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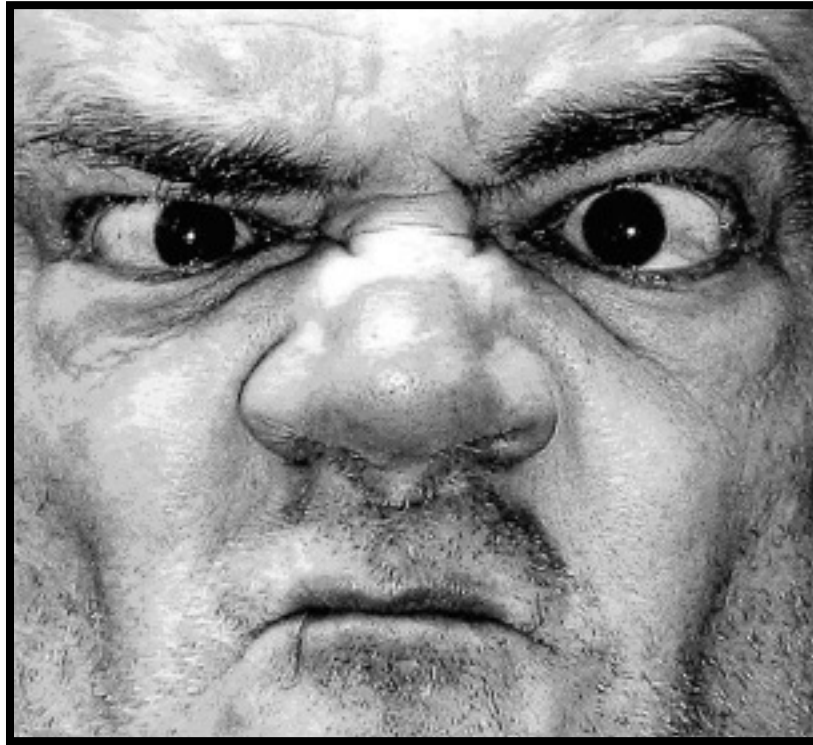
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# Academic Resistance to Wellness Initiatives Within Australian Law Schools

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# Outline

- What is ‘educationalism’?
- In what ways is educationalism resisted by legal academics?
- Why does such resistance by legal academics occur?
- How can academic resistance be minimised?

# Educationalism

**Educationalism** is a higher education discourse characterised by an emphasis upon the importance of student learning and upon teaching by academics in a manner informed by orthodox educational scholarship.

It can be contrasted with other higher education discourses such as doctrinalism, vocationalism, liberalism and radicalism. These discourses co-exist within the discursive field of contemporary Australian legal education.

# Educationalism

Educationalist principles include the following:

- A student-centred approach to teaching is more appropriate than a teacher-centred or content-centred approach.
- Reflective, evidenced-based approaches to teaching are preferable to approaches based on tradition or common practice or the demands of employers.
- Teaching should be defined as the facilitation of learning rather than the transmission of knowledge.
- Student engagement, formative feedback, authentic and fair assessment, transparency in learning objectives, and the alignment of objectives, teaching and assessment are of fundamental importance.
- Student wellbeing and the transitions into and out of higher education are at least partly the responsibility of academics rather than solely the responsibility of students.

# Educationalism

Initially the propagation of educationalism within the law school depended largely upon the *voluntary* adoption by legal academics of educationalist concepts and practices.

In recent years, educationalism has been ‘co-opted’ by managers and administrators. For university policies enacted to manage and monitor academic teaching practices, educationalism offers a relatively consistent definition of ‘effective teaching’, a detailed set of criteria by which teaching practices might be judged and compared, and a relatively clear and consistent set of benchmarks with which academics can be compelled to comply.

Educationalism is a way for a university to regulate, improve and market the ‘product’ sold to its customers, the students.

# Academic resistance

*Trained in analytical thinking and inured to critique, academics are unlikely to passively accept changes they regard as detrimental. Academics are also intrinsically motivated by the nature of academic work. They identify – often passionately – with the tasks and goals that comprise the academic endeavour, and are therefore likely to resist erosion of valued aspects of their work.*

Gina Anderson, 'Mapping Academic Resistance in the Managerial University' (2008) 15(2) *Organization* 251, 252

(And are legal academics even more likely to resist regulation than other academics?)



# Academic resistance

Active forms of resistance include :

- **Public resistance** – resistance that takes place in a public or semi-public forum, such as a verbal protest about university policy changes to senior university administrators in a large meeting.
- **Direct resistance** – resistance in the form of direct protests by academics to administrators about specific instances of regulation or in response to particular incidents, such as responding to an administrative request for information by asking challenging questions about the reasons for the request.
- **Refusal** – resistance in the form of a direct refusal by the academic to comply or cooperate with administrative directives, such as a refusal to conduct student evaluations of teaching.

# Academic resistance

Passive forms of resistance include:

- **Avoidance** – resistance in the form of a failure to comply with administrative directives without directly refusing to do so, such as ignoring administrative requests, claiming to be too busy or to have forgotten about the request, and ‘feigned ignorance.
- **Qualified compliance** – resistance in the form of compliance with administrative directives in minimal, pragmatic, or strategic ways.

# Reasons for resistance

*Where there is power there is resistance.*

Michel Foucault, *The Will to Knowledge: The History of Sexuality 1* (Penguin, 1998) 96

*[W]e must not imagine a world of discourse divided between the accepted discourse and excluded discourse, or between the dominant discourse and the dominated one; but as a multiplicity of discursive elements that can come into play in various strategies.*

Michel Foucault, *The Will to Knowledge: The History of Sexuality 1* (Penguin, 1998) 100

# Reasons for resistance

**Academic freedom:** Resistant academics see educationalism as an unwelcome and inappropriate intrusion upon their individual liberty. They insist that they can and should be trusted to do the right thing instead of being told precisely what to do.

*I think ... lots of academics don't like being told what to do. They'd much prefer just to be able to do what they want to do. They believe and they probably do have the students' best interests at heart. I don't have any worries [that] any of the academics aren't concerned about students' wellbeing and making sure they get a good subject delivered. But I just think they'd prefer to do it on their own terms, how and when they want to do it. [ADTL2]*

# Reasons for resistance

**Academic identity:** Many resistant academics see themselves as researchers rather than teachers, and many of the regulatory requirements imposed upon their teaching practices oblige them to engage in activities and acquire knowledge that is inconsistent with this identity.

*People are very conscious that there is this division of their time between teaching and learning and research, and then community contribution. So there is this tension, 'If I have to spend more time on my subject and in my teaching preparation and preparing new exams every semester, then that's less time that I have to be finishing an article or doing some further research.'* [ADTL2]

# Reasons for resistance

**Anti-educationalism:** This is a discourse that is explicitly critical of educationalism and which questions its relevance to the teaching of law, preferring to continue with traditional, doctrinal approaches. Anti-educationalism is often fuelled by an ignorance of educationalist scholarship and objectives.

*[V]ery often in legal academia we have colleagues who really have no idea about quality practice in learning and teaching and yet they believe that they know it all. ... 'What can an educationalist tell me for heavens sake? I'm a lawyer. I know my work. I know how to teach students. I'll stand in the class and give them stories and anecdotes and that's good teaching.' They just seem to be trapped into a mindset which precludes them from recognising that their own teaching practice is often severely limited.*

*[ADTL5]*

# Minimising resistance

Resistance to regulation is a pervasive and unavoidable phenomenon within all organisations, including the legal academy. A useful analogy is that of the machine: movement within the organisational machine is the result of power, and friction or resistance is an unavoidable aspect of that process. On the other hand, just as friction can be minimised, so too can steps be taken to reduce the level of conflict between discourses.

# Minimising resistance

Where appropriate, disengage initiatives from compulsion, and encourage rather than compel academics to cooperate.

*I also think if you've got some new idea that you want to implement, then if you've got the people who are with you and you work with these people then it can sort of trickle down to the other people later on. And if you have got somebody who really doesn't want to be a part of it, I think to a certain extent, at least in the beginning, you're best to sort of try and not get involved with that. Let them be and eventually when everyone else is moving down one track then I think often they'll get caught up along the way.*



# Minimising resistance

Undermine the assumption that teaching and research are two separate fields of endeavour and that individual academics must choose between one or the other by highlighting the potential connections between the two.

There is a substantial body of scholarship about what is often called either the ‘teaching-research nexus’ or ‘research-led teaching’ that can be drawn upon in this endeavour.

# Minimising resistance

Take the time to clearly explain to academics the benefits of compliance with initiatives. For example:

- explain the reasons for the initiatives in which academics are being asked to participate and the possible benefits for students; or
- encourage compliance by emphasising the importance of cooperation and collaboration and by pointing to the practical benefits of compliance for individual academics .

# Minimising resistance

Strive to create a culture that values the ongoing development of teaching, and that recognises the debate about the nature of teaching as an academic debate.

(This not the same as trying to convince all academics of the merits of educationalism. Rather, it is about a creating the conditions where open discussions about the most appropriate approaches to the teaching of law, including but not limited to educationalist approaches, can take place.)

# Conclusion

Resistance to wellness initiatives can never be abolished within a law school, nor should it: it is appropriate (and unavoidable) that any discourse within the academy – even one with apparent pedagogical merits – will be questioned, challenged and even opposed by alternative discourses and points of view. However, any such conflict should be characterised by an informed debate.

*But as to method of teaching – there we balk at communication, we balk at analysis.  
This is idiocy, plain and drooling.*

Karl Llewellyn, 'On What is Wrong With So-Called Legal Education' (1935) 35 *Columbia Law Review* 651, 677

Thank you