

Future of Professional Education in Tertiary Institutions

Introduction

Some professions and universities have very long histories during which they have undergone many periods of radical change. Those histories have often symbiotically intertwined such that changes in the professions affected tertiary institutions and vice versa. This is certainly a period of such change for both professions and universities. This entry will:

- Begin by rehearsing some of that intertwined history
- Examine the challenges to each
- Speculate on likely futures.

Given the nature of the topic, this last aspect must be somewhat speculative.

Universities and the Professions in the Past

The traditional three 'learned professions' (divinity, medicine and law) all pre-existed universities but played a very significant part in the latter's development. They generally fitted a standard definition of professions:

The central element of any profession is service to the community whose delivery constitutes a public good. A profession involves a body of knowledge, institutions for imparting it and a dedicated and identified group of experts who apply that knowledge for the benefit of the community they claim to serve. The dedicated and identified group of experts are solely or jointly responsible for the entry and exit of professional members – seeking to ensure that members have the relevant skills and abide by a code of ethics in which the public good comes first, the client comes second, and the profession itself comes third.¹

There is no requirement for universities or other forms of tertiary education in that definition. Some professions have operated for very long periods in the past without any such link. However, the learned professions were the original 'knowledge-based industries' and, as universities developed as powerhouses for the development and transmission of knowledge, it was unsurprising that they have interacted in a variety of ways – and are likely to continue to interact in some new and some old ways.

Although modern minds might puzzle at the association of divinity and the priesthood with 'learning' and 'knowledge' we should note some of the links:

- Medicine was almost as speculative as religion and prayer was an often-effective placebo
- Religion was often based on what was thought to be observation (for example, 'miracles')
- Law was a mixture of divine and human ordinance with the latter legitimated by the first in many cultures today.

¹ See Hugh Breakey and Charles Sampford, 'Employed Professionals' Ethical Responsibilities in Public Service and Private Enterprise: Dilemma, Priority and Synthesis' (2017) 40 *University of New South Wales Law Journal* 262, 267-8.

There were also close links between the 'learned professions' and institutional centres of learning. Very early 'medical schools' were formed around the temples of Asclepius and were called *Asclepieia*. The medical school at Salerno was in existence in various forms from the ninth century. The two oldest continuing universities were formed around mosques (the University of Al Quaraouiyine, founded in Fez Morocco in 859 and Al Azha around 970) with their law schools leading the way. The university of Bologna was formally established in 1088 though monks like Pepo were teaching law to students before that.

While monasteries were centres of Christian learning, universities formed from less formal groupings of religious scholars and students in market towns like Oxford.² Study centred on theology with freer thinkers frequently clashing with popes, kings and archbishops.³ British universities were responsible for educating more priests than doctors or even lawyers until the nineteenth century with the other professions taking even longer to find their place in universities. However, the engagement of an increasing number of professions with universities was part of the growing knowledge base required for practice. Professions that had been based on life-long practical learning among their peers recognised the value of universities in collecting, systematising and transmitting knowledge. Though it would be foolish to think that, through a 3-6-year university degree followed by professional or university exams, universities could provide core knowledge and skills – including the skills of securing and deploying new and later-learned knowledge after graduation. This engagement with an increasing number of professions was part of the process of slow but continuous reinvention that universities have undergone. Indeed, universities are the longest standing institutions in the western world other than the Roman Catholic Church which spawned them. They predate the sovereign state by some 600 years and the joint stock company by 800 years – and will probably outlive both. But, their longevity is not because they have stayed the same but because they have used their collective brainpower to engage in radical new ways to build, retain and transfer knowledge. As the 'universal' knowledge-based institution, they have contributed to and drawn from the developing knowledge economy – the process that is likely to continue if universities recognise the scale of the challenges. Challenges and responses are not likely to be merely more of the same.⁴ Instead, they are likely to be more like those suggested by Sampford in the 1980s and 2000s:

Once a highly cosmopolitan profession, law was largely domesticated by the demands of the Westphalian State. But as the walls between sovereign states are lowered law is globalising in a way that is likely to change law, lawyering and legal education as much of the next 30 years – when students entering law schools today reach the peak of their profession – as it has over the last 300.⁵

² They could be medieval innovation hubs and start-ups.

³ See Laurence Brockliss, *The University of Oxford: A History* (Oxford University Press 2016).

⁴ Robert Stein, 'The Future of Legal Education' (1991) 75 *Minnesota Law Review* 945.

⁵ Charles Sampford and Hugh Breakey, *Law, Lawyering and Legal Education: Building an Ethical Profession in a Globalising World* (Routledge, 2017) Preface iii, with details set out in chs 1, 3, 18.

While the professions of law (and arms) have shown the wildest swings from cosmopolitan to state-based to global, most other professions have experienced a version of this – with many other challenges as well. This entry will outline some of the challenges and indicate some, but not all, of the likely responses.

Challenges to the Professions

Challenges to professions that Flood⁶ sees as making professions ‘precarious’ include: the democratisation of knowledge through the internet; increasing difficulty of distinguishing between scientific and non-scientific knowledge; the shift from self-regulation to external regulation of professional education and professional services; corporate delivery of professional services; increasing permeability of professional boundaries; increased marketisation and/or financialisation; and technological hollowing out of professional skill sets.

Challenges to Universities

Universities are subject to just as many challenge/opportunities. The rapid development of knowledge has provided a greater realisation that a university professional education needs to concentrate on the skills of finding, applying and reflecting on knowledge. Technology provides both challenges and opportunities. Online learning and Massive Open Online Courses (‘MOOCs’) provide the opportunity to engage more students⁷ to a certain level, those these initiatives worry those who see the ‘Socratic’ interchange as essential. There will be an expansion of universities in different regions. Asian economies have invested in first class universities, especially in China and Singapore, which explicitly seek to outperform existing institutions. As well, universities will continue to expand in size – with increasing numbers of students, often with multiple campuses in Australia, and sometimes overseas. In Australia, universities are a growing sector of the economy and exports – though the prestige of Australian universities is a lagging indicator that will not be sustained without the funding to compete. As well, anti-intellectual traditions in Australia show little sign of abating even as we move to a more knowledge-based economy.⁸

In educating the professions, moves from traditional industries to knowledge-based industries⁹ and the intensification of knowledge leads to a potentially greater role for universities – if they are equipped to engage with it. On the other hand, universities need to prepare students for rapidly changing professions and the likelihood that students’ future careers are unlikely to be confined to a single profession. This increases the importance of interdisciplinary and contextual studies and the recognition of transferable skills¹⁰ – especially of making complex decisions in risk-fraught systems.¹¹ With this in mind, Sossin suggests

⁶ John Flood, ‘Professions and Professional Service Firms in a Global Context: Reframing Narratives’ in Mike Saks and Daniel Muzio (eds), *Professions and Professional Service Firms: Private and Public Sector Enterprises in the Global Economy* (Palgrave Macmillan, 2018) (forthcoming) ch 3.

⁷ Marie Glenn, ‘The Future of Higher Education: How Technology Will Shape Learning’ <<http://graphics.eiu.com/upload/the%20future%20of%20universities.pdf>> (accessed 7 November 2017).

⁸ Some might suggest that we need a knowledge-based polity before that can be achieved.

⁹ Roland Bloch et al (eds), *Universities and the Production of Elites: Discourses, Policies, and Strategies of Excellence and Stratification in Higher Education* (Springer, 2017); Peer Pasternack et al, *Summary: Current and Future Trends in Higher Education* <https://www.bmb.gv.at/schulen/euint/sb/ws8_study_current_and_future_18115.pdf?5te6wb> (accessed 7 November 2017).

¹⁰ Peter Vogel, ‘The Future of Legal Education: Preparing Law Students to Be Great Lawyers’ (2015) 93 *Oregon Law Review* 893; Gary Davis, ‘International Conference on the Future of Legal Education: Report to Council of Australian Law Deans – Summary’ <www.cald.asn.au/docs/FutureOfLegEdConfRptSummy.doc> (accessed 7 November 2017).

¹¹ Pasternack et al, above n 9.

more 'experiential' approaches, using 'law school firms' in addition to legal aid clinics.¹² This leads to a question of whether the law and other disciplines may follow the 'medical model' where students do a good deal of their learning and early professional development looking after patients and clients to serve the broader responsibilities of the profession. This would further the calls by some legal educators for lawyers to emphasise human rights and access to justice.¹³

Common Challenges to Professions and Universities Alike

Universities, professions, educators and students are becoming more global.¹⁴ However, the importance of retaining the centrality of professional values remains.¹⁵ Yet market models and vendor/consumer approaches are increasingly seeming to dominate. Some see this in simple terms of universities selling a service, or even a product. This is a development that some scholars apparently welcome.¹⁶ However others warn against it.¹⁷ Similarly, clients are seen to be customers of their professionals, exacerbating the traditional risk of the subordination of ethics to client demand. The creation of large professional firms and their corporatisation have exacerbated concerns about the lack of professional constraints and subjugation to profit and shareholder value.¹⁸ While professions and universities both needed revenue and the most prestigious generally had the greatest capacity to secure that revenue, this was never the central point of either. Unlike 'the customer', the student and client are not always right and the duties of academic and professional are to a mixture of the student/client's best interests and to a wider public good. Indeed, while academics and professionals' duties to the public good are usually served through what they do for students and clients, that public good may trump the interests and wishes of the student/client.

In a similar vein, universities being urged to follow the organisational models of some large corporations. This has led to universities being subjected to a degree of control that is alien to many university traditions (most notably the collegiality that has been central to universities for most of the last thousand years) and is rare/unworkable in other knowledge-based industries.

More generally, the increasing movement of graduates between jobs, careers and even professions¹⁹ mean that universities cannot assume the other elements of life-long learning. Instead, they must prepare students for a varied future. This challenge is also an opportunity to recognise the transferable skills they provide, and

¹² Lorne Sossin, 'Experience the Future of Legal Education' (2014) 51 *Atlanta Law Review* 849.

¹³ See, e.g., Mauro Cappelletti, 'The Future of Legal Education: A Comparative Perspective' (1992) 8 *South African Journal of Human Rights* 1.

¹⁴ Joan Mahoney, 'The Future of Legal Education' (2001) 33 *University of Toledo Law Review* 113; Charles Sampford and Suzanne Condlin, 'Educating Lawyers for Changing Process' in Charles Sampford, Sophie Blencowe and Suzanne Condlin (eds), *Educating Lawyers for a Less Adversarial System* (Federation Press, 1999) 173.

¹⁵ James Holbrook, 'Reflections on the Future of Legal Education' (2014) 2 *The Utah Law Review Online Supplement* 53 <<http://dc.law.utah.edu/onlaw/vol2014/iss1/5/>> (accessed 7 November 2017).

¹⁶ Donald Scott and Shelleyann Scott, *Future Trends in Academic Professional Development* <<https://www.ucalgary.ca/provost/files/provost/scottscott-professionallearningcommunitiesinhighereducation.pdf>> (accessed 7 November 2017).

¹⁷ Steven Freidland, 'Adaptive Strategies for the Future of Legal Education' (2015) 61 *Loyola Law Review* 211; Graeme Broadbent, 'A Handful of Dust: Some Thoughts on the Future Funding of Legal Education and Allied Matters' (2011) 45 *Law Teacher* 213.

¹⁸ Marilyn Warren, 'Legal Ethics in the Era of Big Business, Globalisation and Consumerism' in *Joint Law Societies Ethics Forum* (Melbourne, 2010). See also Sampford and Breakey, above n 5, ch 11.

¹⁹ Something that was already happening but is likely to be accelerated by the challenges set out by Flood, above n 6.

which make some professional degrees, most notably law but also engineering and accounting, a good grounding for a variety of careers.

Some Challenges Arise from University/Professional Tensions

It is common to see professional schools sitting awkwardly between the academy and the relevant professions.²⁰ Others concentrate on the question of what can most usefully be learnt at the various stages of a life-long learning process in which universities cannot provide all knowledge and skills but can provide the pivotal phase that is both the most intense and organised.²¹ Professional accreditation can be a means for recognising and negotiating those roles or it may dominate providers.²²

Funding Professional Education

Professional education has been made possible in several ways:

- *Professional Model*: Professional practice involves an apprenticeship system in which teaching is a professional responsibility, at least for senior member of the profession. They may get benefits from free or cheap labour of apprentices (or even payment as was the case for 'articles') in addition to prestige. This was the traditional model for most professions and remains for post university phases of lifelong learning.²³
- *Monastic Model*: Academics once worked for virtually nothing beyond their food and board, initially as clerics and later as single fellows (marriage was banned for Oxford dons until the 1860s).²⁴ Some academics see some of this re-emerging as their relative pay drops much more than secondary teachers.
- *University Model*: At the university, the costs of tuition are paid by a mixture of benefactors (the richest endowments of Oxford and Cambridge colleges come from royal patrons), students or the state. Where most of the cost is paid by students, this can lead to limited access or debt funding.²⁵
- *Prestige Model*: High prices accrue to big name universities – something that can produce an obsession with rankings.²⁶

²⁰ Robert Roemer and Marian Martinello, 'Divisions in the Education Professoriate and the Future of Professional Education' (1982) 13 *Educational Studies* 203 <http://dx.doi.org/10.1207/s15326993es1302_8> (accessed 7 November 2017); Phyllis Goldfarb, 'Back to the Future of Clinical Legal Education' (2012) 32 *Boston College Journal of Law & Social Justice* 279 <<http://lawdigitalcommons.bc.edu/jlsj/vol32/iss2/4>> (accessed 7 November 2017).

²¹ Sampford and Breakey, above n 5, chs 1, 3.

²² Irving Buchen, 'The Future of Higher Education and Professional Training' (2005) 7 *Foresight* 13.

²³ Stein, above n 4. Stein predicted in 1992 that Universities would largely take on this role.

²⁴ Admittedly this could be lavish.

²⁵ Aaron LeMay and Robert Cloud, 'Student Debt and the Future of Higher Education' (2007) 34 *Journal of College and University Law* 79.

²⁶ Gene Nichol, 'Rankings, Economic Challenge, and the Future of Legal Education' (2012) 61 *Legal Education* 345. This somewhat undermines the pure pleasure of the author of starting a law school that, within 25 years, is ranked number 38 in the world.

Some governments have been raising fees on the basis that a university degree, and especially a professional degree, provides higher incomes. However, the more people who go to university, the closer graduate incomes approach the average. (Indeed, if everyone had a university degree, then the average salary for university students will be the average income for all.)²⁷ Rather than concentrating on the mathematical incompetence of current policies, this suggests a return to the original logic of the Higher Education Contribution Scheme ('HECS') – that the government pays part of the cost for the public benefit in higher education and the student pays for the private benefit. However, as the private benefit drops so should the charge for it, rather than going in the opposite direction.

A mixture of funding from state, benefactors and students (with committed academics prepared to earn less at the university than they would in the profession) is likely to remain. However, those policies that put too great a burden on students or academics will not be able to compete in the long term.

Challenges of CPD

Continuing Professional Development ('CPD') is dealt with at length in other titles (see the CPD Models title.) However, some special challenges are worth noting. In general, existing CPD has tended to be ad hoc and unsuited to what Bierama calls 'liquid modernity'.²⁸ Bierama and Cervero argue for a more coordinated approach that would be familiar to curriculum designers – arguing for offerings to be evidence-based, interdisciplinary and technologically sophisticated as well as involving ethics and leadership.²⁹ Universities could not possibly take on all the life-long learning required. But equally, professions could not take on all that universities do.

In any case, the intensification of knowledge means a key role in future for universities and practice groups.

²⁷ Of course, at that point, everyone will be paying for their degree and the question will be whether higher cost degrees are better than lower cost ones.

²⁸ Laura Bierema, 'Navigating Professional White Water: Rethinking Continuing Professional Education at Work' (2016) 151 *New Directions for Adult and Continuing Education* 53.

²⁹ Ronald Cervero and Barbara Daley, 'Continuing Professional Education: A Contested Space' in Maureen Coady (ed), *Contexts, Practices and Challenges: Critical Insights from Continuing Professional Education: New Directions for Adult and Continuing Education* (Jossey-Bass, 2016) 9; Bierema, above n 28.

Summary

The need for the knowledge developed and managed by the professions (and especially their academic members) is widespread. As one senior member of a conservative law firm once remarked to me: 'there is an awful lot of justice to be done'. If access to professional knowledge is greater and computers can do more of the work, the prospect that there will be more justice rather than fewer lawyers is likely to remain. Universities need to work with professions to make it so. The equivalent could be said of medicine and allied health professions, engineers and architects (making livable homes).

In response to these challenges, universities will continue to change and even take on new forms.³⁰ The need will remain for the development and application of knowledge and skills to pursue the public goods that justify professions. This may involve pro bono work, government payments, redistributive mechanisms (for example, a tax on charges for professional services to provide for those who cannot afford them) or a reinvention of the teaching hospital method.

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³⁰ Though not necessarily Buchen's enthusiastically promoted categories of 'educational entrepreneurs', 'corporate universities' and 'learning leaders': see Buchen, above n 22.