Dame Helen Winkelmann, Chief Justice of New Zealand

Keep Running Up That Hill: The Challenge of Educating a Legal Profession Fit for the Next 150 Years[1]

Public Lecture to Celebrate 150 Years of Legal Education at Canterbury

13 July 2023, Te Pae Convention Centre, Christchurch

E ngā mate o te wā,

E ngā hunga ora,

E huihui mai nei

I raro i te korowai o Ngāi Tahu,

Ki te whakanui i tēnei whare wānanga,

I tēnei kete mātauranga tuatinitini,

Ko ngā kaiwhakawā, ko ngā rōia, ko ngā ahorangi, ko ngā tauira

O ngā rā o mua, o tēnei rā, o ngā rā kei te heke mai hoki

Tēnā koutou, tēnā koutou, tēna tātou katoa

It is an honour to give this lecture as part of the programme of events celebrating the 150th anniversary of this great University. I acknowledge the Chancellor, the Hon Amy Adams, and Vice Chancellor, Professor Cheryl de la Rey. I also acknowledge staff and students of this Law School — past and present.

It is right we also mark this very special occasion for the Law School. Canterbury Law School has produced many of the giants of our profession. Amongst its roll of teaching staff past and present are several legal legends — Professors John Burrows, Jeremy Finn, Philip Joseph, Ursula Cheer, Gerry Orchard and Stephen Todd to name but a few. And its alumni have made important contributions to the law. I cannot do justice to the extent of that contribution today — time does not allow. But some indication can be gained by noting that the 6th Chief Justice of New Zealand, Sir Michael Myers, graduated from this Law School in 1897, and that Presidents of the Court of Appeal who were educated here include Sir Kenneth Gresson, Sir Alfred North, Sir Ivor Richardson, and Sir Willie Young. Many more alumni have served on the courts, in the profession and through government. The first Māori to be admitted as a barrister and solicitor, Tā Āpirana Ngata, was educated at Canterbury College, although, as many did at the time, he completed his degree extramurally — today we would refer to it as remote learning.[2]

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[1] I wish to thank my clerk, Bronwyn Wilde, as someone who was recently a law student, for her help in preparing this speech.

[2] Jeremy Finn *Educating for the Profession: Law at Canterbury 1873-1973* (Canterbury University Press, Christchurch, 2010) at 33.

Christchurch was early in offering legal education at tertiary level. Although it was not the first city to do so (that honour falls to Otago University in Dunedin) Canterbury can boast to be the place where law has been taught continuously in New Zealand for the longest time.[3]

This University, and the Law School has been through its own hard times. The 2011 earthquakes caused difficulty and disruption to this institution. But Canterbury students were able to continue with their studies throughout, thanks to the commitment and manaakitanga of the academic and administrative staff, and of course to the resilience of the students. This experience has stood the Law School in good stead for the challenges of the pandemic.

Given the pedigree and accomplishment associated with this institution, the responsibility to honour it on its 150th birthday is heavy. I confess, and I feel it is a confession in this setting, that I am not a Canterbury alumnus, and I have not taught at this institution. But I reassure myself that as a judge, and more recently as Chief Justice, I am in a sense a scrutiniser and reviewer of the quality of the product of this and other law schools — that perhaps gives me standing.

Judges see the fruits of that legal education. When we place confidence in a lawyer's conduct of a trial or hearing we are in part placing confidence in the education they have received at Law School. In the cases we hear, we also see the fingerprints of lawyers who work outside of the courts — in the "policy shops" and legal departments of government departments, in Parliamentary Counsel's office, in the office of Cabinet, and the clerk of the house, lawyers who work as part of the inhouse legal team of local authorities or large corporate entities. We see the work of the many lawyers in suburban practices, handling transactions and legal documentation for families — the sale and purchase of family homes, and small businesses, the documentation of testamentary dispositions and living wills. We benefit from the assistance provided by lawyers through Community Law and Citizens Advice.

In each of these roles, lawyers perform the constitutionally significant task of enabling people to comply with the law and enabling them to access its protection. In all these roles lawyers are relied upon to know the law, to know the systems through which the law is applied, and how to access or use those systems. Judges therefore have a good understanding of the contribution that this Law School, along with others, has made to the legal profession, the administration of justice, and indeed to the rule of law. [4]

But it is not all one way. Because judges and lawyers have always played a significant role in the life of this University and of this School of Law. Indeed, prominent lawyers played a key role in establishing both. As Jeremy Finn recounts in his book "Educating the Profession", the first body offering tertiary level courses in Christchurch was the Collegiate Union, a predecessor body to the University.[5] It was established in 1871 by a group of leading Christchurch citizens, broadening its courses to include law in 1873. Those leading citizens included Supreme Court judge Henry Barnes

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3 The teaching of law at Otago was interrupted twice before WWI.

4 I note as well that judges have a long history of involvement in legal education in New Zealand. For the first thirty years or so, the only regulation of the legal market was provided by judges. Today that involvement continues, although in a different form, with judges serving on the Council of Legal Education, the statutory body charged with aspects of regulation of legal education.

5 Jeremy Finn, above n 2.

Gresson, and local lawyer, William Wynn Williams, surnames that would carry on down through the law for the next century and beyond.

For the first half of its 150-year history, all the teaching in law at Canterbury University College (as it was called then) was undertaken by practitioners. Classes were taught outside work hours — 8am to 9am and 5pm to 8pm. Students typically worked as undergraduate law clerks in law firms — part of the then business model for law firms. The first full-time professor of law was not appointed until 1957. The teaching staff were practitioners from downtown Christchurch who had to balance the demands of their students with those of their clients. Kenneth Gresson, the same Kenneth Gresson who would go on to be President of the Court of Appeal, taught at Canterbury in the 1930s. He once had to cancel two weeks of lectures because of work pressure, personally reimbursing his students for their lost time — paying them 1 shilling 6 pence (the equivalent of $160NZD in today's money) per student, per hour. He wished them luck in their exams, noting "much hard work before November will, no doubt, be necessary".[6] I am sure the money was welcome, but not perhaps the message.

From the 1930s through to the 1960s, the teaching staff included one Mr Eric Wills, who taught property law and, for a short time, contract. He was also Dean of the Law School for a few years in the 1950s. Through all of this he ran a busy practice, the "business" of which is attested to by his former clerk young John Burrows. John recounts that, lacking any administrative support as Dean, Mr Wills wrote to the University in these terms: "The efficiency of the Law Department would be helped if part-time clerical assistance or a tape recorder could be provided". As John tells the story, the University's response to this extravagant request is not known.

These practitioners, the Gressons, the Wills, were busy people. They did this work because they believed in the importance of the legal profession, and the importance of how lawyers were educated.

Throughout its 150-year history, Canterbury Law School has maintained a commitment to employing practitioners to teach the law. Today that continues — when he is not conducting a busy practice as a KC, James Rapley teaches courses in advocacy. Professor Philip Joseph has himself been known to appear before select committees to explain the finer points of constitutional law, and to make the occasional appearance before the Supreme Court. To my mind this connection between the practice and teaching of the law should be nurtured and, if anything, strengthened, as it feeds into teaching and scholarship, knowledge about how the law works in society and in practice.

I have taken my inspiration for today's lecture from remarks I heard Professor John Burrows make at the ceremonial sitting of the Christchurch High Court to mark the New Zealand Law Society's 150th anniversary about the role that the profession had played in legal education. Professor Burrows said of the teaching of law:[7]

"The right balance between theory and practice has always been a contentious subject … . But we must remember that while it is essential that students acquire a deep critical knowledge of law and its underlying premises, and that while law is rightly an academic subject, law is also an intensely

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6 R O McGechan "The Profession and the Teaching of the Law" (1947) 23 NZLJ 110.

7 John Burrows, Emeritus Professor of the University of Canterbury "The Legal Profession and Legal Education" (New Zealand Law Society 150-Year Anniversary, Christchurch High Court, 5 September 2019).

practical subject. It has to be — it regulates society. And, after all, the common law was made by busy judges, after hearing argument from busy practitioners."

Wherever you read discussion of the history of legal education in New Zealand you will read of the debate to which Professor Burrows refers — a debate about the respective virtues and vices of practical versus academic teaching.[8] I believe that to be a false dichotomy — too simplistic a debate on which to base the design of a curriculum. What I think Professor Burrows captured in that short statement is the need for the discipline of law as taught in our law schools to stay tethered to the practice of law. As Professor Burrows said, it has to, because it is law that regulates society. I would add something else — it has to, because law is a social, historical, and economic artefact of society. Untethered from society it will become unable to respond to the justice needs of that society. Untethered from society, it will lose its purpose and relevance.

This takes me to the title of this lecture and to its content. Some of you may think that the title I chose for this lecture, "Keep Running Up that Hill" is a reference to the Kate Bush song, recently made famous (again) in the Netflix programme, Stranger Things. It is not.

The title connects to two themes of this lecture. First the historical connection between the profession and this Law School that I have already spoken about. It draws on my own memories of 5pm lectures at Auckland Law School in the 1980s. Even then, like in Mr Wills' time, 8am and 5pm were the time slots for the classes taught by practitioners. Although the share of teaching workload was, by the 1980s, carried largely by full-time staff, practitioners still taught some core courses. At the end of the day, busy practitioners, inevitably late leaving the office, would have to run up the hill through Albert Park and then on to the Law School — arriving out of breath. In 1985 and 1986 (about the time the Kate Bush song came out for the first time) I myself made this frenzied ascent many times as a junior lawyer tutoring at the Law School. Arriving to take a tutorial with my glasses fogging up, I had to spend the next 10 minutes of the tutorial effectively sightless. The only difficulty with this title inspiration is that of course there is no hill here in Christchurch that practitioners such as Mr Wills had to climb.

The second theme I had in mind is the challenge that lies ahead for law schools in educating the lawyers of the future, equipped to meet Aotearoa New Zealand's justice needs, and to thrive in whatever career they pursue. This Law School has been running up that particular hill for the last 150 years. I suggest that the climb ahead is no less steep.

To frame those challenges, I begin with the features of society, and of our legal system, that tell us something about what it is we will need from the lawyers of the future and what skills and knowledge they will need to thrive in their careers.

First, ours is a diverse society. It is to the justice needs of this diverse society that the legal profession and judiciary must respond. To respond we require, at least as a collective group, an ability to understand the different lives, values, and needs of these diverse communities. The first responsibility of a legal system is to strive to uphold the ideal of the rule of law so that all are equal

[8] See, for example: Peter Spiller "The History of New Zealand Legal Education: A Study in Ambivalence" (1993) 4 Legal Education Review 223; and Margaret Wilson and A T H Smith "Fifty Years of Legal Education in New Zealand 1926-2013: Where to From Here?" (2013) 25 NZULR 801.

before, and equally entitled to the benefit of, the law.[9] Ignorant of those we represent or see before us, we risk failing to meet this ideal.

Secondly, I point out a particular feature of the legal biosphere. The provision of legal services skews to the well-off, yet legal need is just as pressing, if not more pressing, amongst the poor to middle income members of society. Most people cannot afford a lawyer. Professor Bridgette Toy-Cronin, who has written and researched widely in the area of access to justice, observes that the increase in the cost of legal services has far outstripped the increase in median weekly income.[10] While Legal Aid is meant to fill the gap, the current income threshold for eligibility is still set well below the full-time minimum wage.[11]

Thirdly, I point to a fact of life for all lawyers. We work in a system, indeed in systems within systems. Lawyers operate within a large system — the justice system. They must also engage with numerous other systems in the course of their work. Their clients and employers expect them, indeed need them to understand these systems.

There are systems in our society that bear upon almost every facet of life. There are the meta systems that lawyers should understand — for court lawyers, how courts function, the legislative framework, how the common law is made, and how the administrative state functions. For those in the policy shops of government, there is a need to understand how it is that an idea for positive change can make its way into law, and of course, a need to know about how Parliament operates. Then there are the micro systems with which lawyers need to engage. Criminal lawyers are familiar with this — they know the importance of their working relationship with the prosecutor, the police, the judge, the registry staff, of understanding how to get access to a client in prison. Resource management lawyers are also used to working within the labyrinthine systems of planning and consenting.

It is a feature of most societies that over time, societal and governmental systems grow ever more complex — that is as true in New Zealand as it is anywhere. It is also worth mentioning in this context, that in New Zealand a reconceptualisation of some of the law related systems is going on. For example, engagement with the criminal justice system is increasingly being used as an opportunity to enable government agencies, iwi and community groups to come together to address the causes of offending. This approach lies at the heart of Te Ao Mārama courts. Lawyers of the future will need to play their part in seizing this opportunity for their clients.

Other fundamental changes are afoot. The incorporation of tikanga concepts into statute law is already well advanced, and the place of tikanga in the common law is once again being recognised.[12]

In addition, and not unique to New Zealand, digital and remote technology is changing how lawyers are working, how research is undertaken and even how hearings are conducted. The working environment of lawyers, judges, courts, police, is now already being shaped by technology, a trend that will only accelerate.

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9 It is one of the fundamental obligations of lawyers, recorded in s 4 of the Lawyers and Conveyancers Act 2006, to uphold the rule of law.

10 Bridgette Toy-Cronin "Explaining and Changing the Price of Litigation Services" (2019) NZLJ 310.

11 Notwithstanding a 15 per cent increase to this threshold in January 2023.

12 *Ellis v R* [2022] NZSC 114, [2022] 1 NZLR 239.

The final aspect of this environmental scan I mentioned is its constitutional culture. The judiciary is a branch of government and an important part of our constitutional settlement. Our court system is a vital part of the social infrastructure of our society. But the role of the courts, and of the judiciary is little understood beyond the walls of law schools and court buildings. As multiple commentators have noted, while New Zealand as a society greatly values representative government and compliance with the law, we are notoriously indifferent as to what it is that secures the rule of law.[13]

What flows from this sketch for our law schools? I am very relieved that I have the luxury of simply raising questions and ideas for discussion while leaving for the experts, the faculty, and academic leadership, what the answers are. I acknowledge how hard the task of legal education is. It is hard to prepare aspiring lawyers in this social and legal landscape. No less daunting to be an aspiring lawyer.

Rather than answers then, I have framed this speech around two questions. First, who are we teaching? Secondly, what are we teaching? Having said that, I have not been able to resist a few tentative ideas that may assist with answering these questions as we look to the future of legal education. I suggest that our law schools should be educating lawyers who are able to meet the justice needs of our society — lawyers who will have sufficient knowledge of their community, sufficient understanding of the systems within which they will operate and sufficient skills to fulfil that most fundamental obligation of lawyers — upholding the rule of law. Finally tonight, I conclude with an acknowledgment of the important role of the Law Faculty's academic staff and of the vital role they will play in this task of educating our future lawyers.

Who are we teaching?

The need to achieve a diverse student group

I propose that we need to educate a more diverse cohort of students than we currently are.

The need for diversity in our judiciary and in our profession is often, and correctly, remarked upon as a pressing issue. The most recent "snapshot of the profession" provides us with some information about the makeup of our profession — 7 per cent of practising lawyers are Māori, although Māori make up 16.5 per cent of the general population. 3.35 percent of practising lawyers are Pasifika, as against 8.1 per cent of the population. No attempt is made to gather socio-economic data or data on disability.[14]

Diversity in the profession depends upon diversity in our law schools. Our society needs a law student cohort drawn from a variety of backgrounds — varied ethnically, socio-economically and in terms of life experience. That diversity will enrich all students' learning experience, and ultimately, it will go on to enrich the law. Although some research has been done on diversity within law schools themselves, including by academics at this University,[15] there is no research that is sufficiently

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[13] See, for example: Sian Elias "Transition, Stability and the New Zealand Legal System" (2004) 10 Otago LR 475 at 475; Geoffrey Palmer "The Bill of Rights fifteen years on" (paper presented to the Ministry of Justice Symposium, Wellington, 10 February 2006) at [39] and John Priestley "Chipping Away the Judicial Arm?" (2009) 17 Waikato L Rev 1 at 23.

[14] Louise Brooks and Marianne Burt "Snapshot of the Profession 2022" (2022) 952 LawTalk 6.

[15] Lynne Taylor and others *The making of lawyers: Expectations and experiences of first year New Zealand law students* (Ako Aotearoa, University of Canterbury, Christchurch, 2015); Lynne Taylor and others "Ethnicity and engagement in first year New Zealand Law programmes" (2017) 36 Higher Education Research & Development 1047.

recent, accessible, or broad in scope. Without regular, reported research, both quantitative and qualitative, it is impossible to know if law school initiatives targeting diversity are in fact working.

We do have some information, however. Through a series of Official Information Act requests in 2018, the New Zealand Herald discovered that only 6 per cent of students accepted into law schools around the country were from decile 1-3 schools, and only 1 per cent from decile 1. By contrast, 60 per cent of entrants came from decile 8 to 10 schools.[16] The Herald also reported that the financial assistance offered through scholarships went largely to the students who least need it — high decile schools receive four times as many entry-level scholarship as low-decile schools.[17]

There are obvious limitations to this information, but it does suggest a student cohort which overwhelmingly reflects the comfortable to well-off part of our society. It is they who will go on to be our lawyers, and to be our future judges. Missing are the children who grow up in poor families. Missing is the knowledge they could bring to the law. Knowledge of the vulnerability and disempowerment that are features of life for the poor. Yet no-one would suggest that only the children of the well-off have the intellect and ability to be lawyers.

British theorist Stafford Beer coined the famous phrase: "The purpose of a system is what it does. There is after all no point in claiming that the purpose of a system is to do what it consistently fails to do".[18] We should be interested to know whether we have indeed designed a legal education system that has a tendency to exclude those from lower socio-economic groupings.

There are projects in the profession aimed at addressing this deficiency — directed to encouraging students from low decile schools to aspire to law, and supporting them into and through law school, through a mix of mentoring, support, and financial aid.

What can the law schools do?

My first suggestion is to regularly collect information on the ethnic makeup of our law schools, and on socio-economic background and disability. If we don't measure this, then it will forever be an issue we talk about but do little to address.

As to addressing the barriers to entry, scholarships and admissions policies will provide some of the answers. But a broader strategy is needed directed at enabling young people, coming from very unequal starting points, to have a fair opportunity to succeed. When I was a student, the fact that courses were a year long, and that there was a plussage system (a system which enables course marks to count only if they help your final exam mark), provided an opportunity for some levelling up. It allowed for the reality that students from comfortable homes start at a very different point than those from poor homes. It allowed for the reality that disadvantage can persist beyond admission to law school, as work and family obligations still have to be juggled with study, meaning course work may suffer. This reality persists today, yet today we have 4-month semesters, and most

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See also Mele Tupou-Vaitohi & Wiliame Gucake *Fofola na ibe – Improving Pasifika Legal Education in Aotearoa Report on Talanoa Research Findings and Recommendations* (The Borrin Foundation and Victoria University of Wellington, Wellington, December 2022).

16 Kirsty Johnston "Want to be a doctor, lawyer or engineer? Don't grow up poor" *New Zealand Herald* (online ed, Auckland, 15 September 2018).

17 Kirsty Johnston "Half of university scholarships go to wealthiest students while the poorest struggle" *New Zealand Herald* (online ed, Auckland, 6 October 2018).

18 Stafford Beer *Diagnosing the System for Organizations* (Wiley, Chichester, United Kingdom, 1985) at 99.

Universities are abolishing or have abolished plussage. Those limited opportunities for addressing these disadvantages are disappearing.

The use of technology offers new opportunities for addressing these disadvantages, but also, if care is not taken, to worsen them. Debates around remote learning are ongoing in law schools throughout the country, and the issues are complex. I only wish to weigh in to suggest that equity should be at the centre of any decision-making — and perhaps to remind you that Tā Āpirana Ngata was a remote learner.

I acknowledge that the issue of the makeup of the student body has not passed law schools by. I expect that all law schools have support networks for Māori and Pasifika students, although I understand these are largely student led. There are also targeted admissions schemes for Māori, Pasifika, disabled and low socio-economic students. These are important initiatives, but I suggest a more systemic approach is needed. I am going to be controversial and argue for the retention or reintroduction of plussage. I also suggest that, at least for the entry subjects into law school, course content could be designed to provide a ramp to understanding, rather than presenting the law as a disaggregated and complex puzzle which only good lawyers will be able to solve.

Just how to design a system which allows young people from disadvantaged backgrounds a fair chance to succeed is of course also a conversation for the wider university — but the law faculty, with the combined powers of reason and persuasion of its members, must surely be well placed to lead it.

What are we teaching?

There are many issues to be addressed under this heading — I highlight just a few.

Teaching law and skills that will meet legal need

First, I suggest we should be teaching law that will meet the legal needs of our community.

I mentioned as one feature of the legal landscape that the provision of legal services skews to the well-off, and that the needs of the poor are not met. That holds largely true even for middle-income sections of society.[19] I do not know for sure, but I suspect that, when designing courses and course content, law schools in New Zealand do not have regard to the legal needs people have. To be fair, they would be hard pressed to do so because there is very little information collected about that.

Legal need is a dramatically under researched area in New Zealand.[20] Legal academics do not traditionally have much appetite, or skill, for empirical research — tending to favour doctrinal or theoretical scholarship. And, as Professor Michael Taggart noted, with the introduction of Performance Based Research Funding in the 2000s encouraging publication in international

[19] With the notable exception of the sale and purchase of the family home, and the completion of a will.

[20] The last Ministry of Justice national survey on unmet legal needs was in 2006 (plans are underway to run a new survey in 2023 in conjunction with the Ministry of Business, Innovation and Employment). Community Law Centres and Citizens Advice Bureaus record some of this information themselves, but the recent research project by University of Otago Professors on expressed legal needs has been the first attempt to bring these findings into the world of academia: Professors Bridget Toy-Cronin and Kayla Stewart *Expressed legal need in Aotearoa: From Problems to Solutions* (Civil Justice Centre, University of Otago, Dunedin, 2022).

journals, there is less scholarship on issues of concern to the local legal community and society.[21] But understanding legal need, and the obstacles to that need being met, are important to the functioning of the system.

Overseas research suggests that most people with legal need do not seek assistance — either because they do not conceptualise their problem as a legal problem, or because they have no expectation that there is a solution available to them.[22] From speaking to community service providers I know that pressing legal need exists in the areas of rented housing, employment, care and protection, welfare entitlements, immigration and pay day lending. Research undertaken on expressed legal needs by Otago University academics, in association with the Citizens Advice Bureau, adds to this list consumer rights, estates, family law and neighbour disputes.[23]

Some of these, such as rented housing, welfare entitlements, immigration and pay day lending are largely invisible areas of law. Even when they do make their way to a lawyer, resolution of the problem is unlikely to be reported. These are cases more likely to be decided in a tribunal than a court. But law that is taught in law schools overwhelmingly focuses upon the output of Senior Courts. [24]

What law schools can do is ensure that, in the core subjects, students acquire some familiarity with the sources of law in these areas, and ideally, with the core concepts. Law schools can also expose students to the nature of these legal issues and to the value of working in these areas. In other jurisdictions, legal clinics are a popular aspect of legal education. For example, the University of Toronto offers more than 20 clinal legal education papers a semester, with content ranging from housing and income security to advocating for injured workers.

Legal clinics are an idea that has come and gone at our law schools over the years. I see them as an important aspect of legal education, and moreover as supportive of a good student experience at law school. They have the benefit of creating the connection between law as taught and as practised, and of exposing students to the nature of legal need in communities and the human faces of that need.

I am pleased to see that students at Canterbury are given the opportunity to work at Community Law Canterbury and at the free law clinic at the Canterbury Migrants Centre. I also understand that after the 2011 earthquakes, Canterbury students volunteered to assist the local community with their legal issues such as insurance policies and employment rights.[25]

Initiatives such as this are important because they make visible areas of legal need, and of law that would otherwise be invisible to law students. But I make one observation. It is important that

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21 Michael Taggart "Some Impacts of PBRF on Legal Education" in Claudia Geiringer and Dean R Knight (eds) *Seeing the World Whole: Essays in Honour of Sir Kenneth Keith* (Victoria University, Wellington, 2008) 250 at 259.

22 Deborah Rhode "Access to Justice: An Agenda for Legal Education and Research" (2013) 62 Journal of Online Legal Education 531.

23 Bridgette Toy-Cronin and Kayla Stewart, above n 20.

24 Although I note that Victoria Law School has in the last few years twice taught a course on Welfare Law, and in 2017 this Law School taught a course on Landlord and Tenant law. University of Auckland has taught courses in Social Welfare Law, Policy and Action, and also Housing Law and Policy.

25 Kurt Bayer "Students volunteering with post-quake law cases" *New Zealand Herald* (online ed, Auckland, 24 October 2012).

"legal clinic" engagements such as these take place with teaching structure and resource around them. That seems obvious if this is to be part of the education experience. Certainly, it is necessary since I know that lawyers who work in Community Law Centres are typically pressed for time and little able to take on that additional teaching role.

Encouraging Systems Thinking

The next area I suggest is worthy of focus is the systems operating within or touching upon our legal system. Law students are not taught about systems, nor to think systemically. I have already mentioned the system that produces our law students. Many of the issues I have talked about in relation to legal need are also systemic. The obstacles that lie in the way of access to justice are systemic — the form our statutes take, the dispute resolution pathways they create, the information that is available to help people access their rights, the processes and costs of courts and tribunals, the availability of legal advice and representation. These issues and their interplay are worthy focus of systemic research and study.

Nevertheless, with some truly notable exceptions, this is an area that is little studied in our law schools, and little researched in our country.[26] But educating law students about systemic issues bearing upon access to justice in this broad sense would be a significant contribution to an effective legal profession — effective in undertaking its core role of upholding the rule of law.

Perhaps it would also enhance the degree experience for students, making explicit the social good that law is. As to this, I note the initial findings of a longitudinal study of law students in 2015 by lecturers from this University — Professors Lynne Taylor, Natalie Baird, John Caldwell, Debra Wilson, and Dean Ursula Cheer — published as a project for Ako Aotearoa under the title "The Making of Lawyers: Expectations and Experiences of First Year New Zealand Law Students".[27] This research included information about students' backgrounds, and aspirations. One question students were asked was why they wanted to complete a law degree. There were 673 total responses. The three highest preferences selected were, in descending order: "I am passionate about justice and law", "I want to make a difference" and "I want to help people".

Constructing courses in access to justice is not untrodden territory. A short review of overseas universities reveals that many offer courses in access to justice.[28] These courses typically examine the fundamentals of access to justice from a theoretical and practical perspective including consideration of self-represented litigants, pro bono work and the increasingly prominent issue of "cause lawyering".

Perhaps the most interesting are two courses being run by the University of New South Wales. In one, "Designing technology solutions for access to justice" students are taught how to design and build applications to facilitate access to justice, and are given an opportunity to use those skills by building a project to support a not-for-profit organisation. The other, "Legal Aid and global justice

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[26] Notable exceptions include Acclaim Otago (Inc) *Understanding the Problem: An analysis of ACC appeals processes to identify barriers to access to justice for injured New Zealanders* (July 2015); and Bridgette Toy-Cronin and Kayla Stewart, above n 20.

[27] 23 Wai Rev 112.

[28] For example, the Universities of Stanford, Berkley, and New South Wales, and the University College of London.

lawyering" undertakes a comparative analysis of strategic legal responses to communities' legal needs.

In her article "What the Access to Justice Crisis Means for Legal Education", Kathryne Young describes the challenge for legal education in this way:[29]

> … we need to teach law students as much as we can about the ecosystem of justiciable problems, where lawyers fit into this ecosystem, when lawyers are and are not useful to everyday people, and how to partner with other actors in the ecosystem as opposed to training them to focus solely on the narrow legal problem in front of them.

This is a good framing of the systems issue. Lawyers have always needed to work with others in the system to be effective. Yet that is not something we teach. Because of the trends in our legal system, referred to earlier, that challenge will be considerably greater for future lawyers than it is today. There is a contribution practising lawyers can make here. They understand those systems. They see how the law does its work in practice.

Systems thinking will also be necessary as the profession finds its critical role in a society where many will have ready access to legal information and even to some form of advice and documentation generated by digital systems. We have already had a glimpse of this future, with the recent proliferation of large language models such as ChatGPT. It will also be necessary as we reconceptualise a legal system which increasingly will not be conducted on a face-to-face basis, but rather through AVL and computer screens. We need as a profession, an academy and a judiciary, to be actively thinking about what all this means for our model of justice, and what change we should be advocating for — and that which we should be resisting. Technology has enormous potential to increase that percentage of our population with access to legal advice, to legal representation and to the courts and tribunals. It has the potential to generate new business models for lawyers. But it also has potential to be undermining of critical aspects of the legal system.

In the judiciary we are working hard to think through the implications of digital evolution for the administration of justice. Recently we published a Digital Strategy for the Courts.[30] Technological developments will also change the way that law is taught — perhaps consideration should be given to a digital strategy for legal education.

Perhaps also, much of what I have said to date points in the direction of a cross-disciplinary approach to the study of law. I have highlighted gaps in research into legal need, but also gaps in our knowledge about the makeup of our profession, and our law schools. But the gaps don't end there. We don't know what a good law is, because we don't teach lawyers how to measure things like that. Sociology students are taught more about how the law operates in society than our law students are. Political science students can learn more about the democratic theory that underpins judicial review than can our law students. Sir Geoffrey Palmer observes that New Zealand has been slow to refine our legal institutions using evidence, because of the absence of that evidence.[31] He suggests a need for subjects such as statistical and survey-based research to become subjects in the curriculum. Perhaps our law students would benefit from courses taught not just by lawyers but

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29 (2021) 11 UC Irvine L Rev 811 at 831.

30 Chief Justice of New Zealand | Te Tumu Whakawā o Aotearoa *Digital Strategy for Courts and Tribunals* (Te Tari Toko i te Tumu Whakawā | The Office of the Chief Justice, Wellington, March 2023).

31 Geoffrey Palmer "Some Thoughts on Legal Education" (2017) 48 VUWLR 209.

also by statisticians, economists, political scientists and software engineers. None of this would be a world first — just such a cross-disciplinary approach is taken in other jurisdictions.

Leadership and engaged legal scholarship

The final part of this lecture tonight is addressed to the teaching staff and academics of this institution.

First, I would like to acknowledge the role that the legal academy plays in speaking up on critical issues when it is necessary to do so. This contribution you make is to be seen against the background of a funding model which seems to provide no incentive (and perhaps to act as a disincentive) for the study of New Zealand based topics. And against the background of the heavy teaching and administrative load carried by legal academics.

The importance of the legal academy was apparent during the pandemic. Public law academics did valuable work subjecting government action to scrutiny and giving shape and substance to the constitutional and public law issues in play in that response. We also saw the value of this contribution in relation to the recent Three Waters entrenchment debate, when academics from several universities took the unusual step of issuing an open letter raising concerns about the inclusion of an entrenchment provision in ordinary legislation[32]. This is a model of engaged legal scholarship which ensures the law is brought to bear upon issues in society where the law should have something to say.

One of the characteristics of universities, enshrined in legislation, is that "they accept a role as critic and conscience of society".[33] In New Zealand, with its culture of "notorious indifference" to our constitutional arrangements, this is a vital service that this Law School and the others around New Zealand provide. We are a small nation, tucked away at the bottom of the world, and anchored in the Pacific. Without the scholarship of our own academy, the forum of public debate on matters of societal and constitutional moment may fall silent.

Secondly, and to conclude, I acknowledge that the issues I have raised in this lecture and the ideas I have tentatively proposed suggest new areas of teaching, and at least some recalibration of existing teaching. I acknowledge there are resource constraints and that parts of the current curriculum are required teaching. Nevertheless, there are challenges to the present model that must be met. There is work to be done, hard choices to be made. But then, the task of legal education has always been difficult. Compromises will have to be made and perfection is not possible. But the stakes are high, and so I say, keep running up that hill.

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32 Michael Neilson "Three Waters: Lawyers' constitutional concerns over entrenched privatisation provision—'dangerous precedent'" *New Zealand Herald* (online ed, Auckland, 28 November 2022).

33 Education and Training Act 2020, s 268(2)(d)(E).