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It is with some relief that I am now writing this final editorial for 2016. The LED staff have been faced with some unprecedented problems this year so their achievement in overcoming these and ensuring that the *Digest* remains a practical reality means that their efforts are highly commendable. In some ways this mirrors a successful time outcome for ALTA as well, with a highly acclaimed Conference held at Wellington, New Zealand in July 2016 and the preparations already well advanced for what promises to be an equally successful one at Adelaide in July 2017. The fact that there seems to always be in excess of one hundred delegates willing to make a conference presentation, with many of these being translated into refereed articles in JALTA, says much for the vibrancy of Australian law academics. In fact the legal education scene in 2017 contains much of great promise with the Commonwealth Legal Education Conference, followed by the Commonwealth Lawyers Conference—both in Melbourne in March and the already mentioned ALTA Conference at Adelaide in July. These will be followed by the Australian Academy of Law Legal Education Conference (in conjunction with the *Australian Law Review*) in August and the International Bar Conference in October, both of which will be located in Sydney. This should result in plenty of debate with a promising outcome of highly commendable literature relating to the quality and content of Australian legal education. Certainly much to look forward to in 2017!

The book for review in this edition is the highly acclaimed Gabrielle Appleby's text examining the role of the Solicitor-General. As mentioned in the Review, the timing of its publication coincided with a dispute between the Commonwealth Attorney-General and the then Solicitor-General, so that its content attracted a great deal of attention for assisting in the understanding of a legal office which normally remains well out of the judicial limelight.

So to consideration of articles digested in this edition, with the first being designated under *Continuing Legal Education*. Here Dracup and Coverdale examine the challenges for legal education in rural Victoria linking the Productivity Commission's *Inquiry into Access to Justice Arrangements* with the Centre for Rural Regional Law and Justice *Linking Law* research project for 2013–14 entitled: *Practical Guidelines for Delivering Law to Rural Victoria using e-Learning Technologies?* The research stresses the importance for rural practitioners of both formal CPD opportunities, and also for informal social support, peer learning, mentoring and networking.

The problem of the increasing use of sessional law teachers within the university law schools system is reviewed under *Continuing Professional Education* by Heath, Hewitt, Israel and Skead who as part of the Smart Casual Project surveyed twenty eight of the thirty six Australian law schools to identify what development opportunities institutions were making available to their sessional teachers.

Under *Course Structure*, Duffy, Butler and Dickson use the eye catching title of *SEX* to attract the reader to the more mundane subject of promoting the Statutory interpretation *EX*perience in legal education. As the authors explain, the focus of the article is on *how* statutory interpretation can be taught, rather than engaging with the question of *how much* it should be taught, or *what* should be taught.

There are four articles devoted to *Cultural Perspectives*. In the first, Deane, Hamman and Li Ping in highlighting the importance of Chinese cultural competency to Australian law graduates reflect upon a 'short term mobility program' which they undertook to Wuhan, China. In the second article Harvey examines through Community Legal Education how legal services might support communities and buttress night patrols and similar services with the reminder that 'you do not empower, communities are empowered.'

In the third article Lin, Chin and Liu describe how in 2005, the Taiwanese government introduced reforms to radically transform both law schools and legal education. In the final article under this category Shepleva and Novikova in an article in the Russian Law Journal (believed to be the first time the LED has digested a Russian legal article!) explore the three key issues contributing to what are perceived to be the main reasons for the insufficient quality of legal education in Russia.

Educational Theory often gives rise to an esoteric topic for an article and Finnane does not disappoint the reader with an article which focuses on an account of three figures whom the author considers to have played a significant role in shaping the Australian legal academy in the two decades after the Second World War. In naming Sir Zelman Cowen, Sir John Vincent Barry and Norval Morris, Finnane is of the view that not only were they all eminent and influential lawyers, but also joined by their commitment to law as a public good.

Enrolment Policies is the heading for an article by three University of Technology Sydney (UTS) law academics, Evers, Olliffe and Dwyer, whose paper discusses a case study of the operation of a Principals' Recommendation Scheme (PRS). This provides an account of how PRS seeks to redress the significant under-representation of students from low socio-economic status (SES) backgrounds in law courses, in particular the undergraduate law degree (LLB) programme at UTS.

Under *Philosophy of Legal Education* an analysis of epistemic practices in a legal education introductory course is considered by Jensen, Nerland and Enqvist-Jensen when explaining how the University of Oslo conduct an intensive 1-week, method-oriented seminar, locally known as ‘A walk-through of central legal sources.’

Postgraduate Programs provides the coverage for the topic of the role of postgraduate student research groups in higher degree research (HDR) student learning and experience, which as stressed by Bell, Shakel and Steele is becoming increasingly important within the context of postgraduate research programs. Two major issues considered in this article relate to the development and sustainability of law HDR groups.

The heading of *Professional Skills* covers an article by Waters relating to the importance of teaching dispute resolution (ADR) in the modern law school as illustrated by the stand-alone academic subject model approach embedded within the curriculum at Canterbury Christ Church University (UK).

The final heading of *Research* covers two widely differing articles. In the first Murray, Pitsillidou and Caine advocate the development in the UK of student-led law reviews. advocating the success of the North East Law Review published by Newcastle University Law School. In the second article Faux considers the requirement for greater methodological rigour within legal research.

As always this edition of the *Digest* incorporates the usual wide variety of legal educational experience.

Emeritus Professor David Barker AM
Editor

M Dracup and R Coverdale

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Access to justice extends beyond consideration of the systems and institutions of justice; it includes infrastructure such as transport, health, education and communications. Rural, regional and remote ('RRR') communities are more likely to face difficulties in accessing advice and accurate information on laws and processes available for resolution of disputes. Perhaps more fundamentally, they rarely have a voice in effecting reforms in laws and related policies. For several decades, community legal centres, legal aid, courts, and a range of other institutions have used community legal education programs to improve knowledge and access to law and justice systems, services and organisations.

The recent Productivity Commission *Inquiry into Access to Justice Arrangements* notes that, 'Better coordination and greater quality control in the development and delivery of these [community legal education, legal information] services would improve their value and reach. At the same time, research into the professional needs of RRR legal practitioners has found that many of these practitioners face considerable difficulties accessing good quality continuing professional development ('CPD') and informal networking/support opportunities. Current and emerging internet-based technologies open up opportunities for legal organisations to better meet the educational needs of both rural communities and legal practitioners. However, complex layers of decisions are required to critically assess, harness and optimise technologies to best suit the needs of users, and to utilise teaching and learning techniques that best match the technologies and participant needs.

The Centre for Rural Regional Law and Justice completed the *Linking Law* research project during 2013–14. The research findings have been published as: *Linking Law: Practical Guidelines for Delivering Law to Rural Victoria using e-Learning Technologies?*

The research involved mixed methods: 33 semi-structured interviews; a literature review; and three trial events, each with participant-observation and surveys.

Interviewees included eight participants in the trial events and 25 people with expert knowledge relevant to the research.

Rural communities have continued to be on the periphery of legal education programs developed and delivered by specialist and state-wide services. The *Linking Law* research found that generic programs often do not consider the varying circumstances of rural and regional participants and that, where programs are developed for rural participants, they occur irregularly.

It is costly and can be logistically difficult in RRR areas to provide personalised, 'just-in-time' legal advice, and many organisations are focusing their attention on developing their websites and encouraging people to self-help. The study also found that many people lack the motivation, literacy, digital literacy, Internet or computer access to find good quality, appropriate web-based legal information. For those in RRR areas needing more than self-help resources, the report called for a holistic approach integrating delivery across legal and non-legal services including health, community and financial services. This involves educating non-legal professionals to help their clients identify their legal problems, provide generic legal information, refer them to appropriate legal services if necessary, and support them through legal processes.

Building greater awareness of, and engagement with, the law and legal processes through well-constructed and delivered legal education programs can also provide a foundation for more active participation from RRR communities in policy and law development and reform. Dynamic internet-based education programs can open channels of communication between centralised governments, professional services and legal institutions, with RRR communities — providing a conduit for the voices of those communities to be heard by law and policy-makers on issues that affect them.

Legal professionals must complete ten hours of formal professional development per year in the four stipulated CPD areas of ethics and professional responsibility: professional skills, substantive law, and practice management and business skills.

As at December 2013, 72 per cent of Australians in non-urban locations had broadband connections at home, and 32 per cent connected to the Internet using a mobile device. The quality of these connections is generally lower in RRR areas than in Melbourne, but Telstra claims that for most people it is still above 6 megabytes per second (Mbps). E-learning technology experts interviewed for the project proposed that this speed would vary from day to day and was subject to numerous location-specific factors. However, 6 Mbps was generally adequate to allow people to

participate in educational events with streaming video, two-way audio communication, collaborative document creation and so on.

Initiatives such as the National Association of Community Legal Centres' *CLEAR* (Community Legal Education and Reform) database and the Victorian Legal Assistance Forum's *Best practice guidelines for the development and maintenance of online community legal information in Victoria*, are playing important roles in disseminating good ideas and effective practices in online legal education and communication. A small range of smartphone apps have also been developed.

Well-designed websites and thoughtful use of social media make it increasingly possible to create and support an informal community of learning on legal issues.

The webinar is an important addition to the range of community and professional education delivery formats now available to RRR people with good internet access.

For many applications, only the host needs to install the full webinar program. Learner participants can join the event by clicking on a URL to install a small plug-in to their computer, or install a free application to their mobile device. For learner participants, the applications can be surprisingly intuitive and simple to use. The rich features now routinely provided in many of these applications support a wide choice of educational methods.

Even though digitally-supported educational methods may now be technically feasible for legal organisations, the *Linking Law* project provided a number of reasons why face-to-face events, usually targeting metropolitan area, were still favoured.

Some interviewees noted that face-to-face teaching was comparatively easy and lent itself to a wide range of teaching and learning approaches. To stay with methods that were known was particularly attractive when in-house IT support was not readily available, as was often the case. Indeed, the *Linking Law* project trials and interviews confirmed that it takes time, teaching skill, some technical facility and flexibility to learn to facilitate a webinar effectively.

The trials also showed that patchy rural and remote internet access was still an issue. Where participant internet connections were not strong, the result was at best unpredictable — particularly when video was presented.

Several rural-based interviewees also said there were advantages in sometimes travelling to a not-too distant videoconferencing venue in a rural centre. While travelling took time, these events offered opportunities to network and socialise with peers and other professionals. They reiterated previous research findings that such opportunities were often rare, but essential for people living and working in geographically-isolated locations.

Clearly, decision-making in the area of e-learning technologies and techniques is complex. E-learning experts who have studied approaches to the adoption of e-learning technologies across many fields have identified a range of factors that commonly impact on these decisions. These include cost, availability of a partner organisation to share costs and infrastructure, organisational readiness, strategic and marketing imperatives, familiarity of implementers with the technology, the presence of a product champion and other operational matters.

The first step of a systematic instructional design approach is to investigate the nature of a purported need for a particular kind of legal education. It is useful to survey not only the target learners' need for knowledge and skill in a particular area, but also the quality of their internet/mobile access, literacy levels, digital literacy levels, preferred ways of learning, prior knowledge, regional interests, contextual factors and any other relevant characteristics.

With a detailed knowledge of educational needs and learner characteristics, the next step in a systematic approach is to establish a specific set of 'intended learning outcomes' ('ILOs'). These ILOs should provide the basis for decisions on the kinds of learning activities that are used, and ultimately the types of technologies that are best able to support these learning activities.

Analysing intended learning outcomes in order to decide on appropriate learning activities can be awkward, and a popular tool among teachers and instructional designers for this purpose is known as Bloom's taxonomy. This taxonomy categorises cognitive skills into a hierarchy with remembering factual information at the bottom and understanding, applying, analysing, evaluating and creating in successive levels above it. Having decided on the type of cognitive skill involved in an ILO, the taxonomy suggests appropriate learning activities to develop that skill.

As noted above, legal professionals working in RRR areas have considerable need not only for formal CPD opportunities, but for informal social support, peer learning, mentoring and networking. In professional learning and some community groups, a 'community of practice' or 'community of interest', in which members share common interests, culture and values through joint engagement in practices or projects, can provide a context and network for this kind of social support.

In addition, learners may have opportunities to work directly with others with more expert knowledge, or at least observe their practice; and members may be able to negotiate meanings and perspectives together. Furthermore, learners are more likely to learn informally and gain tacit knowledge such as cues to appropriate behaviour and values. The *Linking Law* guidelines can be used to help guide communities of practice/interest as well as organisations using more traditional approaches, in matching appropriate technologies to their proposed purpose.

An aim of the *Linking Law* project was to identify protocols for implementing various digitally-based educational options, to help ensure RRR people can gain maximum benefit from these. Interviewees and trial participants shared many comparatively simple practices that they found to be effective means of ensuring the quality of these learning experiences for RRR people, and increasing their ability to contribute meaningfully to discussions.

Over the last two decades, the Internet has dramatically increased opportunities for specialist and peak organisations to deliver legal education and training, and engage with communities of interest and legal professional services. Realising the potential offered by the Internet however requires a systematic approach. This includes a more considered understanding of the targeted constituents and their needs, and responding with appropriate methods based on their intended learning outcomes.

To *not* respond systematically and thoughtfully to the opportunities and limitations arising from e-learning technologies and models of instructional design risks actually compounding a ‘digital divide’, leaving RRR constituents and other disadvantaged groups further stranded, as ‘a fish hangs in the (Inter)net, like a poor man’s right in the law.’

Beginning To Address ‘The Elephant In The Classroom’: Investigating And Responding To Australian Sessional Law Teachers’ Unmet Professional Development Needs

M Heath, A Hewitt, M Israel, N Skead

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**CONTINUING
PROFESSIONAL
EDUCATION**

The higher education system is one of the most casualised industries in the Australian economy. The number of tertiary students has risen sharply in the last few decades; however, growth in student numbers has been accompanied by a far smaller increase in permanent staff numbers both in universities as a whole and in law schools in particular.

One of the obvious places for law schools to look for sessional staff has been the legal profession.

However, professional expertise does not guarantee an individual has the skills required to be an effective teacher. This, for us, is the ‘elephant in the classroom’ of legal education in Australia.

Australian law schools need to ensure the ‘just-in-time’ availability of discipline-specific, pitch-appropriate development resources to support those sessional law teachers at the coalface.

Several national projects have emphasised the need for and lack of provision of high quality professional development opportunities for sessional staff.

Despite these projects, support and training for sessional teachers still appears inadequate.

Professional development for sessional teachers (as for other academic staff) has three primary purposes. It should enable sessional teachers to develop professionally, help students learn, and work towards wider school and university objectives.

We traced similar concerns in response to the survey of sessional teachers in law run as part of the Smart Casual Project. If universities want highly skilled, committed and motivated sessional staff, those institutions need to demonstrate their commitment by providing high quality professional development.

Many Australian universities have invested time and resources in formulating general policies and guidelines to ensure quality of academic instruction. However, we argue that university-wide programs have significant limitations if left to stand alone.

The need for discipline-specific development programs may be even greater in law than for many other disciplines. Sessional law teachers, particularly those in legal practice, may have a range of professional commitments including time-consuming mandatory professional development obligations in law that shape when and how they will actually make use of development opportunities.

Law students are also often atypical of students at their institutions.

The need for high-quality sessional staff who are equipped to teach and support students is also crucial given the evidence that law students experience higher levels of psychological distress

and risk of depression than the general population, regardless of levels of achievement or working hours.

Finally, law itself is different. Legal discursive practices, legal method, case analysis, statutory interpretation, legal ethics and legal problem solving are all unique to the discipline and must be embedded throughout the curriculum.

Our aim through the Smart Casual Project has been to contribute to the provision of contextualised development opportunities for the broad range of Australian sessional teachers in law through the development of time-efficient, discipline-specific resources that can be accessed on an 'as needs' basis.

As part of the Smart Casual Project, we surveyed Associate Deans of Learning and Teaching (or their equivalent, or their nominees) in all Australian law schools to identify what development opportunities institutions were making available to their sessional teachers.

Twenty eight of the 36 law schools (78 per cent) responded. Of the responding universities, 75 per cent reported that they offered formal generic induction programs for all sessional staff. In approximately half of these institutions (47 per cent) sessional staff were paid to attend these induction programs. Twenty five law schools (89 per cent) reported that some form of introduction to teaching was offered to sessional staff at the level of the discipline. This included formal (workshop, seminar or induction session) and informal (ad hoc meetings on an 'as needs' basis) teacher development. Ten law schools (40 per cent) paid sessional staff to attend formal and/or informal development sessions.

Most introductory development opportunities offered by law schools were, in fact, either generic or focused on administrative matters (eg, use of technology, orientation around the law building, information regarding the law library and other available resources, tours of offices, and introductions to general policies and procedures).

While sessional law teachers at most institutions received some introductory training, the availability of ongoing development and support was much less consistent. Only ten schools provided ongoing support and development opportunities for sessional staff.

While there are good reasons for institutions to believe discipline-specific development tools might be more useful to their sessional teachers, we were keen to discover whether sessional teachers shared this view. So, as part of the Smart Casual Project, we surveyed sessional staff at the University of Adelaide, Flinders University and the University of Western Australia ('UWA').

The three law schools reported employing 108 sessional staff in 2013. Fifty nine of these teachers responded to the survey, a response rate of 55 per cent.

We asked respondents about their experience with nine different teaching development activities (Figure 4). Not surprisingly, activities that required the least effort had been engaged in most commonly.

Familiarity with professional development seemed to encourage further engagement. Therefore, results suggest that the more experience sessional staff have of teaching development activities, the *more* favourable their attitude towards those activities.

When sessional staff had experienced an activity, they were particularly positive towards activities that offered mentoring and feedback from a colleague who had observed their teaching. When sessional staff had not experienced an activity, their expectations were particularly low regarding keeping a teaching journal or reading books and/or articles.

We asked survey respondents to indicate their confidence in, and desire to improve their ability in, a range of teaching-related areas. Sessional teachers were particularly interested in improving both their confidence and their ability in: facilitating critical thinking in students; encouraging and managing class participation; providing feedback; and facilitating student understanding of substantive content. However, respondents were only moderately interested in obtaining knowledge about theories of teaching, improving their ability to reflect upon teaching practices, and improving their ability to facilitate and manage student participation online.

Only half of the respondents had participated in teaching development programs. However, they identified several reasons for not engaging in more teaching and learning professional development activities: the lack of available professional development programs (22 per cent); a lack of time available to commit to professional development (20 per cent); a reluctance to spend time on professional development activities if not being paid to do so (12 per cent); professional development programs with content that was too basic (five per cent); unavailability of programs aimed at teaching law (five per cent); and a belief that they could improve simply by taking on more teaching (two per cent).

From a prepared list of possible development activities, over half the respondents wanted to (from most to least popular): talk with other staff about teaching; think about teaching methods

before and/or after class; attend a workshop; have a colleague observe their teaching; have formal meetings with a mentor; and review student evaluations.

The Smart Casual resources currently consist of three online interactive teaching modules providing guidance for sessional teachers on: engaging law students in the classroom; teaching legal problem solving; and marking and giving feedback on law assessments.

Each module consists of a literature review and resources guide, and a toolbox of strategies and ideas based on sound pedagogical principles that can be accessed by sessional law teachers to support and improve their teaching practices.

The three modules address specifically: how to engage students as active participants in learning law; how to use structured approaches to foster students' context-specific and generic legal problem-solving skills; and how to provide useful formal and informal feedback to all law students throughout the learning process. The modules were trialled by sessional staff, reviewed by our Expert Advisory Group comprising leading national and international legal scholars and educators, and revised in the light of their feedback.

Members of the Expert Advisory Group were keen for development tools for sessional teachers to 'be about sharing, not training'. Significant revision of the modules followed — we changed the tone of the modules from one of instruction to one of peer-to-peer discourse through the introduction of video clips of sessional staff talking about their teaching, interactive questions, contextualised examples and multimedia resources.

The reworked modules were then trialled by 28 sessional law teachers at the University of Adelaide, Flinders University and UWA Faculty of Law while small focus groups were run in Perth and Adelaide with teachers who had participated in the trial. Both newer and more experienced teachers agreed the subject areas were useful and relevant to their teaching practices, and approved of the self-directed format.

Participant feedback overwhelmingly confirmed their belief that there was a need for discipline-specific resources for law teachers.

Participants at each institution also claimed insufficient discipline-specific and teaching-focused development opportunities were available to them.

Others had not found generic teacher-development resources or opportunities very useful.

While the feedback from focus groups confirmed the Smart Casual modules helped respond to an important area of need, participants also suggested a variety of other topics and areas in which they felt insufficiently supported, such as: identifying and managing cultural issues in the law classroom; effective teaching and feedback in an online learning environment; teaching legal writing skills; managing student stress; promoting wellness and dealing appropriately with accommodating students with disabilities in the classroom; and negotiating the expectations of the role of sessional teacher in their institutional context.

The feedback we received from sessional teachers, Associate Deans and experts in the field indicated that there are, of course, discipline-specific professional development needs for sessional staff in law that go beyond the three modules the Smart Casual Project created. We argue that future work should address the additional topics of wellness in law; ethics and professional responsibility; communication and collaboration; critical thinking, and case reading and statutory interpretation.

While these topics reflect a shift in the law curriculum beyond mere transmission of legal knowledge, they offer a relatively restricted view of what law schools and their sessional staff do. The quality of development programs is similarly diminished when sessional staff are not trained to implement online teaching strategies or respond to the increasing diversity of the student cohort they are teaching.

Many law schools lack the resources to implement discipline-specific professional development for sessional staff which integrates curriculum-wide themes. In addition, we would argue that sessional staff in law would benefit from an online interactive space in which sessional staff are able to interact with one another, using reflection on the development modules as an initial point of contact.

The Australian higher education sector is increasingly dependent on its sessional workforce.

While money is saved by cutting long-term investment in the career development of permanent academic staff, casualisation strategies mean replacing them with sessional teaching staff with less experience in teaching and less time to think strategically about the skills that future modes of delivery and student cohorts might require.

J Duffy, D Butler, E Dickson

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In Australia's current legal environment, legislation is everywhere. At the Commonwealth level, and at state and territory level, law made by or under parliament (delegated legislation) continues to grow in number, complexity and importance to the practice of law.

Chief Justice Marilyn Warren (Victoria) and President of the Victorian Court of Appeal Chris Maxwell wrote to the Law Admissions Consultative Committee ('LACC') on the issue. This was perhaps prompted by a concern that the judiciaries' written and spoken exhortations to the legal academy were not being fully addressed. Their Honours urged LACC to review the academic requirements of law degrees, with a view to ensuring that 'the teaching of statutory interpretation is given the prominence and priority which its daily importance to modern legal practice warrants.

Concern was expressed that statutory interpretation was being taught in amorphous fashion across substantive law subjects, as opposed to being treated as a distinct body of law. The evolution of statutory interpretation rules, cases and legislation into a 'distinct body of law' was articulated by Chief Justice Spigelman of the New South Wales Supreme Court in 2001.

As Chief Justice Spigelman noted, 'no area of the law has escaped statutory modification. The challenge for legal educators then, is to teach statutory interpretation well, and in a way that engages law students. While statutes themselves are often not entertaining reading, it is the context and consequences of statutory interpretation that can make the process interesting to students.

The focus of this article is on *how* statutory interpretation can be taught, rather than engaging with the question of *how much* it should be taught, or *what* should be taught. Our central argument is that we can 'bring the sexy' to statutory interpretation by shifting away from traditional teaching methods including text based materials such as study guide tutorial problems.

By creating a blended learning statutory interpretation experience for law students that utilises a complex and dynamic narrative, we can create legal scenarios involving characters with faces, voices, families and backstories. When done skilfully, the context of the scenario and the consequences for the characters can lead students to a sense of engagement with the process of statutory interpretation.

The following sections of this article will outline how statutory interpretation was previously taught at one Queensland law school, and how that has transformed into a blended learning experience for first-year law students. The project *Indigo's Folly* will be explained, along with the broader benefits of using virtual environments to create authentic and engaging learning opportunities for law students.

The Queensland University of Technology Law School first teaches statutory interpretation to law students as part of an *Introduction to Law* subject. This includes a focus on the major sources of law in Australia and the institutions that create, interpret and administer the law. From the very outset, students are made aware of the importance and predominance of legislation as a primary source of law in contemporary Australia.

Despite Australia's identification as a common law country, with historical roots in the English common law system, students are taught (in the words of Justice Michael Kirby) that, 'the world of common law principle is in retreat. It now circles the orbit of statute.'

Prior to 2014, statutory interpretation was taught for three weeks in a 13-week semester (weeks 4–6 of semester). Three weeks of one-hour lectures were supplemented with three two-hour tutorials where students were expected to apply interpretation rules and principles to a set of facts.

Before these interpretation lectures, students were taught about legislation more generally (lectures and hands-on workshops), with a focus on the identification, location, and anatomy of an Act of parliament.

Each of the three statutory interpretation tutorials required students to consider a piece of legislation, and how it might apply to a particular set of circumstances.

To help students answer a statutory interpretation question, a problem-solving (boilerplate) guide was provided, similar to that contained in the *Good Practice Guide (Bachelor of Laws): Statutory Interpretation* and a model proposed by Michelle Sanson.

Indigo's Folly was created for the explicit purpose of making statutory interpretation more engaging for law students. The following objectives underpinned the adoption of a blended learning approach:

1. Engagement of a technologically literate generation of learners;
2. Involvement of realistic scenarios that provided a real-world context for the application of statutory interpretation principles;

3. Scenarios presented in a memorable way (addressing importance of retention of learning through narrative); and
4. A program which could be revisited throughout the degree to refresh understanding of statutory interpretation principles.

In 2014, *Indigo's Folly* largely replaced the study guide-based statutory interpretation tutorial program in *Introduction to Law*. *Indigo's Folly* sits within a Blackboard site and the program is entirely online. It comprises four learning modules, each of which contains at least one scenario video (and as many as four videos), a mock piece of legislation, extrinsic material (radio interviews with governments ministers, or excerpts from Hansard parliamentary proceedings) and a series of multiple-choice questions (theoretical and applied). Each week, students utilise these resources to prepare advice for Ian Indigo, the owner of the Sapphire nightclub. In each of the statutory interpretation tutorials, students are expected to bring along their written advice, and the class discusses whether the actions of Ian Indigo (or a third party) have breached a particular statute. The program utilises machinima video-computer graphics imagery created with the use of the *Second Life* virtual world rather than costly professional software or professional programming to depict scenarios that simulate real world situations.

As with the previous iteration of tutorials, there is a graduated level of difficulty involved with each of the modules. The program culminates in module four, with a nine-page mock piece of legislation, replete with insignia, table of contents, multiple sections, schedules and endnotes (including a key, list of legislation and list of annotations).

After ethical clearance was obtained, a formal survey was conducted at the end of first semester 2014, to assess student response to the program.

The results show an overwhelmingly positive reaction to the program. A total of 85 per cent of the respondents agreed or strongly agreed that the program helped them to engage with the skill of statutory interpretation more than they thought they would have done (with two per cent disagreeing or strongly disagreeing). Eighty seven per cent thought that they were encouraged to think about the skill of statutory interpretation more than they usually would (one per cent disagreeing or strongly disagreeing).

Accompanying comments indicated that the *Second Life* machinima videos, and the narrative that they depicted, played a significant role in making the program engaging and interesting for students.

These results are consistent with literature that suggests that experiential learning environments play a significant role in promoting student engagement.

The literature suggests that providing such an authentic learning environment through simulation can be an effective way of enhancing engagement and long-term retention of knowledge and understanding, since students gain an appreciation of the relevance of what they are studying to experiences they may encounter in their future careers. This was reflected in the survey which found that 86 per cent of the respondents thought that the program helped them to see the real world relevance of the skill of statutory interpretation, and helped them to understand the skill of statutory interpretation in real world practice (two per cent disagreeing or strongly disagree in both cases).

Simulation of real world scenarios may be created using real life actors in real life settings. However, absent substantial funding, such simulations may be limited in scope in the stories they can depict. By contrast, the use of a virtual world like *Second Life*, which allows customisation of the characters and the environments in which they are filmed, enables the depiction of a narrative that is wide in scope, for little or even no cost.

In the final analysis, 83 per cent of survey respondents reported that they agreed or strongly agreed that they enjoyed using *Indigo's Folly* as part of their studies (two per cent disagreeing or strongly disagreeing). A large number of respondents commented that the program was entertaining and fun. Having fun has been recognised as being a powerful stimulus for effective learning.

One further point of interest emerged from the survey. When asked how best to describe their preferred learning style, nine per cent of students indicated they learn best from visual materials and 78 per cent thought that they learn best from a combination of visual and text-based materials. Only seven per cent responded that they learn best from text-based materials. And yet learning from text-based materials alone provides the basis for a traditional approach to legal education.

Statutory interpretation has been variously referred to as a science, an art, a distinct body of law, an intolerable wrestle, and the single most important aspect of legal and judicial work. Due to its importance to the contemporary practice of law, law students need to be well versed and rehearsed in the rules of statutory interpretation and their application to legal problems. This

article suggests that law students can be engaged with statutory interpretation, through the use of blended-learning teaching approaches. Everyone likes stories, and authentic storytelling can lead to powerful learning outcomes. The combination of visual narrative and statutory interpretation instruction holds promise for law student engagement and the closing of an intellectual gap 'twixt education and practice.

CULTURAL PERSPECTIVES

Chinese Cultural Competency and Australian Law Students: Reflections on the Design of Short Term Mobility Programs

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Improving cultural competency in Australian university graduates has been on the agendas of a number of institutions across different disciplines for several years. In 2011, the Australian Learning and Teaching Council recommended further funding be made available for research into learning and teaching practices across cultures, citing it as an area which is 'crucial to Australia's continuing leadership and international reputation in international education'.

The purpose of this article is twofold: firstly, to highlight the importance of Chinese cultural competency to Australian law graduates; and secondly, to reflect upon a recent 'short term mobility program' we undertook to Wuhan, China with a view to improving the design of such projects.

At its most basic level, 'cultural competency' is having an awareness of another culture. Certainly, to be competent in a particular culture one must first be aware of its presence as well as the unique aspects (points of difference) that may influence the ability to work with a person who demonstrates particular cultural traits. In addition to awareness, however, an individual must also develop 'cultural sensitivity'. Cultural sensitivity enables a person to be aware of their own cultural influences as well as their personal biases and prejudices.

Achieving competence is an ongoing process that requires a lifetime commitment to understanding perspectives, languages, behaviours and attitudes different from one's own.

The model graduate paradigm for law in Australia has shifted over the last several decades. During the 1960s and 70s the predominant focus of curriculums was on teaching 'black letter law' through the lens of an individual state's jurisdiction.

Today, however, it is widely recognised that the teaching and practice of law increasingly requires international perspectives and analysis in many contexts. It is the phenomenon of globalization that has driven this transformation including the desire for graduates to have 'on the job' skills and practical experience before they 'officially' enter the workforce. In fact, one would be hard-pressed to find a law school that did not offer international exchanges, partnerships, internships or other study opportunities (both funded and unfunded).

Yet, an understanding of culture and the practice of cultural competency to prepare students for the 'new normal' is not well taught in Australian law schools (if at all). Moves to incorporate Indigenous competency which is urgently needed have been met with some success, but understanding and teaching of other cultures, particularly in South East Asia are not prevalent.

In recent decades, China has experienced unparalleled economic growth. The social and geopolitical importance of the region and its relations has correspondingly increased in stature. China is now home to over one fifth of the world's population, and will be responsible for much of the world's economic progression, and political and military focus, throughout the mid to latter half of the twenty first century. This is, by all accounts, China's century to shine.

More to the point, however, China is Australia's largest source of international students in higher education. The June 2015 signing of the China-Australia Free Trade Agreement ('ChAFTA') is likely to further drive opportunities and challenges in higher education, including the Australian law degree. Off the back of ChAFTA, the Australian government predicts an 'increase [in] student and teacher exchanges, providing Australians with the language and cultural skills to more meaningfully engage with China.' The Australian government has also established the *New Colombo Plan* which offers funded mobility and scholarship opportunities for Australian graduates, including law students, in the Asia Pacific including China.

Acknowledging the significance of Chinese cultural competency is one thing, but designing and implementing appropriate programs is quite another. The problem is confounded, it must be said, by many Australians lacking a basic understanding of mainland Chinese culture, its turbulent history, its notorious language difficulties (Chinese can have four different 'tones' for the same word!) and its many different subcultures and geographic regions.

Differences between Chinese and Australian cultures are underscored by Hofstede's famous 'cultural dimension' work. Individualist cultures (such as Australia, the United States and Western

Europe) are categorised as having a ‘preference for a loosely-knit social framework in which individuals are expected to take care of only themselves and their immediate families. At the other end of the spectrum, collectivist cultures (eg, China, Japan and many Asian nations) generally present a preference for a tightly-knit framework in society in which individuals can expect their relatives or members of a particular in-group to look after them in exchange for unquestioning loyalty.

Of course, one must not over-simplify Chinese culture.

Because of these noted differences, competency programs need to be specifically designed that can take into account attributes and sensitivities which are not well understood nor taught at law school. These include some basic foreign language skills, greetings, etiquette (formal and informal) as well as a genuine desire to learn and share insights. Many of these ‘soft’ skills cannot be taught in a classroom but must be observed through experience and self-reflection.

Existing cultural competency courses for law students generally have learning outcomes that fall into one or more of three categories. According to Hark and DeLisser, these include: developing knowledge of culture and demographics of specific ethno-cultural groups; the ability to use introspection and self-awareness to identify cultural differences; and the evaluation of anti-racism theories and their practical application.

As Ward and Miller remark, well-designed programs that include an overseas experience will achieve a degree of cultural competency that cannot be replicated in the classroom. Recent empirical work supports this claim.

Further research has been published in Australia where business students undertook a three week immersion course of China’s business, cultural and social practices. Students in that program were given five pre-departure briefing sessions before embarking on a 17-day tour of China. Hutchings, Jackson and McEllister concluded that the experience gave students the opportunity to develop a cross-cultural understanding in the Chinese context and a more practical view of the effects of globalization.

The QUT-HUST program was a joint initiative of Queensland University of Technology (QUT) and Huazhong University of Science and Technology (‘HUST’). Now in its second ‘pilot phase’, the program involved a two-week intensive (ie, short term mobility program) to Wuhan, China during November-December 2014. Five QUT law students partnered with four HUST law students to research and report on legal responses to air pollution in China.

Wuhan is not traditionally a tourist destination in China and consequently the language and cultural barrier was more pronounced than it would otherwise have been in other more ‘Western’ cities like Shanghai or Beijing. One might argue that cultural adaptation would be more difficult in a city with such a pronounced language and cultural barrier; however we observed rapid cultural acceptance, adaptation and post-trip insight from the students. We believe this was largely the result of three key aspects of the program: first, the inclusion of pre-departure cultural immersion training; second, partnering with students from the host institution; and, third, reflective assessment to enable students to ‘re-analyse’ the world through their own cultural lens.

The program was preceded by a week-long course at QUT’s Confucius Institute. The Confucius Institute learning experience included some Chinese language skills coupled with cultural awareness training (basic etiquette, geography, culture, politics, etc).

Several student-led discussion forums took place over the two week period, with students responsible for organising, presenting and generating discussion on the issues relevant to their trip (such as air pollution). The ‘natural authority’ of academics supervising students was not present and students were observed relating well to one another, largely through sharing and swapping of popular culture. In this regard, the inclusion of Chinese students in the group learning activities was a vital feature of this project.

Finally, the program was conceptualised to enable the students to see the Chinese cultural experience through their own cultural lens. The assessment methods were constructed to include ‘goal setting’ for individual students, as well as post-trip reflections. Reflective assessment is a critical aspect to development of resilience and insight into the practice of law. It particularly seeks to develop the softer ‘introspective’ skills of law students which traditional ‘black letter’ classes often ignore.

We have argued that techniques for developing cultural competency in law students can and must move outside the classroom, including moving towards the development of short term intensive experiences overseas. The QUT-HUST project was designed with specific cultural competency objectives in mind and with a view to providing the students with an experience they could draw upon throughout their professional lives.

The program design was of course not all positive. Identified challenges for the establishment and continuation of the scheme include: the need for several consecutive years of university funding; a willing partner institution; avoiding high levels of staff turnover. Nevertheless, the observations from our experience, together with supporting literature, have led to three suggested inclusions in the design of such schemes:

- a. begin with a cultural immersion workshop of some kind to accelerate cultural adaptation and prompt moments of reflection while overseas;
- b. include partnering with corresponding university peers to develop rapport and facilitate the exchange of cross-cultural and legal ideas (at the peer, rather than supervisory level) and finally;
- c. design reflective assessment to explore and challenge the many changing facets of culture through the student's own cultural frame.

CULTURAL PERSPECTIVES

Community Legal Education: Bringing Two Worlds Together

Y Harvey

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CLE is a discrete and widely recognised area of legal practice. Community development principles, particularly participation by members of the community in the education design and op process, inform CLE best practice. CLE is described as a 'learning process about the law, which empowers people who share common problems or issues through knowledge, skills and or attitudinal changes, to be able to do things differently' (Goldie, C (1997) *The Community Legal Education Handbook*, Redfern Legal Centre Publishing, NSW.)

In a recent report on 'How lawyers can support and empower communities to achieve change', the Director of the Queensland Association of Independent Legal Services, James Farrell, reminds us that in engaging in or providing CLE 'you do not empower, communities are empowered' (The Winston Churchill Memorial Trust of Australia, Final Report, April 2015). Community legal education is also an area of legal practice that is keeping pace with how people today consume and engage with media and culture, and the move towards a plain language approach to the law. Advertised positions for CLE lawyers are increasingly seeking applicants who, in addition to their legal background, are strongly education oriented (or have formal qualifications in adult education and training) and who possess some creative media or project management skills. CLE in the 21st century is a progressive and innovative 'learning and doing' space for social justice focused advocates.

The Central Australian Aboriginal Legal Aid Service (CAALAS) has recently collaborated on a CLE project, *Two Worlds*, with Julalikari Night Patrol in Tennant Creek. Community Night Patrol is a grassroots community initiative started over 40 years ago. At the outset, it was a volunteer service, but it has grown into a vast movement with paid positions in communities across Australia. Night patrollers are not security guards or police officers or social workers but, as responsible and engaged community members, they are often expected to do a job that borders all of these areas. The *Night Patrol Services in the Northern Territory — Operational Framework* (revised in 2014) provides only general guidelines; for example, around consent of passengers (who may be unaccompanied children or intoxicated persons) when picked up by night patrollers in order to be transported to a safe place. The framework needs to be flexible enough to incorporate appropriate responses to the specific needs of each community. Those needs, and the response to those needs, can bring into sharp focus the intersection of blackfella and whitefella law.

When Aboriginal people follow blackfella law, they may contravene whitefella law, and vice versa. Allowing for clear and appropriate recognition of blackfella laws requires cross-cultural collaboration by night patrollers in providing important services to their communities. Working through the Operational Framework guidelines in large multi-community CLE sessions has resulted in night patrollers from the central desert leading the discussion and creating protocols for dealing with a range of issues, including alcohol transportation in or around restricted areas in the community. These sessions enable knowledge sharing about what works and what doesn't work in neighbouring communities. Importantly, night patrollers are leaders in communities and are subject to blackfella and whitefella laws and norms. Knowledge-sharing by night patrollers about community needs and challenges has wider implications for ensuring that key legal and community messages are appropriately distributed.

CAALAS provides CLE across the central desert to night patrollers based on the approach pioneered by sister legal service NAAJA in the Top End. Current CAALAS projects are informed by a participatory action research approach that emphasises 'two-way learning' and 'moving from the

known to the unknown'. The NAAJA CLE team developed extensive, tailored CLE topics, resources and projects for night patrollers that provided a foundation for these CAALAS initiatives.

The *Two Worlds* project involved Julalikari night patrollers engaging in CLE sessions with CAALAS then developing, acting out, and filming six legal scenarios with a view to incorporating both sets of laws as well as the creation of a short documentary about the origins of night patrol in Tennant Creek. The scenarios focused on aspects of criminal and civil law, such as use of force, domestic violence, false imprisonment, duty of care, and the roles and duties of night patrol. The legal scenarios were translated and recorded by CAAMA Radio in four Aboriginal languages.

The night patrol service exists 'in between many spaces', and reflects both the struggles and successes of living in two worlds. In the *Two Worlds* documentary, Heather Rosas, Julalikari Night Patrol Coordinator, comments, '[Night Patrol] need to recognise two laws; we have to work through whiteman's law but we have to bring our law in too.' Julalikari night patrollers used this project to communicate fears about people forgetting culture as the foundation for the service and have sought to inspire other emerging community leaders to learn and respect both sets of laws. Julalikari Night Patrol, Julalikari Council Aboriginal Corporation and CAALAS were motivated to produce targeted language-based resources to help equip night patrollers to deliver this crucial frontline community service.

Recently, CAALAS teamed up with Desert Pea Media and BushMob residents to put youth justice in focus. The project was developed with the support of many stakeholders, including the BushMob Residential Facility, Ashurst Lawyers, the Alice Springs Police, and the Alice Springs Town Council.

The BushMob Crew in Alice Springs participated in several sessions of CLE run by CAALAS lawyers looking at, amongst other topics, healthy interactions with the law. The BushMob Crew then worked with Desert Pea Media in an immersive music video workshop. The result is a seriously catchy hip-hop song and video, featuring the BushMob Crew and community engagement police officers. The project encourages other young people to *Know Your Rights*. The methodology and distribution of *Know Your Rights* is focused on reaching young people by using the language and technology that speaks to their knowledge sharing interests.

The power of this project resides in the creative translation by the young BushMob Crew of legal ideas and concepts into persuasive messages. Toby Finlayson, Director at Desert Pea Media, suggests, 'contemporary music and film are languages that young people already speak — [they are] an important way to engage in critical thought and dialogue around some serious issues, and to build a contemporary Australian culture that is informed, aware and inclusive.'

There can be challenges to establishing the type of relationships that are intrinsic to developing community legal education projects. These might include changes in community and organisation roles and positions, funding realities and deadlines, communication breakdowns, as well as other issues that impose restrictions on the number and type of CLE projects that can be developed. This can impact on how projects are distributed, evaluated and, ultimately, how services, groups and individuals use the resources. Collaborative and multi-stakeholder approaches, as well as newer technologies such as social media and online interactive tools, offer solutions for co-creating, distributing and evaluating CLE projects.

The legal services that are essential in supporting communities and buttressing night patrol and similar services throughout Australia will continue to grow with the involvement of the next generation of passionate, innovative CLE providers, and with further research of best practice and greater awareness of the value and importance of CLE within the wider legal community.

Legal Education in Taiwan: Evolution and Innovation

C Lin, M Chin S Liu

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The most obvious problem with traditional legal education in Taiwan is its failure to produce lawyers that respond to the needs of industry and society. Being aware of this problem, in 2005, the Taiwanese government introduced reform to radically transform both law schools and legal education. The attempt failed, however, due to opposition from traditional legal academics. However, this failed attempt did not halt the motivations for reform. In fact, without government intervention, it created an opportunity for younger, smaller law schools to adopt new approaches to revolutionize legal education.

CULTURAL PERSPECTIVES

Postwar legal development in Taiwan can be divided into three stages: the transitional stage (1945–49), authoritarian stage (1949–87), and liberalization and democratization stage (1987–2000).

With political liberalization, legal education has also undergone a process of liberalization in the past few decades. Between 1990 and 2012, the number of colleges or universities providing legal education increased from 8 to 37.

However, while the liberalization of law schools has certainly allowed greater access to legal education, it has not solved other problems facing law schools in Taiwan. The former Dean of National Taiwan University's Law School, Professor Chang-Fa Lo, opined on two main views regarding the inadequacies of legal education: the source of law school students, and failures to adapt to social and economic changes in Taiwan resulting from globalization.

The problems associated with legal education are exacerbated by the qualification policy of the legal profession. A Judicial Officer Exam is held to select judges and prosecutors, and a separate Bar Exam is held for lawyers. Those who pass the Bar Exam are required to undertake practical training sessions at the Lawyers Training Institute and, by contrast, complete an internship at a law firm.

The pass rates for the two exams are extremely low. Exams are held once a year. The annual admission's number for the Judicial Officers Exam is based on the number of anticipated vacancies of judges and prosecutors in the following years. The low pass rates of both the Judicial Officers Exam and Bar Exam contribute to distortions within legal education.

In 2005, the then Vice President Lu Xiu-Lian initiated an effort to reform the legal education system. The essence of his proposal was to follow the models used by Japan and Korea, establishing American-style professional law schools at the graduate level. According to his proposal, after a transition period of 17 years (2022), only graduates of the new professional law schools would be allowed to take the two exams.

From the perspective of the low pass rate of the two exams, a clear distinction between the roles of undergraduate- and graduate-level law schools might be helpful to students, as it would allow undergraduate law schools to focus more on traditional law subjects and help students to pass the two exams. However, due to the unresolved issues in the proposal and the strong opposition from many legal scholars, the then President Chen Shui-Bian halted the reform proposal in 2007.

Failure of the former attempt at reform did not stop efforts to innovate Taiwanese legal education. When the 'one-shot solution' proposed by the government was turned down by legal academics, the Ministry of Education became reluctant to interfere with the development of law schools. The loosening of government controls opened up opportunities for individual institutions to try out different approaches in training future lawyers. Thus, the failure of the government's efforts to reform might not be bad after all.

Legal academia began responding to the needs of the technology industry in the early 2000s. Many newly established graduate-level law schools focus on the integration between law and technology.

Almost all of these new graduate-level law schools target students who do not have legal backgrounds. These lawyers would then make up for the disadvantages of traditional law school students and satisfy the needs of the technology industry, while traditional law schools would continue to exist and supply the traditional legal market. However, not all of these newly created institutions have been successful.

And even the so-called interdisciplinary legal studies in leading traditional law schools, such as National Taiwan University and National Cheng Chi University, as well as many other new law schools, are struggling to attract students.

While many new law schools are struggling, the National Chiao Tung University School of Law (NCTU Law) has become one of the most successful law schools in the last decade. NCTU Law has built up its programme with an industry-oriented approach, developing into an "innovation hub" of legal education, to meet the challenges of a dynamic world and changing society. Although the law school has a limited number of full-time faculty and degree-pursing students, it has enormous influence in leading legal education and a huge impact on changing society, through managing education to become a centre of vision, strategy, and action in a dynamic environment.

NCTU Law focuses on American and international law. The Taiwanese technology industry is an indispensable part of global supply chains. Knowledge of international and transnational commercial law has become a basic requirement of corporate lawyers. Knowledge of American and international law thus gives NCTU Law graduates a huge advantage in the job market.

Second, influenced by American law schools, NCTU Law emphasizes training in practical skills and empirical approaches to law.

Practical training involves inviting a substantial number of adjunct professors, who are experienced practitioners, to conduct courses on a regular basis. Another important aspect of practical training is internship opportunities in courts, prosecutor's offices, government agencies, such as the trade negotiation office, and non-governmental organizations (NGOs). NCTU Law is a graduate-level law school. Students are required to finish a master's thesis before graduation. To ensure that these theses fit the needs of society, students are required to incorporate qualitative reasoning and quantitative analysis as the bases of their arguments.

One of the major problems of traditional graduate-level legal education is its design, requiring both professors and students to focus on only one particular field of law.

This group-dividing strategy is successful, from the perspective of nurturing experts in specific areas of law tested by the exams and helping students to pass the exams, but it comes at a high cost. Real-world legal problems often cannot be categorized into specific legal fields.

Two initiatives stand at the core of this innovation. The first allows students with different backgrounds to attend the same courses. The second merges full-time with part-time students.

The new approach has several advantages. First, and perhaps most importantly, merging students with different backgrounds helps to create an interdisciplinary environment, and turns the classroom into a platform that allows students with diverse backgrounds to interact with each other. Also, different groups of students have different strengths in learning. The different groups often contribute very different dynamics to the classroom.

However, an even more interesting dynamic comes from merging full-time with part-time students. Full-time students usually have a better command of English and have more time to work on reading assignments, but they are unfamiliar with the application of legal principles to cases. Part-time students, on the other hand, are exactly the opposite.

Another advantage of merging classes is that, to some extent, it replaces the necessity for summer internships. In terms of making connections, what kind of connection is better than working on group projects in courses with potential future employers? It is not unusual for full-time students to be recruited by their classmates after graduation.

The biggest difference between American and Taiwanese law schools is government control. In Taiwan, the best universities are public universities. The government controls both the number and salary of faculty members, and the number of and tuition fees for students. Also, for a young law school like NCTU Law, faculty positions supported by the government are very limited. It is extremely difficult to maintain a full law school curriculum, which covers both fundamental and advanced legal subjects, and at the same time distribute a reasonable workload to faculty. Therefore, hiring adjunct professors is inevitable. And, because most adjunct professors hired by NCTU Law are practitioners, they not only share the workload of full-time professors, but also contribute their thoughts on the latest industry issues.

Providing continuing education programmes for the government and corporations is crucial to the development of NCTU Law School. Conducting high-quality continuing education programmes brings in funding to hire the necessary adjunct professors. The revenue is then invested back into continuing education programmes and used to conduct seminars and large-scale conferences. The success of these programmes and conferences brings in more revenue and attracts higher-quality students to apply for full- and part-time graduate degree programmes. Higher-quality students attract even better adjunct professors, and thus create a sustainable virtuous cycle that provides the best-quality education to students.

NCTU Law's innovative approaches to legal education have achieved great success over the past decade.

The platform design and interdisciplinary approach are widely praised by students. Today, NCTU Law continues to provide training to both private and public institutions. Its innovative approach has indeed created a sustainable business model for NCTU Law.

One problem shared by many major East Asian law schools is the fact they attract mostly local students. American law schools attract thousands of applicants every year from around the world. Many such law schools are actively seeking opportunities beyond the borders of the US. Some have summer programmes in Europe and Asia, while others arrange non-US employer externship opportunities. A few law schools have even created Asian study and research centres, and hired non-American faculty members to attract students from Asia. The fact that many Asian students are willing to attend US law schools, with much higher costs, shows that East Asian law schools have a ways to go in improving global competitiveness.

After fulfilling the needs of local industries and society, the next step in legal education reform in Taiwan is supplying the demands of global markets. However, due to the limited resources of

law schools in East Asia, it would be hard for any individual school to compete with American law schools anytime soon. This is why East Asian schools should consider forming alliances as platforms for collaboration.

CULTURAL PERSPECTIVES

The Quality of Legal Education in Russia: The Stereotypes and the Real Problems

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Russian Law Journal, Vol. 2(1), 2015, pp 106–120.

The paper explores the three key issues that are often put forward as the main problems contributing to reportedly insufficient quality of legal education in Russia: superfluous number of law schools, lack of practical preparation of students, and lack of teaching of professional ethics.

Current public opinion has it that with the exception of a small number of well-established, elite institutions, the overwhelming majority of law schools are simply not able to provide the appropriate training. Their graduates are frequently unable to find jobs, and if they do become engaged in legal work either in government service or the private sector, their lack of expertise makes them more likely to do harm.

First of all, the practices and experiences of the schools' instructors and administrations must be taken into account. It is also important to consider law schools in the context of actual legal practice and the various fields in which legal knowledge and skills are applied — contexts to which law schools should themselves refer and try to reflect if they are to be effective in preparing graduates for such work.

Many posit that because of the popularity of legal education, private and so-called low-profile institutions have opened law schools and are graduating lawyers without the ability to provide them with high-quality training.

This argument is supported by two widely held beliefs: First, that educational outputs, such as a graduate's knowledge and abilities, are wholly dependent on the institution that educated them. Second, a high-quality education can only be provided by a reputable, established institution employing traditional legal pedagogy.

Some proponents of this point of view explain their concern by asserting that poorly prepared graduates make a negative contribution to professional legal practice; for example, being employed in government institutions and making inappropriate use of their authority. Others state that substandard law schools are misleading their students because the level of training that they provide often does not leave those students sufficiently qualified to find work in their desired field.

The structure of the educational services market and the labor market, as detailed by the results of our study, suggests important corrections to this perspective. Firstly, according to the law school faculties and students who took part in our study, far from every student enters law school with the intention of practicing law upon graduation.

Clearly, after graduation those with 'non-law' motivations do not look for work as a lawyer. They do not perceive this to be a problem, nor do those around them.

Students planning for legal careers try to choose institutions that have reputations as high-caliber law schools. They have to take into consideration, however, the reduction in state-funded institutions and the increasing tendency on the part of law schools to charge for their services.

In practice this means that some motivated, diligent and talented young people cannot afford to attend prestigious law schools and so go where the training costs less.

Thus, capable graduates of low-profile and private law schools often prove themselves to good effect in a professional capacity, although it is more difficult for them to achieve growth in their careers quickly.

Employers often encounter graduates of prestigious law schools who do not meet their requirements. Nevertheless, the results of this study show that practically all graduates who wish to practice law find employment, irrespective of their abilities and the prestige of their diploma. Of course, this assertion does not consider whether those graduates were satisfied with their place of work, nor the demand for their qualifications on the market, etc.

One could say that the present diversity of law schools and the varying quality of student training are brought about by the diversity of external demand. There is a need for schools that teach law and prepare students to become lawyers, for others that keep students 'busy,' and a demand for others still that simply hand out 'sheepskins.' The results of the study show that in each particular region schools begin by specializing in one of the needs listed above. At the same time, even prestigious law schools that aim to provide high-caliber instruction and maintain a good

reputation cannot wholly avoid students who matriculate with goals that are unrelated to getting a legal education.

Perhaps the most common claim regarding Russian legal education is that there is a lack of practical training at law schools.

Our study shows that this claim is not without foundation. However, schools cannot solely account for the problem for two reasons. Firstly, what practitioners and employers expect from higher education is not only ambiguous or contradictory, but generally poorly articulated. Secondly, with rare exceptions, educational institutions experience problems in defining objectives, and to be more precise, in understanding whom they are preparing and for what.

This problem is more clearly observable when law schools attempt to secure from employers and practitioners a list of requirements and wishes concerning the content and level of training for their graduates.

Information obtained during our study indicated that many employers simply do not respond to a school's invitation to take part in dialogue.

On the other hand, when a dialogue does take place, the parties do not always understand one another.

During the course of our study we tried to create a coherent list of the demands made in various fields of practice for professional qualities in lawyers, including those who are just beginning their careers.

One group of employers wants to hire for legal work only those lawyers who can immediately fulfill a certain set of functions without training. This demand is, in part, expressed by the requirement that applicants for even an entry-level position have some minimal work experience.

Other employers, by contrast, prefer to take students or graduates without practical experience and independently shape their professional aims and skills.

This position is generally taken by employers who represent large law firms, whether Russian or foreign. They are more interested in whether the law school provides good theoretical training. These employers, however, have an understanding of theoretical training that is different from academia.

As of yet, law schools have been unable to answer this question. However, this does not mean that they have refused to look for an answer; indeed, they come up against serious difficulties in doing so. Some of these difficulties are caused by a lack of reciprocal ties between law schools and legal practice.

The common perception that the Russian judicial system is flawed and corrupt is another obstacle to the formation of a common point of view on practical training.

Moreover, an understanding of the real problems of jurisprudence compels some in the academic community to reject the very notion of a law school's orientation toward practical training.

Many instructors do not deny the importance of integrating practical training into the curriculum. But here as well there is a difference in views and approaches. One position is to be attuned to the labor market and its current demands in all their diversity. An alternative point of view maintains that law schools should not engage in training personnel for a concrete employer.

Those who reject the idea of preparing students for a specific employer, in turn, offer two different approaches to the understanding of practical orientation. The first is to prepare the student to fulfill traditional professional roles: public prosecutor, investigator, advocate, etc. The second is to equip the student with a set of fundamental professional skills that are indispensable to anyone who wishes to work in the legal profession, regardless of position.

Both of these approaches are realized in current educational practice.

The task of preparing a student for a certain professional role presupposes the creation of an ideal model, i.e. an ideal advocate, investigator, corporate lawyer, etc. Currently, law schools are not fully coping with the task of developing ideal constructions, in terms of both skills and professional roles.

Law Schools find themselves in a situation where they must fulfill several tasks within the framework of the bachelor's degree: fill the gaps left by inadequate education in grade school, give students the required set of disciplines unrelated to law, provide theoretical legal training, and prepare students for professional practice.

Doing this, however, is not simple since for quite some time now law schools have been engaged primarily in theoretical training. This has shaped a firm tradition that is expressed in teaching methods, in approaches to drawing up educational programs, in methods of instruction, and in the organizational structure of law schools. For this reason the integration of practical training into the pedagogical process whilst fulfilling all the other tasks to be met by these institutions will require

a foundational restructuring of the educational process, a reconsideration of the programs' content, and changes in instructional methods.

During public discussion on the deficiencies of the legal education system law schools are accused of not paying sufficient attention to the formation of legal conscience and instilling in students the moral foundations of the profession.

On the one hand, these misgivings are understandable and in certain instances are not groundless. On the other hand, and this is confirmed by the findings of this study, students and young lawyers, as a rule, share society's fundamental values and regard injustice, corruption and malfeasance negatively.

However, within the framework of their jobs practically all young lawyers have encountered situations and problems that do not have a clear and simple solution in light of their personal and professional values. The interpretation of these sorts of situations and the search for a way out of them is a complicated and sometimes even agonizing experience for the young lawyer.

Unfortunately, law schools so far offer little in the way of professional ethics training, despite the fact that instructors recognize their responsibility to train ethical lawyers. The issue is addressed within the framework of traditional law courses. Instructors relay certain values and professional aims when they express their evaluations and judgments regarding legal norms, when examining special cases with their students, when illustrating standard material with examples from practice, and when reacting to students' questions and comments.

On the one hand, there is the problem of mixing questions of professional ethics with questions of the commission of direct infringements of the law and crimes. On the other hand, instructors understand that in practice their students might encounter serious pressure from employers and other figures in a bid to coerce them into engaging in improper acts. Unfortunately, instructors do not always have the answers on how to stand up to these pressures.

EDUCATIONAL THEORY **Law as an Intellectual Vocation**

M Finnane

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In this article I consider the intersecting lives of three figures who played a significant role in shaping the Australian legal academy in the two decades after the Second World War. One, Sir Zelman Cowen, the subject of the conference gathered to reflect on his work as lawyer, university teacher and administrator, later Governor-General; the second, Sir John Vincent Barry, judge, criminologist, historian and civil libertarian; the third, Norval Morris, criminal lawyer, criminologist and penologist. To all three we could readily add the descriptor 'author', for the activity of writing helped define their impact and legacy.

All three figures were lawyers, eminent and influential each in his own degree, but joined by their commitment to law as a public good.

Barry was the least privileged in background — his father was a house painter — but took enormous advantage from a solid education as a scholarship student at a Catholic boarding school in Goulburn. Unlike both Cowen and Morris, Barry's law came through the clerk's system. He had to wait another four decades before he received a university degree, an LLB by thesis in 1963, for two articles he had researched and written while a judge.

He was always the autodidact — while still a law clerk he commenced a pattern of reading that was voracious in capacity and intellectually curious in its breadth. Like an earlier prodigy from his region (Sir Isaac Isaacs, whose maternal dependence was even more intense), Barry appeared to draw much from his drive to match and exceed his mother's expectations.

Being older than Cowen and Morris, Barry had also a different experience of war; too young for military service in the First, and too old for the Second. From the memories of both Morris and Cowen, one gets the sense that war service was an interruption in some other course, or perhaps better that it helped sharpen what would be valuable to them in subsequent careers. The precocious Morris had been forced to take a year off from studies after completion of high school as he was too young to enter university.

For Barry, seeing out the war mostly in Melbourne nevertheless presented challenges of domestic politics and executive power and decision-making that he observed closely. His friendships and alliances were with leading Labor figures, especially H V Evatt (Attorney-General and Minister for External Affairs in the wartime Labor government from 1941) and Arthur Calwell (Minister for Information after 1943), and other civil libertarian and socialist figures, above all Brian Fitzpatrick.

Barry was as passionate about politics as Brian Fitzpatrick. His correspondence with Morris, Fitzpatrick and especially his 20 years of letters to the American scholar of Australian industrial law and politics, Mark Perlman, deliver an inexhaustible commentary on contemporary Australian and world politics, economy and society.

Cowen too was a political figure and observer from early on. He appraised the political world with a deep respect for constitutionalism and good government, nurtured no doubt by the chastening experience of war as well as his very early ascendancy to the demands of academic administration.

No less than the others Morris came easily to political engagement. In 1958, on Cowen's recommendation, the 34-year-old Morris went to the University of Adelaide as foundation Dean of Law. There he ran into trouble with a conservative legal profession and judiciary. It all came to a head over the questionable conviction and impending execution of Rupert Max Stuart in 1959.

As we have seen earlier, Morris was a lawyer who was not satisfied with reading law books but went into prisons to get the other side of the story. Inglis illustrated his observation with a story from an early encounter of Morris with the South Australian judiciary. In 1953 he addressed the Eighth Legal Convention of the Law Council of Australia on the topic of sentencing. His wide-ranging address questioned the narrowness of judicial knowledge about the people appearing before them, arguing strongly for rational sentencing based on psychological and sociological understanding of human and criminal behaviour.

Morris saw such provocation as obligation, whether as teacher, scholar practitioner or advocate of change. Like Barry and Cowen, he was inclined to the political but recognised why his time might be spent more fruitfully in the scholarship that might inform future choices, whether in lawmaking or social policy or the workaday world of the law in practice.

By the time they came together at Melbourne in 1951 all three of our subjects were already internationalist in their thinking and disposition. Remarkably, Barry, the one who had never been outside the region, had forged significant links through his avid reading and confident correspondence with those he found compatible and responsive to his queries and interests.

Though lacking formal university training or international travel, Barry was already thinking internationally and acting the public intellectual role in an exemplary manner by the time his later colleagues commenced their studies. Both Cowen and Morris were shaped in intellectual orientation and academic and institutional networks by their international training.

In 1948 Cowen received an invitation to lecture in the Chicago Law School over the summer term of 1949. In the year of his arrival at Melbourne, he was able to welcome Erwin Griswold, then Dean of the Harvard Law School, who had come to Australia to attend a conference of the Law Council celebrating 50 years of Australian Federation. Before long Griswold was pressing on Cowen an invitation to visit the United States — in 1953 Cowen did so as visiting professor in the Harvard Law School.

The chain continued through Griswold's invitation to Norval Morris to teach at Harvard in 1955, an undertaking that helped change the way Morris taught law. While there he also taught criminology at Boston University at the invitation of Albert Morris, a criminologist who had already visited Melbourne on a Fulbright Fellowship to give his own lectures.

Well before his own sojourn to the United States in 1955, Jack Barry was already being drawn into the American network by his weekly correspondent Mark Perlman — Perlman had come to Melbourne in 1949 to research Australian labour law and industrial relations for his Columbia doctorate. When he got there in 1955, America in reality proved to be both 'an extraordinary place' capable of great innovation, but one whose enthusiastic democracy had its dark side in the populism inflaming agitation against disliked groups and other signs of reaction and 'torpor' — a favourite Barry word.

Disappointed, bored, by the large part of the work of the Victorian Supreme Court, Barry sought to continue his intellectual and public interests. He did so, as Norval Morris put it, and as Barry's letters make clear, by getting 'himself put to undefended divorce', giving him the time to devote to the problems of criminology and the criminal law. In so describing the stratagem he demeaned his work in divorce — 'defended divorce' threw up many problems of policy, procedure and evidence which Barry made the subject of published case reports.

The greater part of his intellectual work, however, was cultural, political and professional in a way that exemplified his activism. The one-time President of the Council of Civil Liberties had to curb his public engagements to a degree — but working away behind the scenes he continued to advance his causes, especially, in the 1960s, that of abolition of capital punishment. In this cause, the judge was joined with Morris and Cowen, whose academic independence gave them the

freedom to agitate the case in ways not open to a judge of the Supreme Court, who still had to sit on capital cases.

Barry's capacity for long service in enterprises which were the first of their kind was evident in two roles that were central to his concerns about the social function and impact of law and punishment — Chair of the Board of Studies in Criminology at the University of Melbourne from its beginnings in 1951 to the end of his life, and Chair of the first Parole Board in Australia from 1957.

These were more than formal tasks. He lectured frequently in the criminology program, even taking over Morris's course when the latter went on leave to Harvard in 1955–56. His work with the Parole Board placed him at the heart of decision-making post-sentence.

Barry was probably unaware of his Australian Security Intelligence Organisation file, but knowledge of it would only have increased his determination to speak for the value of privacy and the dangers of surveillance, two of the subjects on which he wrote for both professional and lay audiences. When Cowen came to deliver his Boyer Lectures on privacy in 1969, he acknowledged and drew on the original work that Barry had published on the subject at the time of Sir Garfield Barwick's *Telephonic Communications (Interception) Act 1960* (Cth).

Cowen, Barry and Morris all came to law in the 1950s as people committed to law and politics in ways that drew on and informed their sense of what kind of values were embedded in law — constitutional, respect for privacy and dignity, a framework for social order and civility. They saw themselves as reproducing a legacy, and creating one.

For all the writing, the journal articles, the biographies of judicial and penological luminaries and those more notorious, Barry's everyday work as a lawyer and later as a judge burdened him with responsibilities of decision-making that intellectuals might largely escape. In the 1930s, which was also the decade of *his* 30s, he was already seeking, in intellectual reflection, relief as well as insight from the daily grind of legal practice.

His voluminous correspondence was not infrequently conducted during breaks in court. This was a man who could not stop thinking and writing, even more so than his friends Cowen and Morris.

ENROLMENT POLICIES **Law's not hard; it's just hard to get into: a study of alternative entry students to law school**

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This paper discusses a case study of the operation of a Principals' Recommendation Scheme (PRS) in the undergraduate law degree at the University of Technology Sydney (UTS).

Whilst there are many aspects to the tapestry of "progress", we have limited the study to key indicators of retention and academic performance, based on students' ability to maintain the standard required for the subjects within their law course.

The study evaluates:

- (1) the 2012 students' first, second and third years of law study;
- (2) the 2013 students' first and second years of law study; and
- (3) the 2014 students' first year of law study.

There are many other key aspects relating to students' health and wellbeing that could also be considered in a study of their university experience and academic progression.

The mark required by school students to enter law school has consistently ranked law with medicine, dentistry and actuarial studies as the most difficult courses in which to obtain entry. This has resulted in a significant under-representation of students from low socio-economic status (SES) backgrounds in courses such as law, medicine and architecture.

In 2009, the federal government announced its commitment to various recommendations made by the Bradley Review.

One of the Review's most reported recommendations was the setting of a national target that, by 2025, at least 40% of the population between the ages of 25 and 34 will have graduated with a bachelor degree. The Review also recommended that a national target be set to achieve an increase in higher education participation of people from low SES backgrounds, with a target of 20% of undergraduate enrolments by 2020.

As Professor Richard James observes, a university admission rank is "... not a measure of intrinsic individual intellectual ability" rather the ranking "... partly measures the cumulative

advantage or disadvantage of family, school and community circumstances ... a less than perfect proxy for the potential of individuals to thrive in and benefit from university study”.

One of the alternative approaches adopted by some universities is the Principals’ Recommendation Scheme (PRS). The PRS is based on high school principals’ recommendations that a final year student be offered a place on a course in those cases where the student meets the PRS eligibility criteria and is unlikely to achieve the required course ATAR.

At the same time, admitting school leavers with lower ATARs to university has ignited research and discussion on attrition rates. The Grattan Institute Report, “Taking University Teaching Seriously”, argues the need to improve teaching and learning at university to cater for students with “weaker academic backgrounds”.

The University’s commitment to non-conventional students is strengthened by the collaboration among three of the units within the University, the Equity and Diversity Unit (EDU), the Student Services Unit (SSU) and the Institute for Interactive Media and Learning (IML).

The EDU oversees the alternative pathways to university entry that have admission criteria based on educational disadvantage. The University’s SSU works with the EDU to provide curriculum and non-curriculum support to PRS students through individual learning plans, brokered referrals, mentoring and subsidised tutoring.

Research and the development of specific approaches for transition and retention of first year undergraduate students have been part of the University’s policies and strategies for several years, with a specific program for retention and success introduced in 2012 within the University’s Widening Participation policy. Complementing the University’s Widening Participation policy is the First Year Experience (FYE) Program, which includes the PRS.

The challenge with the participation targets required by the Bradley Review is not the increase in student numbers, but rather in ensuring that the experience for these students is affirming and constructive, with a likely outcome that students will continue with their studies.

Research data reports that students are generally satisfied with the transition to university experience, and less satisfied that their expectations about learning have been fully achieved. Nelson, Kift and Clarke suggest that this could be resolved by targeted curriculum design and explicit communication to students about learning objectives and outcomes.

The Faculty’s first year program and strategy for PRS students are based on Kift’s Transition Pedagogy, through the curriculum principles of transition, diversity, engagement, assessment and evaluation and monitoring.

Kift refers to the special learning needs of students that may result from their backgrounds, including “at-risk or equity groups” and “non-traditional cohorts”. It is essential that, as individuals, the PRS students are supported, respected and resourced in their academic development.

In the second semester of 2012, the University introduced a pilot Transition Support Project for PRS students. The Project’s core aim was to provide PRS students with the support to ensure their retention and success in their chosen courses.

PRS students were provided with tailored information, which included an explanation as to the structure of lectures and tutorials, instructions concerning assessments, advice about the need for a good balance of work and study commitments and tips on the university environment. The information was provided by senior students in the role of mentors and tutors.

As part of the Project’s evaluation, the academic success of all the PRS students across the University was analysed, with the positive result that 91.4% of students passed their subjects in first year. Further analysis in 2013 and 2014 showed a success rate for PRS students of 91.2% and 92.8%.

Curricular strategies include small group teaching, committed first year teaching academics, early low risk assessment and feedback, introduction to legal skills, such as research and problem-solving, and a focus on academic literacies, reflective practice and self-management skills. Co-curricular strategies include Law Orientation, the peer mentoring program for all first year students, academic mentoring for students “at risk” and workshops in case note writing, problem-solving and exam preparation.

One of the initial challenges with planning for PRS students was whether, by providing additional support, these students would be “labelled” and either view themselves, or be viewed, as different or less capable. The Faculty adopted an approach based on student confidentiality, with communications being maintained on an individual, rather than a collective, basis and student consent being obtained prior to the Faculty disclosing a student’s PRS entry to teaching staff.

As a general finding, based on all law subjects undertaken by the 2012 PRS students, the pass rate was 93.6%.

The study also considered tutorial attendance records and student engagement in co-curricular opportunities. In those classes where records were kept, the majority of PRS law students had excellent attendance. There was a clear correlation between the students who achieved strong results and attendance.

Of the 14 commencing 2012 PRS students, two discontinued their law study, one transferring to another course and the other withdrawing from UTS. Using data from students' transcripts, subject attendance records and assessment marks, we concluded that the 12 remaining PRS students successfully completed their first year of law study with high attendances and a solid engagement with co-curricular activities.

The Faculty continued to track the PRS students, focusing on academic performance and retention as part of the University's ongoing Widening Participation strategy. In 2013, 23 students commenced their law study under the PRS. The pass rate for the 2013 law students was 93.7%. In 2014, 34 students commenced their law study under the PRS, a significant increase from 2013. The pass rate for the 2014 law students was 93.9%.

The results of all core law subjects undertaken by all undergraduate students, including PRS students, in 2012, 2013 and 2014 were collated and the average marks calculated for the PRS and undergraduate students. Although the average mark for the PRS students is lower than the average mark for all undergraduates, the PRS students are progressing academically and, in some subjects, individual PRS students achieved higher marks than the undergraduate average.

As shown in [Figure 3](#), there is a discernible difference between the PRS students who achieved an ATAR of 87 and above (Group 1) and those who achieved an ATAR of between 80 and 86.95 (Group 2).

In all but two of the core subjects over the three-year period, the Group 2 average was below the Group 1 average. This is relevant to the discussion as to whether an ATAR of less than 87 should be offered for entry into law.

Early analysis and evaluation of these results for the first three years of the PRS demonstrate the majority of PRS students are succeeding in their law studies. While the aim is to retain all students, it should be noted that the attrition rate for law PRS students was the same as the attrition rate for UTS undergraduates across all Faculties.

The inpUTS educational access scheme is the major alternative entry pathway for students who meet the eligibility criteria discussed earlier in this paper. Of the 71 PRS students who commenced law between 2012 and 2014, 70% may have been eligible for an inpUTS offer as they achieved an ATAR score within 10 points of the entry score for their nominated course.

A more nuanced research question resulting from the analysis is: how are the PRS students who would not have received a place as inpUTS students performing academically? In comparing the ATARs of the PRS students, it is interesting to note that only 30% of the cohort required their school principals' recommendation of a place in law. The PRS can be seen as a safety net, a "just in case", to cover the situation where the ATAR might be such that more than the 10 bonus points are needed to reach the ATAR determined for the desired law degree.

An examination of the retention and success rates of the PRS students from 2012 to 2014 finds consistency with the retention and success rates of the inpUTS students.

There is no evidence in this study that PRS students, in general, require any additional support services where there is a well-designed and comprehensive program in place that assists all students in their transition to tertiary study. The challenge is to ensure that PRS students are aware of, and able to access, support services on offer and that tailored resources, such as academic mentoring, subject tutoring and contact with Faculty staff, are available if required by individual students. Other factors such as student retention, ongoing study support resources, future employment and the impact on funding more university places need to be considered in future research. The role of high schools as a partner in identifying and recommending students for specific courses and the effect on student optimism, self-esteem and commitment also require further discussion.

Given the recent establishment of the Scheme, the data as to study progression and retention is limited. Qualitative and quantitative data relating to the academic and personal experience of PRS students is in its early days, and requires ongoing review. However, the success to date of the PRS students indicates that the PRS is a beneficial scheme to incorporate as part of a widening participation policy and is worthy of consideration by other law schools committed to increasing access to legal education.

K Jensen, M Nerland, C Enqvist-Jensen
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This article introduces a conceptual framework to examine how students in profession-oriented higher education programmes become ‘enrolled’ in their prospective expert culture by taking part in the knowledge practices characteristic of their area of expertise.

To examine further the mechanisms of enrolment into an expert culture, as well as the formative and mobilising role of the epistemic machinery, we employ the concepts of epistemic practices and ‘epistementalities’. Epistemic practices denote the specific ways in which knowledge is approached, developed and shared in a given culture. The notion of epistemic practices allows us to move beyond the traditional emphasis on ‘knowledge as content’ in higher education to focus on the investigative processes, modes of inquiry and principles for verification that are presented to and enacted by students in such activities.

The concept of ‘epistementalities’ is closely related to the above, but it also highlights the way epistemic machineries generate collective beliefs and ways of understanding knowledge.

In what follows, we use the concept of ‘epistementalities’ to analyse how specific ways of reasoning and understanding professional problems are presented to students by the teachers, tasks and texts in the educational activity. The concept of epistemic practices is used to analyse in detail what the students do in their problem-solving and focuses on their ways of examining and constructing knowledge.

The course we focus on is an intensive 1-week, method-oriented seminar at the University of Oslo, locally known as A walk-through of central legal sources. This employs an inquiry-based educational model. A complex legal case is used to introduce students both to the core practices involved in resolving legal problems and to the various sources they should consider.

The case comprises many actors and several disputes. The story follows a temporal structure and is intertwined with details that are more or less relevant from a legal perspective. The task presented to the students concerns identifying the legal parties involved and their conflicts, as well as arriving at a solution using the main sources of law. Each day, the students are introduced to a new source that they are expected to explore in order to acquire information that can assist them to resolve the case.

The organised introduction of legal sources one after another implied that each day started with a (re)opening of the case and ended with the (preliminary) solution, which was challenged the next day in the colloquium session and by the introduction of a new source. While the students focused on one type of resource and its related epistemic challenges every day, they also brought the insights they achieved from one day to the next and gradually improved their understanding of the legal case at hand.

In the teacher-led colloquiums, the students were given their first introduction to the ‘epistementality’ of law through the teachers’ ways of emphasising what is important in this field. They learned that argumentation is at the core of this type expertise but, at the same time, they learned that this requires a solid basis for justification.

During the first colloquium, the teachers also presented the students with a systematic way of sorting a legal case. This involved a step-by-step procedure for identifying actors, claims and conflicts in the story. They were also told that in a complicated scenario, they should clarify who the parties are before moving on to describe what they did and to pass judgment.

However, when examining the group work, we find that the students had difficulty in removing their discussion from the narrative structure of the story.

The procedure for sorting the case was nevertheless used in all groups to organise their arguments. All the groups returned to this in a stronger fashion towards the end of their meeting when they needed to agree on their ‘map’ of claims and conflicts.

The students were then introduced to a series of statutes that could be relevant to their current case. In the colloquiums, the students read parts of the texts together and were guided by the teachers in how they could follow references made in one text to other statutes. When meeting in the smaller groups, the students first prepared individually and tried to identify statutes and sections that could inform their case.

The discrepancy in the selection of Acts led to lively discussions in which the students read aloud from the statutes, questioned one another’s choices and interpretations of the meaning of words and sections, and considered which provisions could be relevant to their case.

We also observe signs that the students try to make use of the structured way of reading the law introduced in the teacher-led colloquium, for instance, by pointing out where to look for information that defines the scope of the law. The statutes thus serve to stabilise the discussion and at the same time provide pathways of exploration for the students to follow in their investigative process.

The students were introduced to another key source of law in the third colloquium: court decisions. In the teacher-led sessions, the students browsed the official collection of important court decisions together and were told that they are a vital knowledge resource for lawyers.

By looking at the various court decisions and how they refer to and build on one another, the students were introduced to how the knowledge dynamics in law involve multiple actors and spaces for participation.

After several attempts to read the cases by comparing and contrasting, the students realised that they lacked an understanding of the principle. A turning point came when a different strategy was adopted, i.e. tracing the judge's arguments instead of looking for parallel examples in the cases.

The final day introduced textbooks as an epistemic resource. The students were told that these sources add another perspective in that they are generated from the academic study of law but also provide a summary of cases and events. The students were also told to ensure that a range of books was utilised by their group. This advice reflects an epistementality that recognises the multitude of voices in the professional field as well as the role that academic work plays in the wider epistemic machinery.

The week ended with a plenary lecture in which a teacher deconstructed the case and its possible claims and arguments. Although many of the students' decisions were supported, it was emphasised that 'there is no clear solution to this case'. Hence, an important aspect of the epistementality of law is the insight that nothing is settled forever and that certainty and doubt follow each other in ways that stimulate new questions and investigations.

Considering the examples from the four group sessions, we notice that the students' discourse changed over the week and became more marked by profession-specific language. The overall picture reveals a movement from the somewhat unstructured way of 'sharing and breaking opinions' guided by moral stances to gradually employing structured procedures and principles to explore the case and arrive at sustainable decisions. Moreover, as the extract from the final group meeting indicates, the students appropriated ways of arguing and combining knowledge from various legal sources to build a case.

The data extracts illustrate how the students engaged in a set of epistemic practices during their investigative processes, such as the identification and categorisation of judicial conflicts and claims; elaboration of information and problems; specification of information to clarify, e.g. the conditions under which a law applies; generalisation of information to explicate the underlying principle in legal argumentation; integration of knowledge from various sources; and evaluation of the relevance of knowledge to the problem at hand. Moreover, the students engaged in justification as a part of their negotiations and in constructing convincing arguments to produce a legal case.

This richness of epistemic practices seems important for the way the group discussions evolved. First, it served to keep knowledge and solutions fluid by bringing temporary decisions into question and by generating new avenues for investigation. We argue that this is an equally important aspect of the inquiry process because it makes possible the differentiation of the relevant from the not so relevant and the making of small decisions necessary for continuing. In addition, new questions and avenues for exploration can emerge from stabilising some aspects.

However, the epistemic practices did not emerge from students' work alone. Rather, these were mediated in significant ways by profession-specific tools, such as knowledge resources and methodological approaches, and were framed within the overall epistementality of the professional knowledge culture.

First, the examples from the students' group work showed how legal sources acquired different functions and mediated different epistemic practices.

Second, the teachers' statements and provision of methodological principles should be highlighted as important mediating devices.

We find that the practices and mediating devices described above combine to enrol students into their professional knowledge culture by forming and providing access points to an extended network of legal knowledge. The teachers' statements and instructions served as an important introduction to the epistementality of the profession, which in turn provided frames of relevance for the enactment of epistemic practices.

In the introduction to this article, we referred to recent discussions in the Higher Education journal arguing the need for new approaches that may deepen our understanding of the transformative role that knowledge plays within higher education institutions.

To contribute to this debate, we have suggested that the notions of epistemic practices, epistementalities and epistemic machineries may represent a valuable starting point to understand the dynamics of student enrolment in higher education and have used law as an example.

First, the notion of epistemic practice can sensitise us towards how practitioners become involved in learning when they explore complex problems, and is useful to study the interplay of what students do and the knowledge resources they mobilise.

Second, the concept of epistemality, as it is used in this study, brings into focus the core role that instruction strategies and course designs may play in making visions of knowledge transparent and keeping these dynamics in motion.

Third, the concept of machineries invites us to explore the relationship between activities in the programmes at different levels and the challenges in the broader professional knowledge culture.

We end by suggesting two pathways for advancement. First, while the concepts presented here are helpful in exploring the epistemic dimension, they may not capture how the logics of knowledge increasingly become intertwined with other logics as a result of new relationships between science and society. Another aspect is related to the expansion of sites for learning and participation which increasingly have come to include new organisational forms that run parallel to formal education. Thus, it might be valuable to expand the spatial framing of empirical studies to examine knowledge practices in multiple settings and how they work together to serve learning.

Towards Growth and Sustainability: The Institutional and Disciplinary Dynamics of Postgraduate Law Research Groups

F Bell, R Shakel, L Steele

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POSTGRADUATE PROGRAMS

Increasingly, attention in Australia is focusing on the role of postgraduate student research groups in higher degree research (HDR) student learning and experience. The current research project was aimed broadly at the evaluation of HDR groups, and was directed towards informing development of an interdisciplinary group around criminology, criminal law and criminal justice (the Crim* Network: <http://crimstarnetwork.com/>) based within the Law Faculty at the University of Sydney. Specifically, it sought to ensure the Network developed within a pedagogically informed structure, and was sustainable in the long-term with potency for growth and outreach beyond the host faculty and institution.

In the current article, we examine two related issues regarding development and sustainability of law HDR groups. The first issue is that of group sustainability. The second overarching issue is the particular challenge of sustainability for an inter-disciplinary group based in a law faculty.

In considering these two issues, we suggest that although law students may prefer the involvement of legal academics to direct or mediate group interaction, the sustainability of the group might instead depend upon academics retreating from the traditional role of teacher to explicitly promote a non-hierarchical structure and more egalitarian interactions.

Traditionally, at the institutional level, law faculties in Australia have tended to stand alone, although recent restructuring of many universities to create divisional structures or ‘mega-faculties’ has seen law schools become integrated with other disciplines. Arguably the traditional disciplinary boundaries of law are being pushed, witnessed by the growth of socio-legal research, empirically-based legal research and research at the intersections of law and culture.

To the extent that particular academic disciplines are likely to be imbued with different academic cultures, law reputedly retains a self-focused emphasis on professionalism and legal practice rather than the study of law itself as a site of critical inquiry.

As discussed in our previous work, we sought feedback about HDR student groups both from students who had participated in the Crim* Network and from students completing HDR degrees in law. A survey was completed by three participants in the Crim* Network.

Another survey was distributed to students attending the Sydney Law School Postgraduate Conference held in October 2012. In total, 36 surveys were received. We acknowledge that this is a very modest sample size and that the sample is self-selected.

Following analysis of the survey responses, we invited academics and HDR students who we identified through web-based research as being involved in running research-related groups, to participate in informal discussions with a researcher about their group and its goals, format and operation. Five academics and two students participated in such discussions.

These discussions were particularly useful to us as a counterpoint to the survey data, illustrating the other side of the coin, as it were: running a group, rather than being a participant.

The transient and possibly foundational nature of HDR student identity means that a student-led group that is solely member-driven, without institutional recognition or support (however informal), is likely to disband once key members have completed their HDR studies, or more likely sooner, depending upon the competing demands of members (which commonly increase as students move towards completion).

On the other hand, the value of a group that achieves its specific purpose (such as the members learning more about a particular theory or method of analysis) is not diminished by disbanding once this learning is complete.

Groups that are run by academics, even if *for* students, may be expected to have longer lifespans.

Buissink-Smith, Hart and van der Meer distinguish between groups that have developed in a 'bottom-up manner' (which they suggest are most of those described in the literature) and those 'artificially manufactured by the institution' as were the groups in their study at Otago University. Their study identified the potential for 'manufactured' groups to be successful:

Particularly interesting here is that students and peer leaders actually found the continued involvement of the institution to be both comforting and legitimising, especially for international students.

Facilitation by the academic could be more or less hands-on as required and all members of the groups were self-selecting.

Different again to both the less formal but content-specific groups and the highly structured, skills-oriented groups, Jess (an academic and HDR student) described a different writing group. Comprised of five members who had met at the commencement of their doctoral degrees, the group was purely social for the first six months or so when its members decided to begin sharing their written work with one another. This group had existed for some three years. There had been no attempt to recruit new members as it was felt that to do so might upset the equilibrium of the group.

The range of different types of groups that emerges from the literature and from the survey and interview data illustrates that diverse structures, levels of formality and institutional support can be attributed to the different goals and purposes of the groups.

As we have previously noted, it seems that many HDR students in law do not view themselves as being in pursuit of an academic career. Nevertheless the importance of peer learning and developing academic independence is recognised amongst commentators not just for progression to an academic role but for completion of the dissertation. Baker and Pifer, reporting on their study of American doctoral students, explain as follows:

The students in our study who did not realise the importance of networking and collaboration, or lacked the confidence to engage in these activities, suffered as a result, and had a more difficult time making that transition from student to scholar. *They seemed to be waiting for someone else to assign them to a project or otherwise direct their efforts and progress.* Efficacy and initiative are critical to making the transition from student to scholar, and engaging in collaborations with individuals in the community are key for making this transition effectively. (Emphasis added.)

Entirely student-run groups might be expected to avoid such a pitfall. However, without a certain degree of proactivity or commitment to the group, a single motivated student may be left to push the group along unassisted.

There is the potential for 'academic involvement' to assist HDR students in transitioning to viewing themselves as scholars and academics rather than novices. Yet the discussion above also highlights the need for academic involvement to be balanced by student initiative in order for the transition from being a student to be successful.

A strategic withdrawal strategy to allow hand-over to experienced students after a certain period of time might be a way of encouraging a group to become self-sustaining. Meanwhile, the structure of the group might provide students with the opportunity to locate others with whom they might work absent a mediating academic influence.

The continuing background presence of academics is likely to be beneficial for group momentum. Academics may also have a role to play in encouraging reflection on disciplinary identity and boundaries, as well as facilitating the formation of inter-disciplinary relationships, which is discussed in the following section.

A further issue raised by the interview narratives is that the most self-sustaining groups are those in which the effort of contributing is matched or exceeded by the benefits the participant receives, regardless of whether those benefits are academic, personal or social.

Therefore, HDR law student groups might begin with diverse goals and purposes and have differing levels of institutional or academic support. Yet, ultimately HDR student groups will benefit from a framework that fosters student independence, and ideally any academic involvement in a group should be aimed towards this end.

Through its approach to empiricism, law has been its own gatekeeper, determining the realities and ideas from other disciplines that will be authorised within its disciplinary space. In a discussion about situating law and legal research, Loughnan and Shackel have commented:

Acknowledging the difficulty of the task of pinning down what it is that is distinctive about legal research, [the Council of Australian Law Deans] suggests that, in part because of the primacy of doctrinal research and the distinctive notion of ‘legal reasoning’, legal research falls neither wholly within one or other category.

HDR students in law are engaged in a wide range of projects. The range of research methodologies, analytical approaches and topics lends itself to a quasi-inter-disciplinarity.

In response to a question concerning interest in participating in a group with members from different faculties or disciplines, approximately two thirds of students expressed themselves as interested in participating in such a group.

Thus, there is a tension between the desire for interdisciplinarity and the need to invest one’s (limited) time in subjects directly relevant to his or her immediate area of research.

It might be that inter-disciplinarity still needs to be founded upon shared theoretical, political or methodological approaches. However, at times, such an approach may lead to missed opportunities, such as the discovery of unexpected points of commonality.

Manderson has noted the lack of training in inter-disciplinarity for postgraduate research students in law. Further, he has suggested that the predominance of ‘traditional’ methods of the *study* of law (such as doctrinal research) may at times lead to the devaluing of the inter-disciplinary study of law and methods for doing so.

In some faculties, absence of a cohesive culture may impact upon HDR students’ ability and desire to engage in collaborative and equitable group interactions. Yet, the benefits of research related groups are not confined to HDR students but are rather highly relevant also to academics and, as previously discussed, in the transition from student *to* academic.

Thus, institutional dynamics, notably the involvement of individual academics and the climate of faculty at large, is significant to the success of inter-disciplinary HDR law student groups.

We conclude that academics can have an important role in fostering skills in independence, critical thinking, listening and facilitation of discussion that are central to the success of a group. Moreover, academics and the broader faculty are in a position to foster a culture of inter-disciplinarity and collegiality.

The importance of teaching dispute resolution in a twenty-first-century law school

B Waters

The Law Teacher, 2016

PROFESSIONAL SKILLS

Traditionally dispute resolution has never been taught as a stand-alone topic in UK law schools. By comparison in the United States there are many examples of taught courses in the sphere of dispute resolution particularly ADR including mediation and negotiation.

Adversarialism has therefore been very much at the heart of our approach to the study of law as without the principle of *stare decisis* and the doctrine of precedent, our common law would not have developed as it has. As such litigation has been the most accessible, popular and best understood way of resolving disputes for students of law.

In his “Blackstone’s Tower” Hamlyn lecture in 1994, Twining criticised the entrenched tradition of teaching and scholarship that purports to confine itself to the exposition and analysis of posited law, observing that such an approach had been the subject of diverse attacks on such grounds as that it is narrow, reactionary and dull.

There is not one universally accepted definition of alternative dispute resolution or ADR as it is commonly acronymised. Brown and Marriott consider its components and in an attempt to define the word “alternative” do so by suggesting that it could imply in one sense a dispute resolution process which is alternative to the formal court process or litigation.

In common law countries it is evident that for more than 20 years not only is a tiny proportion of all disputes litigated, but also only a very small percentage of litigated cases are “resolved” by adjudicative decisions (on questions of fact or law).

ADR, which in its broadest sense includes arbitration, bilateral negotiation and mediation, is now responsible for the majority of dispute settlements. In the early part of the twenty-first-century

ADR should therefore be viewed not so much as alternative dispute resolution but as appropriate dispute resolution.

In the past 20 years there have been two major civil justice reviews in the UK: Woolf in 1996 and Jackson in 2010. Many of Woolf's recommendations which emerged from the review of the civil justice system and articulated in his final report *Access to Justice* in July 1996, brought about a wholesale reorganisation of civil procedure through the implementation of a modified and updated civil code (the Woolf Reforms).

The civil justice reviews have taken place against a backdrop of unprecedented change in the legal services sector over the past 50 years. The Access to Justice Act 1999 replaced the Legal Aid Board with the Legal Services Commission (LSC). Eligibility for public funding as it became known was still based on merits and means, but strict criteria under the new Funding Code replaced the old merits test.

The reforms continued and in 2005 Lord Carter was asked by the government to review legal aid yet again.

The following year the "Carter Reforms" were implemented which for the first time created a market-based approach to the reform of the legal aid system in the UK; fixed pricing was introduced for criminal work, market management strategies became evident through efficient and good quality suppliers being awarded contracts, and managed price competition became a reality.

The effect of all the changes over the past 20 years or so is disenfranchisement. There is undoubtedly a justice gap; not only has there been significant increase in the level of court fees, there has been a commensurate rise in the number of litigants in person which has placed extreme pressure on the court system.

An awareness of this changing landscape is debatably fundamental for law students, even for those not intending to practise law, as it places the teaching of dispute resolution as an academic subject and its socio-legal importance into justifiable and explicable context.

Traditional approaches to legal education have been questioned by Duffy and Field who suggest that in Australia (where like in the UK ADR is not widely taught in law schools), given the centrality of ADR processes to current legal practice in their jurisdiction, law schools throughout Australia are fundamentally failing future legal practitioners. This is a very bold statement as it is predicated on the assumption that such mandatory curriculum content is fundamental to legal education.

At the writer's institution the dispute resolution pathway for all LLB undergraduate students commences in Year 1 with a 20 credit Introduction to Dispute Resolution module. One of the early lectures entitled "Understanding Conflict" deals with the reasons why conflict arises; types of conflict and their sources; the different approaches to conflict; the role of ethics (in conflict resolution) and aspects of human rights (in the context of conflict). The module draws upon the work of Mayer and references his "wheel of conflict" theory.

The broad study of dispute resolution requires knowledge and understanding of the recognised dispute resolution continuum mentioned earlier. This includes a sound understanding of the principles of a number of dispute resolution processes ranging from negotiation, mediation, arbitration and litigation along with many less well known processes which form components of the continuum.

The ethical responsibilities of lawyers practising in the area of civil justice are now very much shaped by the new civil procedural code as introduced by the CPR following the Woolf Reforms. Law students aspiring to become practising lawyers need to have a sound awareness of the ethical implications of the CPR as well as their professional codes of conduct and this is particularly the case if they are to become solicitors who are required to provide legal advice in the general area of dispute resolution. Many law firms have rebranded in the last decade and for these firms this has included the creation of "dispute resolution" rather than litigation departments. This nuanced change is recognition of the fact that for civil disputes, litigation is no longer considered to be the only or primary dispute resolution process available.

Furthermore a solicitor's client care obligations imposed under the Solicitors Code of Conduct include under Rule 2.02(1)(b), the requirement to give the client a clear explanation of the issues involved and the options available. The obligation is further clarified under Guidance Note 15 to Rule 2.02(1)(b), which states that when considering the options available to the client, if the matter relates to a dispute between the client and a third party, the solicitor should discuss whether mediation or some other ADR procedure may be more appropriate than litigation, arbitration or other formal processes. There may be costs sanctions if a party refuses ADR as evidenced by a number of decisions in the appellate courts.

The Civil Procedure Rules have undoubtedly influenced the way in which lawyers advise their clients regarding dispute resolution because since their introduction, there are indications that the

adversarial vigour with which advocates pursued their clients' interests in the pre-Woolf era is now an unacceptable approach to take with regard to dispute resolution.

Nagorcka et al. make the point in relation to Australia that whereas in the past within their jurisdiction lawyers may have been retained to "win a case", now they may be required to provide legal services to clients to "help resolve a dispute". With increased judicial intervention and commentary on the subject of mediation in particular, the attitudes of legal educators must start to change and a more socio-critical curriculum approach be taken by law schools.

Drawing on previous research undertaken by the writer into the benefits of both simulation and live clinic experiences using a dispute resolution focused module as the subject, it is evident that graduate and other useful transferable skills can be acquired through the study of dispute resolution and specific aspects of it as an academic subject.

The writer also spent a semester at the University of Pennsylvania's Law School (Penn), which has a number of experiential clinics which are specifically designed to help students develop core lawyering skills and competencies. The clinics are varied and students are able to draw from challenging experiential learning opportunities in civil litigation, business transactions, child advocacy, mediation, legislation, interdisciplinary practice, international lawyering, appellate lawyering, intellectual property and technology law.

Of particular interest at Penn is the Mediation Clinic. This elective module, open to second and third year law students, enables them to act as frontline mediators in a wide range of "real-time" disputes. With faculty supervisors present, students co-mediate an average of four to five cases per semester at local courts, government agencies and at the law school in areas that include civil litigation, criminal, domestic, campus student discipline, international child custody disputes and employment discrimination matters. To complete the learning experience, students debrief with their faculty supervisor after the conclusion of each mediation.

The area of dispute resolution and particularly ADR provides a research rich landscape and it is therefore somewhat surprising that such little research has actually been undertaken in this area, particularly in the UK, let alone in its context within the legal education field. Such university-led research may not only encourage outreach into the legal services community and assist the knowledge exchange agenda, but also inform and enrich the curriculum as well as even making an impact on a macro level by influencing policymakers.

An ongoing study in the area of dispute resolution undertaken by the School of Law at Canterbury Christ Church University (CCCU) into solicitors' views and attitudes to the use of mediation mentioned briefly above, has given researchers the opportunity to make some useful comparisons with Professor Dame Hazel Genn's research in 2007.

Such research provides an opportunity for research informed teaching and the Christ Church study is useful evidence based research to support the dispute resolution curriculum, a pathway which is central to the LLB at CCCU.

Writing in 2003, MacFarlane acknowledged the existence of a significant cultural change taking place as a result of the widespread introduction of court-connected and private ADR programmes in the United States. Some 13 years on the momentum continues in the US.

Perhaps therefore as part of the recommended discourse it is time to consider the mandatory inclusion of socio-legalism within undergraduate legal education in the UK, otherwise there is a danger (if not already the case) that law students will exist in something of a vacuum and have little appreciation of law in context.

One of the recommendations made by the Ormrod Review in 1971 concerned the objectives of the academic stage of legal education (training) which the committee considered should include a basic knowledge of the law, the intellectual training necessary to apply abstract concepts to case facts and an understanding "of the relationship of law to the social and economic environment in which it operates". These were highly sensible recommendations, the third of which suggested that an element of socio-legal studies should be made compulsory in some shape or form.

It is encouraging also that the LETR does at least make passing mention of ADR, indeed Recommendation 13 states:

"On the Bar Professional Training Course (for intending barristers), Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy."

But this is the extent to which the committee's report ventures in providing any specific mention about legal education and the teaching of dispute resolution as an academic subject in any form and in doing so confines its discussion to advocacy and legal representation.

The use of IT will bring about changes to the way in which lawyers operate and this applies to those practising in the broad area of dispute resolution. If the lawyers of tomorrow are to be adequately prepared for legal practice, the reality of such changes and what they mean to those wishing to enter the legal profession cannot be ignored and omitted from inclusion somewhere within legal education.

The indications suggest that ADR, particularly mediation, is likely to become more mainstream in the future. Twenty years ago speculation about the potential for institutionalisation of mediation was being discussed; however, from the government's standpoint, the provision of a general network of mediation agencies, parallel to the courts, was thought to be almost unimaginable on grounds of cost. The lack of government intervention has however allowed the growth and establishment of private (unregulated) mediation services which are frequently being used to assist parties in dispute to resolve a whole range of civil and commercial disputes.

As Sanders puts it the socio-legal approach (to legal education) is one way of saying that students should do subjects that are "about law" as well as subjects that "are" law, and is one way of looking critically at how law works.

If the debate is one which is considered worth having, and the arguments put forward in this article suggest that it is, then questions as to where, when and how dispute resolution as an academic subject should be taught must be considered.

Whatever the considered approach, it is strongly argued that somewhere within the law curriculum at either undergraduate or postgraduate study of law in the UK, students must be exposed to, and gain some understanding and appreciation of, dispute resolution. There is a good case for making the teaching of this subject compulsory at the undergraduate stage of legal education in the UK.

The stand-alone academic subject model approach is the one which is strongly argued for here as being the most all-embracing and is what is embedded within the curriculum at Canterbury Christ Church University where there is a defined "dispute resolution" pathway through the levels of study of the undergraduate law degree. The pathway includes aspects of basic conceptual understanding of conflict through to more in-depth study of principles associated with the dispute resolution continuum, coupled with the opportunity to specialise in a particular process where practical skills can be acquired.

RESEARCH Student-led law reviews: what every UK law school needs?

CRG Murray, L Pitsillidou, C Caine
The Law Teacher, 2016

In the US student-edited law reviews are a prominent feature within legal education and "serve as the primary vehicle for dissemination of legal scholarship".

In recent years there has been a wave of UK student-edited periodicals, explicitly influenced by North American publications. In this article we consider whether UK law schools will, like their US counterparts, come to need their own law review project.

The delayed emergence of UK student-edited law reviews can largely be explained by the predominance of the undergraduate law degree in UK legal education. The US, by contrast, maintains a model of postgraduate legal education with the intention that students begin their time at law school with "a broad liberal education and a great level of maturity". In the US teams of student editors select and edit academic content for publication. We describe this model as the student-run law review. In the UK, by contrast, many recently founded student law reviews involve student editors preparing for publication student content pre-selected by academics. We describe this model as the student-led law review.

We conduct this research in light of our experience, as student editors and staff liaison, of the workings of a case study publication, the North East Law Review (NELR), founded at Newcastle University in 2013 and operated under the student-led model.

What differentiated the Harvard Law Review, first published in 1887, from its forerunners was in part a highly motivated student body "taught to analyze" as opposed to memorise legal authorities through the new casebook method of teaching. But the initially secondary motivation behind the Review, of providing Harvard's faculty with "a suitable organ of publication", was if anything more important to sustaining its existence, for it secured academic buy-in and provided the steady stream of high-quality content for students to edit (and alleviating the need for student editors to also generate much of the publication's content). Nonetheless, although the leading student-edited reviews remain amongst the most prestigious international outlets for legal writing, the US model has not escaped criticism.

Much of this critique relates to three alleged shortcomings, namely that student editors' poor decision-making leads to biased and uninformed article selection, that the absence of academic peer review enables poor quality articles to circulate and that editorial over-eagerness results in aggressive rewriting of manuscripts with an impact upon their coherence.

With regard to the first shortcoming, student inexperience has arguably led to articles being published based on the author's notoriety rather than its quality, and a bias towards legal topics and modes of analysis familiar to law students, with few student editors being equipped to evaluate non-doctrinal scholarship.

The second enduring criticism is that work published in law reviews will be of variable quality because it is not subject to peer review.

Whilst praised, often faintly, for their generally careful citation-checking (a responsibility which most peer-reviewed journals place upon the author), student editors are frequently criticised for their tendency to over-edit content.

Over-editing supposedly takes place because inexperienced student editors do not understand complicated material and redraft it in a way which mangles or neutralises the author's argument. Defensive practice consequently sets in, with academics devoting considerable attention to the explanation of basic concepts, particularly where an article pursues an interdisciplinary approach, lest it fall foul of student editors.

Many US legal academics do not share these concerns over student-run law reviews.

Many of the weaknesses of US law reviews would dissipate if the element of student review of academic work was sidelined.

Several decades after the first student-run US law reviews emerged, the Cambridge Law Journal was founded in 1921 by the young American Fellow at Corpus Christi College, Arthur Goodhart, alongside Henry Salt, a Trinity College undergraduate. Looking back at the experiment in the 1960s, Goodhart diagnosed the level at which law is taught as the main reason for the failure of US-model law reviews to emerge in the UK.

Despite this appraisal, the idea of a Cambridge-based student law review eventually resurfaced with the establishment of the Cambridge Student Law Review (Cambridge SLR) in 2003, this time publishing student-generated content edited by a team of undergraduates and postgraduates.

Once again the experiment was brief, with the Cambridge SLR being replaced by the Cambridge Journal of International and Comparative Law (CJICL) in 2011, which was "run by a young, up and coming team of doctoral candidates at the Law Faculty". The change in title also marked a shift from student-generated content to double-blind peer review of academic work administered by the editorial team.

The Cambridge SLR, although short-lived, was at the forefront of a new generation of student publications in the UK. Having a publication in which the students contributed the content, as well as editing and publishing it, demonstrated a distinct departure from the US model of students publishing academic work. This resurgence can be traced to the inaugural publication, in 1994, of the UCL Jurisprudence Review, which Stephen Guest intended to use as a vehicle for disseminating the best essays produced by each cohort of students on UCL's compulsory undergraduate jurisprudence module.

Student involvement expanded from a single over-worked editor to an editorial board, thereby "sharing around the very valuable experience gained from doing this sort of work".

Although the UCL Jurisprudence Review marked an important new departure for UK law reviews, it remained under Guest's guidance for much of its life, and not long after he stood down as staff editor in 2008 the publication was radically overhauled, becoming the UCL Journal of Law and Jurisprudence (UCLJLJ).

The journal rapidly shifted towards attracting submissions by postgraduate students at UCL and other institutions.

From these tentative beginnings it should be evident that there is, as yet, no dominant model for student-edited law reviews in the UK.

Building upon these beginnings a handful of institutional student publications have emerged in recent years, including the Aberdeen Student Law Review (Aberdeen SLR), Edinburgh Student Law Review (Edinburgh SLR), the Kent Student Law Review (Kent SLR) the King's Student Law Review (King's SLR), the Manchester Review of Law, Crime and Ethics (MRLCE), the Southampton Student Law Review (Southampton SLR), the University of Liverpool Law Review (ULLR) and the Warwick Student Law Review (Warwick SLR). These journals differ in the composition of their editorial teams, the nature of articles that they publish and their means for attracting submissions. They nonetheless share a reliance upon open-access formats, involve cooperation between the

student editors and academics and derive the bulk of their content from undergraduate and postgraduate coursework and dissertations produced in their parent law schools.

To provide a window into the operation of this new wave of UK student law reviews, and to highlight their distinctive attributes by comparison to US law reviews, we case study one of these publications, the NELR. The NELR is an open-access student-led journal established in January 2013 by an editorial board comprising both undergraduate and postgraduate students from Newcastle Law School.

As with the traditional US model, the administration of the NELR by members of the student body keeps running costs to a minimum, but the first point of distinction is that the NELR is primarily an open-access digital publication, further reducing overheads. It can be accessed through a website hosted on institutional servers.

In a further contrast to the US model, by which law reviews tend to derive much of their content from submissions by legal academics (or by students into comments sections), the NELR primarily provides a platform for disseminating high-quality student coursework and dissertations. Criticisms of US law reviews relating to student exercises of academic judgement in the selection and editing process are thereby circumvented.

Other new-wave reviews have operated unsolicited submission processes, managing quality control through an academic review process.

Whereas US student-run law reviews vigorously assert their independence from faculty, the student-led approach relies upon a cooperative relationship between the academic staff who select material and the student editors who prepare it for publication. Training students from the beginning of their time on an editorial team enhances their skill and confidence as editors and improves the publication's quality.

The homogeneity of US law review teams as an "academic elite" has also drawn criticism as it limits the transformative potential of this collaborative learning experience. The NELR editorial team, however, has taken on as many applicants as possible, combining undergraduate students of different levels of experience and taught and research postgraduates.

The NELR has three core pedagogic aims which it shares with UK's other student-led law reviews. The first aim is to provide training and experience for the editorial team itself.

The second aim of law reviews is to encourage students to engage with advanced source material and theoretical concepts and to thereby hone their own analytical skills.

Third, the publication of high-quality undergraduate and taught postgraduate research allows the wider community of law students to benchmark their own performance against the published contributions.

The NELR's creation built upon Newcastle University's track record with open-access legal scholarship. Open access, although a term subject to multiple interpretations, "implies that authors should grant free access and rights to use published works, subject only to proper attribution of authorship". This approach to academic publication is internet dependent.

The adoption by new student-led law reviews of open-access publishing, combined with their low running costs and the commitment of student editorial teams, provides a basis for a distinctive contribution to legal scholarship. The challenge, however, remains finding an approach which enhances the contribution of student law reviews to legal scholarship without sidelining their educational mission.

At a time when the REF prioritises certain forms of academic scholarship, student-generated content could populate sections of law reviews which have consequently become stale.

In the UK the burgeoning interest in student-led law reviews since 2009 has generated an expanding range of subtly distinct periodicals. But whilst the pedagogic benefits of law-review activity evidently can, through the active support of academic staff, extend beyond "displays of footnote finesse" by student editors, the student-led law review's place in UK legal education remains uncertain.

As adherence to the student-led model increases there is the chance that a tipping point will be reached. Potential students could come to expect that an active periodical will be one of the extracurricular activities supported by their shortlisted law schools. But this tipping point could also be a moment of danger for law reviews.

In such an environment innovation is stifled and new law reviews will become increasingly likely to mirror successful existing publications. But such a loss of diversity is by no means inevitable. Our overview of the NELR case study has demonstrated just one approach by which the student-led review model can make a substantial contribution to the learning experience of students.

T Roux

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The quality of legal research¹ is increasingly being scrutinised by scholars from other disciplines.

This article argues that the way legal academics respond to this challenge needs to be sensitive to the distinction between traditional doctrinal research and the other types of legal research that have emerged over the last forty years.

As will be apparent, the argument developed in this article depends on a foundational distinction between doctrinal research and the various other types of legal research that have emerged over the last forty years.

The first critique largely has to do with the use of empirical arguments in doctrinal research. On the weak version, doctrinal research does not necessarily involve the making of testable empirical claims, and thus legal researchers are only bound to observe social science research methods to the extent that they choose to found their arguments on such claims. On the strong version, legal decision making in the common-law world has evolved over the last century to become unavoidably reliant on testable empirical claims, not just as a matter of expert witness testimony or social scientific evidence, but also as a matter of legal reasoning. It follows that doctrinal researchers need to familiarise themselves with the methods used to establish such claims.

The weak version of the critique is not necessarily fatal to the distinctiveness of doctrinal research. It is only when doctrinal researchers become more ambitious, and try to persuade law-makers to engage in a major piece of social reform, that problems arise. When that happens, social scientists have legitimate reason to be upset about the influence that doctrinal researchers wield, sometimes in inverse proportion to the rigour of their methods. But doctrinal researchers can meet this objection, and safeguard the distinctiveness of their discipline, by exercising the necessary caution.

On the stronger version of this critique, there can be no such escape. On this view, legal reasoning in the common-law world has evolved over the last century to become *unavoidably* reliant on testable empirical claims.

The persuasiveness of the strong version of the first critique depends on the strength of its contention that legal reasoning, at least in appellate cases, is unavoidably reliant on testable empirical claims. In the nature of things, this is a question that must be determined jurisdiction by jurisdiction, and conceivably also area of law by area of law.

In a recent paper, Kylie Burns and Terry Hutchinson have pointed to a number of studies showing the way in which Australian judges are increasingly referring to ‘social facts’ in their decisions. The evidence also suggests, however, that these references are overwhelmingly being made without proper empirical support.

One of the social functions legal academics have traditionally performed has been to hold up a mirror to prevailing judicial-reasoning methods to reveal their weaknesses and improve their rigour. If that is correct, there is clearly considerable merit in Burns and Hutchinson’s argument that undergraduate law school students need to be trained in empirical research methods.

The second critique of the disciplinary distinctiveness of doctrinal research concerns the so-called ‘interpretive turn’ in the social sciences. Here, the argument is that researchers in other disciplines, including the sociology of law, anthropology, legal theory, and political science, are increasingly adopting a hermeneutical approach to the study of law and legal institutions that seeks to understand legal phenomena by understanding the meaning that legal norms have for actors within the legal system.

The implication of this argument is that the assessment of the quality of doctrinal research should be left to disciplinary specialists, and ideally to researchers working in the particular area of law concerned. This does not mean, however, that doctrinal researchers need not explain the criteria they apply when assessing the quality of their research.

There is a tendency nowadays to regard doctrinal research as somewhat old-fashioned, and its practitioners as mired in the ways of the past.

For the most part, this problem has few practical consequences. But there is at least one setting in which doctrinal research is unavoidably subject to the standards applied by other disciplines, and that is the supervision and examination of PhDs.

Two features of doctrinal research in particular make these standard elements difficult to apply: (1) the fact that doctrinal research is often presented in a highly rhetorical style; and (2) the fact

that the criteria for sound doctrinal research, quite apart from doctrinal PhD research, are rarely articulated.

As suggested earlier, the difference between bad (or simply uninteresting) doctrinal research and good doctrinal research has something to do with the difference between research that is purely descriptive, in the sense that it merely restates uncontested legal propositions, and genuinely analytic research in the course of which the researcher pushes through settled legal questions to address questions that are complex and unresolved in the legal system.

On this understanding, good doctrinal research is both a matter of experience (which concerns whether the researcher knows and understands all the legal materials potentially relevant to the question being addressed) and skill (which is about whether the writing is economical and disciplined, technically accurate but also creative in its anticipation and resolution of likely questions of law).

Legal-theoretical differences about the nature of law and legal reasoning should also, in theory, affect assessments of the quality of doctrinal research.

Initially, these legal-theoretical differences appear to have profound consequences for the assessment of the quality of doctrinal research.

In reality, however, most doctrinal researchers do not espouse a particular theory of law.

The implications of this discussion for the assessment of the quality of doctrinal research, and doctrinal PhD research in particular, should now be apparent. Doctrinal research is a specialist undertaking that needs to be assessed in terms specific, not just to academic lawyers, but to the particular legal system and area of law in which the research is being conducted.

Despite the continuing social importance of doctrinal research, most current surveys of legal academics in the English-speaking world reveal that only a minority conceive of themselves as engaging in this type of research in its pure form or, what amounts to a slightly different thing, in pure doctrinal research *to the exclusion of other types of legal research*. Logically, this must mean that most legal academics think of themselves as doing one of three things: (1) engaging in research that is wholly non-doctrinal; (2) engaging in interdisciplinary research (in the specific sense that their research is directed both at legal doctrine and at another body of scholarly knowledge); and (3) engaging in pure doctrinal research, but at the same time, as a *separate* undertaking, pursuing some other type of non-doctrinal or interdisciplinary research.

'Socio-legal' (or 'law and society') research is an umbrella term that encompasses a vast array of research practices that are all concerned in one way or another with understanding law in its social context.

Since so many different types of legal research fit under this heading, categorising a research project as socio-legal does not immediately suggest the standards by which it should be assessed. Rather, the standards will depend on the particular approach taken and the particular (combination of) methodologies used. Two general points may nevertheless be made. The first is that the existence of a broadly defined field of socio-legal research tends to confirm the correctness of the earlier definition of doctrinal research as research that uses the conventionally accepted reasoning methods in a particular legal system to contribute to the construction of legal doctrine.

The second general point is that, despite the capaciousness of the term when used to describe the multidisciplinary field of socio-legal studies, socio-legal research *as a distinct form of research pursued in the legal academy* may not be quite so unbounded.

As argued earlier, notwithstanding their adoption of an internal perspective, interpretivist social science researchers who study law and legal institutions lack legal academics' defining aim of influencing legal doctrine. It follows that, within the multi-disciplinary field of socio-legal studies, much of the research that legal academics do is best thought of as a particular kind of socio-legal research that is bounded, on the one hand, by traditional doctrinal research, and on the other by pure (in the sense of non-doctrinal) social science or humanities research.

Defined in this way, the main risk to the quality of socio-legal research conducted by legal academics is that, by attempting to synthesise methods and conceptual frameworks from different disciplines, the research ends up doing justice to none of the disciplines on which it is drawing.

The way to mitigate this risk is plain enough: legal academics should not undertake socio-legal research lightly, but should pay rigorous attention to the conceptual frameworks and methods of all the disciplines on which they are drawing.

Over the last 40 years, a number of areas of research have emerged that are identified by the combination of the word 'law' with the name of an established social science or humanities discipline. As others have pointed out, however, the use of the term 'interdisciplinary' in this context is suspect: the mere fact that legal phenomena are the object of study from within a particular

social science or humanities discipline does not mean that the research being conducted is aimed at synthesising the conceptual frameworks and methods of that discipline with the participatory-insider perspective of doctrinal research.

Where there is no doctrinal dimension to the research being conducted, the question arises whether 'law and ___' research should be classified as legal research. On one view, the term 'legal research' should be reserved for research that at least has some doctrinal element, failing which the research should be classified according to the social science or humanities discipline from which it emanates. On another, legal research includes any research on law and legal institutions.

The Council of Australian Law Deans' *Statement on the Nature of Legal Research* mentions 'legal philosophy', 'jurisprudence' and 'legal theory' as forms of legal research that are 'more easily identified with the humanities' than the social sciences.

Of the three terms — legal philosophy, jurisprudence and legal theory — the last is perhaps amenable to a slightly broader interpretation encompassing all forms of theoretical inquiry into the nature of law and legal institutions.

These classificatory niceties do not matter for our purposes except in so far as they may affect the criteria applied to assess the quality of the work being produced.

Another pressing issue affecting the assessment of research quality in this area is the fact that, critical legal studies aside, there is very little cross-fertilisation between research in legal philosophy and doctrinal research.

As noted, critical approaches to law (including, for example, critical legal studies or 'CLS', critical race theory, feminist legal studies, Marxist legal theory and the legal-theoretical implications of Foucauldian discourse analysis) may be classified under the general rubric of legal theory.

While the rapid growth and diversification of legal research over the last forty years has left the quality of legal research vulnerable to critique, the consequences of this development can be successfully managed. Doctrinal researchers could and often should do more to clarify the theoretical and philosophical foundations of their subject. Methodological standards in doctrinal research also need to be explained in a way that scholars who have not been trained in law can understand.

There is, however, no obvious reason why doctrinal researchers should hand over control of these matters to others. Although legal academics engaging in this form of research must respect the standards of the disciplines on which they are drawing, there is a need to defend what is distinctive about the socio-legal research that legal academics conduct, and to develop standards specific to it.

The Role of the Solicitor-General

Gabrielle Appleby

Hart Publishing, 2016, 335 pp

BOOK REVIEW

I do not suppose either the publishers or the author Gabrielle Appleby, could have anticipated that this book would have become part of a recent contemporary dispute between the current Commonwealth Attorney-General and the former Solicitor-General, one which even resulted in an extract from the book being quoted. However, as most readers are aware, that whilst this particular dispute came to an end on 24 October of this year when the Justin Gleeson resigned as the Commonwealth Solicitor-General, it did have the effect of bringing the role of the Solicitor-General, both at Federal and State-level, which had previously been low-key, to the attention of the general legal community.

As the author states: 'the role of government lawyers in Australia, and specifically the Solicitor-General as the most senior of government lawyers, is under-theorised and under-studied'. As will also be evident from the text of the book itself, much of it is based on the author's doctoral research: *The Constitutional Role of the Solicitor-General: An Historical, Legal and Lived Portrait*. This means that not only is it well-researched but it also reflects the authors enthusiasm for the topic which she reveals was originally aroused when she worked as a young articulated clerk with Justice Patrick Keane, who was at that time the Solicitor-General for the State of Queensland.

In order to simplify what would be acknowledged as a complex subject, the author has divided the book into three parts described as Part I: Introducing the Solicitor-General, Part II: The Australian Solicitor General and Part III: Negotiating the Tensions.

This does mean that by reading the Introduction to the Solicitor-General, the reader can gain an overview of what is involved by anyone who undertakes not only the role of the Solicitor-General but also wishes to be informed as to the historical origins of all law officers who were designated in earlier times as English Law Officers representing the King in Court. In this respect 1461 is the

date of both the appointment of the first English Attorney-General and also the granting of the right of the Attorney-General to appoint a King's Solicitor and subsequently in 1515 when the title of Solicitor-General first appears. After consideration of the History of the English Law Officers this section of the book leads into a review of the role of their modern equivalent, explaining how these positions have developed into roles negotiating politics, law and the public interest. This has often given rise to occasions of ongoing controversy across their public interest and advisory functions. The conclusion to this section also incorporates an outline of equivalent offices to the Solicitor-General in two other former UK colonies; those of the United States and New Zealand.

Part II of the text is concerned with a full description of the evolution of the Australian Solicitor-General embracing the three periods of its development; the 'British Colonial Period', 'Public Service Period' and finally the 'Modern Period'. There is also coverage of the current legal framework within which the Australian Solicitor-General practices. This incorporates the appointment and removal of a Solicitor-General, and the manner by which the Solicitor-General is expected to act as adviser and advocate to the Crown whilst retaining independence and also continuing in the traditional role of acting for and protecting the public interest.

The Final Part III of the text under the title: 'Negotiating the Tensions' involves an examination of the extent to which the historical objectives of the office of Solicitor-General are realised, how (if at all) the legal framework has impacted upon its functions and the various divergences which have arisen in the practices of individuals when approaching the office's administration. Such a review focuses on the role of the Solicitor-General, both as an adviser and an advocate. Within this context there is what the author describes as a 'recurring theme' of the independence of the law officers' function. This part of the discussion ranges across the various issues which constitute the conflicting aspects of the independence of the Solicitor-General. These embrace such topics as 'professional competence and independence', the 'statutory and structural mechanisms that protect this independence' and a discussion of the contrast between the structural and individual protection of such independence.

In the concluding chapter the author endeavours to reconcile the concerns which have arisen with regard to the constitutional expectations of the Law Officers in their roles and if the outcome of decided cases have illustrated a failure of judgement which might give rise to a need to 'reform' the office. The author also acknowledges that dominating this debate of the exercise of a Law Officer's judgement has been competing ideas about whether the public interest, politics or the law have exerted legitimate influence within this context.

In her conclusions Gabrielle Appleby is of the view that: 'the appropriately independent exercise of the Law Officers' function rests not on the particular constitutional arrangements but on the integrity and capacity of an individual officeholder.'

There is no doubt that the author has managed to describe and create an interest in the office of the Solicitor-General, which up until now has been little known and of a lesser interest to the legal community, let alone the general public. It is hoped that the publication of this book will stimulate both law academics and students to gain a greater knowledge of an office, which as the text has illustrated, can have a significant bearing on Australian Constitutional issues.

Emeritus Professor David Barker AM
Editor

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