characterised17 by autonomy in their work, divided loyalty, tensions between professional values and bureaucratic expectations, and peer evaluation of work.

Academic staff like other professionals, can and do demand large-scale autonomy in their work based on their skill and expertise; there is no direct supervision. The way staff divide their time between the various functions is largely up to them. As long as staff fulfil the timetabled obligations, which are mainly in teaching and student advising and examining, little monitoring is done. Thus staff have autonomy not only in how they fulfil the different functions, but also to what extent they emphasise a function.

This is one of the very great attractions of academic work. It means that there is flexibility within the day, the week, the month, over a lifetime. At an early stage a

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16 Moses & Roe, supra note 14 at 10.

17 Baldridge supra note 15.
lecturer might stress research, at another stage consultancy, at yet another teaching, and eventually perhaps academic administration. Indeed, the university system has benefited from allowing staff this flexibility; it avoids burnout and also draws on the multiple talents of staff.

Most university staff see themselves as teacher-cum-researcher; they are intrinsically motivated. They derive satisfaction from the nature of the work itself, whether they are research or teaching oriented, and from the relative autonomy they experience in their work.

Universities have fragmented professional staff; their allegiance is to a number of different professional groups. Clark described this as “a segmentation of the faculty into clusters of experts” usually in a department. And he calls this arrangement “bottom-heavy”. Academics experience divided loyalty between the discipline at large, their peers at national and international level, and the local institution. The literature calls those with primary loyalty to the discipline, the scholarly community, “cosmopolitans”, and those whose first loyalty is to the institution, “locals”.

The cosmopolitan tendencies of many staff result in diminished administrative power over them as they receive their rewards and status in part from this international peer group.

Again, by way of contrast, lawyers have a lesser degree of autonomy in their work due to demands of paying clients, Law Society regulation, the potentially serious consequences of professional error, and the daily pressure to create billable hours. Similarly, objects of loyalty are arguably clearer and less diverse – namely the Law Society, the partners, the clients’ welfare and personal conscience. Whereas academics are free to criticise publicly their own department and university, similar behaviour would lead to economic sanctions, or even dismissal, in a law firm.

3. **High level of autonomy of sub-units**

Cohen and March coined the much-used phrase of universities being “organised anarchies”\(^{20}\); Weick\(^{21}\) spoke of universities as “loosely coupled systems”; Clark\(^{22}\)

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described universities as “bottom heavy”. All these terms graphically acknowledge that universities are characterised by the strength of their basic units, the departments, institutes or seminars.

There are disciplinary cultures and conventions, into which academics have been socialised and which they take for ‘normal’. Academics find it often therefore easier to talk to colleagues in the discipline elsewhere than to colleagues from other departments in their own university. Thus communication across departments can be poor and individual and departmental goals may be pursued which are not necessarily in harmony with the institution’s.23

Generally speaking, the subspecialties situated in law firms do talk to one another (or at least try to over drinks) and have a strong economic motivation to do so, both to reduce possibilities of professional negligence, improve client service and be rainmakers between departments. Competitive senses of superiority between specialised departments are often used to enhance the law firm’s profit-making goal.

4. Part-time decisionmakers

Universities are also characterised by having part-time decision-makers in its councils, as well as in its academic administrators and committees. This makes universities very different from business organisations where resources and people are managed through hierarchical controls.

There is much in favour of the university arrangement. Lockwood24 favours the part-time status of the senior academic management as found in Britain. He claims that the continuing involvement in academic activities is necessary for heads’ and deans’ own careers, helps them to retain in close contact with the activities and personnel they are helping to administer, and to retain the confidence of the academic staff.25

Ironically, many small to mid-size law firms also work on this part-time management model. Law partners often service clients as well as attempt to manage the office part-time or on a reluctant roster.


23 Moses & Roe supra note 14.


However, there is an increasing presence of “corporate culture” and “managerialism” in Australian and U.S. universities – an emphasis on centralised management, profit and attempted measurement of “performance”. This trend predictably has a host of vociferous critics.\(^\text{26}\) Ironically, law firms purport to reject certain aspects of modern university “managerialism”. For example, key staff characteristics such as curiosity, love of learning, expertise, sense of humour, high morale and collegial support are not readily “measurable”. Yet these characteristics are acknowledged as the core of long term law firm success.

5. **Financial Dependence**

The environmental vulnerability of universities, and more so of colleges, is obvious. With most of the funds coming from the government in most of the countries, universities are very dependent on the autonomy governments grant and aware of the power of interference they have and sometimes exercise. This has been used in recent years extensively in Britain, continental Europe and Australasia for restructuring higher education.\(^\text{27}\)

No doubt professional schools at public universities have some scope for controlling their own destinies by entrepreneurial activities such as fundraising, charging student fees, student recruitment programs and conducting “professional” seminars. However, as a matter of degree these activities are relatively low key compared to the intense rainmaking activities of law firms, especially during recession and at times of inter-firm competitiveness.

6. **Undifferentiated functions**

In the basic units of the American research universities and the British and Australian universities in general, ie in departments and schools, there is neither a hierarchy of tutor-lecturer-senior lecturer-associate professor-professor-professor in terms of direction, nor is there a clear or consistent differentiation in function.

Lecturers like professors are expected to perform teaching duties and to do research, to engage in professional activities and to take on administrative tasks. This is closely connected to the notion of ‘community of scholars’, of looking at colleagues as peers, not as superiors or inferiors in terms of position. In the academic hierarchy there is little direction. There is an acknowledgement that the senior members have the advantage of more experience and accumulated expertise, but that the younger staff

\(^\text{26}\) Eg G Tuchman *Wannabe U: Inside the Corporate University* (2009).

\(^\text{27}\) Moses & Roe *supra* note 14.
will achieve similarly. In the North American higher education system this is publicly acknowledged by denoting all these positions as ‘professors’.28

Arguably, there is more of a hierarchy (on the letterhead and on pay days) in a law firm and more differentiation of functions than at law schools, based on perceived skill and experience. Lawyers are assigned or gravitate by “drift and opportunity” to research, conveyancing, negotiating, attracting clients, drafting or litigotiation – “finders, minders and grinders”. In another sense, hierarchy is flattened by the ubiquitous measurement of billable hours.

These six features of university life cause some suspicion and scepticism within the culture of practising lawyers – goals appear vague and unreasonable; workers unaccountable and disloyal; structure resembles organised anarchy; leadership unspecialised; lacking drive, entrepreneurial flair and financial competitiveness; and lines of authority and function are rather too democratically oriented.

Conversely, all these features make legal culture appear through reflective spectacles to be driven by narrow financial criteria measured by the ever-present billable hour; over-controlled and thereby crushing creativity and honest dissent; rigidly conformist encouraged by an array of social sanctions; led with narrow vision; ulcer inducing and frenetic; hierarchical in authority, task and status.

Differences promote suspicion and distance. In turn these quickly engender a two-way traffic of disrespect, insult and more distance. Apart from these six differences between the cultures of town and gown, an array of other causes of conflict are anecdotally identified below.

(1) Psychological aversion to change or growth

The various subcultures of practising lawyers have differences in dress, language, work habits, values, priorities, skills and knowledge from the various kinds of university teachers and researchers. Some human beings dislike and distrust other human beings who are different. Disliking others who are different often helps insecure people feel more secure. Avoiding encounters with different people also minimises any pressure to change of “grow”.29

(2) Residual transitional trauma

28 Moses & Roe supra note 14 at 12.

Some practising solicitors have been shocked and scarred by the experience of moving from law school to legal practice.30

They discovered a world for which they were almost entirely unprepared and there received no adequate supervision and training – only criticism and a sense of inadequacy. Therefore, they have a storehouse of hostility towards the “irrelevant” legal education which set them up for such a negative transitional experience. Young lawyers often are unprepared for the emphasis on elusive facts, law cost problem solving, strategy and concealment, ruthless time and paper management, and people skills. Stephen Gillers has described the movement of students from academy to legal practice:

Thinkers and stars are the exaggerated and romantic lures new lawyers will find scarce in the life which they graduate. The intellectual tradition, in the academy allegiance to truth and fairness, now accommodates other demands. Stardom – the lawyer’s media face – is displaced by the exigencies of overhead and a profusion of the ordinary. Law students, impressed in spite of themselves with the seductive world of employer courtships and professional relationships, may sense these impositions in a diffuse and general way. Soon the details will come more sharply into focus. Assembling, dabbling, dissembling, enforcing, and concealing, though on their own terms defensible and offering as honourable a livelihood as most enjoy, nevertheless describe tasks that are unexpected until they are unavoidable. Then, encountered, these roles to be tolerated, even savoured, will be redescribed in the minds and public presentations of their occupiers as good or grand or glorious, as in service to The Law. So myths abide.31

(3) Disappointed expectations


31 Id at 679. Gillers suggests this myth-shaking entry into law school handbooks: “CAUTION: Students often apply to law school in the belief that as lawyers they will do important work, including work that will directly advance justice and fairness in society, if not the world. They expect a career in law will give their work a meaning absent from other callings for which they may be suited. You should know, before making a final decision to pursue legal training, that although a few men and women do get to do some of this work, the overwhelming majority do not. It has been our experience that law school applicants, through no fault of their own, have an overblown and distorted view of the centrality, excitement, and intellectual challenge of lawyers’ work, including the work they themselves are likely to end up doing. Much of lawyers’ work is repetitive, unimaginative and routine. Often it is unpleasant, petty and unkind. For many of you, the economics, and to some extent the ethic, of practice will encourage roles you neither envisioned nor invited. We suggest that you interview some ordinary practicing lawyers in your hometown, and learn exactly what they do in a typical week, before you mail the enclosed application.” Gillers, supra note 29 at 663.
Likewise, some university teachers and researchers found their own initial experience in certain corners of the legal world to be boring, stressful, confrontational or clerical. Thus they returned to a culture which they find more orderly, reflective and intellectually demanding. Accordingly, they find it difficult to make encouraging comments about the culture they left behind.

**4) Noble thinkers**

Following the previous point, some university inhabitants have developed a platonic view of “work”. That is, the highest form of labour is reflection, writing and debate. They have aspired to and scaled the heights. The lower classes scuttle about with deadlines, paper, crises and trivia.

Unfortunately the crass marketplace is no respecter of platonic ideas and tends to pay the labourers outrageous sums in contrast to the thinkers.

**5) Noble labourers**

Conversely, some legal practitioners have another view of “work”. They rationalise their lack of reflection and long term planning by glorifying busyness, frenetic activity and the sweat of the brow. Thinkers are bludgers. This view is buttressed in Australia by an anti-intellectualism springing supposedly from convict roots in white Australian history.

This division is symbolised and perpetuated by the less than friendly rivalry between the “workers” who entered the legal profession via part-time non-university night school and the rich kids who meandered through university law schools. The hostility sometimes goes beyond ideologies about work to reflect a class struggle.

**6) Boring educational memories**

Apart from alleging irrelevancy and misrepresentation, many legal practitioners found their own legal education just plain boring after the initial adrenalin rush of first semester exams.

Educational goals were vague, methods antiquated, resources poor, feedback slow, imagination rare, risk-taking infrequent. They have no love for or patience with university

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33 Eg R Conway The Great Australian Stupor (1971); Land of the Long Weekend (1978); The End of Stupor (1984); S R Graubard, Australia: The Daedalus Symposium (1985).

34 See Weisbrot supra note 1 at 141-143.

35 ABA, Law Schools and Professional Education 1980.
types who inflicted such a repetitive diet of blandness upon them, and now propose to do so once again upon their offspring (and still with no realistic competition to render them accountable).

(7) Grading curve failures
Ranking and grading practices at law school quickly assign to the majority of students the labels of "pass" or "average". Little or no remedial help is given to enable students to shed labels. This occurs because of lack of teaching resources; lack of teaching and learning skills on the part of both teachers and learners; dominance of publish or perish philosophy in academic cultures; rationalisation that students should help themselves; and a convenient subconscious law school belief in "intelligence" rather than behaviourism (ie the pass students are not inherently intelligent enough to get high grades). The behaviourist version of this rationalisation is "The pass students do not work sufficiently long hours to get high grades."

Grading curves predestine that 70% of students will not be labelled a "success". Teachers vainly try to reassure the students that a "pass" or a "credit" is a "success". But students know better. The small quotas of allowable success can induce fear, indifference and competition; they also offend almost every version of effective learning theory.

Legal practice does not ascribe success or failure to lawyers on the basis of grading curves. The criteria for success in practice are harsh, but measurable - and everyone can succeed on the behaviourist model of long hours of work.

Thus law school can be remembered as a learning environment where success was accessible to only a few. The majority were rarely encouraged by regular experiences of success until post-graduation.

(8) Anonymity
Large classes and the concentration of most teachers on publication means that few students have a close relationship with law school staff. Respect and affection from students are usually engendered by close and regular contact with teachers who are interested in the wellbeing of individual students. Many students, (with the exception of those who "succeeded" at law school) do not look back at law school as halcyon days. Conversely, at some North American and some recently established law schools, many students remember with delight (and cash donations) the long discussions on theory and "academic" matters. Theory, even high theory, is only irrelevant in a certain context. Sophisticated theory is more likely to become a life-long asset when it emerges not only from books and lectures, but also from a personal relationship of respect, accountability and friendship.
(9) Confidence and humility

The most dominant characteristic of a practising lawyer is said to be self-confidence - in fact, an overwhelming self-confidence36 whether right or wrong. By bluff and bluster, lawyers have learned that much can be achieved at relatively low cost - if ultimately cornered, the mistake can usually be covered by silence or obsequious retraction or a flurry of counter attacks. Moreover, any admission of error or ignorance may affect customer confidence and liability for professional negligence. This pragmatic style stands in stark contrast to the reflective, inquiring scholarly spirit. (S)he knows that the more one knows, the less one knows. The pursuit of truth is a road to humility.

Accordingly, the classic styles of the scholar and the practitioner can grate on one another. The practitioner may appear to be an arrogant and superficial loudmouth who ruthlessly cuts his way to a result. Conversely the scholar may appear to waffle on in endless impractical qualification upon qualification - all process and little result. In larger law firms, specialisation may allow the reflective and overconfident styles to complement one another.

(10) Neutralised scholars

Lack of interdisciplinary groupings or skills amongst legal scholars has exacerbated the divide between theory and practice. Many legal scholars become jammed in "rule" research and are thereby isolated from lawyers who infrequently refer to rules, or at least those kinds of rules. Bridges would arguably develop if more legal scholars were also more willing and able to be both more "theoretical" and more "practical". This involves researching the difficult topics of the sociology, economics and psychology of professions, different parts of legal culture, conflict, interviewing, advice-giving, negotiation and decision-making to name a few.

There is, of course, a completely converse argument. That is, rule and doctrinal research have effectively co-opted the legal scholar as a tame lackey of the practitioner culture. "Keep them busy with door-stopping books and unread journal articles, if they start asking too many questions, they may become a rod for our backs - just look at the critters".37

(11) Economic stability versus change

Lawyers have considerable sunk costs in current practices and the status quo. For example, learning how to use pleadings may involve employing new staff, delays in constantly revising


37 Weisbrot supra note 1 at pp 146-7 (professional resentment when legal scholars begin to examine the legal profession); see J Disney, J Bosten, P Redmond and S Ross Lawyers (Sydney: Law Book Co 1986); ALRC, Managing Justice (Report 89; 2000); Review of the Federal Civil Justice System (DP 62; 1999).
documents, slowly developing a system of precedents on word processors, networking with barristers who have insider knowledge and skills, developing expensive staff training programmes and finally productive habit and routine.

By way of contrast, reflective academics are constantly developing:

a) criticisms of the status quo and;

b) new models.

By nature or nurture, they are necessarily a disruption on the shop floor. They are encouraged to be so by international academic culture and by promotion practices.

This inevitable tension between change and stability means that practitioners often lobby to discredit "academic" ideas (or to discredit any proposed changes at all). Similarly, the university community lobbies against changes which affect members’ habits and sunk costs. Each has an interest in productivity and profit in their respective factories.

David Weisbrot\textsuperscript{38} has written:

The Pearce Report described the relationship between legal academics and practitioners as ‘uneasy’, and the Australian law deans have said that it contains an ‘element of tension’. In truth, the relationship is even less healthy, and has been characterised as ‘the most significant division within the profession’, surpassing the division between barristers and solicitors. Australian legal academics have been far more actively involved in progressive legal and social issues than the profession at large because of, among other things, a more flexible work structure, different political orientation, and freedom from the pragmatic interests and restrictive ‘ethical’ rules of practitioners. The critical function of legal education and legal scholarship has in recent years been applied to the profession itself, with legal academics often being critical of the self-regulation of the legal profession and standards of both professional responsibility and the delivery of legal services.

This critical function has been positively recognised by at least one senior Supreme Court judge (who is also, perhaps not coincidentally, Chancellor of the University of New South Wales). Justice Gordon Samuels, in discussing the need for academic representation on admitting authorities, has written that:

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\text{... another reason for including academics, apart from their skill and experience in teaching law and framing curricula (is that) they have increasingly assumed the character of social conscience to the profession and the judiciary. It is a role for which they are well cast, since they are neither influenced by professional self-interest nor trammelled by professional...}
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\textsuperscript{38} Weisbrot supra note 1 at 146-7.
responsibility. Academics are no more immune than others from eventual intellectual sclerosis; but their work keeps them aware of the wider ranging currents of legal thought and experiment, and they are constantly exposed to the irreverent reactions of students first encountering the more opaque areas of the law. So their contribution ought to be a generally critical one.

However, other judges and practitioners have been less willing to assign to academics the role of ‘conscience of the profession’, at least without some return criticism.

(12) **Disappointing return to academe**

Many legal practitioners and judges love (for a variety of reasons) to return to speak at university law schools. However, contrary to the overt fanfare, the experience is often not a comfortable one. The practitioner finds that the effective design of course objects, methods of learning, resources and feedback is an awesome task. The current generation of Sesame Street students is quickly disenchanted with his/her war stories, cognitive barrage, obsequiousness to judges and expectation of vigorous class participation. The visiting practitioner may well conclude - "Creating a positive learning environment is either more difficult than it seems or those academics have failed to give these students the right information and attitudes".

In response, a few very successful (and well received) "training the trainers" programmes have been conducted. However, if such "programmes" or team teaching are not conducted with sensitivity and skill, then the "outsider" practitioner may conclude that teacher training is platitudinous and unhelpful.

(13) **Short term marketable product**

Some legal practitioners, particularly in smaller firms, have a particular interest in the short term profitability of law school graduates. That is, they want a larger range of "employable" students who have a quota of "immediate" skills, knowledge and attitudes. These might include drafting, pleadings, knowledge or Supreme Court rules, advocacy before magistrates and letter writing skills. Moreover, they do not want to bear the heavy training costs and non-billable hours needed to bring the "useless" graduate up to billing speed. Thus the ubiquitous advertisement for "law graduate with at least two years of experience".

Many students also naturally want to market themselves as immediately employable at high wages by acquiring such capabilities sooner rather than later.

Law teachers respond to this combined student-practitioner pressure with well worn arguments such as:
• Many immediately marketable skills are more effectively taught elsewhere eg in a post-graduation simulation course or in a legal office.

• Law schools do not have financial resources necessary to teach most of the instantly marketable skills.

• Law schools have introduced some "skills" and "procedural" optional subjects.

• It is a betrayal of law students (and of society) to emphasise short term ephemeral skills and knowledge. In the long term, law students need to develop research skills, tolerance, flexibility, curiosity, openness to change, understanding of timeless "grand" issues, character, humour, hobbies, analytical speaking, writing and thinking. University represents the right time and place for these long term assets to begin to develop. Employment interviews in the larger law firms appear to canvass these topics because employment partners are looking for long term investment, and also have the infrastructure to effect ongoing "ephemeral" training.

• Acquiring a reasonable quota of lawyerly competencies in attitudes, skills and knowledge is an extended process of learning. Twining comments: "It should be a further truism the basic formation of a professional lawyer is at least a ten-year process which does not stop at the point of admission and that law students should be encouraged not to try to cross bridges before they come to them. When I tell this to my first year students, I sense that they do not really believe me."40

• Law Societies and broader society are ill-served by a membership with an undue "plumbing" and "profit" emphasis. Society is changing so quickly that new lawyers need the skills to be pro-active team planners rather than reactive mechanics.

• It was predicted that more than half of the graduates from law school in Australia in the 1980’s and 1990’s will exit traditional legal practice within five years of graduation. If so, law schools arguably have some responsibility to train this majority for 35 years of various leadership roles as well as for 5 years of legal practice.

39 Bok supra note 30.

40 Twining supra note 2 at 9.

41 W Twining, Pericles and the Plumber” (1967) 83 LQR 396.
Of course, these predictable (and often persuasive) arguments do not resolve a necessary tension between short term and long term "value". In the past, the tension was substantially relieved by an extended and virtually unpaid apprenticeship (articles) for the "useless" graduate. Billable hours blossomed slowly or rapidly in narrow areas of specialisation. Carrying the considerable cost of one’s own education for such an extended period of time may appeal to employers, but is unlikely to be an acceptable resolution to this generation of law students.

Law school (and professional legal training courses) remain the inevitable ham in the short term/long term "value" sandwich. Over-confident appointees to regional law societies continue to offer quick, cheap and recycled fixes to this important debate.42

(14) Rarefied Theory (doctrine) versus everyday theory

Law school staff tend to research and teach doctrine or principles extracted from cold print. It is not "real" theory extracted from the behaviour of human beings -it is "doctrine" several stages divorced from human behaviour. Moreover, it is rarefied doctrine. It revolves predominantly around the overt language of appellate court judges. Thus it is indeed sterilised theory, far distant from theories which could be developed from the everyday life of the various subcultures of the legal profession.43 Thus it is not a theory-practice divide, rather a doctrine-practice divide.

The need for scholar-practitioners. We are coming to believe that research on mediation will be enriched in direct proportion to the degree to which those who study the process have direct experience as mediators. Such a scholar-practitioner model has proved valuable as clinical psychology and all branches of medicine. It is in line with Mark Twain’s dictum that in holding up a cat by the tail you learn things that you can learn in no other way. Or, to paraphrase Kurt Lewin on a more serious level, if there is nothing so practical as a good theory, there may be nothing so theoretical as good practice.44

(15) Mutual ignorance about each group

Until the last decade, there have been very few studies concerning how the various subcultures of lawyers think or what they actually do.45 Without such studies, it is obviously

42 Compare the excellent study ABA Law Schools and Professional Education 1980.
44 K Kressel and D G Pruitt, Mediation Research (San Francisco: Jossey Bass, 1989) at 431.
very difficult for teachers to speculate upon and break down lawyerly skills, knowledge and attitudes into learnable chunks.

Lawyers sometimes believe (wrongly) that their core thoughts and behaviour patterns are universal throughout the legal profession. Moreover, when asked to describe what they do and how they think, lawyers frequently produce confused or platitudinous explanations.

Conversely, practitioners still tend to believe that academics lecture for a few hours per week and otherwise are on holidays.

(16) **Beware of the Law School scapegoat**

Law schools should not readily accept a role as scapegoat for the tensions between the various law school cultures and the various legal practitioner cultures for a variety of reasons including:

a) Tension and conflict can be productive if they lead to ongoing constructive debate.

b) There are also conflicts between the various subcultures of legal practitioners, usually about money - particularly client poaching and levels of competent service. This is most notable between solicitors/barristers, mega firms/small firms, city and country lawyers, specialist boutiques and general practitioners, in-house lawyers and the "independent" profession, legal and lawyers and private practitioners, "in-house" lawyers and the independent profession.

c) After initial euphoric honeymoon periods, there are constant tensions between lawyers and PLTC organisers concerning whether the students are learning the "right" knowledge, attitudes and skills fast enough (deja vu?). Thus occurs the revival of the debate about articles of clerkship yet again.

These conflicts suggest that law schools provide only one small piece in the jigsaw surrounding the cost and efficiency of legal services. Law schools should not readily accept responsibility for "solving" complex social questions such as the cost and efficiency of legal

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services. Conversely, it is hopefully more than a platitude to suggest that various law school cultures should be eager to experiment and change.

(17) Responses to conflict?

Only some of the identified causes for tension between law schools and the practising profession(s) can be constructively "remedied". For example, factual misunderstandings can be minimised by constant interaction between the two groups - visitors, CLE; consultancies, advisory groups and joint teaching/research projects.

However, some other identified causes for conflict cannot or in the writer's opinion, should not, be "remedied".

For example, it is inevitable that a crucible of current needs and work pressures will lead some law graduates to blame their legal education for its "narrowness"; that some law graduates will find traditional legal practice to be too clerical, unscrupulous or frenetic and will harbour bitterness towards a legal education which failed to warn emphatically of what lay ahead; that some law graduates find the pace and people in legal practice far more stimulating than the relative isolation and bookishness of law school.

Additionally, some conflict should be maintained. For example, law school researchers should continue to be one conscience for the legal profession, legislators and judiciary (always on the condition that sociologists, psychologists, educationalists, ethicists, and the legal profession should be also encouraged to critique law school culture); law schools should ideally have strong streams of study on analytical thinking, history, sociology, psychology, ethics and interdisciplinary research, despite the growing market pressures to graduate instantly billable employees. Short term marketability should not prevail over long term marketability, social service and personal development. Additionally, at least some law schools should have well developed "skills" programmes which will necessarily divert both resources and time away from rule coverage, and "policy" debate.

Conclusion

Categorising and hypothesising about the causes of tension and conflict between the various sub-cultures of legal practice and law schools is a worthwhile and ongoing exercise.46

This paper has argued that some causes can be constructively addressed while others are deeply entrenched.