

Changing Legal Education: Rhetoric, Reality, and Prospects for the Future

MARY KEYES* AND RICHARD JOHNSTONE†

Abstract

This article examines the extent to which Australian legal education has transcended the traditional model of legal education which dominated most law schools until the mid-1980s, and outlines a modest agenda which might guide further development in legal education in Australia. The article outlines challenges to the traditional model, changes in legal education following the 1987 Pearce Report, and identifies factors that impede lasting and profound change. It concludes by proposing a series of issues which might be addressed by law schools seeking to provide a learning environment in which students can actively engage in learning about law, in a framework that does not simply prepare students for private legal practice.

1. Introduction

Australian legal education has changed substantially in the last 30 or so years. In 2000, Le Brun suggested that:¹

Legal education in Australia is markedly different today from what it was, say, a decade ago. Changes in curriculum, teaching approaches, and assessment strategies have occurred that could not have been easily predicted in the late 1980s.

We do not doubt that many of these changes are for the better. The purpose of this article is critically to assess the nature and extent of changes which have occurred in Australian undergraduate legal education since the late-1980s.² We argue that change has been uneven, often temporary, and has struggled entirely to transcend the traditional model of legal education.

* BA LLB (Hons) *Qld*, Grad Cert Higher Ed, PhD *Griff*, Senior Lecturer, Griffith Law School.

† BBusSci (Hons) *Cape Town*, LL B (Hons), PhD *Melb*, Professor, Director of the Socio-Legal Research Centre, Griffith Law School. We thank two anonymous reviewers for their careful and detailed comments.

1 Marlene Le Brun, 'Editorial' (2001) 12 *Leg Ed Rev* iii at iii.

2 For discussion of postgraduate legal education, see Desmond Manderson, 'Law: The Search for Community' (2002) 74 *Journal of Australian Studies* 147; Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* (2003) at ch 6.

We begin by describing the key characteristics of the traditional model of legal education, which dominated many Australian law schools until the 1980s. We then briefly canvass two sources of challenge to Australian legal education: the recommendations of various reports into legal education and the insights from various schools of contemporary teaching and learning theory. Drawing on a recent report into legal education in Australia, we assess the current state of Australian legal education, with reference to the overall funding environment in which legal education seeks to operate; developments in curricula, and improvements in approaches to teaching and learning in law.

We then argue that there are significant impediments to change in Australian law schools: in the form of demands of students and the legal profession; the unwillingness of many academics to look beyond protecting their own subjects to engage in broader collective curriculum development and to engage with the educational literature; and the inadequate resourcing of law schools.

We conclude with some key challenges facing tertiary legal educators. The first challenge is for Australian law schools to rethink their relationship with the legal profession, to ensure that law schools assert their autonomy in matters of curriculum, teaching and learning and research, so that legal education aims for more than preparing students for work in private legal practice. A second challenge is to take a collective, law school-wide, approach to integrate matters such as legal theory, interdisciplinarity, ethics, general and legal skills, and issues of internationalisation, gender and indigeneity, so that law students are provided with a co-ordinated and incremental approach to developing knowledge, skills and attitudes. Third, law schools need collectively to engage with educational theory to develop approaches to structured and activity-based teaching, and to co-operative and collaborative learning in law schools. Finally, the evaluation of teaching and of subjects needs to be rescued from its current use predominantly as a management instrument, and to be used instead by law teachers to understand, reflect upon, and respond to the ways in which students experience law subjects and law teaching.

2. *The Traditional Model of Legal Education*

The traditional model of legal education provides a benchmark (albeit flawed and unsatisfactory) against which developments in the last twenty years are to be judged. Understanding the traditional model is necessary in order to enable us to identify and understand the factors which have affected and limited change, and provide a background to the suggestions which we make below as to some desirable developments for the future of legal education. In this section, we outline the main characteristics of the traditional model, which held sway in the majority of Australian law schools in the mid-1980s.³ This is not intended to be descriptive of present practice, although in our experience some aspects of the traditional model of legal education can still be found in some institutions.⁴

3 Denis Pearce, Enid Campbell & Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) (the 'Pearce Report'). The key references in this report to the traditional model are noted below.

The traditional model has five dominant characteristics. The first is the teacher-focused nature of legal education.⁵ In this model the role of the teacher is to transmit their own expertise in some specific and narrow subject matter area of law to students, who are conceived as empty vessels to be filled with this information. Teachers are regarded as subject matter experts in narrow fields of substantive law, and protecting their subject matter territory, or patch, dominates other considerations, including coordination within the curriculum. It can also prevent teachers from recognising how legal education should and could change, and from implementing those changes.⁶ Teachers are not required to have any qualifications in teaching, and very few teachers have any familiarity with the literature on learning and teaching. Cownie notes that ‘Conscientious preparation for teaching appears to demand that one be up-to-date as regards the latest research in the area, or the latest Court of Appeal pronouncement, but little thought is given to any but the most basic of the pedagogic aspects of teaching.’⁷ In the traditional model, law schools do not provide or support training in legal education — teachers are expected to pick up the relevant skills on the job.⁸ In the traditional model, most teachers uncritically replicate the learning experiences that they had when students, which usually means that the dominant mode of instruction is reading lecture notes to large classes in which students are largely passive.⁹ Students’ understanding of that material is assessed in terminal examinations.¹⁰ That is not to say that all law schools or all individual teachers taught in precisely the same way. For example, from the 1950s some Australian law schools adopted a version of the Socratic method,¹¹ but this method is heavily rule-oriented and teacher-focused.¹²

There are three negative consequences of the teacher-focused nature of traditional legal education. The first is that it leads governments and universities to believe that legal education is inexpensive to provide.¹³ Second, students are treated amorously and as though they are homogenous. Given that law teachers

4 According to Brand, some of these characteristics are beginning to reappear in law schools because of students’ demands and funding constraints: Vivienne Brand, ‘Decline in the Reform of Law Teaching? The Impact of Policy Reforms in Tertiary Education’ (1999) 10 *Leg Ed Rev* 109 at 111.

5 For a description of the teacher-focus of traditional models, see John Biggs, *Teaching for Quality Learning at University* (2nd ed, 2003) at 20–22 and Paul Ramsden, *Learning to Teach in Higher Education* (2nd ed, 2003).

6 We have often heard teachers remark that they cannot see how they can change their subjects to incorporate theory, skills, or ethics, for example, because there is a certain quantity of content which must be covered.

7 Fiona Cownie, ‘Searching for Theory in Teaching Law’ in Fiona Cownie (ed), *The Law School — Global Issues, Local Questions* (1999) at 44.

8 Pearce, Campbell & Harding, above n3 at 191.

9 Ninian Stephen, ‘Once and Future Law Schools’ (1992) 1 *Griffith LR* 10 at 11.

10 Pearce, Campbell & Harding, above n3 at 173–174.

11 Marlene Le Brun & Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (1994) at 20, 282–286.

12 Id at 284–285.

13 Margaret Thornton, ‘Portia Lost in the Groves of Academe Wondering What to Do About Legal Education’ (1991) 34 *Australian Universities’ Review* 26 at 30.

were traditionally predominantly middle class white men, this had predictable consequences for female students, and students from any other socio-economic, cultural or racial background.¹⁴ The third consequence of the teacher focus is that students' experience of learning is not taken seriously. The assumption is that if the teacher teaches, then the students will learn; if they do not do so successfully, it is the students' fault.¹⁵ Consistently with this, student learning is not properly evaluated.¹⁶ Evaluation, if it is undertaken at all, is likely to be used in a purely pragmatic sense by both teacher and law school, in which the teacher's overall satisfaction or popularity rating is used for various purposes and any other feedback received from students is discarded.

The second characteristic of traditional legal education concerns what is taught. Traditional legal education is almost entirely concerned with the transmission of content knowledge and, more particularly, with teaching legal rules, especially those drawn from case law.¹⁷ According to Dicey, nothing 'can be taught to students of greater value, either intellectually or for the purposes of legal practice, than the habit of looking on the law as a series of rules'.¹⁸ The main teaching resource, aside from didactic lectures, is textbooks and case books.¹⁹ These books are commonly written in treatise style, and do not engage the reader in any activity aside from reading. Often texts are marketed as being as suitable for practitioners as they are for students,²⁰ and this is so even for some subjects commonly taught in the first year of the law degree.²¹ This suggests not only a close connection between legal education and legal practice, but also that there is no appreciation of the students' intellectual development as they progress through their degree.²² Legal rules are taught in year or semester long subjects, based on nineteenth century categorisations of law and without any consideration of their theoretical, historical, political, or economic foundations.²³ Subjects are treated as

14 Miranda Stewart, 'Conflict and Connection at Sydney University Law School: Twelve Women Speak of Our Legal Education' (1992) 18 *MULR* 828; Taunya Lovell Banks, 'Gender Bias in the Classroom' (1988) 38 *J of Leg Ed* 137 at 138–139.

15 Biggs, above n5 at 21–22.

16 Pearce, Campbell & Harding, above n3 at 192.

17 *Id* at 4, 156; *Report on the Future of Tertiary Education in Australia to the Australian Universities Commission* (1964) (the 'Martin Report') at [11.37].

18 Albert V Dicey, *Can English Law Be Taught at Universities?* (1883), cited by David Sugarman, 'Legal Theory, the Common Law Mind and the Making of the Textbook Tradition', in William Twining (ed), *Legal Theory and Common Law* (1986) at 30.

19 Sugarman, *ibid*. Even where a casebook method of teaching is adopted, the focus is almost exclusively on legal rules derived from case law: Le Brun & Johnstone, above n11 at 20.

20 For example, the back cover of Peter Nygh & Martin Davies, *Conflict of Laws in Australia* (7th ed, 2002) states that 'This authoritative, wide-ranging text is ideal for students taking Conflict of Laws as part of the LLB course and legal practitioners requiring information in this area.'

21 The back cover of Lindy Willmott, Sharon Christensen & Des Butler, *Contract Law* (2001) states that the book 'is a valuable resource for all students and practitioners in the area of contract law.' See similarly the back cover of John Carter & David Harland, *Contract Law in Australia* (4th ed, 2002) (while the book's main aim 'is to provide a text for students undertaking Contract courses at tertiary institutions', it is 'an indispensable reference for practitioners as well.')

22 The one concession made to this is that subjects which are perceived to be easier (like contract law) are taught earlier than subjects which are perceived to be harder (like civil procedure).

23 Sugarman, above n18 at 26–27.

discrete and having little direct interaction. Students are taught the same type of material — a detailed analysis of common law rules — and given the same type of assessment — examinations testing mastery of the legal rules and their application to hypothetical problems — semester after semester, in much the same way, focusing often exclusively on learning legal rules from listening to an expert describing them, or reading a text which focuses on legal rules. The only thing which changes between subjects and between semesters in the student's progression through the degree is the substantive rules which form the content of the subjects.²⁴

The traditional law curriculum gives little express consideration to generic skills (such as oral communication, self-reflection, teamwork, computer skills, and so on) or legal skills (such as legal reasoning and problem solving, legal research, interviewing, negotiation, advocacy and so on),²⁵ ethics, theory, attitudes and values, interdisciplinary perspectives on law, or the international aspects and implications of law and legal practice.²⁶ Whatever skills students learn are acquired with little direct guidance or instruction from teachers, and they are often not specifically assessed. Ethics is taught only as required by professional admitting authorities, and is usually taught in the final year — often in discrete subjects. Theoretical issues are seldom addressed explicitly, except in subjects on 'Jurisprudence', and the socially constructed and contestable nature of law is seldom explored.²⁷ Attitudes and values are seen as irrelevant. Law is taught almost exclusively in a local perspective — usually at the level of the State or Territory in which the law school is situated.²⁸ Interstate and international aspects of law are not directly considered, except in elective subjects in private or public international law.

The third characteristic of the traditional model is the strong conviction that law is an autonomous discipline; quasi-scientific in nature.²⁹ Lawyers have little, if anything, to learn from other disciplines and interdisciplinary studies are regarded as having limited value, at best.³⁰ Until the 1960s, most law students did

24 Marlene J Le Brun, 'Curriculum Planning and Development in Law in Australia: Why is Innovation So Rare?' (1991) 9 *Law in Context* 27 at 29.

25 For example, the United States' MacCrate Report identified the following 10 fundamental skills: problem solving; legal analysis and reasoning; legal research; factual investigation; communication (oral and written); counselling clients; negotiation; understanding litigation and alternative dispute resolution procedures; organisation and management of legal work; and recognising and resolving ethical dilemmas: American Bar Association, Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development — An Educational Continuum*, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992) (the 'MacCrate Report') at 138–140.

26 Pearce, Campbell & Harding, above n3 at 31, 47, 49, 105–106.

27 Ian Duncanson, 'Broadening the Discipline of Law' (1994) 19 *MULR* 1075.

28 Michael Chesterman & David Weisbrot, 'Legal Scholarship in Australia' (1985) 50 *Mod LR* 709 at 713.

29 Thornton, above n13 at 28; Richard A Posner, 'The Decline of Law as an Autonomous Discipline' (1987) 100 *Harv LR* 761.

30 Roderick Meagher, 'How Can You Learn Practice in Theory?' *Proceedings and Papers of the 7th Commonwealth Law Conference, Hong Kong* (1983), cited by Chesterman & Weisbrot, above n28 at 716.

not take combined degrees.³¹ Law is also seen as *sui generis* within the academy, in the sense that it is not truly academic in character, but rather closely associated with the legal profession.³² In this model few teachers of law hold research-based higher degrees,³³ collaborate on research projects,³⁴ or undertake research unless it is perceived to have clear practical relevance to practitioners and the judiciary (usually, requiring that it involves analysis of legal doctrine and rules).³⁵ In short, as a discipline law is perceived as being outside the core of the academy. This conviction about the autonomous nature of law is carried through to its teaching, so adherents of the traditional model doubt whether general principles of learning and teaching have any application to legal education.³⁶

The fourth characteristic of traditional legal education is the close relationship between legal practitioners and the academy.³⁷ Sugarman suggests that 'Despite the variety of producers and consumers of legal discourse, it is what the judges say and the supposed needs of the legal profession as narrowly defined that have had the greatest magnetic pull over the nature and form of legal education and scholarship.'³⁸ Until the 1960s, in Australia the great majority of law teachers were full-time private practitioners.³⁹ Although the relationship is close, the academy is clearly subservient to the profession. It is much less controversial than one might have thought that legal practice exerts a very large degree of control over the curriculum.⁴⁰ The dominant consideration in curriculum design is the responsibility of the academy to prepare students to work in the private legal profession. One particularly concerning consequence of this is that it has the effect of uncritically endorsing and perpetuating the status quo.⁴¹

The fifth characteristic of traditional legal education is that the law school experience is individualised and isolating for both teachers and students. Teachers prepare and teach their subjects in isolation from each other so that there is often no direct coordination between subjects, either within any year of the degree

31 Pearce, Campbell & Harding, above n3 at 7.

32 William Twining, *Blackstone's Tower: The English Law School* (1994) at 28; Chesterman & Weisbrot, above n28 at 711.

33 In 1974, 16% of law teachers had PhDs; this had only increased to 18% by 1985: Pearce, Campbell & Harding, above n3 at 557. Much higher proportions of staff held LL.M degrees, or equivalents: *ibid.*

34 *Id.* at 315, 393–394.

35 Andrew Goldsmith, 'Standing at the Crossroads: Law Schools, Universities, Markets and the Future of Legal Scholarship' in Fiona Cownie (ed), *The Law School – Global Issues, Local Questions* (1999) at 85–90.

36 Jay Feinman & Marc Feldman, 'Pedagogy and Politics' (1985) 73 *Georgetown LJ* 875 at 895.

37 Chesterman & Weisbrot, above n28 at 710–713.

38 Sugarman, above n18 at 27.

39 Pearce, Campbell & Harding, above n3 at 3–4, 549–450.

40 For a description of the recent history of attempts by the legal profession to entrench and extend this control, see Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System* (Report No 89) (2000) at 123–127. See also Brand, above n4 at 125–126.

41 Goldsmith, above n35 at 91.

program, or between different years. Compared with other disciplines, there is little scope for collaboration with other teachers, except in the context of teaching particular subjects. Students are given no opportunity in their formal education to learn from and with each other.

3. Criticisms of the Traditional Model

In this section, we consider criticisms of the traditional model of legal education which have been made in reports into legal education in Australia and other common law jurisdictions. Those reports are critical of the content of traditional legal education, but generally have little to say about the teaching and learning implications of the traditional model. We draw on contemporary teaching and learning theory to address this shortcoming.

A. Criticisms of the Content of Traditional Legal Education

Many aspects of the traditional model of legal education have been criticised in reports into legal education in the United States,⁴² England⁴³ and Australia⁴⁴ in the last 35 years. Many of these reports have been critical of the emphasis in traditional legal education on transmission of knowledge about legal rules and doctrine,⁴⁵ and on the intellectual skills of analysis and synthesis which dominate traditional legal education.⁴⁶ The dominant justification for substantial changes to university legal education which motivates most of these reports has been the perception of legal practitioners that graduates are deficient in fundamental legal skills.⁴⁷ They have consistently advocated the need for a more ‘practical’ focus in university legal education, particularly the need to teach more legally specific skills.⁴⁸ Some reports have recommended a greater emphasis on the contextual, critical and theoretical study of the law;⁴⁹ the Cramton Report justified this on the basis that such subjects provide the foundation for ‘self-learning about an ever-

42 Paul D Carrington, *Training for the Public Professions of the Law* (1971) (the ‘Carrington Report’); American Bar Association, *Law Schools and Professional Education: Report and Recommendations of the Special Committee for a Study of Legal Education of the American Bar Association* (1980) (the ‘Foulis Report’); RC Cramton, *Lawyer Competency: The Role of the Law Schools: Report and Recommendations of the Task Force on Lawyer Competency* (1979) (the ‘Cramton Report’); and the MacCrate Report, above n25.

43 The Lord Chancellor’s Advisory Committee on Legal Education and Conduct (ACLEC), *First Report on Legal Education and Training* (1996).

44 The Martin Report, above n17; Pearce, Campbell & Harding, above n3; Australian Law Reform Commission, *Review of the Adversarial System of Litigation* (Issues Paper 21), (1997); Australian Law Reform Commission, *Review of the Federal Civil Justice System* (Discussion Paper 62), (1999); Australian Law Reform Commission, above n40.

45 Martin Report, above n17 at [11.37]–[11.38]; Pearce, Campbell & Harding, *id* at 4, 156; Australian Law Reform Commission, above n40 at 139.

46 Foulis Report, above n42 at 92–93.

47 MacCrate Report, above n25 at 5.

48 *Id* at 93; Cramton Report, above n42 at 15; MacCrate Report, above n25 at 138–140; Australian Law Reform Commission, above n40 at 142. Some of the reports also recommend greater emphasis on generic skills, such as self-reflection: Cramton Report, *id* at 39.

49 ACLEC, above n43 at [2.4]; Pearce, Campbell & Harding, above n3 at 149.

changing set of laws and legal institutions.’⁵⁰ The importance of teaching attitudes, values and ethics has been raised in some of the recent reports.⁵¹

While these reports consistently address issues relating to the substance of law curricula, as outlined above, few of them have directly addressed the manner in which law is and should be taught. There are several important exceptions. The Cramton Report advocated a structured curriculum which incrementally developed students’ abilities in problem solving.⁵² The MacCrate report proposed that an experiential cycle incorporating reflection should be used in teaching skills and values,⁵³ and the Pearce Report recommended greater use of small group teaching.⁵⁴

An important factor in the development of Australian legal education has been the adoption of nationally unified requirements for admission to the legal profession.⁵⁵ In 1992 the Consultative Committee of State and Territory Law Admitting Authorities, chaired by Justice Priestley, prescribed 11 ‘areas of knowledge’ (the ‘Priestley 11’) that students are required to have studied successfully before they could be admitted to the profession. These areas of knowledge are contract, tort, real and personal property, equity (including trusts), criminal law and procedure, civil procedure, evidence, professional conduct (including basic trust accounting), administrative law, federal and state constitutional law, and company law. The Priestley Rules do not specify the detailed content which should be required for these areas of knowledge.⁵⁶ The Priestley Rules focus on areas of traditional areas of knowledge rather than on graduate attributes or skills,⁵⁷ and do not explicitly require attention to theoretical perspectives.

In 2000, the Australian Law Reform Commission urged the abandonment of the Priestley Committee’s ‘solitary preoccupation with the detailed content of numerous bodies of substantive law’.⁵⁸ It criticised the Committee’s failure to

50 Cramton Report, above n42 at 10.

51 ACLEC, above n43 at [2.4]; MacCrate Report, above n25 at 140–141; Cramton Report, id at 10; Australian Law Reform Commission, above n40 at 142. Pearce, Campbell & Harding questioned the appropriateness of teaching values: above n3 at 31. Parker and Goldsmith note that ‘ethical training of lawyers was notably absent as an issue in the Pearce Report’: Christine Parker & Andrew Goldsmith, “Failed Sociologists” in the Market Place: Law Schools in Australia’ (1998) 25 *J of L and Soc* 33 at 39.

52 Cramton Report, above n42 at 17.

53 MacCrate Report, above n25 at 243, 331.

54 Pearce, Campbell & Harding, above n3 at 159–160.

55 The requirements of the State and Territory admitting authorities which applied before the Priestley rules came into effect were diverse: Pearce, Campbell & Harding, above n3 at 90.

56 The Law Council of Australia has recommended more specific content for each area of knowledge, and these are widely used as a guide as to whether a program has satisfied the requirements.

57 The Priestley Committee has also listed 12 skills areas of importance to practising lawyers, referred to as ‘The Priestley 12’, to be undertaken during practical legal training.

58 Australian Law Reform Commission, *Managing Justice*, above n40 at 139, 117–121, 138–142; Australian Law Reform Commission, *Review of the Federal Civil Justice System*, above n44 at 40–50.

consider the changing nature of the legal profession and legal practice for which law students were being prepared, noting that contemporary legal practice was much more internationalised, process-driven and teamwork reliant than had hitherto been the case. It was critical of the assumption made by the Priestley Committee, without any discussion of whether this was necessary or desirable, of a rigid divide between law school education and professional legal training, in which law schools teach legal rules and professional legal training teaches practice or skills.⁵⁹ It concluded that legal education should focus on what lawyers need ‘to be able to do’, rather than on what lawyers ‘need to know’.⁶⁰

This brief overview of reviews of legal education shows that the traditional model of legal education, outlined in Part 2 of this article, has been strongly challenged. What is striking in these reviews is that the debate is dominated by the perceived need for legal education to serve the present requirements of the legal profession. The reports assume that the most important concern in curriculum is preparation for private legal practice, rather than the law degree as early preparation for a career in legal scholarship, or in a range of other professions. With several minor exceptions, these reports exclusively address curriculum content issues. They give very little direct attention to teaching and learning in law — that is, *how* students should be taught in law schools.⁶¹ In the next section, we consider the implications of educational research for this very important question.

B. Criticisms of Teaching in the Traditional Model

Educational research from a variety of traditions,⁶² including behavioural,⁶³ cognitive,⁶⁴ constructivist⁶⁵ and relational learning theories,⁶⁶ heavily criticises the teacher-focused nature of traditional education, and emphasises that teaching should be concerned with enhancing the learning experience of students; that is, that it should be student- rather than teacher- focused.⁶⁷ The notion that teaching is about the transmission of knowledge from teacher to students has been

59 Australian Law Reform Commission, *Managing Justice*, above n40 at 138–142.

60 Australian Law Reform Commission, *Review of the Federal Civil Justice System*, above n44 at 46, [3.23].

61 See similarly Twining, above n32 at 27.

62 For introductory accounts of behavioural, cognitive and constructivist learning theories, see Michael Hunter Schwartz, ‘Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching’ (2001) 38 *San Diego LR* 347 at 365–383; Le Brun & Johnstone, above n11 at ch 2; Diana Laurillard, *Rethinking University Teaching: A Framework for the Effective Use of Educational Technology* (1993) at chs 1–3. Relational learning theory is explained in Michael Prosser & Keith Trigwell, *Understanding Learning and Teaching: The Experience in Higher Education* (1999) at ch 2. See also Ramsden, above n5.

63 Behaviourists start from the premise that learning takes place when the learner responds appropriately to a specific stimulus, and see the goal of teaching as developing and reinforcing the relationship between the stimulus and the response: Schwartz, *id* at 368–369.

64 Cognitivist theory is concerned with what happens between the stimulus and the response: how the brain processes and retains learning. Cognitive theorists ‘equate learning with the learner’s active storage of that learning in an organized, meaningful, and useable manner in long-term memory’: *id* at 372.

criticised; rather, teaching should be about enabling, stimulating, prompting and guiding students to develop their own conceptions and abilities.⁶⁸ Educational writers argue that the development of students' understanding of and ability to apply key concepts and skills is more important than coverage of a large quantity of content.⁶⁹ Students in the traditional model are largely passive recipients of information, in lectures and in reading texts written in a particular didactic style. Educational research demonstrates that this is extremely undesirable, and that high quality learning requires that students should be actively engaged.⁷⁰ 'Learning takes place through the active behaviour of the student; it is what [s]he does that [s]he learns, not what the teacher does.'⁷¹ This has implications not only for the design of classes, but also for the design of textbooks and other printed study aids, such as subject materials.⁷²

In the traditional model, teachers' expectations of students are infrequently directly articulated, leaving students to try to determine what is required of them in learning and assessment. Modern learning theory indicates that teachers' expectations should be clearly explained in terms which are readily understood and applied by students.⁷³ Recent research shows the importance of assessment in student learning. A variety of assessment tools should be employed which

65 Constructivism begins from the postmodern position that knowledge and understanding is built up by learners from their individual experiences of the world and their interpretations of that experience. They consider that 'three factors are crucial to learning: practice in real settings (experience), the opportunity to develop personal interpretations of experiences (construction of meaning by the learner), and the opportunity to negotiate meaning (collaboration)': id at 380. See also John Seely Brown, Allan Collins & Paul Duguid, 'Situated Cognition and the Culture of Learning' (1989) (Jan–Feb) *Educational Researcher* 32; Leslie Steffe & Jerry Gale (eds), *Constructivism in Education* (1995).

66 Relational student learning research envisages 'learning as a change in the way we conceptualise the world around us' and contends that 'a conception of an aspect of subject matter can be thought of as a sort of relation between the person and a phenomenon' (Ramsden, above n5 at 40), When a person understands a concept, they are relating to the concept in the way that an expert would relate to the concept. (Ramsden, id at 41). Researchers have identified at least two qualitatively contrasting ways in which learners can relate to a learning task, based on whether or not a learner is searching for meaning when engaged in the task, and the way in which the learner organises the task: these are commonly referred to as 'deep' and 'surface' 'approaches to learning'. (Ramsden, id at 43 and ch 5; Prosser & Trigwell, above n62 at 3–5).

67 Biggs, above n5 at 13, 24–25.

68 Ibid; Prosser & Trigwell, above n62 at 153–157; Keith Trigwell & Michael Prosser, 'Changing Approaches to Teaching: A Relational Perspective' (1996) 21 *Studies in Higher Education* 275.

69 Biggs, above n5 at 45–47.

70 Paul Ramsden, 'Evaluating and Improving Learning Teaching in Higher Education' (1991) 2 *Leg Ed Rev* 149 at 150–151; and Schwartz, above n62 at 365–383.

71 Ralph W Tyler, *Basic Principles of Curriculum and Instruction* (1949) at 63, quoted in Biggs, above n5 at 25.

72 Richard Johnstone, *Printed Teaching Materials: A New Approach for Law Teachers* (1996); Richard Johnstone & Gordon Joughin, *Print Materials for Flexible Teaching and Learning in Law* (1997).

73 Richard Johnstone, Jennifer Patterson & Kim Rubenstein, *Improving Criteria and Feedback in Student Assessment in Law* (1998); Biggs, above n5 at ch 3; D Royce Sadler, 'Formative Assessment and the Design of Instructional Systems' (1989) 18 *Instructional Science* 119.

encourage students to take a deep approach to learning; assessment should be clearly aligned to stated learning objectives. The over-use of examinations and the failure clearly to state learning objectives and assessment criteria in the traditional model of legal education impede effective learning.

Good teaching requires teachers to engage with students at their own level of understanding, motivating them to learn by stimulating their interest in the subject.⁷⁴ Rather than being remote from students, and treating them as homogenous, teachers should respect students, be aware of diversity in the student body, and respond to that diversity appropriately in the selection of teaching material and activities. Student diversity relates not only to gender and racial, social and cultural background, but also to different learning styles, which has clear implications for the selection of learning activities and assessment.⁷⁵

We noted above that in the traditional model, there is no explicit appreciation of students' intellectual development. Learning theory shows that students' intellectual development should be taken into account in the design of individual subjects and of the curriculum as a whole.⁷⁶ This implies the need to provide meaningful and timely feedback on student performance in assessment,⁷⁷ as well as the need to ensure the progressive development of skills and knowledge in related subjects.⁷⁸

As we outlined in Part 1, the traditional model of legal education is highly individualised. It does not encourage or reward collaborative work by students. Recent research demonstrates the considerable intellectual and social benefits of collaborative work to students,⁷⁹ as well as its pragmatic benefits to teachers.

Finally, one of the most important implications of the student-focus mandated by modern educational research is that students' experience of learning should be closely evaluated by teachers, and that appropriate modifications to teaching should be made in the light of that evidence.⁸⁰ The main purpose of teaching evaluation should be to lead to further improvements in student learning, rather than to certify teaching competency.⁸¹

In short, there is a great deal of evidence available about what constitutes good teaching in higher education. Almost every aspect of that evidence is at odds with the traditional model of legal education. We think it is a matter of serious concern that very little of this research has directly influenced the policy debate on desirable changes in tertiary legal education.

74 Ramsden, above n5 at ch 5.

75 Paula Lustbader, 'Principle 7: Good Teaching Respects Diverse Talents and Ways of Learning' (1999) 49 *J of Leg Ed* 448; Annie Howell & Frank Tuitt (eds), *Race and Higher Education: Rethinking Pedagogy in Diverse College Classrooms* (2003).

76 Biggs, above n5 at ch 3.

77 Terry Le Clerq, 'Principle 4: Good Practice Gives Prompt Feedback' (1999) 49 *J of Leg Ed* 418; Johnstone, Patterson & Rubenstein, above n73.

78 Schwartz, above n62 at 368, 375.

79 David Dominguez, 'Principle 2: Good Practice Encourages Cooperation Among Students' (1999) 49 *J of Leg Ed* 386.

80 Prosser & Trigwell, above n62 at 168.

81 For further discussion, see Part 6F below.

4. *Changing Legal Education?*

Many commentators have remarked on the changes which have occurred in Australian legal education since the Pearce Report was published in 1987.⁸² In this Part we examine the evidence of these changes, drawing on the recently published report by the Australian Universities Teaching Committee into *Learning Outcomes and Curriculum Development in Law*.⁸³ We first outline the impact of general contextual factors on law schools, and then consider changes to law curricula, and conclude by considering changes to teaching in law schools.

A. *Contextual Factors*

Perhaps the most outstanding changes have been the dramatic increase in the number of law schools and of law students since 1989. In the period 1855 to 1960, six law schools were established in Australia. By 1975 a further six law schools had emerged. Since 1989, seventeen new schools have been established; evidently, several more are in the planning stage. The rapid growth in law schools has been accompanied by significant growth in law student numbers,⁸⁴ which itself has increased student diversity by reference to factors including academic background and prior achievement, geographical location, career aspiration, and socio-economic status.⁸⁵

Another very significant change has been the introduction by the Commonwealth Government of a user-pays model in higher education, which has affected every discipline but has particular implications in law. Under the differential system of student contribution to the cost of higher education, law programs are assigned to the highest charge band; however, under the Commonwealth Government's funding formula, they receive the lowest level of funding.⁸⁶ Law students are charged on a full cost recovery basis while law schools are starved of resources. A lack of adequate resourcing for law has been a serious difficulty affecting legal education for many years⁸⁷ and has drawn repeated calls for reform.⁸⁸

Law schools have, due largely to the commodification of higher education, become even more vulnerable to the demands and expectations of students and employers of law graduates. One consequence is that law schools have sought to emphasise their distinctiveness, and differentiate themselves, particularly from their local competitors.⁸⁹ Despite the apparent diversity of undergraduate offerings

82 Jack Goldring, Charles Sampford & Ralph Simmonds (eds), *New Foundations in Legal Education* (1998).

83 Johnstone & Vignaendra, above n2 (the AUTC Report).

84 Johnstone & Vignaendra, above n2 at 3; Craig McInnis & Simon Marginson, *Australian Law Schools After the 1987 Pearce Report* (1994) at 11.

85 Jack Goldring & Sumitra Vignaendra, *A Social Profile of New Law Students in the Australian Capital Territory, New South Wales and Victoria* (1997).

86 Johnstone & Vignaendra, above n2 at 4.

87 McInnis & Marginson, above n84 at vii–viii.

88 Pearce, Campbell & Harding, above n3 at ch 16.

89 See Johnstone & Vignaendra, above n2, at 25–43.

among Australian law schools,⁹⁰ senior academics interviewed for the AUTC Report argued that these developments mask an underlying homogeneity, a uniform response by law schools to market pressures from employers and students.⁹¹ From the 1960s and until recently, most law schools required school-leavers to undertake a combined degree.⁹² The AUTC report found a recent reversal in this trend, in that most law schools now offer stand-alone law degrees to school-leavers.⁹³ It appears that law schools have been influenced in this regard by market pressures.⁹⁴ Market pressures, including student demands for greater flexibility in teaching arrangements and accelerated progress through the LLB program, have resulted in most law schools adopting intensive modes of teaching.

One implication of the high cost of university education and of the massification of education is that students are far more likely to be engaged in substantial amounts of paid employment while they are undertaking university studies than was the case in the past.⁹⁵ Many law teachers feel that this factor has dramatically changed students' legal education, resulting in poor class attendance or poor participation in, and preparation for, class.⁹⁶

The lack of adequate resources for law schools has led to a great administrative burden for teachers. Teachers interviewed for the AUTC Report stated that they were consequently left with very little time to reflect on their teaching, subject design, assessment activities and preparation for classroom teaching.⁹⁷

B. Changes in the Content of Law Curricula

There has been a notable change in thinking about the objectives and substance of legal education in the last 20 years.⁹⁸ During the 1980s, law schools began to move away from their traditional 'trade school' approach, 'towards the classic, liberal model of university education'.⁹⁹ McInnis and Marginson credit the Pearce Report directly with improvements in the content of legal education. They found that it had generated 'critical reflection on the nature and content of courses'.¹⁰⁰ Partly in response to the recommendations of the Pearce Report, many law schools now give greater attention to teaching generic and legal skills, theory (including interdisciplinary perspectives on law) and ethics.

90 Id at ch 3.

91 Id at 86–87.

92 The Pearce Report stated that this was a 'widespread though not universal' requirement: Pearce, Campbell & Harding, above n3 at 7.

93 Johnstone & Vignaendra, above n2, at 66–69.

94 Parker & Goldsmith, above n51 at 45.

95 Craig McInnis & Robyn Hartley, *Managing Study and Work: The Impact of Full-Time Study and Paid Work on the Undergraduate Experience in Australian Universities* (2002); Michael Long & Martin Hayden, *Paying Their Way: A Survey of Australian Undergraduate University Student Finances* (2000).

96 Johnstone & Vignaendra, above n2 at 336–340.

97 Id at ch 13.

98 Goldring, Sampford & Simmonds, above n82.

99 Chesterman & Weisbrot, above n28 at 718.

100 McInnis & Marginson, above n84 at vii–viii.

In 1994, McInnis and Marginson reported that most schools espoused a commitment to teaching theoretical, critical and contextual approaches to law.¹⁰¹ The AUTC Report found that most law schools required students to undertake at least one subject in legal theory.¹⁰² Some also required students to complete further legal theory subjects in later years; some encouraged, if not required, teachers to incorporate theoretical perspectives into both core and elective subjects, and a few attempted to co-ordinate the infusion of legal theory into substantive law subjects. In some law schools teachers with little interest in, or who felt threatened by, legal theory resisted these attempts so that legal theory remains marginalised at some law schools. As Sugarman has commented, while there is 'a growing movement to broaden the study of law beyond' the traditional focus on case law principles, 'transcending it is easier said than done.'¹⁰³

Whereas in the traditional law curriculum, the teaching of skills was confined to legal analysis and reasoning, legal research, legal writing and mooting, as a by-product of teaching in substantive law subjects,¹⁰⁴ most law schools now pay greater attention a wider range of skills,¹⁰⁵ although there is still disagreement about the importance of practical legal skills. The AUTC Report found that a third of law schools adopt a minimalist approach to the introduction of generic and legal skills, most focusing on the relatively traditional skills of legal research and writing, case analysis, statutory interpretation, oral communication, and advocacy. Many schools include specific legal skills such as alternative dispute resolution and negotiation in their curriculum. Most of the small number of remaining law schools have an integrated skills program in their LLB curricula, including clinical teaching programs and placements. Only two law schools have developed an incremental, integrated and co-ordinated skills program which spans the entire law curriculum.¹⁰⁶ Four law schools include fully-fledged professional legal training programs within their LLB programs.

All but two law schools now teach legal ethics as part of the mainstream LLB program, and most do so as part of the compulsory program.¹⁰⁷ Some law schools teach ethics in stand-alone subjects, and others as one component of a subject. In some schools, ethics is addressed frequently in different subjects at various stages of the curriculum; in other schools, this appears to be an aspiration but there are no formal arrangements to ensure a co-ordinated approach to teaching ethics.¹⁰⁸ Critics argue that legal ethics teaching in Australian law schools requires a more coherent philosophical basis, and that ethics should be taught as a pervasive set of values that underpin the practice of law, rather than by reference only to practical ethical problem solving. They also suggest that ethics should be seen as an integral part of learning the law as a social phenomenon.¹⁰⁹

101 *Id* at 154, 157.

102 Johnstone & Vignaendra, above n2 at ch 5.

103 Sugarman, above n18 at 27–28.

104 Pearce, Campbell & Harding, above n3 at 25.

105 This is consistent with McInnis and Marginson's findings in 1994: above n84 at 168–170.

106 See further Part 6C below.

107 Johnstone & Viganendra, above n2 at 118.

108 Johnstone & Vignaendra, above n2 at 118–122.

Most law schools require students to complete at least one international subject, such as public international law and international trade law. Some law schools have reciprocal teaching programs or student exchange programs with overseas law schools. A few schools have made comparative and international law their special focus.¹¹⁰ One the whole, however, Australian law schools have not developed coherent and systematic strategies to address the implications of globalisation and internationalisation for the law and for legal practice.¹¹¹ This is largely because of the restrictions placed on LLB curricula by the Priestley requirements, which are seen to be antipathetic to curriculum developments addressing globalisation and the issues it generates for law, and which have evidently been interpreted as being relevant mainly to the level of local and national jurisdictions.

C. *Quality in Teaching*

The Pearce Report is widely credited with stimulating interest in teaching in legal education.¹¹² The establishment of the ALTA Law Teaching Workshop in 1987 and initiatives in most universities to improve teaching and learning have also invigorated concern with teaching and learning in law schools since the late 1980s.¹¹³ Fewer law teachers than before assume that teaching involves the transmission of their knowledge to students. Some teachers conceptualise teaching as predominantly concerned with facilitating active student learning.¹¹⁴ The changes in thinking about teaching and learning in Australian law schools are illustrated by the many examples of theoretically-based teaching strategies developed in Australian law schools; a greater interest in legal education;¹¹⁵ increased research into, and scholarly writing about, legal education;¹¹⁶ the small but growing number of teachers who complete formal qualifications such as a Graduate Certificate in Higher Education; and the offering of subjects and graduate programs in legal education by some law schools.¹¹⁷

It would not be accurate to claim that all law schools or all law teachers treat the scholarship of teaching as important. Developments in the scholarship of teaching in law are far from uniform, even within individual law schools, and many law schools maintain a traditional approach to legal education.¹¹⁸ There is

109 Margaret Castles, 'Challenges to the Academy: Reflections on the Teaching of Ethics in Australia' (2001) 12 *Leg Ed Rev* 81; and Christine Parker, 'What Do They Learn When They Learn Ethics?' (2001) 12 *Leg Ed Rev* 175.

110 Johnstone & Vignaendra, above n2 at 198–206.

111 Australian Law Reform Commission, *Managing Justice*, above n40 at 139.

112 McInnis & Marginson, above n84 at 163; Johnstone & Vignaendra, above n2 at ch 11; and Charles Sampford & Sophie Blencowe, 'Context and Challenges of Australian Legal Education', in Goldring, Sampford & Simmonds, above n82 at 1.

113 Johnstone & Vignaendra, above n2 at ch 11.

114 *Ibid.*

115 McInnis & Marginson, above n84 at 163.

116 *Id* at 44.

117 Johnstone & Vignaendra, above n2 at chs 11 and 18.

118 *Ibid.*

evidence of ignorance, even disparagement, of educational theory amongst teachers, and of the 'anti-intellectual' approach to teaching that Cownie has identified in British law schools.¹¹⁹

The two most significant improvements to teaching and learning in Australian law schools since the late 1980s have been a greater concern with student-focused teaching,¹²⁰ and a trend towards smaller class sizes.

Law teachers are increasingly using discussion-based teaching methods, small group work, and occasionally teacherless groups, to supplement, and even replace, lecturing, in order to facilitate student learning. Lectures are still the norm at many law schools, especially given the increase in student enrolments at most law schools; however, those teaching small classes are increasingly adopting discussion- and activity-based teaching, with some able to use such methods even in larger classes.¹²¹

McInnis and Marginson found that the Pearce Report contributed to a commitment to the increased use of small groups in teaching, although even in 1994, for funding reasons some law schools were struggling to continue to provide small class sizes.¹²² By 2002, the majority of Australian law schools had taken measures to reduce class sizes, under the assumption that smaller class sizes allow for a variety of teaching methods to be adopted which promote active student learning.¹²³ This demonstrates a commitment to student-focused learning, although because of funding constraints many law schools are only able to offer small class sizes in the early years of the LLB program. Since the publication of the AUTC Report, some law schools have abandoned a commitment to smaller group teaching, even in first year.

University-led teaching and learning initiatives are seen by law teachers to have contributed to the improvement of subject design.¹²⁴ Clearer learning objectives, better alignment of learning objectives with assessment tasks, more varied assessment and teaching methods, more feedback on assessment tasks, and increased use of teaching materials and methods to encourage active learning is evidence of this.¹²⁵

Complementing positive changes to classroom teaching methods has been a rethinking of the design of teaching materials.¹²⁶ Fifteen years ago, many law teachers merely provided students with 'reading lists', limited to topic headings and lists of case citations. Many law schools now require that teachers provide

119 *Id* at 289; Fiona Cownie, 'The Importance of Theory in Law Teaching' (2000) 7 *Int J of the Legal Profession* 225; and Cownie, *above* n7 at 43–46.

120 Johnstone & Vignaendra, *above* n2 at 292–296. Student-focused teaching also found expression in better pastoral care for students in some law schools, more student-friendly approaches to law school administration, and longer student consultation hours.

121 *Id* at ch 16.

122 McInnis & Marginson, *above* n84 at vii–viii.

123 Johnstone & Vignaendra, *above* n2 at ch 16.

124 *Id* at ch 17.

125 *Id* at chs 15 and 16.

126 At some law schools, this has been influenced by the need to cater to external students.

students with subject information including learning objectives and details of assessment tasks. A small, but growing, number of teachers provide teaching materials designed to structure activity-based learning, with introductory text, topic summaries, questions to guide reading and discussion, and learning activities (eg, hypothetical problems, simulations) to provide a context for student learning.¹²⁷

The AUTC report notes continued staff and student antipathy to the use of group work in legal education. The dominant focus in education remains upon the assessment of individual achievements. In such a context, students are not surprisingly often openly hostile to working in groups, and may be inclined to downplay the importance of group work.¹²⁸ Many teachers, like students, have negative perceptions about group work, and are often pessimistic about using group work.¹²⁹ There is a high level of resistance in most law schools to adopting group work as part of the formal curriculum, particularly if the group work is assessable.¹³⁰ Interestingly, this is one area in which law schools have evidently resisted employers' expectations. Employers commonly perceive that law schools do not focus sufficiently on teaching important practical skills. The skills which they identify as most important, and most lacking in formal legal education, are skills in teamwork and communication.¹³¹

The management of, and support for, teaching in law has also shifted in line with the new ways of conceptualising law school teaching. This has led to a considerable amount of evaluation of law teaching,¹³² generally undertaken at the behest of the university. In addition to surveying law students about subjects and curricula, most law teachers are required, or encouraged, to have their teaching evaluated by students using written, multiple-choice questionnaires, often designed by a central university unit. Other forms of teaching evaluation are less common, although many schools reported that peer evaluation and mentoring occurs informally, usually at the initiation of individual teachers.¹³³ The purpose of the evaluation of subjects and teaching in most law schools, however, appears to be for management purposes — to identify poorly performing teachers and deficient subjects — and to provide teachers with evidence of the quality of their teaching, rather than for collecting evidence of the way in which students are experiencing the subject and the way the subject is taught.¹³⁴

The changes to support for teaching within law schools have also led to a growth in teaching interest groups and seminars on teaching within law schools,

127 Johnstone & Vignaendra, above n2 at 398–403.

128 In Johnstone & Vignaendra's study, 'quite a few law teachers reported that many students are opposed to group assessment': id at 372.

129 Ibid.

130 Ibid.

131 For evidence and discussion, see Johnstone & Vignaendra, id at 238–246.

132 The Pearce Report found that law schools had very variable practices in relation to student evaluations, and that several law schools conducted no evaluations at all: Pearce, Campbell & Harding, above n3 at 192.

133 Johnstone & Vignaendra, above n2 at 436–438.

134 Id 427–439.

law schools' support for individual teachers' attendance at the ALTA Law Teaching Workshop, and less frequently, mentoring schemes. Some law schools encourage staff to complete Graduate Certificate-level qualifications in education.¹³⁵ Very few law schools, however, reported that they had in place systematised support for a scholarly approach to teaching, which would include measures to ensure that teachers individually, and schools as a whole, evaluate students' experience of teaching and in particular the impact of teaching upon student learning.¹³⁶

In summary, while it is true to say that legal education today is vastly different to what it was 17 years ago when the Pearce Report was published, the changes which have occurred, as documented in the AUTC Report, are not as profound, as well-embedded or as focused on the serious problems with the traditional model as one might have expected or hoped.¹³⁷ The most substantial changes have resulted from external factors — for example, the tremendous increase in student numbers, the increasing workload of both teachers and students, and the decreasing levels of funding for legal education. The major internal changes supplement rather than supplant or challenge the traditional model — for example, the use of small classes in addition to lectures and the addition of theoretical perspectives to legal rules in terms of the content of legal education. These changes do not fundamentally address the problems with the traditional model which we have identified.

5. *Impediments to Change in Legal Education*

In this part, we identify some of the substantial inhibitors to profound and enduring change in legal education. They arise from a diverse range of sources, from the demands of students and the legal profession, to factors affecting legal academics, to the culture of law schools, to the role played by universities, and to the funding treatment of legal education by the Federal Government.

The corporatisation of universities has led to the perception of students as consumers. This perception legitimises student demands as to the content and delivery of the law curriculum¹³⁸ and exposes the vulnerability of some law schools to these demands. Although some student demands are justified and require attention in curriculum development, others may undermine important educational goals. The less well established law schools may be driven by actual or perceived student demand to alter their programs and subjects in ways which are not necessarily desirable — for example, as some law schools have done to permit school leavers to undertake a straight law degree, or to minimise or exclude the kinds of topics and skills which some students perceive as irrelevant to legal practice.¹³⁹ Some of these perceived demands are also likely to cause individual academics to avoid exploring new approaches to subject design and teaching.

135 *Id* at ch 17.

136 Prosser & Trigwell, above n62 at 161–162.

137 Thornton notes that 'the "core" curriculum has witnessed comparatively few major changes of substance over the past half century': Margaret Thornton, 'Technocentrism in the Law School: Why the Gender and Colour of Law Remain the Same' (1998) 36 *Osgoode Hall LJ* 369 at 373.

138 Brand, above n4 at 121.

139 *Id* at 123–124; Johnstone & Vignaendra, above n2 at 66–69.

The academy's 'uneasy'¹⁴⁰ and largely subservient relationship to legal practice places considerable impediments in the way of change. We noted above that even the most progressive of the recent reports into legal education continue to refer to the requirements of practice as the dominant criterion for determining what should be taught at law school. The legal profession has exercised and continues to exercise considerable control over what is taught at law school, and has in the last decade indicated its desire to exercise a greater degree of control.¹⁴¹ At the same time, the self-perception of some legal academics that law is not unambiguously an intellectual discipline also influences the kinds of changes we can pursue in legal education. The persistence of the view that doctrine is the centre of legal research¹⁴² also has an inhibiting effect on our ability to perceive different ways of conceiving legal education.¹⁴³

Merely covering the subject matters identified as essential by the Priestley requirements accounts for a large part of the LLB program in most law schools. In conjunction with the traditional focus on teaching legal rules, this concentration on content leaves little space in the LLB curriculum to devote to the kinds of issues which have been identified as important by the reports into legal education referred to above,¹⁴⁴ as well as by numerous commentators. What little 'space' is left after accommodating the Priestley requirements, law schools choose to devote to incorporating ethics, theory and skills into existing subjects, or by adding on new subjects which address these issues. This is done at the expense of addressing newer and more complex issues such as the coordination of the curriculum and the implications of globalisation.¹⁴⁵

At the level of individual teachers, two factors inhibit change. The first is individual teachers' concern to protect the status quo with their subjects, based perhaps on a combination of insufficient resources, increasing workloads and inertia. Teachers are therefore reluctant to change their teaching, even though there is no shortage of material suggesting how the law curriculum generally and individual subjects specifically might be developed, both in terms of content, and in the modes of learning which are employed.

The second factor which prevents teachers from advocating and implementing profound changes to legal education is a general lack of awareness of or concern for the educational literature, its implications for teaching practices,¹⁴⁶ and an actual or perceived inability to implement change. The traditional attitude that university teachers do not need formal qualifications in education, or otherwise to

140 Fiona Cownie, *Legal Academics: Culture and Identities* (2004) at 198.

141 Australian Law Reform Commission, *Managing Justice*, above n40 at 123–127.

142 Thornton, above n137 at 372.

143 Goldsmith, above n35 at 88–90.

144 See Part 3A above.

145 John Flood, 'Legal Education, Globalisation and the New Imperialism' in Fiona Cownie (ed), *The Law School – Global Issues, Local Questions* (1999); Donald B King, 'Globalization Thinking for Modern Legal Education', in Donald B King (ed), *Legal Education for the 21st Century* (1999), ch 29.

146 Le Brun, above n24 at 30–31.

engage with the educational literature, seems deeply entrenched in law. Without an understanding of the literature, law teachers will understandably be inclined to retain conventional and established approaches to teaching. Although an increasing number of legal academics possess educational qualifications and are acquainted with the educational literature, they still clearly constitute a minority who find it difficult to pursue substantial change in the face of a disinterested, if not hostile, majority.

Within law schools, change is inhibited because of the individual focus of teaching, as well as a general lack of support from law schools for improving legal education. Subjects are commonly treated as self-contained, not interconnected, and most academics teach in isolation from each other. There is a lack of collective corporate focus on the curriculum within the vast majority of law schools. Few law schools provide systematic assistance and support for legal academics who wish to improve their teaching. Such assistance and support would clearly play a vital, and probably essential, role in promoting a scholarly approach to teaching, and especially in agreeing collective curriculum objectives, and ensuring their implementation and evaluation.

While universities' increasing emphasis on teaching and learning is laudable, and appears to have influenced improvements in legal education, this emphasis is often interpreted by legal academics as excessively bureaucratic. It appears, ironically, to fuel some academics' cynicism about teaching and learning. We have already referred in several places to the serious issue of resourcing of law schools. Law schools suffer because the Commonwealth Government funds law at a substantially lower rate than other disciplines to which it ought to be compared; most universities apply a similar formula to determine funding to schools. This lack of resourcing has seriously undermined the ability of law schools to undertake substantial change. Of all the factors identified here as impeding reforms to legal education, this is the most severe and the most difficult to overcome. Twining observes that 'law has traditionally been perceived as one of the cheapest disciplines' and that '[t]his image is so deeply entrenched that it is almost impossible to change.'¹⁴⁷

The recent history of legal education in Australia suggests both that the traditional model is profoundly embedded and that the impediments to change are extremely effective.

6. *Issues for the Future Development of Legal Education*

In this article we have argued that since the late 1980s there have been significant developments in Australian legal education. At the same time, we have suggested that many aspects of the traditional model of legal education still hold sway in Australian law schools. Limitations of space prevent us from canvassing all of the issues that law schools face in developing curricula and teaching and learning

¹⁴⁷ Twining, above n32 at 41; See also Ian Duncanson, 'Interdisciplinarity in the Law Discipline' (1996) 5 *GLR* 77 at 85.

strategies suited to contemporary challenges. In this section we discuss some of the issues that appear to us to be pivotal in renovating law curricula and teaching and learning strategies.

We have noted in several places the very serious consequences of the continued underfunding of legal education by government and by universities. The assumptions which lie behind the funding level applied to legal education are clearly influenced by the traditional model of legal education,¹⁴⁸ one of the few virtues of which is that it is relatively inexpensive to offer. The underfunding of law comes at the expense of individual academics, in terms of high workloads, and the educational experience of students. It also has the effect of maintaining the subservient relationship between the academy and the private legal profession, in that underfunded law schools are required to seek external, often corporate, sponsorship.¹⁴⁹ Developing and implementing change in legal education requires resources, and attending to this should be regarded as a matter of very high priority.

A. The Relationship Between the Academy and the Legal Profession

We have explained above the dominant influence of the Priestley 11 requirements on legal curricula in Australia. This influence is regressive for several reasons. First, it focuses exclusively on students' acquisition of knowledge expertise in certain subject matter areas and entirely neglects the importance of other important aspects of legal education, even those which are far from controversial, such as the acquisition of generic and legal skills and attitudinal awareness. Second, it assumes that all that is important for practice is subject matter knowledge in certain traditional narrowly defined areas of law. Third, it assumes that the central purpose of legal education is to train students for private legal practice, and more particularly, that it is appropriate for the profession to dictate to universities a substantial part of their curricula. Roper noted nearly ten years ago that fewer than half of final year law students intended to work in private practice.¹⁵⁰ He suggested that this finding 'could have ramifications' for legal education; in particular it called into question 'the extent to which law schools' curricula *principally* reflect the needs or requirements of the private legal profession' as well as 'the extent of influence which the private profession, through the professional bodies, should be able to exert on law schools' curricula, in virtue of their capacity as representatives of the dominant vocational destination of the students.'¹⁵¹ These sentiments have been repeatedly endorsed, and yet we remain in a position where our curricula are largely dictated by an unrepresentative group of the consumers of law graduates.

Cownie recently identified evidence from English academics that the ties between the legal academy and the legal profession are becoming weaker, and that academics are becoming more autonomous.¹⁵² We hope that a similar trend could

148 Council of Australian Law Deans, *The Funding of Law Schools: A Resource Document for Deans* (2000) at 28: <www.cald.asn.au/FundingV3.pdf> (24 August 2004).

149 Brand, above n4 at 120; Cownie, above n140 at 34–35.

150 Christopher Roper, *Career Intentions of Final Year Law Students* (1995) at 79–80.

151 *Id.* at 80, emphasis in original.

152 Cownie, above n140 at 156–158.

be demonstrated in Australia. We certainly advocate and look forward to a more mature, ‘consultative and respectful’,¹⁵³ relationship, in which the function of the academy is regarded as significantly broader than the preparation of graduates for private practice, and the production of research of utility to practitioners and judges.¹⁵⁴ Ironically, Brand suggests that recent changes in higher education may have had the opposite effect, forcing legal education back into a more traditional model.¹⁵⁵

B. Rationale for Legal Education and its Scope

Legal education must be about much more than a narrow, teacher- and subject-matter focused approach to learning the law; it must also be about more than merely preparing students for work in private legal practice.¹⁵⁶ Even the recent reports which recommend changes to legal education with a view to preparing students for work in the legal profession emphasise the importance of learning material, skills, attitudes and values beyond the scope of the traditional model of legal education. There seem to be few (outside the profession) who dissent from such sentiments, and there is a wide body of material outlining and evaluating the types of material, issues, perspectives, activities, skills and values which might compose a different and better type of legal education.¹⁵⁷ It is essential to commence with a clearly articulated understanding of the theories of law, lawyering and learning on which our curricula are based. These theories should be ‘more than platitudinous and anecdotal’, they should be ‘systematic, conceptual and rigorous.’¹⁵⁸

We noted above that what has been missing from many of the policy discussions about legal education concerns how law should be taught; accordingly we have tried to address some of the most important aspects of learning and teaching in this article.

C. Co-ordinated and Incremental Development in the Curriculum

In Part 2 of this article we observed that the traditional legal education model has been preoccupied with the study of narrow legal rules. We also suggested that the traditional model taught the same thing — analysis of legal rules — repeatedly, with little evident recognition of students’ intellectual development. In Part 4 we reported that law schools are now addressing some of these issues in their curricula. Most law schools report that they teach more legal theory, that legal ethics is a compulsory part of the curriculum, and that there is greater attention to legal and

153 Australian Law Reform Commission, above n40 at 137.

154 Contrast Harry T Edwards, ‘The Growing Disjunction Between Legal Education and the Legal Profession’ (1992) 91 *Mich LR* 34 at 36, 42–57.

155 Brand, above n4 at 139–140.

156 Roger Brownsword, ‘Law Schools for Lawyers, Citizens, and People’ in Fiona Cownie (ed), *The Law School – Global Issues, Local Questions* (1999) at 27–30, 36–38.

157 For just a few examples, see Andrew Goldsmith, ‘Legal Education and the Public Interest’ (1998) 9 *Leg Ed Rev* 143; Le Brun, above n24; Charles Sampford & David Wood, ‘“Theoretical Dimensions” of Legal Education – A Response to the Pearce Report’ (1988) 62 *ALJ* 32 at 39–49; Australian Law Reform Commission, above n40 at 138–142.

158 Feinman & Feldman, above n36 at 895.

generic skills. While some law schools claim that some of these themes pervade their curricula, the most common approach to including theory, ethics and skills in the curriculum is in separate one-off subjects.¹⁵⁹ Apart from appearing tokenistic, this approach does not enable students to practise and test their knowledge and skills in different, increasingly complex, contexts, and gives them little opportunity for structured and incremental development throughout the law degree.¹⁶⁰

The challenge for law schools is to embed, or integrate, legal and generic skills, ethics, and legal theory within their law curricula, so that law students are provided with a co-ordinated and incremental approach to developing their knowledge and skills.¹⁶¹ The first law school to embrace this challenge was the Queensland University of Technology (QUT) Law School.¹⁶² The first step in this redesign of the curriculum was to identify the generic and discipline-specific capabilities that the school required of its graduates.¹⁶³ The school then identified the different skills, and the expected level of achievement for each of those skills involved in developing the required attributes to guide students as they progress through the program, and staff in designing subjects and assessment.¹⁶⁴ The third stage involved reviewing the undergraduate law curriculum to integrate the identified skills within the law degree program.¹⁶⁵

While the QUT model could be criticised for confining its focus to skills and ethics, and not adequately including legal theory, interdisciplinarity, indigenous and gender issues, it provides a very useful framework. Each element should be introduced in the first year of the five-year combined degree program, in 'modules' within substantive subjects, and then developed in at least one further module in later year subjects. Academic teaching staff will need to collaborate to ensure that the learning objectives relating to each element in each subject build on earlier learning, and that assessment tasks assess learning at each stage.

D. Structured and Activity-based Teaching

Teaching and learning theory provides useful principles, or guidelines, to help law teachers move away from the traditional teaching as transmission model to a

159 Johnstone & Vignaendra, above n2 at ch 5.

160 Karl Mackie, 'Lawyers' Skills: Educational Skills' in Karl Mackie et al (eds) *Learning Lawyers' Skills* (1989) at 9 and 18; Bobette Wolski, 'Why, How and What to Practice: Integrating Skills Teaching and Learning in the Undergraduate Law Curriculum' (2002) *J of Leg Ed* 287; Sharon Christensen & Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration' (2000) 11 *Leg Ed Rev* 207.

161 See also the recommendations of the Cramton and McCrate Reports in relation to incremental development in the law curriculum, discussed in Part 3A above.

162 Christensen & Kift, above n160; Sally Kift, 'Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Case Study', paper presented at the Australian Association Research in Education Conference, 2002. For an account of the incremental development of skills within the Bond Law School curriculum, see Wolski, above n160; for a discussion of a similar program at Flinders Law School, see Rachel Spencer, 'Teaching Legal Skills at Flinders – An Integrated Practical Legal Training Program' (2003) 6 *Flinders J of Law Reform* 217.

163 Christensen & Kift, id at 224, 216–219.

164 Id at 214–219.

165 Id at 214–215, 219–233.

student-focused approach which helps students to construct their own knowledge by engaging deeply with learning through activities.

Schuell argues that '[i]f students are to learn desired outcomes in a reasonably effective manner, then the teacher's fundamental task is to get students to engage in learning activities that are likely to result in their achieving those outcomes.'¹⁶⁶ Learning objectives, assessment tasks and learning activities should be mutually supportive.¹⁶⁷ Educational theory¹⁶⁸ outlines flexible models of teaching which generally ask teachers:

- to think about the learning context,¹⁶⁹ and who our students are — their characteristics (age, gender, ethnic and class background, previous work and educational experience, motivation for taking the subject, academic ability, relevant prior experience and learning) and the implications of their characteristics for subject design;
- bearing in mind the learning context, and characteristics of our students, to articulate our purposes and expectations, in the form of learning objectives — which can include intellectual, generic and legal skills, and attitudes and values;¹⁷⁰
- to select assessment activities¹⁷¹ which help us determine students' progress towards our specified learning objectives, and which are integrated into the whole subject and designed as an intrinsic part of ongoing learning, rather than something done at the end of teaching. We should make our expectations and criteria clear, and maximise the opportunities for students to receive constructive feedback so that they have information to correct their misconceptions of the subject matter, to improve their skills, and develop their skills in self-monitoring;¹⁷²
- to select learning activities¹⁷³ that facilitate students' achievement of specified learning objectives — a useful rule of thumb is to reduce the time in which students are simply attending, and increase the time they spend articulating, discussing, practising and experimenting with, and reflecting on, the subject material;¹⁷⁴ and

166 Thomas J Schuell, 'Cognitive Conventions of Learning' (1986) *Review of Education Research* 41 at 429, quoted in Biggs, above n5 at 26.

167 Biggs, id at 25–26. See also Johnstone, Patterson & Rubenstein, above n73.

168 Susan Toohey, *Designing Courses for Higher Education* (1999); Schwartz, above n62 at 383–420.

169 Schwartz, id at 384–386.

170 Id at 392–404; Biggs, above n5 at ch 3.

171 For discussions of assessment, see Derek Rowntree, *Assessing Students: How Shall We Know Them?* (rev ed, 1987); Peggy Nightingale et al, *Assessing Learning in Universities* (1996); Ramsden, above n5 at ch 9; Le Brun & Johnstone, above n11 at ch 4; Johnstone, Patterson & Rubenstein, above n73; Terry Crooks, *Assessing Student Performance*, Higher Education Research and Development Society of Australasia, Green Guide No 8; Biggs, above n5 at chs 3, 8 and 9.

172 DR Sadler, 'Formative Assessment and the Design of Instructional Systems' (1989) 18 *Instructional Science* 119.

173 See Le Brun & Johnstone, above n11 at chs 5–7, and the references cited therein; Biggs, above n5 at chs 4–7 and 10; Derek Rowntree, *Teaching Through Self-Instruction. How to Develop Open Learning Materials* (1990); David Jaques, *Learning in Groups* (3rd ed, 2000); Johnstone, above n72; Johnstone & Joughin, above n72; Toohey, above n168, Stephen D Brookfield & Stephen Preskill, *Discussion as a Way of Teaching: Tools and Techniques for University Teachers* (1999).

174 Diana Laurillard, 'Balancing the Costs of Learning Technologies', Committee for University Teaching and Staff Development Seminar, Women's College, The University of Queensland, 19 August 1999.

- to evaluate students' perceptions and experience of the subject and the way it is taught.¹⁷⁵

There are also helpful frameworks for structuring topics to promote robust student learning. For example, Diana Laurillard¹⁷⁶ has outlined a 'template for the design of teaching' which begins with teachers presenting ideas to students, via, for example, teaching materials which require students to question, clarify, and express their understanding of the ideas, so that the teacher can then re-express the ideas in order to clarify student misconceptions. The teacher then provides students with opportunities to re-express their understanding of the material, and invites students to engage in a task which requires an application of the learned material. The students receive feedback on their performance from the teacher and use the feedback to improve their performance. Robert Gagne¹⁷⁷ provides a nine-step framework using 'instructional events' in which the teacher gains student attention by illustrating the importance of the topic; informs students of learning objectives; stimulates recall of prior learning in relation to related topics; presents new information; provides learning guidance to help students engage with new material; provides activities requiring students to apply their learning; gives feedback; provides activities in the performance of which students can assess their progress; and finally encourages students to review what they are learning, and to apply their learning to new situations to enhance retention.

These frameworks are not meant to be straitjackets for law teachers, but rather guides to ways of thinking through issues of curriculum and subject design, so that student learning is structured and developed through students' active engagement with subject material, their teachers and their peers.

E. Collaboration in Legal Education

One of the greatest challenges for the development of legal education may be to redress the present focus on individualism, as it affects both students and teachers. Zimmerman asserts that 'cooperative and collaborative learning cut right to the heart of traditional legal education and challenge its underlying traditions.'¹⁷⁸ Individualism is pervasive in legal education, both in terms of how legal academics work and in terms of how students learn and are assessed. This is a factor which is seldom addressed in policy reports on higher education, except insofar as teamwork is identified as a desirable generic attribute (often only because practitioners perceive that graduates lack the ability to function effectively in groups in the workplace).¹⁷⁹ It has likewise generated relatively little comment in

175 See below at Part 6F.

176 Laurillard, above n62 at 195–196.

177 Robert Gagne, *The Conditions of Learning and Theory of Instruction*, (4th ed, 1985) at 246.

178 Clifford Zimmerman, "'Thinking Beyond My Own Interpretation": Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum' (1999) 31 *Arizona State L J* 957 at 986.

179 Teamwork is – probably for the same reason – commonly identified as a desirable generic attribute by universities.

the Australian legal education literature. Nevertheless, the individualised nature of assessment and learning in law school has been demonstrated to create student anxiety and stress in numerous United States studies.¹⁸⁰

Addressing the individual focus of legal education present significant obstacles for law schools and most law teachers. Zimmerman observes that ‘the root of institutional concern [about the use of group work] lies in four notions embedded in traditional legal education: competitiveness, teacher control, authorship/individualism, and individualized grading.’¹⁸¹ Each of these is deeply ingrained in most law teachers’ experiences as law students and as academics, and these experiences cause profound resistance to the use of group work.

Even if individual teachers are willing to incorporate cooperative learning into their subjects, they are likely to meet resistance as most students are socialised into individual learning in pre-tertiary education. Given that the dominant mode of learning and assessment at university is individualistic it is not surprising that students resist group work.¹⁸² It is essential that students receive specific instruction in learning how to work collaboratively;¹⁸³ like other aspects of the curriculum, this should be learnt in a co-ordinated and incremental fashion through the law degree. Ramsden points out that from students’ perspective, assessment defines the curriculum,¹⁸⁴ and if students observe that group work assessment is worth less than individual assessment, they will draw the conclusion that group work is not valued by us, and therefore should not be valued by them. Requiring students to work cooperatively where there is no extrinsic reward for doing so (that is, if every item of assessment is assessed at the level of individual achievement) will create the perception that group work is unimportant.

There are many substantial academic and social benefits both to students and to law teachers from working in groups,¹⁸⁵ and yet the underlying culture in legal education remains profoundly individualistic. This characteristic of the traditional model appears to be the most deeply entrenched and the most resistant to the changes which have affected legal education over the last thirty years. This seems

180 See the references noted in Zimmerman, above n178 at 968, footnote 42. The same results almost certainly could have been demonstrated in Australia.

181 *Id.* at 971.

182 Boud et al suggest that if ‘the weighting of any given element of a course is less than 20%, it can give the message that this aspect is valued very little, and students might be prompted to ignore it or put little energy into it’: David Boud, Ruth Cohen & Jane Sampson, ‘Peer Learning and Assessment’ (1999) 24 *Assessment and Evaluation in Higher Education* 413 at 422. See also Helen Brown, ‘The Cult of Individualism in Law School’ (2000) 25 *Alternative Law Journal* 279 at 287.

183 Susan Bryant, ‘Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession’ (1993) 17 *Vermont LR* 459 at 485.

184 Paul Ramsden, *Learning to Teach in Higher Education* (1992) at 187; Rowntree, above n171 at 1.

185 These are much better documented in the case of students than academics, although similar arguments can be made for the benefits of cooperative work to academics. For evidence of benefits to students, see David W Johnson & Roger T Johnson, *Cooperation and Competition: Theory and Research* (1989) at 74, 170; Elizabeth A Reilly, ‘Deposing the “Tyranny of Extroverts”’: Collaborative Learning in the Traditional Classroom Format’ (2000) 50 *J of Leg Ed* 593 at 598–601. For evidence of the benefits of cooperation for academics, see Cownie, above n149 at 153–155.

likely to be at least partly a result of the way in which legal academics work. Relative to other disciplines, legal academics are much less likely to collaborate in research teams;¹⁸⁶ in teaching, many academics' experience is highly solitary. We strongly advocate the development of scholarly communities, both for the purposes of legal research and teaching.¹⁸⁷

F. Evaluation as Part of a Reflective Strategy

A student-focused approach to teaching requires teachers to gather information about student experiences of teaching, and to reflect on how students perceive and experience their subjects. In the past decade law schools, in line with developments across Australian universities, have made increasing use of student surveys of teaching and subjects. Student surveys almost always utilise written, multiple-choice questionnaires, which are rarely designed by the law school. Instead, they are often designed by a central university unit, which, in some cases, analyses the results for the law school. A few teachers at some law schools also conduct other types of student evaluations of subjects, which invite open-ended responses from students.

This evidence suggests that student evaluation of teaching has become a management instrument,¹⁸⁸ or a tool used by law academics to provide management with evidence that they are satisfactory, even excellent, teachers,¹⁸⁹ and is not seen as a means of enabling teachers to find out how students are perceiving and experiencing the subject and the teaching of the subject. Educationalists emphasise the importance of teachers collecting information (including student feedback) about their teaching and its effect on student learning, so that they can use this information to improve their teaching. McKeachie¹⁹⁰ suggests that:

The ultimate criterion of effective teaching is evidence of impact upon student learning. What we are concerned about in evaluating teaching is not what the teacher has done, but what has happened to the students.

Prosser and Trigwell¹⁹¹ argue for a use of evaluation which elicits information which can be interpreted:

in terms of the way the students experience the teaching. The issue ... is not whether the students' ratings were right or wrong on particular items. It is what the students' responses say to the university teacher about the way the students experienced the teaching; was that the way the university teachers planned or meant the students to experience the teaching and what can the teachers do to bring these aspects into closer alignment?

186 Goldsmith, above n35 at 87.

187 Lee Shulman, 'Teaching as Community Property' (1993) 25(6) *Change* 1 at 6–7.

188 Paul Ramsden & Agnes Dodds, *Improving Teaching and Courses: A Guide to Evaluation*, (2nd ed, 1989) at 2–3.

189 Johnstone & Vignaendra, above n2 at 427–439, at text accompanying notes 132–134.

190 WJ McKeachie, 'The Role of Faculty Evaluation in Enhancing College Teaching' (1983) 63 *National Forum* 37.

191 Prosser & Trigwell, above n62 at 161.

Most importantly, this approach to evaluation does not seek to elicit student judgments on the quality of teaching, but looks for information to help the teacher understand how students have experienced the subject, so that the teacher can make changes to the subject and the way it is taught to enable student experience to be brought into line with the experience planned by the teacher.¹⁹² If law schools are to improve the quality of teaching, as measured by student experience of teaching in the context of the law school and university environment, then academic leaders in law schools will have to advocate for the proper use of evaluation, using triangulated sources,¹⁹³ and resist its use as a crude management tool.

7. *Conclusion*

In this article, we have outlined the traditional model of legal education, pointing out its key characteristics. We have canvassed debates that have challenged this model, from the perspectives of policy and of teaching and learning theory. Drawing on the recent AUTC Report,¹⁹⁴ we identify evidence of positive changes in Australian legal education, which have been stimulated by these debates. We pointed to factors which impede the achievement of important and profound changes, and have proposed a modest agenda for the future development of legal education.

Although recent changes to legal education appear impressive, this impression is largely formed by reference to the low benchmark provided by the traditional model, which has dominated legal education in Australia for far too long. The existing debate about the future direction of legal education is certainly progressive in part, challenging to the academy, and provides much scope for improvement. However, this debate is framed by an assumption which in our opinion prevents real progress: that the dominant purpose of legal education is preparation for legal practice. Even more problematic is the limited extent to which this debate engages with teaching and learning issues — questions about what good teaching is, and how it is necessary to enrich an understanding of law and to promote student learning.

We were hesitant to publish this article, because we know Law Deans will remind us that they lack the resources to implement substantial changes, and our colleagues are already heavily overworked, ironically particularly in relation to their teaching-related activities. In short, an essential precondition to the achievement of change is a greater allocation of resources for legal education.

192 *Id* at 161–162.

193 Ramsden & Dodds, above n188; Le Brun & Johnstone, above n11 at ch 8; Royce Sadler, 'Improving Teaching Through Collaboration' in *Managing Your Academic Career: Strategies for Success* (1999) at ch 18; and Graham Gibbs, Sue Habeshaw & Trevor Habeshaw, 53 *Interesting Ways to Appraise Your Teaching* (1988).

194 Johnstone & Vignaendra, above n2.