

INTERDISCIPLINARITY AND AUSTRALIAN LEGAL EDUCATION

A commentary on the Pearce Report five years on

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Introduction

IN THE LAST FEW YEARS new Law Schools have sprung up in Australian Law Schools like mushrooms after rain (eleven new Law Schools in five years is a lot in anybody's language). As well as this dramatic increase in new Law Schools, these few years have seen some dramatic reorganisation of existing Law Schools.

The impetus for this frenzy was the release in 1987 of the Pearce Committee Report (more correctly Australian Law Schools. A discipline assessment for the Commonwealth Tertiary Education Commission). This document included many scathing criticisms of, and suggested changes to, the way law is taught and researched in this country's higher education institutions. One important message of these criticisms and suggestions was that law had to be made more relevant. Among other themes in this message was the theme of interdisciplinarity – in other words, 'make law more relevant by making its links with other disciplines more explicit.'

This is the theme I explore in this commentary. My exploration is based on an assertion: that five years down the track Australian Law Schools (both new and old) are no more interdisciplinary than they were before Professor Pearce and his Committee began their work (indeed, the new ones look surprisingly like the old ones did before any government minister deemed them worth assessing). My exploration traces a contention about the reasons for the state of affairs captured in this assertion.

My contention is that the Pearce Committee report reflects and fails to address a confusion about interdisciplinarity in Australian law teaching and research which is remarkably widespread.

In this commentary on the report I propose:

- i) to highlight this confusion; and
- ii) to point to certain conditions of Australian law teaching and research which contribute to its widespread existence.

If I help to overcome the confusion in so doing, then so be it, but this is not my aim. Neither is my aim advocacy: I am advocating neither greater interdisciplinarity nor continued disciplinarity.

Pearce and Confusion about Interdisciplinarity

The Pearce Committee Report's confusion sees it directly favouring greater interdisciplinarity at the same time as it limits these discussions, sometimes to the point of meaninglessness, and even at the same time as it directly favours continued disciplinarity.

The report contains three very direct discussions in favour of inter-disciplinarity and a number of less direct discussions.

In one direct discussion the report is quite enthusiastic about a particular experiment in interdisciplinary law teaching

at Monash University. It relates how a law subject 'draws on the qualifications of a non-lawyer teaching in combination with a number of the law school staff' (Pearce et al, 1987:33). In this context the report proposes the following Suggestion (the report has 48 formal Recommendations and 64 weaker Principal Suggestions): 'Law schools should examine the possibility of fractional/joint appointments with a view to bringing into the teaching program, persons with appropriate expertise in non-law disciplines' (1987:12). This suggestion is echoed in one of the report's informal visions for the future – 'joint appointments or co-operative arrangements directed towards more interdisciplinary teaching' (1987:90).

In the second direct discussion, the report is full of praise for the 'significant and special contribution to legal education in Australia' made by the Legal Studies department at La Trobe University. In this department 'over 40 subjects which examine the law in an interdisciplinary fashion but which are not directed to qualifying a person for legal practice' are offered (1987:82).

In the third direct discussion, the report is keen for law school curricula to take on board 'more theoretical and critical material'. In this context, it notes positively the role of 'interdisciplinary work' – the 'relevant teachings of the social sciences, the critical study and evaluation of the law and the legal system and efforts to see law in context' – in providing an 'education designed to cultivate general intellectual skills of analysis, research, criticism, and communication' (1987:25).

The less direct discussions favouring greater interdisciplinary in the report include: legal education should be more than an industry training for private legal practice (1987:25); research in law should be much wider than pure legal doctrine (1987:51); more attention should be 'paid in law school curricula to the functions of law in society and to underlying policy and ethical issues' (1987:3); resistance to the division of law schools into different departments should continue (1987:73); legal education should be available to a wider range of students (1987:55) (this passage contains the insightful typographical-error-that-may-not-be-a-typographical-error, 'All law schools select all but a handful of their students on economic merit').

One of the main ways in which the report limits its own support for greater interdisciplinarity is to use only Suggestions in promoting changes towards this goal, not the stronger Recommendations; no points about interdisciplinarity are taken up in the Recommendations. As noted, the idea of 'joint appointments and co-operative arrangements' is proposed only as a Suggestion. This is also the case with the idea of law school curricula including 'more theoretical and critical material', like 'relevant teachings of the social sciences'. In this second case, the wording of the Suggestion limits the support for the idea still further. In suggesting that 'all law schools examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other forces' (1987:12), the report effectively stifles its own idea. Asking law schools to 'examine the adequacy of their attention' to something, without any specific criteria to judge adequacy, is to ask them to do nothing. Law schools are virtually being invited to claim that any attention is adequate attention.

The report's praise for La Trobe's Legal Studies Department is limited by a 'caution' 'against too hasty an adoption of the La Trobe type of department', a caution issued alongside an acknowledgement that there is 'a demand for courses of the kind offered by La Trobe' (1987:82). The various indirect discussions in favour of greater interdisciplinarity are limited precisely in being indirect discussions; no attempt is made to link them to greater interdisciplinarity as a goal, not even to the three direct discussions I have identified.

The direct favouring of continued disciplinarity mostly concerns accommodation. This is no small matter – where the report directs none of its 48 Recommendations to interdisciplinarity, it directs eight of them to the 'accommodation problem' of law as a separate discipline. The report clearly assumes that law is best taught and researched in completely separate disciplinary spaces (1987:7–8). In Recommendation 17, for example, the report talks of 'the need of law schools for a separate law school building which is adapted to the range of special functions and needs of law schools' (1987:7).

This type of direct favouring of disciplinarity also informs discussions of some resource provision (1987:11), of

teaching law to non-lawyers (1987:42), and of some administrative needs (1987:73–4).

Some Conditions Contributing to Widespread Confusion about Inter-disciplinarity

Four separate conditions seem most relevant to me in discussing the continued widespread confusion about interdisciplinarity in Australian law teaching and research:

- i) the lack of a clear distinction in Australian higher education between the teaching and researching of law and teaching and research about law;
- ii) the lack of a clear definition of interdisciplinarity in Australian higher education generally;
- iii) the career paths available for those trained in law in Australia and the career paths available for those doing Australia's law teaching and research; and
- iv) the arrangements for administering and accommodating all teaching and research in Australian higher education.

These four categories overlap and intertwine in various ways. I discuss them separately, but attempt to demonstrate the links between them as I proceed.

i) The lack of a clear distinction between 'of' law and 'about' law

The teaching and research of law involves the dissemination and/or clarification of the vast array of technical knowledges we summarise by the term 'law'. Teaching and research about law involves the dissemination and/or production and/or clarification of knowledges about the ways different laws operate, the way they have effects, the way they are read, the way they are perceived, etc.

Crucially, there is no necessary connection between the two. Knowledges involved in the teaching and research of law are unified to a considerable extent, by the operation of law schools, by the publishing and distribution techniques of law publishers, by some conferences, by the legal profession, and by parliamentary procedures. Knowledges involved in teaching and research about law are

unified, to a far lesser extent, by the operation of certain other university departments (sociology, legal studies), by a few specialist books and journals (the unified field is not big enough, unlike the field of law, to justifying separate publishers), and by a few conferences.

This is to say that while there are connections between the teaching and research of law and teaching and research about law, these are specific connections formed around the definite conditions under which they operate, not necessary connections driven by the idea of 'law' (or by some other single unifying principle).

Despite the clarity of the relatively distant relationship between the two when looked at in this way, the failure to make a clear distinction between them is widespread enough to serve as a condition of the continuing widespread confusion I am discussing here. Certainly the Pearce Committee Report fails to make this distinction, which again I take to be evidence enough to use the term 'widespread'. For example, in urging joint appointments and other co-operative staffing arrangements, the report does not address the question which this distinction demands: if people with non-law backgrounds are to be brought into law schools, presumably because of their expertise in teaching and research about law, will their teaching and research about law complement, or be at the expense of, or even impinge upon, existing teaching and research of law?

It is not clear to me why the failure to make this distinction is so widespread. I am prepared to speculate that it has to do with two facts: the fact that the above-listed conditions for the teaching and research of law are so much older and stronger than those listed for teaching and research about law (meaning that for the vast majority of people involved in legal education, those on the of law side of the distinction, perhaps arrogantly, the distinction has never arisen); and the fact that the term 'law' has developed historically as a cover term for every activity associated with legal matters (meaning that it is perceived to have a sort of magic status which automatically forges unity between disparate enterprises – any activity with the word 'law' applied to it must be the same activity). I am not prepared to go beyond this speculation in this essay.

Whatever the reason for the widespread failure, it means consideration of the uneasy relationship between a relatively stable body of technical knowledges of laws and the much more fluid, potentially more contestable knowledges about laws is ignored by the majority of those involved in Australian legal education.

The upshot of all this is that the widespread failure to distinguish between the teaching and research of law and teaching and research about law serves to support the continued dominance of disciplinarity in Australian law teaching and research. It is in this way that it serves as a condition for the widespread confusion about interdisciplinarity. From the perspective of the unity of law teaching and research built on the back of the dominance of the teaching and research of law, interdisciplinarity must seem an annoying irrelevance.

Before proceeding to the next condition of confusion, I must remind the reader that I am advocating neither disciplinarity nor interdisciplinarity. In this spirit, I acknowledge the existence of both powerful arguments for the continued dominance of the teaching and research of law and the accompanying disciplinarity (arguments to do with the continuing, even growing, need for technically trained legal practitioners and with the longstanding tradition of this type of legal education) and powerful arguments for a greater role for teaching and research about law and the accompanying interdisciplinarity (arguments to do with the growing demand for people trained in a more generalist manner and with the not-quite-so-longstanding tradition of liberal education which suggests that a thorough education must involve a technical training and an awareness of criticisms, especially politically inspired criticisms, of the limits of this training).

ii) The lack of a clear definition of interdisciplinarity

Australian higher education has seen a range of developments in interdisciplinary teaching and research over the past twenty years or so. In the established nineteenth century universities there have been some interdisciplinary developments, like the formation of Political Economy and General Philosophy at Sydney and General Studies at

Melbourne. In the older of the post World War II universities there have been interdisciplinary developments, like the formation of Legal Studies at La Trobe. And of course the 1970's saw the development of three new universities designed as interdisciplinary universities – Deakin, Griffith, and Murdoch.

Despite these developments, no clear definition of interdisciplinarity has emerged. At most, interdisciplinarity is seen as a mix of established disciplines which encourages the liberal notion, described above, of technical trainings constantly accompanied by an awareness of criticisms, especially politically inspired criticisms, of the limits of these trainings.

The lack of clarity in even this definition has meant that developments in interdisciplinarity have not been sustained. While some of those described continue, they have not been rapidly duplicated elsewhere, as was envisaged by their supporters at the times of their initial developments, and others have been subtly watered down.

Murdoch is a good example of this latter tendency. Established in 1973 (with undergraduate teaching commencing in 1975), Murdoch was modelled loosely on the University of California, Santa Cruz. Initially, all undergraduate students enrolled in any of the university's six Schools had to take one of three interdisciplinary 'trunk' courses. Schools were meant to be interdisciplinary mixes rather than collections of disciplines and the names of some Schools (for example, Social Inquiry, Human Communication) and some of their constituent Programmes (for example, Social and Political Theory) reflected this intention.

By 1992 much of this has changed. Students now take 'foundation' courses offered by each School, rather than the university-wide 'trunk' courses. The idea of Schools as interdisciplinary mixes has been all but dropped; Programmes now look much more like traditional discipline-based departments and their names have been changed to reflect this (for example, Social and Political Theory is now four programmes – Politics, Philosophy, Sociology, and PPS, the last being a residue of Social and Political Theory from which the other three have emerged). New, more clearly disciplinary Schools have been formed as break-aways from existing Schools (for example, Economics and Commerce broke away from Social Inquiry,

has since become Economics, Commerce and Law, and is soon to see Law break away to form a separate School) and the names of Schools have been changed to something closer to the names of divisions in traditional discipline-based universities (for example, Social Inquiry has become Social Sciences and Human Communication has become Humanities).

In this environment it is hardly surprising that interdisciplinarity is more a fuzzy ethos than a clearly defined policy objective. In this way, interdisciplinarity is something which is experienced more than it is known. It is experienced as either or both a means to greater intellectual freedom and/or an obstacle to continuity and security. On the first hand it is experienced as a means of producing well rounded intellectuals, in the mould of certain eighteenth and nineteenth century European intellectuals, who make and point to (for the benefit of students and colleagues) connections between knowledges, because they 'belong' together and/or because they are useful together for some intellectual and/or moral and/or political purpose. On the other hand, interdisciplinarity is experienced as a source of disorder, even charlatanism, which disrupts the proper functioning of academic communities, especially their demarcation arrangements and their career structures.

I stress again, I am not advocating either disciplinary or interdisciplinarity here. The environment I have described – interdisciplinary developments moving in such a way that no clear definition of the term is available – has seen, and continues to see powerful explicit arguments for and against interdisciplinarity. The powerful argument for it in this context are those acknowledged in the context of the distinction between of law and about law – arguments in the tradition of liberal education. The powerful arguments against it include those acknowledged in this other context – arguments about the need for technically trained personnel – but also include a set of arguments to do with the practical issue of attracting students (disciplinarity is said to attract many more students than interdisciplinarity; the Murdoch changes provide evidence for this set of arguments, though whether the dramatic increase in student numbers which has coincided with the changes is related to the changes is not certain).

iii) Interdisciplinarity and career paths

In line with the two conditions discussed so far, it is a fact that career paths for those trained in the disciplinary mode of Australian law teaching and research and for those involved in this mode as teachers and researchers are much clearer than the career paths for those trained in the interdisciplinary mode and for those teaching and researching in this mode.

This fact is a condition for the continuing widespread confusion about interdisciplinarity because it renders interdisciplinarity a risk for potential legal practitioners and for law teachers and researchers.

To take the disciplinary path in legal education is to take a path where the teaching and research of law completely dominates and leads straight to legal practice, and straight to the sort of legal practice – disinterested interpretation of laws as technical matters, whether in private practice or working for a corporation or a union or a government department – most likely to lead to promotion through the hierarchy of the legal profession. In this way, legal training in twentieth century Australian law schools is the heir of the common law tradition which began to emerge in the 12th Century Inns of Court training.

For the teachers and researchers who staff twentieth century Australian law schools, the disciplinary career path in of law teaching and research is equally clear. Mainly because of the very strong influence of the legal profession on the content and direction of Australian law schools, to concentrate on the teaching and research of law, while either ignoring or marginalising teaching and research about law, is to ensure a much better chance of a tenured job in the first place, and of promotion through the academic hierarchy thereafter.

To take the interdisciplinary path in legal education is to take a path where the teaching and research of law is subordinated to teaching and research about law and has no certain career outcome. In Australia it is virtually impossible to gain a law degree by taking this path and as yet the sort of degrees available down this path – usually a B.A. with some sort of diploma, possibly in Legal Studies or Justice Studies, added on, but increasingly a range of Masters' degrees as well – might lead to a job in either the public or private sector with some duties to

do with (usually more interested) interpretation of laws, or it might lead to a job with no quasi-legal duties at all, or it might lead to unemployment.

For the teachers and researchers who staff those corners of twentieth century Australian law schools prepared to tolerate some teaching and research about law and those corners of other institutions where interdisciplinary legal teaching and research goes on, the interdisciplinary career path in about law teaching and research is equally uncertain. To concentrate on teaching and research about law while either ignoring or marginalising teaching and research of law is to stand much less chance of securing a tenured job in a law school than your more disciplinary colleagues (Australian law schools tend only to take on such staff members after they are confident they have a full quota of disciplinary staff). Such folk may pick up a tenured position in a legal sub-disciplinary enclave of another discipline, like sociology, politics, or history, or in a more interdisciplinary space, like Legal Studies at La Trobe or one of a couple of divisions at Griffith, but these positions are thin on the ground and applicants usually need another string to their bow in any case. Once in, promotion through the hierarchy is probably no more difficult in the interdisciplinary spaces than for the average academic, but in the law schools an interdisciplinary approach may well be considered a handicap.

The close relationship between the accrediting arm of the legal profession and disciplinary oriented law schools is only one reason for this situation. The other major reason is the general status of interdisciplinarity discussed above. The career prospects in Australian universities for anyone not clearly disciplinised are no brighter in general in the 1990s than they are for those with an interdisciplinary approach to law.

Whatever the reason, disciplinarity is a much safer career bet for students and staff involved in legal education. Interdisciplinarity is much more an unknown career quantity and as with unknown quantities in many endeavours, little or no knowledge is accompanied by much confusion.

Yet again I must conclude a discussion with the caveat that I am not arguing for either disciplinarity or interdisciplinarity in making these points. Yet again I simply note the existence of both strong (mainly utilitarian, in the

common not political theoretical sense) arguments in favour of the dominance of disciplinary career paths and strong (mainly liberal) arguments in favour of clearer and more certain interdisciplinary career paths.

iv) Disciplinary administration and accommodation arrangements

Apart from a few lingering exceptions – those discussed above in discussing the lack of a clear definition of interdisciplinarity – Australian higher education institutions administer and accommodate all their teaching and research in a manner which fosters disciplinary at the expense of interdisciplinarity. Law is far from unique in wanting to emphasise its disciplinary separateness through administration and accommodation arrangements.

Twentieth century universities are, after all, twentieth century organisations and the division of twentieth century organisations into discrete manageable administrative units is of course a defining characteristic of twentieth century bureaucracies. In this sense, disciplinary is to be expected. However, bureaucracy is not completely rigid; I am not suggesting that discipline-based administrative divisions are somehow inevitable in the twentieth century world; the few instances of interdisciplinary developments discussed above prove otherwise. What I am suggesting is that discipline-based administrative divisions have, for historical reasons (disciplines, as we know them, and modern bureaucracies emerged about the same time), come to dominate twentieth century universities to the extent that they provide the dominant means and criteria for judging administrative efficiency.

What this means is that attempts at new administrative arrangements designed to foster interdisciplinarity are judged inefficient. To avoid this situation would require the development of new means to assess efficiency and either new personnel to do the assessing or intensive training programmes for existing personnel. Up to this point in time, no interdisciplinary developments have been this thorough.

Without carefully developed means to administer interdisciplinary university teaching and research in a manner which is widely accepted as at least as efficient as the means available to administer disciplinary teaching and

research, interdisciplinarity is bound to appear confused.

The architectural requirements of twentieth century Australian universities have been developed in line with the twentieth century criteria for order and efficiency discussed above: disciplinary criteria. To design spaces in which teaching and research is carried out with little regard for disciplinary division is now almost unthinkable, though of course this was not the case in the ancient world, the Renaissance world or even in nineteenth century Europe (and much of Australia's university accommodation built in the manner of pre-twentieth century European universities has had to be adjusted in the twentieth century to suit the prevailing dominance of disciplinary). Design criteria are expressed in the twentieth century, as the Pearce Committee Report clearly demonstrates, in terms of the 'needs' and 'special functions' of separate disciplines.

This architectural arrangement for twentieth century university accommodation reinforces the circle of confusion which surrounds interdisciplinarity. The provision of separate spaces for the academic and administrative personnel of Australia's twentieth century universities to do their teaching, research and administration is very much the obvious way to accommodate them. The idea of interdisciplinary spaces is bound to appear confused.

Conclusion

The Pearce Committee Report is confused about interdisciplinarity because it was produced in, and reflects, a national university community which is confused about interdisciplinarity. I have highlighted and examined this confusion in a manner which links its existence in legal education to the wider context of university education generally. I described four conditions for this continuing and widespread confusion – the lack of a clear distinction in Australian higher education between the teaching and research of law and teaching and research about law, the lack of a clear definition of interdisciplinarity in Australian higher education, the career paths for law graduates and for law teachers and researchers, and the disciplinary administrative and accommodation arrangements which dominate Australian universities.

As a final point, the widespread confusion about interdisciplinarity should not be seen as the outcome of a teleology. In both describing four conditions for the continuing existence of this confusion and in refusing to advocate one side or other of the disciplinary/interdisciplinarity debate, I am not suggesting in any way that disciplinary is inevitable, that confusion about interdisciplinarity is somehow the result of the natural development of knowledge and universities. I described the four conditions very much as contingent conditions – conditions without the certainty of 'progress' or 'nature'. The current conditions of Australian legal education, including the four conditions I describe as conditions for confusion about interdisciplinarity, are, I would say, much more the result of accident than of progress or nature; had certain developments taken a slightly different course I would today just as likely be writing about a confusion surrounding disciplinarity.

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REFERENCE

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