# THE PERILS OF THE SMALL LAW SCHOOL
## *OR*
## A LESSON FROM *CAPTAIN CARPENTER*

FRANK BATES*

> Captain Carpenter rose up in his prime,
> Put on his pistols and went riding out
> But had got wellnigh nowhere at that time
> Till he fell in with ladies in a rout.[1]

The fate which Captain Carpenter suffered was not an especially pleasant one: The ladies with whom he fell in, and their friends, removed, *seriatim,* those parts of his physiognomy and anatomy which had given him any individuality at all. The lesson ought not to be lost on us, particularly as each of the ladies who trimmed the Captain so drastically were all symbols[2] of agencies bent on his destruction. Although there has been substantial writing on legal education[3] in all of its varied aspects, given the number of small law schools, particularly in the United States, it is perhaps surprising that only Veitch, himself the Dean of a small school,[4] has discussed[5] the problems which they face. Accordingly, it is the purpose of this paper to canvass some of the problems which small law schools face and to suggest some ways in which they might be alleviated.

Of course, it must not be thought that small schools are in any way cushioned or immune from the central difficulties which are involved in the study of law at tertiary level. A major problem which must be faced at the very outset is that the study of law does not rank high, it seems, in the hierarchy of academic endeavour. Although I first considered[6] that this view was only the product of my own experience and assessment of essentially anecdotal evidence, unfortunately the evidence is far stronger than that. Indeed, comments which reflect this view can be found fairly liberally spattered through the literature; thus, the distinguished

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1 John Crowe Ransom, "Captain Carpenter", from *Selected Poems* (1963).
2 Captain Carpenter was, of course, himself a symbol of the *antebellum* Southern states. See Parsons, *John Crowe Ransom* (1969) at 125 et seq.
3 For example, in the most recent consolidation of *Index to Current Legal Periodicals* (September 1981 - August 1982) the subject of "Legal Education" took up just above three columns, (at 262-263), whereas, say, the topic of "Law Reform" had only six entries (at 259).
4 The University of New Brunswick's Faculty of Law in North-Eastern Canada.
5 Veitch, "Pride or Prejudice: The Choices for the Small Law School" (1981) 30 U New Brunswick LJ 208.
6 Bates, "The Responsibility of the Law School" (1981) 15 The Law Teacher 172, 177.

economist, Samuelson, has said[7] of legal scholarship that "A Williston or Corbin or Prosser or Wigmore achieves fame for codifying a branch of the subject and writing a successful textbook. When I became a successful textbook writer, I had to live down that fact by producing more and better scientific research." This comment is the more disturbing when Samuelson's own eminence as a social scientist is taken into account and when the universal admiration in which the work of Williston[8] and Corbin[9] in the area of contract law, Prosser in tort law[10] and Wigmore in evidence[11] is held in legal circles. It may be that Samuelson has misunderstood the nature of much of legal scholarship — some of which has been hugely influential in a very much wider context[12] — but the major significance of the comment is its maker and the very fact that it was made at all. Again, Twining has referred[13] to the ". . . depressing fact" that the *Survey of Learned Societies,* published in 1976, refers to no organisation directly concerned with the study of law.[14] Twining has suggested that a major reason for academic law's apparently lowly status is, echoing Samuelson's stricture,[15] that much endeavour has gone into the writing of, in ". . . broad surveys of large fields (classified in terms of legal concepts) rather than into detailed, critical monographic topics on specific topics".[16] Here again, although this might once have been the case, recent developments in legal publishing[17] suggest that the situation has changed. Although these statements, and others to like effect, may not be accurate, and can be shown not to be so, because they are made by commentators of such eminence as Samuelson and Twining, notice may well be taken of them by agencies which have power to do Law Schools and the study of law harm, in the same way in which harm was done to the protagonist in the poem with which I began.

7 Samuelson, "The Convergence of the Law School and University" (1975) 44 The American Scholar 256, 260.

8 Williston, *A Treatise on the Law of Contracts* (18 vols, 3rd ed 1957, Ed Jaeger).

9 Corbin, A Comprehensive Treatise on the Working Principles of Contract (10 vols, 1963).

10 Prosser, *Handbook of the Law of Torts* (4th ed 1971).

11 Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (10 vols, 3rd ed 1940).

12 An obvious example is that of James Dalrymple, First Viscount Stair, whose seminal work, *The Institutions of the Law of Scotland, deduced from its originals and collated with the Civil, Canon and Feudal Laws and with the Customs of Neighbouring Nations* (1681) created, in essence, the legal system of Scotland, with all the broader societal connotations which the expression "legal system" implies.

13 Twining, "Goodybye to Lewis Eliot; The Academic Lawyer as Scholar" (1980) 15 J Soc P Teach Law 2, 5.

14 The Royal Society and the British Academy, *A Survey of Learned Societies* (1976). Although, apparently, the British Association of Law Teachers has sought to be included in a further edition.

15 Supra n 7.

16 Supra n 13 at 25.

17 The *Modern Legal Studies* series, in England, published by Sweet and Maxwell, which includes titles such as Yates, *Exclusion Clauses in Contracts* (2nd ed 1982); Heydon, *Economic Torts* (2nd ed 1979); Oakley, *Constructive Trusts* (1978) etc, and the more recent series of Research Papers produced by the Adelaide Law School in Australia (the most recent title in which was Duggan, *The Economics of Consumer Protection: A Critique of the Chicago School Case Against Intervention* (1982), suggest that Twining's view was not correct.

Indeed, it is in one crucial area that the Law School's place can clearly be determined — the area of available financial support. Hence, in August 1982, the Dean of the Faculty of Law of Monash University[18] stated that, "The Faculty has had a reasonably stable year, and as a result of members of staff being on leave without pay for various periods, was able to cushion some of the budgetary cuts. These emanated from Canberra but were also reflected in the unwillingness of the University Administration to give Law an equitable share of the University 'cake'." All this in spite of the Dean's comment that, "The Faculty's research record is a very proud one. Members of the Faculty produce more books per capita than any other Faculty in the University." Other Australasian Faculties of Law and Departments of Legal Studies made not dissimilar remarks on the same occasion relating, particularly, to staffing and accommodation.[19] Although no area of activity has escaped, law seems to have been particularly badly hit. On a more specifically local level, the Vice-Chancellor of the University of Tasmania, in a recent newspaper feature,[20] noted that the University had a national and international reputation in various areas,[21] which attracted interstate and overseas students. However, law was not one of those mentioned, despite the facts that approximately one third of the law student body (both undergraduate and postgraduate) is from overseas or from other Australian States, that the Law School has a successful and unique postgraduate programme[22] and that its record of publication substantially outstrips all other related Humanities and Social Science areas in the University.[23] One criterion which the Vice-Chancellor of the University of Tasmania seemed, however, to consider crucial in his assessment of excellence was the ability of a subject area to attract additional money from external sources. Here again, Law, on a broad basis, is significantly under-represented: In Australia, presently, with 12 professional Law Schools and various Departments of Legal Studies with a total staff in excess of 300, only eight projects are in receipt of assistance from the Australian Research Grants Commission.[24]

18 Baxt. See *Annual Report to the Australasian Universities Law School's Association* (1982).

19 The Universities of Auckland, New South Wales and Papua New Guinea, Latrobe and Macquarie and the New South Wales Institute of Technology made comments on the same occasion to the same effect.

20 Lazenby in "Can We Make an Industry Out of Tertiary Education?" *The Mercury*, Hobart, 5th May 1983 at 25.

21 Those mentioned were: Physics, Astronomy, Computer Technology, Education, Microbiological Agriculture and Cold Water and Antarctic Studies.

22 In the area of Welfare Law; see University of Tasmania *Faculty of Law Handbook* 1983 at 50 et seq.

23 Including one area specifically mentioned by the Vice Chancellor — that of Education. Hence, in the 1981 Academic Year, the Centre for Education, with a staff of 45, produced 29 papers, whilst the Faculty of Law, with a staff of 12, produced 30. A substantially higher proportion of the Law School's publications appeared in journals throughout Australia than did those of the Centre for Education. See "Research Report" in *University of Tasmania Calendar* (vol 4, 1981) at 19-22 and 26-28.

24 As compared with 40 in Australian History, for example. See *Australian Research Grants Scheme: Report on Grants Approved for 1982* (1981) at 97-99 and 106-107.

The whole matter has been encapsulated by Twining who gloomily concludes[25] that, ". . . compared with other disciplines we do not have, and are not perceived as having, a highly developed tradition of committed and sustained scholarship which is central to the culture of academic law". Before, however, we may properly be able to claim that the academic study of law has been misunderstood and its preceptors deprived thereby, I am strongly of the view that many of the difficulties and obstacles which we encounter are of our own making. First, overstating our own importance has not, I suspect, done us very much good either in the community as a whole and, more particularly, in academe. To take, for instance, two statements by a leading English academic lawyer, R H Graveson that,[26] first, "The house of law is the home of all mankind. It is contemporary, yet coeval with man himself. It has sheltered society since the human race began and still performs its ancient task" and, second,[27] "In an age which has rejected alike ultimate principles of ethics, natural law and reason, the spirit of English law remains a standard of validity by which all lawmaking, whether by Parliamentary process or by judicial analogy, may be fitted into the true pattern of English life". Reliance on these, and similar,[28] portentous statements can, I venture to suggest, do the study of Law little but damage. In the academic community, the historian, sociologist and political economist will be aware, from their own studies, that these claims are not, as a matter of fact, correct and, at least, some members of the general public are likely to have an instinctive and, perhaps, even experiential reaction against it. Law teachers would do better to draw attention to their real potential[29] rather than to attempt to camouflage other deficiencies with vapid platitude, however high-sounding. To the casual observer, Law does not appear to stand well beside, say, the achievements of modern Medicine or Engineering, nor does it seem to possess the solid and traditional virtues of the Classics, History or Philosophy. Indeed, it is a central thesis of this paper that we should not either adopt a stance which is too apologist and nor should we seek to turn our endeavours to ape the conventions and methodologies of other disciplines.

The second reason why Law may not be as highly regarded as an area of study is of particular relevance to the small Law School and the perils which beset it. At all costs, must a slavish adherence to a profession, which is clearly unpopular in the community, be avoided. It would be all too easy in a small community, such as Tasmania, for a Law School to succumb to the profession's expressed requirements as to their needs (without taking account of the responsibilities owed to the community at large and to academic endeavours as a whole).[30] Indeed, in this very jurisdiction that course had been strongly urged by Dunbar, who has

25 Op cit supra n 13 at 25.
26 Graveson, "The House of Law" in *One Law* (1977) at 1.
27 Graveson, "The Spirit of English Law" ibid at 38.
28 Members of the practising profession are not adverse from similar dicta, see, for example, Schumiatcher, *Man of Law: A Model* (1979) and Lord Denning, *The Discipline of Law* (1979), *The Due Process of Law* (1980), infra text at n 68.
29 Infra text at nn 59, 60.
30 For a more detailed comment, see Bates, supra n 6.

written[31] of this institution that, "The Law School, although a component part of the University, must for all intents and purposes be regarded as a professional institution. Refusal to acknowledge that fact and to insist on treating the school as if it were an ordinary university department, or even to view it in the light of its English and American counterparts, would in my opinion be detrimental to the welfare of all those concerned." The fact that this was written of Tasmania and that the political situation which pertained in the area of University, professional and community relationships in Hobart may have demanded that such a statement be made, do not necessarily make it true today. In addition to this basic statement of policy, Dunbar suggests that few, if any, students who do not make the practice of the law in this one jurisdiction their aim should be permitted to enter the Law School[32] and that[33] the subjects of Legal History and Jurisprudence are of scant value to the student seeking to be a legal practitioner. Of jurisprudence, Dunbar writes[34] that, "The many theories of law, to comprehend any one of which would take a first rate student months of intensive reading, seem only to confuse and irritate the average student who at best merely succeeds in learning by note a collection of maxims without acquiring any real understanding of their significance". More recently, the practice orientated commentator Nash has written[35] regretting that in, at least, one law school it is possible for students to acquire an LLB degree without having studied subjects such as Conveyancing, Company Law, Trusts and Evidence and Procedure whilst, instead, studying subjects such as Legal Aid, Introduction to Modern Civil Law and Social Security Law. To an extent, the small law school is likely to avoid this dilemma, or, perhaps, more accurately to have it avoided. Core subjects have to be taught and, particularly in a small community such as Tasmania or New Brunswick, must be taught; the more so as the local profession may well exercise considerable indirect control over course structure[36] more than seems to be possible in larger jurisdictions with larger law schools.

Is this a desirable situation? Since the small law school may logistically only be able to offer basic subjects, it is likely to come under fire from its host institution for not offering that which pedagogues in other disciplines consider to be disinterested scholarship. Indeed, such a standpoint, however much law teachers might regret it, is readily compre-

31 Dunbar, "Common Sense in the Law School" (1961) 1 U Tas LR 540, 541.

32 At least until there is a non-vocational degree available, ibid at 541-542.

33 Ibid at 544-545. As are also Roman Law and Public International Law, ibid at 545. See also Lawton, "Legal Education and the Needs of the Legal Profession" (1980) 14 The Law Teacher 162.

34 Supra n 31 at 545.

35 Nash, quoted in Lucke, "University Training of Lawyers: Contents of Curriculum, Number of Courses, Electives and Non-Law Subjects" in *Legal Education in Australia* (1978) vol 1 at 223.

36 Thus, in the LLB course of the University of Tasmania, Contract, Torts, Land Law, Criminal Law and Australian Constitutional Law are the only specifically prescribed subjects. However, the practising profession require Mercantile Law, Trusts, Family Law, Company Law, Evidence and Administrative Law as prerequisite for admission as well as one of Jurisprudence, Comparative Law, Criminology or Legal History and one of Income Tax, Trade Practices, Banking Law and Remedies. See *Faculty of Law Handbook* 1983 at 56.

hensible. The misuse of subject areas, such as Nash has mentioned, contributed not inconsiderably to the discomforture of the previous Australian government, facts which are unlikely to escape the attention of legal education's critics. Indeed, one might go further and suggest that emphasis on the mechanics of legal capitalism can well reinforce the "trade-school" image of the law faculty, a danger noted by Cranston who points[37] the risk of law schools being evaluated, ". . . solely in terms of whether they produce persons capable on graduation day of becoming fully fledged functionaries in places like Sue, Grabbit and Runne, Solicitors". Larger law schools with more staff are in a better position to avoid this particular peril because they, simply by offering courses of the kind denigrated by Nash, seem to provide a more academic education in the traditional sense. From an educational point of view, it would be doubly unfortunate if small law schools were not to offer broadly based cultural subjects and, in fact, a former Chief Justice of South Australia has recently eloquently argued[38] a case for the teaching of Roman Law.

The question of selection of teaching staff also presents a special peril for the small law school[39] in a small jurisdiction. Closer surveillance of the curriculum has already been noted[40] and it is no great step to suggest that the attitudes of the local practising profession are likely to seek to make themselves felt in this area. A not insignificant pointer can be found in an article by Pincus,[41] a senior practitioner in the Australian State of Queensland, who argues that there is, in essence, no such entity as the academic study of the law. Central to his claim is that there is no ". . . special mode of reasoning called legal . . .".[42] He refutes any suggestion[43] that, ". . . the academic schooling makes one a master, at least potentially, of a craft, a possessor of valuable techniques in reasoning, the possession of which is likely to stand one in good stead in all kinds of job, from politician to public servant". Pincus continues by saying that the only specifically legal ability is the knowledge and understanding of the rules of the law, of the construction of the legal machine, of how laws are made and enforced, or how judges decide cases. Hence, that to say of a person that he is an expert in a particular branch of the law means no more than that he knows the rules in that area and has a good knowledge of the way in which those rules are developing. Pincus's article contains much that is important and thought provoking — especially his remarks[44] that legal research is frequently too tentative in its approach to important issues — but is the more disturbing for those very reasons and the articulate manner in which he has made his case. The fact is that

37 Cranston, "Law and Society: A Different Approach to Legal Education" (1978) 5 Monash ULR 54, 61.

38 Bray, "A Plea for Roman Law" (1983) 9 Adelaide LR 50.

39 Although it must be said that the University of Tasmania law school is fortunate in that staff members have had teaching or professional experience in England, Scotland, the United States, Canada, Sierra Leone, the Sudan, Papua New Guinea and Sri Lanka as well as in other institutions in Australasia.

40 Supra text accompanying n 36.

41 Pincus, "The Academic Study of the Law" (1972) 7 U Old LJ 398.

42 Idem.

43 Ibid at 400.

44 Ibid at 399.

many members of the practising profession have far less regard for any kind of philosophy of legal education than has Pincus (who noted[45] the demand which exists for non-university routes to admission). The demands are predictable: either the full-time teaching staff should be largely or entirely localised or that a substantial part of the curriculum should be taught by members of the local practising profession. These demands must be strenuously resisted. First, even assuming that part-time teachers of appropriate calibre and experience are easily available — and Bailey and Marsh suggest[46] that the position in England, at any rate, is less parlous than once it was — there may be more fundamental educational difficulties. The law in many small jurisdictions can sometimes be somewhat idiosyncratic. Thus, in Tasmania, the rule against perpetuities flourishes in all its bizarre splendour,[47] legal entails still exist at general law as do the substantive provisions of the horrendous English Larceny Act 1916.[48] Therefore, too great an emphasis on local law, some of which may be out of accord with development of common law as a whole, may distort proper appreciation of that whole.

Second, the use of part-time staff who are likely to be experienced in one only, perhaps idiosyncratic, jurisdiction may well reinforce the impression of a trade school mentality amongst members of other teaching departments. A leading American writer, Allen,[49] has commented upon the increasingly anti-intellectual character of legal education in that country and it would be most unlikely were other jurisdictions to be immune from that development: "The new anti-intellectualism is impertinent with any educational activity that does not promise an immediate and discernible payoff in private law practice . . . . The essence of the new anti-intellectualism is, rather, the narrowing of interests, the rejection of intellectual and humanistic concerns, the militant assumption that the test of an educational endeavour is its impact on the law firm's ledger. It is characterised by confident but wholly unsubstantiated judgments about the contributions of particular educational experiences to professional proficiency." In view of Allen's enormous contribution[50] to the debate over value analysis and legal education, his remarks must be taken very seriously indeed. The risk of the small law school in a small community capitulating to the kind of attitude described by Allen is both substantial and obvious: the danger of being left behind in the world context is omnipresent. As a Canadian law student has written in a stimulating essay,[51] a general criticism which is

45 Idem.

46 Bailey and March, "Law Teaching in Colleges of Further Education" (1981) 15 The Law Teacher 83, 87.

47 See Sackville and Neave, *Property Law: Cases and Materials* (3rd ed 1981) at 572 et seq.

48 See Criminal Code Act 1924 (Tasmania), Part VI.

49 Allen, "The New Anti-Intellectualism in American Education" (1977) 28 Mercer LR 447, 450.

50 See, for example: Allen, "The Causes of Popular Dissatisfaction With Legal Education" (1976) 62 American Bar Assoc Jo 447; "Prospects for University Law Training" (1977) 63 American Bar Assoc Jo 346. See also Allen's contribution in Gold (Ed) *Essays on Legal Education* (1982).

51 Campbell, "Toward An Improved Legal Education: Is There Anyone Out There?" (1978) 43 Saskatchewan LR 81 at 91.

levelled at curriculum design is that it has not kept up with social developments at large. Thus, although much has happened since modern law schools first developed, few of such changes are reflected in today's curriculum which ignores much that is vital to a good legal education. In the words of Richardson,[52] "As social problems proliferate, traditional legal education, aggressively abstract and perversely indifferent to the findings of the social and behavioural sciences concerning the human condition is in serious danger of becoming a monumental irrelevancy in the process of social change". Richardson urges an increase in the teaching of logic, semantics and behavioural sciences.[53] Whether one totally agrees with Richardson or not, isolation may well lead to failure to appreciate the importance of new developments, as they relate to the broadly intellectual or directly practical applications of legal education.

The small law school is, thus, particularly vulnerable to losing its academic identity by too close association with the needs of the profession as they themselves perceive it and to losing its professional status, whatever that may mean, by making too gradiose claims for its academic function. The loss of its third responsibility or function — that of community service[54] — is also at risk, paradoxically because of the strained relationship between the other two. In a larger body, it is easier for particular members of staff to demonstrate responsibility to particular interest groups; in the smaller law school it is by no means as easy, as individuals are required to fulfil more than one responsibility. The problems which may be caused by members who seek, for instance, to make less privileged members of the community aware of their legal rights and responsibilities may find their task more difficult if they are thought by such people to be associated with a clearly unpopular practising profession.[55] Of course, we all know that many law teachers are closely involved with law reform agencies, but there may well be hidden dangers in this apparently socially desirable occupation. In seeking to fulfil their law reform responsibility, the law teacher, particularly in a small school in a small jurisdiction, must be careful to eschew too great an attachment to piecemeal modifications of so-called lawyers' law at the expense of more central social questions. His task may, of course, be made more difficult in a federal system, such as Australia or Canada, when constitutional demarcation may remove important areas from his consideration. An additional trap may exist in the shape of legislation, as exists in Tasmania,[56] that the law reform body cannot inquire into matters without the *imprimatur* of the relevant Minister. The consequences for the law teacher and his relations with the community are clearly apparent: An unsympathetic, indecisive or indolent Minister can

52 Richardson, "Does Anyone Care for More Hemlock?" (1973) 25 J Legal Education 431, 434.

53 The disparity of attitudes to legal education in general can be seen when Richardson's view, ibid, is compared to that of Bray, supra n 38.

54 Bates, supra n 6 at 175.

55 See, for example: Waltz, "The Unpopularity of Lawyers" (1976) 25 Cleveland State LR 143; Thomason, "What the Public Thinks of Lawyers" (1974) 46 NY St Bar J 151; Nader, "The Legal Profession: A Time for Self Analysis" (1979) 13 Akron LR 1.

56 Law Reform Commission Act 1979 s 3(2) (Tasmania).

all too easily refuse to permit the commission to enquire into areas likely to embarrass him politically and, amongst those areas, may probably be topics which could demonstrate a law teacher's commitment to the community at large. In a more diverse and bigger jurisdiction effective political pressure is more likely to be able to brought to encourage a Minister from abrogating his proper function. Even should a law reform agency be permitted to make recommendations in controversial areas, there is no guarantee that those recommendations will be implemented. Although this is a risk which is run in all jurisdictions,[57] experience seems to suggest[58] that there is a greater likelihood of its occurring in small jurisdictions with, perhaps, a small, but influential and conservative Upper House.

What can the law teacher make of this unhappy situation? Elsewhere, I have suggested[59] that law teachers have been more than somewhat reticent regarding the general value and utility of their discipline and in being prepared to speak out in its support. In failing to do so, they have lost a very important opportunity to reinforce commitment to the broader community, the more so, as Street has properly pointed out,[60] "Journalism and especially television offers wide scope for law teachers. I would maintain that the best legal communicators . . . in broadcasting have been university teachers." The public, it seems to me, are entitled to informed media comment from law teachers, especially in small jurisdictions and in view of the considerations discussed earlier in the paper.

Recognising the problems which small law schools in small jurisdictions appear peculiarly to face is the first step in attempting to overcome them. This brings me to the major thrust of my argument. In the only other analysis of the small law school's role, Veitch has argued[61] that disputes between the local profession and the law school regarding the proper content of the degree and the philosophical disputes thereby engendered are often exaggerated and, probably, need not exist. In a small jurisdiction, he contends, both students and teachers have ample opportunity to participate in the deliberations of the professional body and, hence, it is appropriate for the University law school to make available the courses required for admission whilst not requiring the selection of such courses for graduation. Broadly speaking, such is the situation in Tasmania, but this commentator cannot help but think that Veitch has under-estimated some of the problems inherent in small jurisdictions which have been earlier considered. At the same time, proper participation in the affairs of the professional society may not be as common as Veitch seems to uggest or as might be desirable. If I am correct, and it is all but impossible to prove the issue in either direction, one might like to consider whose fault it might be. Provided, however, that one is con-

57 See Farrar, *Law Reform and the Law Commission* (1974).

58 See Chalmers, "Tasmania 'Doesn't Need' Anti-Discrimination Laws" (1981) 6 Legal Service Bulletin 73, for an example of the kind of situation noted.

59 "The Law Teachers' Dilemma", paper presented to the Annual Conference of the Association of Law Teachers, Winchester, April 1983.

60 Street, "The University Law Teacher" (1979) 14 J Soc Pub Teach Law 243, 250.

61 Supra n 5 at 218.

stantly aware of the tripartite responsibility of the law teacher, Veitch is clearly correct in attempting to maintain the balance which he describes.

But this is by no means the whole of the matter. As most writers to whom reference is made throughout this article affirm, there is more to legal education than the production of either competent technicians, in the deprecatory phase of Bankowski and Mungham,[62] or well-rounded graduates, in Veitch's.[63] Perhaps remarkably, a useful starting point is provided by a recent publication[64] by the administration of the University of Tasmania, in which it is written that the fewer numbers in the University ". . . makes for a friendlier, less formal atmosphere in most faculties and departments. Staff and students get to know one another better, especially after first year." Close academic relations between staff and students in all disciplines is obviously desirable, but there is a further dimension relevant to legal education. In an albeit specialised area, Turner has spoken[65] of Family Law as ". . . an exciting and rewarding subject to teach. Its potentiality as a humanising influence has been insufficiently recognised." But why should humanising influences be confined to Family Law? It is, of course, true that the areas of human activity with which that subject is concerned involve basic relationships such as those between spouses, parent and child, and family and community; but other areas of legal activity are concerned with others which are similarly crucial. On a wider basis, the leading Canadian commentator on legal education, Arthurs, has urged[66] that law schools seek to produce lawyers who are ". . . more learned, more insightful, or more idealistic than their predecessors" and continues by saying[67] that, "If we genuinely believe that we are educating new kinds of lawyers, we have an obligation to define their function and to develop modes of practice through which they can exercise. If we have an authentic concern for the impact of law on people, we have an obligation to ensure that the new lawyers who are responsible for this impact are provided with a frame of reference within which they can evaluate their own contribution. In other words, out of our position of potential influence upon the profession flows fiduciary obligation to contribute our talents to the reshaping of the profession."

But does the profession need reshaping or humanising? Many of its members would deny any such claim. Amongst them would doubtless be another Canadian, Schumiatcher, who described[68] the world of the practising lawyer in these terms:

62 Bankowski and Mungham, " 'Warwick University Ltd.' (Continued)" (1974) Brit J Law Soc 179 at 184.

63 Supra n 5 at 218.

64 University of Tasmania, *Pre-Arrival Notes for Overseas Students* (1983) at 5.

65 Turner, " 'If Only He Had Had a Good Teacher': Reflections On the Responsibility of the Family Law Teacher" (1979) 14 J Soc Pub Teach Law 253, 2<0.

66 Arthurs, "The Study of the Legal Profession in the Law School" (1970) 8 Osgoode Hall LJ 183, 199.

67 Ibid at 200.

68 Schumiatcher, op cit supra n 28 at 2. Academic lawyers are, of course, not guiltless in this regard, see supra, text accompanying nn 26-27.

> Whether in the sheltered quiet of his private chambers he advises his clients of their rights and duties, or in the open courtroom (that greatest of all human arenas) he advocates his client's cause, the man of law serves as the custodian of society's security, the explorer of its liberty, an arch-critic of its philosophy and a principal engineer of its improvement.

Lest it be thought that one jaundiced commentator has selected one egregious, and foreign, statement, reference may be made to a survey conducted by Dunbar[69] amongst the legal profession in Tasmania as to their perceived needs as to legal education which is liberally bespattered with references[70] to "an old and honourable profession", "ethical profession".

Yet the legal profession would do well, it is submitted, to take account of the investigations of Weyrauch, a scholar with experience in both Germany and the United States, who suggests[71] that both modern legal education and practice provide attraction to a specific kind of personality. He specifies that,

> preoccupation with rules or rituals, intellectualisation of disturbing human problems and seemingly detached and "cold" rationalisations are . . . familiar to anyone who has dealt with lawyers and law students . . . . They emphasise legal skills and professional responsibilities. Prestige and status are very important to them . . . . They may be tense in their relations with others and lack human warmth and affection . . . . They are often gloomy and lack confidence in the future, and worry about their health and questions of security and old age. They lean towards non-egalitarian outlooks, at least on the unconscious level, preferring power and authority to persuasion.

"In summary," Weyrauch concludes,[72] "lawyers as a group, contrary to common beliefs and formal resolutions, may have personality traits that counteract or retard a wide distribution of democratic values among all people." Weyrauch's views, again, do not stand alone. Other professions do not hold lawyers in the same regard as they do themselves: There is a clear and documented distrust of lawyers felt, in particular by social workers,[73] a view which is shared by many of their clients.[74] Worst of all, perhaps, from the point of view of legal education is the statement of Turner,[75] who has the courage to state what many of us know to be true, but are afraid to admit, namely that, "No one who teaches or studies in an autonomous Law School of a University can fail to be aware that the

69 Dunbar, "Legal Education in Tasmania: What Does the Practitioner Want?" in *Understanding Lawyers* (Ed Tomasic, 1978) at 224.

70 Particularly at 223. This survey is particularly disturbing since it seems clear that the profession in one jurisdiction are not clear in their own minds about what they want the law school to do, but are prepared to criticise it for not doing that. It is also clear that many of the contributors are wholly ignorant of both what subjects were being taught in the University of Tasmania law school and the manner in which they were taught.

71 Weyrauch, *The Personality of Lawyers* (1964) at 278.

72 Ibid at 279.

73 See, for example: Phillips, "Social Work and the Delivery of Legal Services" (1979) 42 MLR 29, 39-40. For broader comment, see Bates, "The Social Worker as Expert Witness in Modern Australian Law" (1982) 56 ALJ 330, 330-331.

74 See McGregor, Blom-Cooper and Gibson, *Separated Spouses* (1970).

75 Supra n 65 at 259.

Law School is one of the most unpopular on the campus. One hears criticism that there is more snobbery amongst law students than in other faculties or departments. Law students, so it is said, tend to adopt rather patronising attitudes to other students." Against this kind of informed and experienced comment and information, it is hard to continue to maintain that the law school should not seek to exercise a humanising influence over future practising lawyers.

It almost goes without saying that a small law school is best equipped to exercise such an influence; of course, it almost goes without saying that it is important that the right teachers are found, though that is properly the subject for another paper. However, it may be necessary that we look for more than the holder of an ". . . undergraduate and law degree . . . a postgraduate degree and two or three years of practical experience" described by Veitch[76] as the ideal candidate for a teaching position. As Turner has written[77] of the successful Family Law teacher, scholarship is important, but so is concern for human development.

The second important role of the small law school relates to the context of legal education as a whole. Patterns of legal education are well established in Australia,[78] Canada,[79] England[80] and the United States[81], and it may well be that they are, by now, too well established. Thus, in Canada, Macdonald has concluded[82] that, "Law schools must consciously strive to be more diverse. There is no surer sign of our intellectual bankruptcy than the fact that almost all Canadian schools are teaching the same course in the same way." Although the prospect is not quite so dismal in Australia as it seems to be in Canada, the variety of models in its 12 professional law schools is not remarkably diverse. Diversity, I would submit, is essential if legal education is to remain vital and healthy: The fact is that some students are more suited to one type of legal education than another and Goldfarb, in her advice to intending law students even in the prestige conscious United States, urges[83] them to find a law school which is congenial and appropriate to individual student's needs. Diversity is also, therefore, an educational responsibility. Although diversity amongst law schools in curricula and teaching methods are desirable, so is diversity amongst the student body. Macdonald is keen[84] that law schools appeal to a more varied clientele and considers that, if law teachers are serious in creating a climate of curricular reform, students who will stimulate reform must be attracted and students who do not intend legal careers should be brought into law faculties. The smaller law school is almost bound to be less inflexible in

76 Veitch, "The Vocation of Our Era for Legal Education" (1979) 44 Saskatchewan LJ 21, 36.
77 Supra n 65 at 256.
78 See Australian Law Council Foundation, *Legal Education in Australia* (1976).
79 See Waddams, *Introduction to the Study of Law* (1979) at 25 et seq.
80 See Hogan, *A Career in Law* (1981) at 15 et seq.
81 See, for example: Goldfarb, *Inside the Law Schools* (2nd ed 1982).
82 Macdonald, "Legal Education on the Threshold of the 1980s" (1979) 44 Saskatchewan LJ 39, 61.
83 Supra n 81 at 16.
84 Supra n 82 at 61.

its administrative and academic structures than its larger counterpart. Perhaps the small law school in the small jurisdiction may be more circumscribed by the professional requirements mentioned earlier[85] than the small law school in a large jurisdiction with more than one institution.[86] Nonetheless, with the increasing trend towards uniform legislation in many federal systems,[87] and the continuing likelihood of interstate or overseas enrolments,[88] the opportunities for diversification and constructive experiment ought not to be neglected.

However, this paper ought to end with Captain Carpenter, as it began. If we are to avoid his fate, we must be aware of the agencies who are likely to bring it about and the methods they are likely to adopt. Further, being too intent on avoiding damage to one part of the body from one source may lead to attack on another from another. Of course, the small law school is forced to serve both practice and academe and must be resigned to that Janus-like role, yet avoiding the loss of integrity.[89] After all, Captain Carpenter was ". . . an honest gentleman/Citizen husband soldier and scholar enow . . .";[90] perhaps some of the suggestions made in this paper could enable his counterpart in legal education to retain some of its distinctive and worthwhile limbs and features.

85 Supra, text accompanying n 30 et seq.

86 Examples of such schools would be the University of Otago in New Zealand, Brunel University in England and, say, Whittier College School of Law in California.

87 See, for example: Kirby, "Uniform Law Reform: Will We Live to See It?" (1977) 8 Sydney LR 1.

88 See supra, text accompanying n 21, for comment on the Tasmanian situation.

89 One of the major themes of the poem, see Parsons, supra n 2 at 128.

90 Supra n 1.