

THE CONSTRUCTION OF THE LEGAL IDENTITY: 'GOVERNMENTALITY' IN AUSTRALIAN LEGAL EDUCATION

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Research into the way that law students construct their legal identities (particularly regarding whether they maintain socially idealistic aims) relies on problematic assumptions about how power relations operate. Foucault's work, particularly that on 'governmentality', provides the conceptual tools to address these limitations, and think differently about the way the legal identity is constructed throughout legal education. This paper applies this framework to Australian legal education with the intent of moving research in this area in a more productive direction. Doing so will also provide a more nuanced basis for political action than is possible with current conceptual frameworks.

I INTRODUCTION

Studies into the reasons that students undertake law degrees indicate that for many (although certainly not all students), social ideals such as using the law to fight for social justice and addressing social disadvantage are strong motivators.¹ It appears, however, that law schools do not foster such ideals and that, throughout their legal education, many of these students become cynical about the ability of the law to achieve social change.² In some extreme cases, they experience alienation from their studies,

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¹ J Allen and P Baron, 'Buttercup Goes to Law School: Student Wellbeing in Stressed Law Schools' (2004) 29 *Alternative Law Journal* 285, 286; T Booth, 'Student Pro Bono: Developing a Public Service Ethos in the Contemporary Australian Law School' (2004) 29 *Alternative Law Journal* 280, 281; Jeremy Cooper and Louise Trubek, 'Social Values from Law School to Practice: An Introductory Essay' in Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (1997) 1, 14; D Schleef, "'That's a Good Question!': Exploring Motivations for Law and Business School Choice' (2000) 73 *Sociology of Education* 155, 157; J Webb, 'Developing Ethical Lawyers: Can Legal Education Enhance Access to Justice?' (1999) 33 *The Law Teacher* 284, 285-6. Although they are not the concern of this paper, it must be acknowledged that not all law students enter legal education with such ideals, nor even with the intent to practise law.

² Schleef, above n 1, 157.

feel that their own voice is silenced, or develop mental and physical health problems.³ Generally, few of these students go on to actually pursue social change in their legal practice.⁴

A body of critical research and scholarship on legal education has sought to understand why law students who have 'altruistic aspirations geared toward public service',⁵ instead gain employment in corporate practice. This critical legal narrative argues that:

- External forces (such as the legal profession, coupled with user-pays philosophies in higher education) exercise power in legal education to constrain the law curriculum (such as the content of compulsory units);⁶
- This curriculum therefore reflects the narrow (generally corporate or pro-business) interests of the legal profession, resulting in legal education becoming a form of ideological indoctrination that discourages critical or contextual discussion, and consequently;⁷
- The techniques and practices employed within legal education (teaching methods that encourage passivity, or classrooms that foster a competitive ethos and set boundaries on debate) are calculated to indoctrinate, and operate upon students as passive receptacles into which professional ideologies can be poured.⁸

³ Sheldon and Krieger cited in Allen and Baron, above n 1, 285-6. These included a decline in life satisfaction and wellbeing, or the development of depression.

⁴ Schleef, above n 1, 157. As Schleef states, 'the trend away from a social justice orientation while in law school has been widely documented'.

⁵ Ibid. A summary of this research is provided below.

⁶ A Hunt, 'The Case for Critical Legal Education' (1986) 20 *The Law Teacher* 10, 11; R Guthrie and J Fernandez, 'Law Schools in the 21st Century' (2004) 29 *Alternative Law Journal* 276, 277; M Keyes and R Johnstone, 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' (2004) 26 *Sydney Law Review* 537, 555; M Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press, 1996) 75; M Tsamenyi and E Clark, 'An Overview of the Present Status and Future Prospects of Australian Legal Education' (1995) 29 *The Law Teacher* 1, 4, 8; Anne Bottomley, 'Lessons From the Classroom: Some Aspects of the "Socio" in "Legal" Education' in Philip Thomas (ed), *Socio-Legal Studies* (1997) 163, 180; M Thornton, 'The Idea of the University and the Contemporary Legal Academy' (2004) 26 *Sydney Law Review* 481, 483; I Ward, *Introduction to Critical Legal Theory* (Cavendish Publishing, 2nd ed, 2004) 148.

⁷ Adrienne Stone, 'Women, Law School and Student Commitment to the Public Interest' in Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* (1997) 56, 61; Jiri Přibáň, 'Sharing the Paradigms? Critical Legal Studies and the Sociology of Law' in Reza Banaker and Max Travers (eds), *An Introduction to Law and Social Theory* (2002) 119, 127; Ward above n 6, 147-9.

⁸ H Charlesworth, 'Critical Legal Education' (1988-9) 5 *Australian Journal of Law and Society* 27, 30; Gerry Simpson and Hilary Charlesworth, 'Objecting to Objectivity: The Radical Challenge to Legal Liberalism' in Rosemary Hunter, Richard Ingleby and Richard Johnstone (eds), *Thinking About Law: Perspectives on the History, Philosophy and Sociology of Law* (1995) 86, 106; Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Australian Universities Teaching Committee, 2003) 395, 463; Thornton, 'Dissonance and Distrust', above n 6, 78; D Weisbrot, 'Taking Skills Seriously' (2004) 29 *Alternative Law Journal* 266, 267. See, further, Matthew Ball, *Legal Education and the 'Idealistic Student': The Need for a 'Governmental' Analysis* (2006) Legal Knowledge: Learning Communicating and Doing, Australasian Law Teachers Association Conference Proceedings 5-6

<http://www.alta.edu.au/pdf/conference/published_papers/ball_m_2006_alta_conference-paper_legal_education_idealistic_student.pdf> at 10 August 2007.

The end result, according to these arguments, is that law students have been successfully indoctrinated into thinking that the law operates unproblematically and that only incremental law reform is appropriate or necessary. This narrative underpins political action that seeks to prevent the ‘repression’ of this idealism through legal education. Such action includes attempts to loosen the grip of the profession over the curriculum, teach the law critically, or otherwise encourage students to maintain their social ideals and resist indoctrination.⁹

The research project discussed within this paper seeks to render this critical narrative problematic, by examining the construction of the legal identity through the more nuanced conceptual framework provided in the work of Michel Foucault. Foucault’s work was concerned with the *power* relations through which individuals are governed, the relations of *knowledge* that underpin this governance, and the effect these have on the actions of individuals as *subjects*. As the critical narrative relies on problematic understandings of these elements (power, knowledge and the subject), Foucault’s work provides useful tools with which to unpack this narrative. Furthermore, as mentioned above, political action within legal education that is based on this critical narrative and thus premised on these problematic assumptions is likely to have limited efficacy. Foucault’s concept of ‘governmentality’, however, provides the conceptual nuances required to address these problems and move research into the construction of the legal identity, as well as political action based upon this research, in a productive direction.¹⁰

As such, this paper seeks to use Foucault’s work to think differently about the critical narrative itself, and not create an alternative, more accurate, or more definitive explanation or ‘truth’ explaining this loss of idealism *per se*. Nor does this analysis focus solely on the ‘loss’ or ‘repression’ of student ideals. As these are constructions of the critical legal narrative, to do so would be contradictory when this research seeks to render this critical narrative problematic. In a similar vein, this research does not seek to absorb Foucault’s work into a liberatory or emancipatory political agenda, such as that which underpins the critical approach. Not only is this problematic when utilising Foucault’s own tools, but it would again contradict the purpose of this analysis.

This paper will begin by outlining the way in which Foucault’s conceptual tools of power, discourse and the subject can be used to problematise the critical narrative, demonstrating the conceptual limitations of this framework. It will then introduce Foucault’s notion of ‘governmentality’, outlining how this constitutes a methodological approach to researching legal education, and then briefly summarise how Foucault’s work has previously been used to examine legal education. The final sections of this

⁹ See for example Hunt, above n 6; Charlesworth above n 8.

¹⁰ The concept of governmentality has previously been used in a wide range of educational studies and studies of power and governance, but to date has not been used to examine legal education. On governmentality and its wide application, see generally, G Burchell, C Gordon and P Miller (eds), *The Foucault Effect: Studies in Governmentality* (Harvester Wheatsheaf, 1991). On the application of Foucault’s work (including governmentality) to education, see generally, Ian Hunter ‘Assembling the School’ in Andrew Barry, Thomas Osborne and Nickolas Rose (eds), *Foucault and Political Reason: Liberalism, Neo-Liberalism and Rationalities of Government* (1996) 143; T Popkewitz and M Brennan (eds), *Foucault’s Challenge: Discourse, Knowledge and Power in Education* (Teachers College Press, 1998); M Peters and T Besley (eds), *Why Foucault?: New Directions in Educational Research* (Peter Lang, 2007); S Ball (ed), *Foucault and Education: Disciplines and Knowledge* (Routledge, 1990); B Baker and K Heyning (eds), *Dangerous Coagulations: The Uses of Foucault in the Study of Education* (Peter Lang, 2004).

paper will use this framework to provide a preliminary analysis of Australian legal education, concluding with an outline of the benefits of this conceptual approach over previous research in this area, and its implications.

II PROBLEMATISING THE CRITICAL NARRATIVE

Analysing the critical narrative constitutes an important part of this project. This section will do this by using Foucault's conceptual tools, thus providing the groundwork for the use of a governmental framework in legal education research. By utilising Foucault's conceptual tools of power, discourse and the subject, the certainty of the assumptions underpinning the critical narrative can be destabilised quite effectively.¹¹

To begin with, a major feature of the critical narrative is that law schools *repress* subjects through the imposition of ideology. This is problematic because Foucault did not believe that subjects had 'real' interests that could be repressed, and instead that forms of identity or self were constructed through power relations in the social body.¹² Furthermore, the very idea of *ideologies* repressing students is problematic because it implies that the curriculum taught is false and obscures the 'truth' of the law.¹³ Foucault's work was concerned with the history of 'truths' and the relations between power and knowledge.¹⁴ Ultimately, as relations of power and knowledge construct both the subject as well as forms of knowledge of the law, there can be no inherent, essential or 'real' interests to be repressed, nor a 'false' knowledge of the law that aids this repression.

The critical approach is also characterised by a repressive notion of power, with power being possessed by the legal profession or law teachers and exerted over powerless students, with teaching methods, assessment tasks and the unit content representing the will of these powerful groups. In contrast, Foucault saw power as much more complex and productive,¹⁵ constituting not a property, but an 'agonistic' relationship exercised from innumerable points, including by those who, it would normally be argued, hold no power at all.¹⁶ Because of the historical contingency and complexity of power relations, the range of programmes that govern cannot operate according to a single will.¹⁷ Furthermore, as 'power would be a fragile thing if its only function were to repress...exercising itself in a negative way',¹⁸ Foucault saw it as being productive,

¹¹ For an extended discussion, see further Ball, above n 8.

¹² C O'Farrell, *Michel Foucault* (Sage Publications, 2005) 98; Michel Foucault, 'Body/Power' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (1980) 55, 58; Michel Foucault, 'Truth and Power' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (1980) 109, 118.

¹³ S Mills, *Michel Foucault* (Routledge, 2003) 34 and 54; Foucault, 'Truth and Power', above n 12, 118.

¹⁴ Mills, above n 13, 53, 56, and 62.

¹⁵ M Foucault, *The Will to Knowledge: The History of Sexuality Volume 1* (Penguin Books, 1998) 82-5; Michel Foucault, 'Power Affects the Body' in Sylvère Lotringer (ed), *Foucault Live: Collected Interviews, 1961-1984* (1996) 207, 207 and 210; Michel Foucault, 'Questions on Geography' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (1980) 63, 72; Michel Foucault, 'Two Lectures' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings 1972-1977* (1980) 78, 90.

¹⁶ Mills, above n 13, 34; Foucault, 'Power Affects the Body', above n 15, 210.

¹⁷ Foucault, 'The Will to Knowledge', above n 15, 92 and 94; Foucault, 'Power Affects the Body', above n 15, 210.

¹⁸ Foucault, 'Body/Power', above n 12, 59.

producing knowledge, *producing* techniques of governance, and *producing* subjects.¹⁹ If there is no essential or ‘true’ self, then power cannot repress or negate this self; it can only produce *different kinds* of self. Political projects that claim to ‘liberate’ a ‘deeper’ part of the self that has been ‘repressed’ are themselves an exercise of power operating to construct forms of identity.

The final major element of the critical legal narrative unpacked here is the assumption that law students are passive receptacles, having little choice but to accept the professional ideology that is ‘imposed’ upon them. Foucault’s work on power always incorporated a place for the potential modification of power relations, and his later works on ethics affirmed the freedom and autonomy of subjects in giving shape to their own selves and not having forms of subjectivity simply imposed upon them.²⁰ Such ideas are inconceivable by the critical narrative, which posits that law school is a disciplinary institution that inscribes ways of ‘think[ing] like a lawyer’ upon the docile bodies of law students,²¹ making little, if any, concession to the active role students play in this process, in contrast to Foucault’s later work.²² The critical legal narrative largely assumes that students (particularly from disadvantaged groups) have inherent interests which are repressed by power relations exercised over them in a negative way by the legal profession to achieve the profession’s own ends. As such, this narrative can ascribe no intention or freedom to students who construct their legal identity in ways that do not incorporate social ideals or political action.

The absence of conceptual nuances within this explanatory narrative allows for it to be challenged on three grounds: the assumptions it makes about ideology, power and the subject. This results in a limited way of conceptualising the knowledge to which individuals are subject, how external influences and interpersonal relations shape the creation of a ‘legal identity’, and how an individual acts upon themselves in this process.²³ Not only is Foucault’s work useful for rendering this narrative problematic, but it is also useful for approaching the construction of the legal identity differently.

III THINKING ‘GOVERNMENTALLY’ ABOUT LEGAL EDUCATION

Foucault’s notion of ‘governmentality’ can provide conceptual and methodological nuances to research on the construction of the legal identity without relying on the problematic assumptions of the critical legal narrative. It does not reduce the legal identity to a representation of the intent of the legal profession in the last instance, nor does it suggest that students possess real interests of which they remain unaware. Furthermore, it does not utilise binary distinctions when considering the legal identity – that it is *either* conservative *or* socially radical.

¹⁹ Foucault, ‘Two Lectures’, above n 15, 102; O’Farrell, above n 12, 100-1; Mills, above n 13, 36.

²⁰ Michel Foucault, ‘On the Genealogy of Ethics: An Overview of Work in Progress’ in Paul Rabinow (ed), *Ethics: Subjectivity and Truth. Essential Works of Foucault 1954-1984: Volume 1* (2000) 253; M Foucault, *The Use of Pleasure: The History of Sexuality Volume 2* (Vintage Books, 1990) 6 and 10-11.

²¹ Thornton, ‘Dissonance and Distrust’, above n 6, 79-80.

²² Michel Foucault, ‘The Subject and Power’ in James Faubion (ed), *Power: Essential Works of Foucault 1954-1984: Volume 3* (2000) 326, 340-1. See also Michel Foucault, ‘The Ethics of the Concern for the Self as a Practice of Freedom’ in Paul Rabinow (ed), *Ethics: Subjectivity and Truth. Essential Works of Foucault 1954-1984: Volume 1* (2000) 281, 292.

²³ Ball, above n 8, 15.

Rather, a governmental analysis requires a 'rejection of the founding or constitutive subject of philosophical humanism',²⁴ removing the individual from their modernist sovereignty as the originator of all social action and meaning. It requires the recognition that no natural or essential identity exists to be discovered or denied, liberated or repressed. Instead, subjects (or forms of self) are constructed through social relations and interactions with a diverse range of practices of government. The subject must therefore be considered not as a substance, but a form. It 'is never given to itself, but formed, organised, shaped, and indeed dislocated within diverse modalities of practice'.²⁵ These practices involve relations to forms of knowledge, relations of power, and relations with the self,²⁶ and the interaction between the three constitutes the focus of governmental research.²⁷

On this basis, a governmental analysis recognises that practices of government operate on a continuum between two poles. One pole consists of *governmental practices* that exist externally to the subject, and construct identities. The other pole consists of *practices of the self*, which are those techniques that individuals adopt to give shape to their own 'selves'.²⁸ Forms of knowledge underpin the practices within both of these poles.

In looking at governmental practices, this analysis seeks to establish the *governmental rationalities* that represent the 'thinking' behind government (referring to how government is spoken and thought about, particularly its justifications, appropriate targets, limitations, and the kinds of identity that are to be constructed),²⁹ the *programmes of government* developed (translating governmental rationalities into practical designs to govern),³⁰ and the *technologies* that are utilised to put these designs into effect (the mechanisms, techniques, expertise, and know-how that implement government).³¹ At the same time, examining practices of the self,³² requires a consideration of the *ethical substance* to be worked upon (the part of the individual that is the target of ethical work),³³ the *mode of subjection* or justification for these practices (the authority to which individuals defer),³⁴ the *ethical work* involved (the physical or mental practices giving shape to the identity),³⁵ and its *telos* or end goal (the kind of identity to be achieved).³⁶

²⁴ M Dean, *Critical and Effective Histories: Foucault's Methods and Historical Sociology* (Routledge, 1994) 195.

²⁵ Ibid.

²⁶ Ibid 114.

²⁷ Ibid 211-12.

²⁸ See generally N Rose and P Miller, 'Political Power Beyond the State: Problematics of Government' (1992) 43 *The British Journal of Sociology* 173; M Dean, *Governmentality: Power and Rule in Modern Society* (Sage Publications, 1999) 12.

²⁹ Rose and Miller, above n 28, 175, 178-9.

³⁰ Ibid 175.

³¹ Ibid 183.

³² Foucault, 'The Use of Pleasure', above n 20, 26-8. In this text, Foucault sets out a number of methodological guideposts for examining this relation to the self.

³³ Foucault, 'On the Genealogy of Ethics', above n 20, 263; O'Farrell, above n 12, 115; Foucault, 'The Use of Pleasure', above n 20, 26.

³⁴ Foucault, 'The Use of Pleasure', above n 20, 27.

³⁵ Foucault, 'On the Genealogy of Ethics', above n 20, 265; O'Farrell, above n 12, 115.

³⁶ Foucault, 'On the Genealogy of Ethics', above n 20, 265; O'Farrell, above n 12, 115.

It is through the operation of, and interaction between, these two sets of practices, that forms of identity are constructed. The next sections of this paper will apply this framework to Australian legal education, demonstrating the conceptual nuances that it provides over the critical narrative, and what this can mean for political action in the law school.

A *Foucault Goes to Law School: The Current Literature*

Foucault's work has only been used extensively in one other analysis of Australian legal education. Nickolas James has previously analysed legal education as a discursive field characterised by six discourses. Discourses govern what can be said and thought regarding a particular object, shaping the contours of 'truth' about it (in this case the object was legal education). Each discourse within a discursive field is in perpetual competition with others to establish a 'regime of truth', altering power relations in order to do so. In the process, these changing contours of knowledge construct particular kinds of subjects.³⁷ James' analysis provides a starting point for this project because discourses feature within all practices of government.

Discourses feature in rationalities of government because they provide the basis of what can be said and known about 'things', state how it is appropriate to govern, and define the proper objects of government. Discourses also feature in practices of self-governance, presenting knowledge of the world and a structure to the thinking of individuals, allowing them to develop as particular subjects, while also providing the moral justifications for ethical action.³⁸

The six discourses that James identified underpin this governmental analysis and feature throughout this paper. These discourses are doctrinalism (concerned with 'black-letter' law or an otherwise positivist knowledge of the law),³⁹ vocationalism (concerned with skills and other capabilities required for employment in a legal professional capacity),⁴⁰ corporatism (concerned with efficiently providing a legal education 'product'),⁴¹ liberalism (concerned with encouraging liberal ideals and values such as social justice, interdisciplinarity, ethical democratic citizenship, and equality within the law),⁴² pedagogicalism (concerned with the incorporation of teaching and learning theory into legal education),⁴³ and radicalism (concerned with a radical subversion of the legal status quo).⁴⁴

³⁷ G Kendall and G Wickham, *Using Foucault's Methods* (Sage Publications, 1999) 53.

³⁸ M Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin Books, 1991) 27-8; Mills, above n 13, 56 and 62.

³⁹ N James, 'Expertise as Privilege: Australian Legal Education and the Persistent Emphasis Upon Doctrine' (2004) 8 *University of Western Sydney Law Journal* 1.

⁴⁰ N James, 'Why Has Vocationalism Propagated So Successfully in Australian Law Schools?' (2004) 6 *University of Notre Dame Law Review* 41.

⁴¹ N James, 'Power-Knowledge in Australian Legal Education: Corporatism's Reign' (2004) 40 *Sydney Law Review* 587.

⁴² N James, 'Liberal Legal Education: The Gap Between Rhetoric and Reality' (2004) 1 (2) *University of New England Law Journal* 163.

⁴³ N James, 'The Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education' (2004) 27 (1) *University of New South Wales Law Journal* 147.

⁴⁴ N James, 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16 *Legal Education Review* 55.

In order to propagate, each discourse identifies an object to govern and, in governing that object, constructs specific kinds of 'subject positions' (forms of identity).⁴⁵ By suggesting appropriate forms of identity for individuals to take up, discourses play a role in constructing the legal identity. Having previously outlined these discourses, the objects that they seek to govern and the subject positions they create can be articulated. Doctrinal discourses seek to construct the *legal knower* by working upon the student's *legal knowledge*; vocational discourses seek to construct the *legal doer* by working upon their *skills capabilities*; corporatist discourses seek to construct a *law school customer* by working upon their *customer satisfaction*; liberal discourses seek to construct an *ethical lawyer-citizen* by working upon their *moral and ethical values framework*; pedagogical discourses seek to construct a *good student* by working upon their *learning experience and abilities*; and finally radical discourses seek to construct the *agent of social change* by working upon the student's *political consciousness*. This is not to suggest that only one discourse dominates and, hence, only one subject identity is constructed; rather the legal identity, as evidenced within the analysis below, can be a diverse amalgamation of different discourses and subject positions. This is in contrast to the overly simplistic understanding of the legal identity suggested by the critical legal perspective (such as, that the legal professional identity is inherently conservative) that this research seeks to move beyond.

Recognising the way in which discourses construct and render problematic objects to govern as part of their propagation,⁴⁶ provides an original way of seeing the legal identity and the way that practices of governance operate. It not only demonstrates the constructed nature of objects of governance, but also the historical contingency of this governance, as these objects shift when there is a change in the discursive terrain and another discourse becomes dominant. Thus, when vocational discourses are dominant, the student's skills competencies are taken as a target of governance. When radical discourses are dominant, the law student's political consciousness will be the target. This supports the contention that the legal identity is not a pre-existing 'entity' that can simply be governed with objectivity. Rather, the legal identity only exists at the intersection of multiple discourses and the objects that they construct and govern in their propagation. This is an important insight that underpins the analysis below.

IV GOVERNMENTAL PRACTICES IN AUSTRALIAN LAW SCHOOLS

In order to understand how governmental practices in Australian law schools shape the legal identity, the undergraduate legal education offered at three Queensland universities for 2006 were examined: the University of Queensland (UQ), Queensland University of Technology (QUT), and Griffith University (GU). These universities were chosen because they are major Queensland universities, and on the surface represent three different approaches to legal education: UQ teaching black-letter law, QUT concerned with 'real world' skills, and GU focusing on social justice. While not discounting the importance of considering curriculum content, a governmental analysis is more concerned with the broader programmes to govern law students. Thus, for each law school, this analysis will discuss its general rationalities, a programme that

⁴⁵ See generally, Michel Foucault, 'History, Discourse and Discontinuity', in Sylvère Lotringer (ed), *Foucault Live: Collected Interviews, 1961-1984* (1996) 33.

⁴⁶ Michel Foucault, 'Problematics' in Sylvère Lotringer (ed), *Foucault Live: Collected Interviews, 1961-1984* (1996) 416, 421; O'Farrell, above n 12, 78-9.

translates these rationalities in practice, and some of the technologies utilised to implement this programme.

This analysis does not seek to compare the three universities, concluding that graduates of one will be better able to maintain their social ideals than those of another. A governmental analysis cannot answer such questions because it does not ask them. Nor does it approach the apparent differences between law schools as merely inventions of their marketing departments. These statements have effects in the development of policies and practices that govern, providing insights into the various targets of, justifications for, and intended outcomes of governance (particularly in terms of the forms of legal identity they intend to produce). Furthermore, although each university has similar programmes (for example, QUT is not the only law school that teaches legal skills, nor do skills constitute the entire curriculum at QUT), those that feature within this analysis were selected because they most clearly demonstrate a translation of the governmental rationalities present at each respective law school. Once again, this analysis does not seek to construct a ‘complete’ analysis of practices of governance so that law schools may be compared. Rather, it intends to demonstrate the complexity of the thought and practice of governance in law schools, in contrast to the simplistic claims made by the critical narrative.

A *Rationalities of Government*

These law schools demonstrate apparently different rationalities of governance, attempting to govern in different ways, operate upon different objects, and ultimately construct different legal identities. It is apparent that UQ intends for students to gain a range of ‘qualities, skills, knowledge and abilities’ that are widely applicable.⁴⁷ These include in-depth knowledge of the law, communication skills, and ethical and social responsibility.⁴⁸ Similarly, QUT seeks to construct graduates who are ‘highly employable in their chosen professional areas’, possessing the ‘moral and ethical competence to enable them to deal with situations they will inevitably face as practitioners’.⁴⁹ However, in a different sense, GU seeks to incorporate the values of ‘equity and social justice; [a] sense of civic responsibility, and; respect for social and international diversity’,⁵⁰ within the law degree, hoping to create students who are both ‘ethical problem solver[s] using the institutions of law’, ‘critical observer[s] of the legal system’,⁵¹ and servants to the community.⁵²

⁴⁷ University of Queensland, *Statement of Graduate Attributes* (2002) 1 <<http://www.bacs.uq.edu.au/CurriculumReview/UQGraduate%20Attributes210502.pdf>> at 21 October 2006.

⁴⁸ Ibid.

⁴⁹ Queensland University of Technology, *Graduate Capabilities in Law* (2003) 8 and 12 <http://www.law.qut.edu.au/files/final_project_write_v2.pdf> at 9 June 2006.

⁵⁰ Griffith University, *The Griffith Graduate* (2004) <<http://www62.gu.edu.au/policylibrary.nsf/azcategory/63a5c8d51bb2231f4a256bb400633a52?opendocument>> at 16 February 2007.

⁵¹ Griffith University, *Bachelor of Laws/Bachelor of Arts – Nathan* (2006) <http://www17.griffith.edu.au/cis/p_cat/admission.asp?ProgCode=1276&Type=overview> at 20 June 2006.

⁵² Griffith University, *Bachelors Degree Policy* (2006) point 2.0 <<http://www62.gu.edu.au/policylibrary.nsf/alldocscat/cda01e10cb1030184a256b910008c36b?opendocument>> at 16 Feb 2007.

As it appears, the rationalities differ between each university. Rationalities at both UQ and QUT demonstrate vocational discourses, largely setting the appropriate object of governance as the law student's skills capabilities, while also mentioning morals, ethics, social responsibility, and legal knowledge as objects of governance. In this sense these universities seek to prepare lawyers as ethical professionals, with the student's moral and political values worked upon *as part of* (or incidentally to) the skills developed. In contrast, the rationalities at GU set the student's moral values as a specific target of governance in itself. In this sense, GU seeks to construct socially just, ethical citizens through its practices of governance, not just professionals. It is therefore apparent that a range of discourses are present within these rationalities, each constructing different targets of governance to give shape to the legal identity.

B *Programmes of Government*

Each law faculty develops programmes of government in order to put these rationalities into effect and thus construct legal identities. UQ places a heavy emphasis on competitions as such a programme. These are not simply opportunities for students to test their abilities against other students, but are also central to the construction of the legal identity. The competitions here represent an attempt to 'equip...students with the research and advocacy skills to prepare them for their professional lives',⁵³ in line with the rationality that constructs the student's skills as the object of governance. However, skills are not the sole focus of competitions. There are many other competitions, including those on international law or humanitarian law,⁵⁴ which consider freedom of speech, the regulation of hate speech, and the responsibility of those that have committed crimes against humanity.⁵⁵ Thus, some of the problems considered in these programmes involve students becoming subjects of liberal discourses through a concern for human rights or freedom of speech.

The programme developed at QUT to govern the student's legal and generic skills is the graduate capabilities framework.⁵⁶ This framework defines a range of capabilities ('discipline knowledge', 'ethical attitude', 'communication', 'problem solving and reasoning', 'information literacy', and 'interpersonal focus'),⁵⁷ the skills through which students can demonstrate them (attitudinal, cognitive, communication and relational skills),⁵⁸ and the three progressive standards of achievement.⁵⁹ These skills are taught through an 'authentic learning environment' (a classroom cognisant of the 'real world' of the workplace and social and ethical values),⁶⁰ which relies on rigorous planning and incremental development of the skills taught.⁶¹ This framework is used to achieve specific and targeted governance in the classroom or assessment methods, while also

⁵³ University of Queensland, *Mooting at UQ* (2006) <<http://www.law.uq.edu.au/mooting-at-uq>> at 21 October 2006.

⁵⁴ University of Queensland, *Mooting Competitions* (2006) <<http://www.law.uq.edu.au/index.html?page=40096&pid=40093>> at 21 October 2006.

⁵⁵ See for example University of Queensland, *International Humanitarian Law Moot* (2005) <<http://www.law.uq.edu.au/international-humanitarian-law-moot>> at 21 October 2006.

⁵⁶ Queensland University of Technology, above n 49, 12.

⁵⁷ Ibid 20.

⁵⁸ Ibid 21.

⁵⁹ Ibid 22.

⁶⁰ Ibid 5.

⁶¹ Ibid 26.

encouraging more directed self-governance on the student's part.⁶² These capabilities and skills include ethical and social justice orientations, inclusive perspectives, as well as legal and generic skills such as advocacy and communication.⁶³ Thus, like UQ, the programme developed here also seeks to construct students as liberal subjects, while becoming vocational subjects.

The programme of government at GU involves the use of legal clinics, where students 'learn[...] by doing',⁶⁴ by working on real cases and policy issues under supervision. These clinics are intended to allow students the opportunity to 'develop an appreciation of the importance of legal professional responsibilities to the effective operation of...democratic institutions'.⁶⁵ The targets of this programme (apart from legal skills) are the morals and values of law students, hoping to construct them as socially just and ethical citizens. These clinics focus on refugee law, community legal service,⁶⁶ or in the case of the Innocence Project, the investigation of miscarriages of justice and the attempt to free those wrongly convicted,⁶⁷ so that future lawyers champion such liberal ideals as the 'values of truth in justice', among others.⁶⁸ Once again, this particular programme evidences an attempt to construct ethical lawyer-citizens with a sense of social justice, while also developing skills abilities.

Despite apparent differences, these programmes are not entirely dissimilar. Each attempts to construct skilled legal identities by incorporating the professional environment in some form into the design of these programmes. In addition, each attempts to govern the morals or values of students, with this constituting, in the case of GU, a *specific target* of governmental practices. Far from making a distinction between professional skills and social justice (as is made within the critical narrative), these programmes link the two in constructing the legal identity. This demonstrates that the programmes that construct the legal identity consist of a complex amalgamation of discourses, and that these programmes seek to govern the law student's concern for social justice in productive ways *as part* of acting as a professional. Such a conclusion is not tenable using the blunt tools of the critical narrative.

C Technologies of Governance

These programmes of government are put into effect through the use of a number of technologies. Because of the range of such technologies, this discussion will examine a selected few. It will only consider three of the techniques used, not other technologies such as the pedagogical discourses that act as the forms of expertise underpinning many programmes of government. The three techniques considered here are classroom teaching, assessment, and self-reflection.

⁶² Ibid 22 and 23.

⁶³ Ibid 21.

⁶⁴ Griffith University, *Clinical Legal Education* (2006) <http://www.griffith.edu.au/text/school/law/content03_clinical.html> at 18 May 2006.

⁶⁵ Griffith University, *Maximising the Benefits of Legal Externships* (2000) 1 <<http://www.griffith.edu.au/school/law/assets/cle/externships.pdf>> at 6 June 2006.

⁶⁶ Griffith University, above n 64.

⁶⁷ Griffith University, *Innocence Project* (2006) <<http://www.griffith.edu.au/text/school/law/innocence/content.html>> at 18 May 2006.

⁶⁸ Ibid.

Each of these programmes utilises a classroom teaching component as a technique of government, wherein students receive instruction from a teacher. Students participating in mooting competitions through UQ, for example, receive instruction from teachers on how to participate in the competition, how to shape their submissions, and how to present their arguments before formally competing.⁶⁹ At QUT, the graduate capabilities framework is an important part of the design of each unit and the classroom activities that students must complete.⁷⁰ Finally, in each legal clinic offered by GU there is an 'intensive' classroom element providing instruction to students prior to, and throughout, the clinical work.⁷¹ In each programme, the classroom is used as a way of providing initial instruction to students before they proceed to another stage of competition, skills development, or clinical practice. It is therefore a technique that has a direct influence on the construction of the legal identity.

Additionally, each of these programmes is implemented through the use of assessment techniques, which allow the student population to be known and more effectively governed.⁷² Before students compete in the competitions at UQ, they are assessed by their peers, academics, and members of the profession in various 'tryout' or 'practice' moots.⁷³ At QUT, a major way in which the graduate capabilities framework is implemented is through the design of targeted forms of assessment to develop these capabilities.⁷⁴ Finally, within the clinical legal programs at GU, students are assessed on their 'performance' when appearing in court, class presentations, participation in classroom or clinic activities, personal reflections, and group work.⁷⁵ These assessment practices allow for the construction of particular kinds of legal identities. For example, the continual assessment through 'tryout' moots at UQ leads to the construction of the skilled legal identity,⁷⁶ in a similar way that forms of assessment at GU (such as participation in a law reform project, or reflective essays on an area of the legal system that requires change) lead to the construction of the liberal legal identity.⁷⁷

Another technique used to implement these programmes is the practice of self-reflection. Suggesting that students reflect on their own progress is a way of having them adopt the responsibility for governance and making governmental programmes work upon their own selves. After practice moots at UQ, for example, students and teachers analyse the 'performance, style and arguments presented' by the mooters in a 'de-brief' session.⁷⁸ They are encouraged to reflect on the submission that they made and how they performed the legal identity during the moot.⁷⁹ Similarly, the graduate capabilities programme at QUT relies on various ways of having students reflect on their own development of skills, identifying the gaps in their own abilities so they may

⁶⁹ University of Queensland, above n 53.

⁷⁰ Queensland University of Technology, above n 49, 15.

⁷¹ Griffith University, *Innocence Project Course Outline* (2006) 2-4 <http://www.griffith.edu.au/courseoutlines/OLD/law/2006/s1/5166LAW_3061_CO.pdf> at 18 May 2006.

⁷² See further Foucault, above n 38, 170-94.

⁷³ University of Queensland, *How to Apply?* (2005) <<http://www.law.uq.edu.au/index.html?page=40095&pid=40093>> at 21 October 2006.

⁷⁴ Queensland University of Technology, above n 49, 23.

⁷⁵ Griffith University, above n 64.

⁷⁶ University of Queensland, above n 53.

⁷⁷ Griffith University, above n 64; Griffith University, above n 71, 5.

⁷⁸ University of Queensland, above n 73.

⁷⁹ See further *'Being' a Legal Identity*, section V C 5 below.

more effectively govern themselves.⁸⁰ Finally, reflection is an important practice in the clinic programme at GU, as the classroom elements (and personal journals) provide an opportunity for students to ‘de-brief’ and reflect on their clinical experiences, with the teacher providing guidance on what students ought to reflect on, such as ethics and responsibility.⁸¹ This reflection is calculated to play a role in the construction of the legal identity, whether it is reflection on skills or ethical values.

This section has briefly analysed the rationalities, programmes and technologies that play a role in the construction of the legal identity. It has demonstrated that governmental practices seek to construct skilled legal doers at the same time as ethical lawyer-citizens. This is particularly evident at GU, where the morals and values of students constitute a target of government in itself. Importantly, by examining the diverse governmental rationalities within law schools, how these find expression as programmes of governance, and how they are implemented through specific technologies, the similarities between various attempts to govern (including those that are seen as ‘emancipatory’) becomes apparent. Political action based on the critical narrative (such as that which seeks to construct socially just legal identities) can be seen as another form of governance, and not removed from power relations. The next section will examine the role that individuals play in governing their ‘selves’, an approach which provides a further conceptual nuance not offered by the critical narrative in examining the construction of the legal identity.

V PRACTICES OF THE SELF

The ways in which students are encouraged to govern themselves in the construction of their own legal identities will be examined by considering five texts on the successful study of law (recommended by the universities examined above).⁸² This analysis focuses on how these texts encourage students to govern themselves, following the methodological signposts discussed above for examining practices of the self. It is beyond this analysis to evaluate the ‘success’ or otherwise of this advice in effecting change in students, or to examine what ‘really’ effects such change. Although this analysis is restricted to five texts and does not seek to be a ‘complete’ analysis, the diversity of messages presented within these texts challenges the claim of the critical narrative that students are simply encouraged to become conservative legal identities.

A *Ethical Substance*

These texts encourage students to construct parts of themselves as the ethical substance to be worked upon when giving shape to their legal identities. The various forms of this substance include the student’s *skills* (both legally specific and more general),⁸³ their

⁸⁰ Queensland University of Technology, above n 49, 34, 45, 60 and Appendix 1, 91.

⁸¹ Griffith University, above n 65, 17 and 27; Griffith University, above n 71, 5.

⁸² M Brogan and D Spencer, *Surviving Law School* (Oxford University Press, 2004); S Chesterman and C Rhoden, *Studying Law @ Uni: Everything You Need to Know* (Allen and Unwin, 2nd ed, 2005); J Corkery, *Starting Law* (Scribblers Publishing, 2nd ed, 2002); R Krever, *Mastering Law Studies and Law Exam Techniques* (LexisNexis Butterworths, 6th ed, 2006); A Smith, *Learning the Law* (Sweet and Maxwell, 12th ed, 2002). Although *Learning the Law* is a British text, it is included here because it is sold at the bookshops of these universities, is recommended for students to use, and is considered a classic among these texts.

⁸³ Corkery, above n 82, 207 and 258; Brogan and Spencer, above n 82, 67-8.

legal knowledge (including not only what to learn but *how* to do so),⁸⁴ their *ethical or moral values* (influencing how they are encouraged to act and the values they ought to hold),⁸⁵ their *political consciousness* (generally so that they are not partial to a cause),⁸⁶ and their *way of 'being'* as a legal identity (including the way they speak and their physical actions).⁸⁷

The contours of the ethical substance are similar to the discourses examined previously, as these objects of government are discursively constructed. These various discourses suggest to students the parts of their selves that they ought to work upon in constructing their legal identity.

B *Mode of Subjection*

These texts provide a number of reasons why students should give shape to their legal identities in the ways suggested and through the techniques offered. Overwhelmingly, these relate to the role of lawyers in democratic societies, utilising liberal discourses. It follows that there are proper ways of acting on social ideals, a proper shape to give to the legal identity, and specific practices with which to do so.

These texts suggest that legal identities are to function as part of the democratic society in which they act. They are to uphold the rule of law, and protect basic freedoms and civil rights in their actions.⁸⁸ The way they do this within everyday legal practice is to simply act for their clients 'however, evil, eccentric or unpopular'.⁸⁹ This leads to students being encouraged to adopt some important characteristics as part of their legal identities. Students must learn to work within the 'dialectical' nature of the law; that is the identification, comparison and evaluation of competing legal arguments so as to provide legal advice for any side of a legal dispute.⁹⁰ Therefore, this mode of subjection is not only characterised by liberal discourses, but also by vocational discourses, as the ethical practice of the legal identity requires the use of particular skills.

It becomes apparent that the legal identity therefore has a technical role in the administration of justice: '[a] lawyer has no business with the justice or injustice of the cause which he [sic] undertakes...The justice or injustice of the cause is to be decided by the judge'.⁹¹ This is not to suggest that legal identities are to remain unconcerned with justice *per se*, but rather that they are only to be concerned with the overarching administration of justice in society. The lawyer's role is to represent clients to the utmost of their ability, and the extent to which legal identities can actively fight for a just cause is in trying to maintain or achieve further access to justice for citizens.⁹² This broader approach to justice and the protection of liberal ideals is also apparent when

⁸⁴ Brogan and Spencer, above n 82, 67; Corkery, above n 82, 22-3; Krever, above n 82, 11-12.

⁸⁵ See for example Corkery, above n 82, 19, 22 and 101-2; Brogan and Spencer, above n 82, 43.

⁸⁶ See for example Corkery, above n 82, 102.

⁸⁷ Smith, above n 82, 18, 93, 196-7, 199 and 200-2; Julie Cassidy in Krever, above n 82, 91 and 92-5; Corkery, above n 82, 248.

⁸⁸ Corkery, above n 82, 15 and 17.

⁸⁹ Geoffrey Robertson cited in *ibid* 102.

⁹⁰ Krever, above n 82, 9.

⁹¹ James Boswell cited in Corkery, above n 82, 102.

⁹² Brogan and Spencer, above n 82, 11-13; Corkery, above n 82, 20.

students are encouraged to become a ‘bastion against tyranny’,⁹³ maintaining a constant vigil over the protection of civil rights and freedoms in the society of which they are a part.

Practising this administrative role also means that they are encouraged to be concerned with the operation of the systems of law and the forms of justice that currently exist in society, not with their radical subversion. It may in fact be seen as undemocratic and an abuse of power for a legal identity to fight for a specific cause. If students possess social ideals, this results in their idealism being channelled in certain productive ways, such as maintaining vigilance regarding liberties, addressing problems with access to justice, and protecting society from the approach of tyranny, as opposed to radically challenging capitalism, for example.

These messages challenge the view of the critical legal narrative which suggests that legal education produces conservative legal identities simply because it is an adjunct of the legal profession. The messages presented in these texts encourage students to participate in forming themselves as ethical subjects that have a functional and productive role in the legal system and society more generally. Acting as what the critical narrative would suggest is a ‘conservative’ manner is, when considered utilising this analytical framework, one way of acting ethically as a legal identity in a democratic society. It may be for the very reason that liberal discourses largely underpin the mode of subjection presented in these texts that legal identities act on social ideals in particular ways (ostensibly seen as conservative).

C *Ethical Work*

The texts examined suggest a range of practices to utilise in constructing legal identities. Not all will be considered here; however, the practices of self-reflection and self-examination, modelling actions on others, ‘knowing’ the law, ‘being’ a legal identity, and studying widely to give shape to this identity will be discussed further below.

1 *Self-Examination and Reflection*

Students are encouraged to reflect on the reasons they chose to study law.⁹⁴ Constructing themselves as an object of knowledge in order to know their ‘truth’ is to play a part in self-governance.⁹⁵ One practice asks students to ‘[i]magine that [they] have (sadly) died at [their] average life expectancy age...[and] write [their] own 200 word obituary, as [they] would wish it to be, after a lifetime in the law’.⁹⁶ In doing this, students are to bring their death into play in governing their own life, using their (desired) obituary as a tool for guiding the actions they initially take throughout legal education. If students lack a direction for their studies, these texts provide a range of viable reasons for attending law school, such as having an interest in the forces that shape our society, seeing the law as an important tool for achieving justice, a desire to have a (professionally, personally, and financially) rewarding career, or the wish to help

⁹³ Corkery, above n 82, 8.

⁹⁴ Ibid 3; Chesterman and Rhoden, above n 82, 3; Brogan and Spencer, above n 82, 2.

⁹⁵ See further Michel Foucault, ‘Subjectivity and Truth’ in Sylvère Lotringer and Lysa Hochroth (eds), *The Politics of Truth* (1997) 171, 183.

⁹⁶ Corkery, above n 82, 17.

others.⁹⁷ These act as a range of truths that students are to identify with, and are to act on the basis of. For those that already possess a direction for their studies, these truths provide a standard against which they may assess whether their intentions are viable and appropriate, or whether they need to re-examine their reasons for studying law and work on their legal identity differently.

2 *Models of Action*

These texts provide students with a range of models they might base their actions upon, usually taking the form of anecdotes about eminent members of the legal profession. Students are encouraged to read the biographies or autobiographies of these legal personalities. For example, in order to decide what to do with their legal education, Australian High Court Justice Lionel Murphy is used as a model that might encourage students to become socially just: 'I was concerned [during wartime Australia] about civil liberties and public affairs, and the road to that, I think, is through the law'.⁹⁸ Similarly, Justice Michael Kirby's views are presented regarding his motivation for entering law school and approach to the law: 'I approach a life in law today as I did when I first entered it nearly three decades ago. With idealism – [as] the pursuit of justice, the assertion of fairness, the defence of human rights[,] and obedience to laws worth respecting are ideals worthy of civilised people'.⁹⁹

Contrary to the arguments of the critical legal narrative, eminent members of the legal profession are not used as models to simply encourage students to become conservative, aim for financial reward, or uphold legal hierarchies.¹⁰⁰ Instead, they are presented here to encourage students to *maintain* their ideals.

3 *'Knowing' the Law*

These texts encourage students to adopt particular practices in order to gain knowledge of the law. This is shaped initially by the role of the lawyer in a democratic society (discussed above), who must work with the 'dialectic' nature of the law.¹⁰¹ The approach to solving legal problems, or studying for class, for example, usually involves the process of recognising the relevant legal issue/s; identifying the appropriate law/s involved; constructing an argument by applying the law to the facts; and then developing a conclusion in the form of advice to a client.¹⁰² In order to achieve this, students are to adopt the practices of legal research, being a central part of the legal identity, and a central tool for lawyers to do their job.

4 *Reading and Note-Taking*

This way of approaching their knowledge of the law also requires a particular way of researching the law, the sources to read, how to go about doing so, and what to note from this reading. For example, it requires a distinction to be made between primary

⁹⁷ Ibid 3 and 6-7; Chesterman and Rhoden, above n 82, 3; Brogan and Spencer, above n 82, 9-11.

⁹⁸ Cited in Corkery, above n 82, 5.

⁹⁹ Cited in *ibid* 17.

¹⁰⁰ See for example Duncan Kennedy, 'Legal Education as Training for Hierarchy' in D Kairys (ed), *The Politics of Law: A Progressive Critique* (1982) 54.

¹⁰¹ Krever, above n 82, 7 and 11; Brogan and Spencer, above n 82, 80.

¹⁰² Brogan and Spencer, above n 82, 85 and 182; Krever, above n 82, 64; Smith, above n 82, 206.

(such as statutes, cases, judgments) and secondary sources of the law (such as commentary, textbooks, journal articles).¹⁰³ Students are to use these sources for different purposes, generally privileging primary sources as the central tools for practicing the legal identity and ‘knowing’ what the law is so that they may solve legal problems.¹⁰⁴ Such reading is also to be practised in a strategic manner, not simply because it is a central part of the legal identity, but because the primary sources of the law are written for the particular purpose of drawing out legal principles or distinguishing a case from a precedent, not simply to be read.¹⁰⁵

5 *‘Being’ a Legal Identity*

These texts also suggest that the legal identity involves a level of ‘performance’ (primarily expressed in courtrooms), and thus students ought to practice ‘being’ the legal identity. This involves discipline of the body at the micro-level, encompassing ways of speaking (using legal terms and adopting practices such as proper expression and speech training),¹⁰⁶ modes of actions (standing to present arguments, sitting when not addressing the court, emphasising points with hand gestures, remaining upright, and not fidgeting),¹⁰⁷ forms of dress (robing or dressing neatly to ‘[promote] the notion that the system is trying the issues objectively’),¹⁰⁸ and even the governance of forms of humour (using it rarely, only to improve the submission and not to disturb the dignity and neutrality of the court).¹⁰⁹ The reason that these feature as practices of self-governance is that they allow students (as lawyers) to present a client’s case effectively, while also allowing them to remain neutral tools in the administration of justice – two central parts of the legal identity.¹¹⁰

6 *Broader Knowledge and Interdisciplinarity*

Activities that allow students to gain some form of interdisciplinary knowledge are suggested in these texts. They are intended to have an effect on the broader ethics and moral frameworks of the legal identity. These practices include forms of general reading, primarily of literature, drama, history and classic legal texts such as notable cases and essays. Texts on jurisprudence, logic, philosophy, and economics are also suggested, particularly by liberalist philosophers such as Mill, Hart, and Dworkin.¹¹¹ Doing so is intended to immerse the law student in liberal legal thought and aid their construction of a liberal legal identity.

The practices discussed here do not constitute an exhaustive list. However, they do indicate that these texts suggest practices that might allow for students to become more than simply conservative lawyers. Although the ways in which students are to ‘know’ the law pay little attention to critical or interdisciplinary perspectives, other practices such as the models they are to follow, the forms of self-reflection they are to undertake,

¹⁰³ Brogan and Spencer, above n 82, 183-97; Corkery, above n 82, 32 and 35.

¹⁰⁴ Corkery, above n 82, 34; Krever, above n 82, 22; Smith, above n 82, 75.

¹⁰⁵ Chesterman and Rhoden, above n 82, 69 and 71.

¹⁰⁶ Smith, above n 82, 93, 196-7, 199 and 200-2; Cassidy in Krever, above n 82, 91 and 93-5; Corkery, above n 82, 248.

¹⁰⁷ Smith, above n 82, 196 and 202; Cassidy in Krever, above n 82, 92-3; Corkery, above n 82, 248.

¹⁰⁸ Corkery, above n 82, 248.

¹⁰⁹ Smith, above n 82, 197 and 202; Cassidy in Krever, above n 82, 93.

¹¹⁰ Smith, above n 82, 194; Cassidy in Krever, above n 82, 87 and 91; Corkery, above n 82, 251.

¹¹¹ Smith, above n 82, 265-79.

and the wider readings they are to study, provide such an avenue. Therefore, it is once again apparent that the practices used to construct the legal identity are drawn from a complex and sometimes contradictory amalgamation of different discourses – liberal, doctrinal and vocational discourses being most apparent in this case.

D *Telos*

The desirable form of legal identity presented in these texts is that which is characterised by professional skills, a concern for ethical values, and a desire to achieve justice. Undoubtedly, these texts suggest that the legal professional is a desirable goal. However, this does not mean that this is an unreflective or socially unjust professional that employs their skills in corporate practice alone, at the expense of a broader social justice agenda. In fact, the modalities of this legal professional identity include corporate lawyers, criminal lawyers, prosecutors, and those working for community organisations.¹¹² Although these may seem a disparate group of professional roles, the fact that they are suggested as legal identities that students may 'be' – upon adopting the advice of these texts – demonstrates that there may be similarities between them. Thus, it could be argued that these texts present a relatively similar core legal identity: the legal professional constructed through vocational, doctrinal and liberal discourses. The fact that these texts are not dissimilar in the advice they give and the practices they encourage suggests that it is not so much a particular *kind or type* of lawyer (like a corporate lawyer or criminal prosecutor) that is the desired outcome, but rather some sort of core or central legal *identity* which can then be put to *different* uses. This contrasts with the suggestion from the critical narrative that the knowledge that underpins the professional identity is monolithic. As stated above, the professional here is not monolithic, but characterised by a range of discourses. Therefore, it could be suggested that there does not exist a stark difference between the corporate lawyer and the lawyer who works in a community legal centre – apart from the modalities of this discursive practice and the ends to which it is put.

Professional legal identities are to provide services to any client who seeks them and to advocate as far as ethically possible for that client in order to fully administer justice.¹¹³ This model of the legal professional identity makes emotional neutrality a requirement in order to act professionally. To some extent, the practices discussed above all lead to this – such as adopting the conceptual framework of the dialectical nature of the law, or employing particular reading practices, so that students may 'perform' this 'neutrality'. In opposition to the desires of critical legal scholars (that lawyers actively pursue radical social justice causes), the advice these texts present suggest it is antithetical for legal professionals to use their legal skills in the service of one particular cause. The legal identity is to remain neutral in their actions and not fight for a cause that they are personally motivated by. Doing so may deny legal services to others. The corollary of this is that refusing legal services to a cause the lawyer sees as repulsive is potentially as unethical as fighting for causes they are personally motivated by. The only time that zealous advocacy for a cause is encouraged is when the individual 'performs' a modality of the legal identity presented in these texts, and even then, only when they are representing a client's case in court. Zealous advocacy is unethical if the lawyer is taking on the role of a political activist.

¹¹² Brogan and Spencer, above n 82, 7-8; Smith, above n 82, 225-61; Corkery, above n 82, 105-10; Chesterman and Rhoden, above n 82, 5-17.

¹¹³ Corkery, above n 82, 101 and 103-4.

Furthermore, this is not to suggest professional messages are so monolithic that students are prevented from practicing this legal identity according to their own personal tastes and interests. Where concern for social justice is involved, this passion is channelled into legal aid or pro bono work, not radical social change,¹¹⁴ so that the legal identity can be an effective tool in the administration of justice. Thus, the idealism that students possess when entering law school is not necessarily repressed or denied by these practices of government, but rather channelled in positive, productive ways. It is important to note that this 'channelling' is not a conspiratorial 'repression' of the student's interests, or of particular inconvenient perspectives.

Thus, a diversity of discourses informs the work that students are encouraged to perform upon themselves. The relation of the student to themselves is not solely defined by the legal profession and conducted in its interests. Instead, a number of discourses outline the ethical substances to work upon, and suggest the ways to proceed (for example, the liberal discourses that feature heavily within the mode of subjection). Acknowledging the role of self-governance in shaping the legal identity constitutes a conceptual challenge to the critical narrative, which sees students as simply passive receptacles for legal professional ideology. Without recognising that the apparent absence of social ideals in students might be the result of an ethical relation to the self, political interventions based on the critical legal narrative are once again likely to be ineffective.

VI CONCLUSION

This paper has utilised a governmental framework to consider the range of practices of governance in Australian legal education that operate to construct the legal identity. The impetus for this research was twofold: dissatisfaction with the problematic assumptions that underpin, and simplistic and globalising conclusions made by, the critical legal narrative that seeks to explain why law students apparently become politically apathetic, and a desire to use new conceptual tools to consider this.

Although this paper has only provided an overview of such practices, it has nevertheless demonstrated the complexity inherent within these power relations. The discourses underpinning governmental practices and practices of the self range from vocational discourses (encouraging the construction of the skilled legal identity), to liberal discourses (encouraging the construction of the ethical lawyer-citizen). These messages are not programmed in a unitary and monolithic manner representing, in the last instance, the demands of the legal profession. On the contrary, there is a complex amalgamation of discourses and practices that give shape to the legal identity in different ways. This analysis has demonstrated that although students are encouraged to approach legal problems in ways that might apparently sideline concerns for social justice, this is not because such concerns are politically inconvenient for the legal profession. Rather, social ideals and a concern for justice are fostered, shaped, and made to operate by these power relations in *productive* ways: expressed as a concern for pro bono legal work, or work at community legal centres. These roles are presented as ethical ways to perform the legal identity: acting upon social ideals while also acting as a tool in the administration of justice in a democratic society.

¹¹⁴ Ibid 20 and 105; Brogan and Spencer, above n 82, 11-13.

This analysis does *not* challenge the conclusion that some students feel dissatisfied about the way that legal education encourages them to act upon their social ideals. However, this *does* challenge the argument that this demonstrates 'repression'. This is not simply an issue of semantics. The insights that a governmental analysis provides have implications for further political action in legal education. This paper has pointed out the problems with the conceptual foundations of the critical legal narrative, upon which political action is based. Perhaps the most apparent is that legal educators that seek to 'liberate' students from the ideological indoctrination of the legal profession cannot claim to be outside of power relations and implementing objectively better teaching practices, for example. This analysis has demonstrated that the programmes used to construct apparently different legal identities are often similar in their operation, and utilise similar technologies in order to achieve this governance.

The important role that practices of the self play in constructing forms of legal identity also necessitates a different approach to political action in legal education than that offered by the critical legal narrative. If students play a role in constructing their own legal identities through an ethical relationship with themselves, it is problematic to approach students as ideological dupes, or otherwise as conservative sell-outs as the critical narrative does. As this analysis has shown, the aversion to radical political action that legal identities express can be the result of an ethical relation to the self. Further analysing this relation to the self may also bring to light ways that students can work upon themselves in constructing new forms of legal identity.