

**Paul Maharg is professor of law at the Australian National University College of Law and Nottingham Law School, and author of *Transforming Legal Education – Learning and Teaching the Law in the Early Twenty-first Century*. Maharg has been re-thinking current forms of legal education, the role of emotions therein and use of technology in educating legal professionals that matter for the future of law practice.**

**It's often been said that our education system is a relic from the industrial age. Is that something you agree with?**

'Yes. We're still stuck in 20th century practices that are mired in a 19th century industrial educational mindset. Many of the practices and approaches we use are not relevant in today's society or where we're going in the future.'

**Can you give some examples?**

'We're still too focused on the idea of lawyers following traditional routes into the profession, eg undergraduate LLB, professional education and traineeship, then qualification. We should be diversifying the routes into law, for example for people who become interested later in life, for reasons other than becoming a lawyer – they might just be interested for its own sake, or find legal study helpful in their career paths. Part of the reason we're not changing fast enough is that in spite of what legal academics critique elsewhere as Fordist professional practices, we're still stuck in the industrialised model of a curriculum.'

'Another thing is what one of my co-edited books, called *Beyond Text*, deals with – the textuality of law. How can legal education move beyond an obsession with text itself? It has characterized much of legal education since the Renaissance, since the rise of the book in the 15th century actually. In *Transforming Legal Education* I argue that the digital revolution is taking us back beyond the book, to a more liberating view of law as a network, a huge shimmering glossed manuscript of meaning, gloss upon gloss.'

'I believe that the digital revolution has further possibilities in breaking up that 19th century view of education. I think that rethinking fundamental concepts of time and place leads us to rethink our model of learning, both inside the university and beyond it.'

**How much law is actually still needed in legal education of the future?**

'Interesting point. There should always be law in the curriculum of course, and students need to know the core conceptual elements within the sub-disciplines, Contract, Delict, whatever. But they also need to know how to manipulate legal reasoning, what it is, what it does, how to use it, and they don't do enough of that.'

'I would also say, with the Realists, that law is what goes on in the real world and students need an education in that.' So we need to understand law in a much more social context. Traditionally in law schools, there is a mismatch between that activity of understanding: what legal reasoning about, and the social context of law. We should really be looking at law as a socially-driven activity. And by socially I mean politically, economically, taking account of social purposes and relations. All these aspects of law should be built into every course in a much more foundational way than has happened in the past.

**You've also studied the role of emotions in learning. Not a lot of focus is given to that in law practice, not to say it's been avoided altogether. Why is it so important?**

'Well I think we need to help students to be identifying and reflecting on emotions. We need to help them to predict and regulate emotions. And we need them to have something like a mode of resilience when they are thinking about themselves and their possible future selves or even their best future selves as professionals.'

'That needs three things in the curriculum, the three C's. The first is *Content*, where authenticity is a high priority. Not just the concepts and the legal rules themselves. In other words, when I talk about authenticity I mean real life understanding of how law plays out in the world. How are contracts

actually formed? How important is it to be people in specific industries to have specific types of contracts and things like that.'

'The second is *Coaching*. We rarely do coaching with students. What we often have is kind of like a ghetto of skills, which are identified as legal skills – think negotiation, legal drafting or legal writing or whatever. But we don't put them into a personal context, where students can learn, as Dewey said, from habituated practice. So the skills that are taught kind of stay *out there*, as it were, and not really part of the students themselves. I think that coaching could really help that, rather than just teaching skills in isolation.'

'The third C is *Commitment to the future*. Law schools themselves need commitment to a new model of legal education which is more than the hegemonic liberal law school model. In the UK, Australia and the USA and the common law world generally that model has held sway for the last 40 years or half century. We need law schools that conserve the past, help students to understand and remember it, but we also need to help them understand their futures. We've scarcely begun that yet. And looking to the future isn't only a rational activity – it involves us as complete persons, including our emotions'

**Thinking versus feeling. Are these mutually exclusive domains in law, or do both have their place?**

'The problem is the school socializes us to separate the two very often, simply by ignoring the emotional aspect. This is I think true of all schooling where there is a focus on rational activity, whether it's mathematics or interpretation of text in English or an understanding of history. A very limited discussion of emotion is brought into that. What I argue for is a much more focused discussion on the place that emotion has within in particular legal education, and from Day One of legal education.'

'Very often law sets itself up as a coldly rational model. But in law that is something we have to break down for the students, and make them realize that even judges, the highest judges, are intertwining emotions. They can't help it! They're intertwining emotions with legal argument and policy. All legal advisors are doing so. But there are ways one can engage in prediction and regulation of feelings and emotions. That's the most important element. But that also means that we have to learn much more about emotions, how to identify, how to reflect on them, also how to be congruent with our emotions, so we identify the roots of them.'

'This is important for crucial issues such as the roots of racism for example, or gender discrimination. We need to think about those emotions, and how they intertwine with our confirmation biases, analyses, and rationalizations.'

**Emotions aside, which emerging legal technologies do you believe will have a profound effect on law practice and the forming of legal professionals?**

'To take one example, in law schools we do almost no work with our students on data analysis. Ours is now pre-eminently an information society, but we do almost nothing with our law students on information. So I would like to see data analysis courses for law students and lawyers. I'd like to see lawyers and law students being much more *au fait* with legal informatics and the radical changes that legal informatics is already bringing about. And there are other specific examples – the culture of courtrooms and legal offices where there are virtual practices, information advice giving over the web and things like that, and how that is changing legal practice.'

'I think that communication and social media is again something that is virtually untouched by law schools. Also, there's a huge amount that needs to be done by schools in terms of collaborative working skills, business process management, project skills and business interpretative skills. We need to forge a good understanding of what entrepreneurialism and innovation is all about within the legal domain. All of that is tied intimately to the digital revolution and to technology. We can use technology as a platform to help people understand just what's going on in these fields.'

'Really significant is the social revolution that is accompanying the digital revolution. We can see that in so many industries. Every industry thinks it's pretty special and that the digital revolution just won't

affect them is the dominant thinking. And that's just not the case. Actually, we've barely begun the digital revolution. The print revolution took about two generations to be established. We've only had at most two decades so far, and sure, digital much faster in developmental terms. But we've had very little time to assimilate change and think about where it's going. Look at blockchain technologies. Most people think of bitcoins when they hear of blockchain. But it's not just a cryptocurrency. It can be used for most legal documents and processes, and it can be used for simulating those processes. It can even be used to construct a virtual law school, alongside other technologies.'