UNSW Law

Research in Legal Education: State of the Art?

What is it? Are we really doing it? What can it achieve? Where is it going?

3 – 5 December 2017

Hosted by UNSW Law Sydney, *Legal Education Research Group*

BOOK OF ABSTRACTS

Monday 4 December 2017

Keynote 1
Paul Maharg, York University

"Prometheus, Sisyphus, Themis: Three futures for legal education research"
In almost every common law jurisdiction the review of legal education has become more sophisticated and more complex. It has not been matched by concomitant increase in the sophistication and complexity of the empirical research base, nor in the organisation of that research. As we pointed out in the LETR Report (2013), there are significant gaps in legal educational research. There is little co-ordination of research initiatives between academy and regulators on a sustained basis. There is little organisation by the academy of the increasing volume of research that it produces on legal education: a significant lack of longitudinal studies, very few ongoing and sustained data studies, no meta-reviews, almost no systematic reviews of literature, almost no policy paper series, little in the way of a stream of historical literature on legal education that feeds into current developments and future innovation. Such lack of organisation and the thin historical awareness that it gives rise to, I argue, constitutes a bar to the development of a rich legal educational research paradigm, and seriously affects our ability to generate, curate and argue from evidence-based data.

In this presentation I explore why this has come about, and how we might begin, inter-jurisdictionally, to improve the situation. The methods by which other disciplinary educations organise their research will be explored, and mapped on to the organisational infrastructure and content of legal educational research. On a practical level we shall explore several initiatives that seek to improve collaboration in the field. Finally, I draw an iconography of approaches to legal education research that constitute three rival futures for legal education research.

Parallel Panel Session 1
Regulating Legal Education

1. Anthony Bradney, Keele University

"Who Controls University Legal Education? The Case of the United Kingdom"
The question of who, if anyone, controls university legal education has long been contentious, in the United Kingdom as much as anywhere else. Contenders for control have historically been either legal academics or legal practitioners or their respective professional bodies. In more recent years other potential contenders have arisen. These new contenders include regulators, whether of practitioners or academics, central university authorities and students either as consumers or more simply qua students.

This paper will look at the historical interaction between those with an interest in university law schools in the United Kingdom. It will analyse changes in that relationship. It will then turn to recent suggested reforms to professional legal education and ask what impact, if any, these might have on undergraduate legal education. Finally the paper will look at the two bodies that recently taken an interest in what universities and their law schools do, the Competition and Markets Authority and the Advertising Standards Authority and ask whether their interventions will have any impact on the politics of who controls university legal education in the United Kingdom. The paper will argue that legal education scholarship has made an important contribution to the debates noted above resulting in a more self-confident and assertive academic body.

2. Sally Kift, James Cook University

"A virtuous journey through the regulation minefield: Reflections on two decades of legal education scholarship"

After having spent the greater part of two decades writing and theorising about what a quality Australian legal education might look like for our students, this Conference, and the new LACC focus on "Assuring Professional Competence" across the legal education continuum, provide a welcome opportunity to interrogate some of legal education's wins and losses over that time. Despite the minefield of multiple regulatory and other forces, it will be suggested that the overall quality of Australian legal education ranks amongst the best in the world. This is so because Australian legal educators, on the whole, have adopted the sensible approach of "virtuous compliance" with regulatory intent; a compliance mindset that is underpinned by the Academy's (now) strong commitment to assuring robust graduate outcomes through the delivery of quality curricula.

This has been no easy undertaking. The entrenched disincentive for change that a stultifying adherence to the Priestley 11 has enabled, together with predominantly antiquated approaches to law curricula design and delivery as recently as the 1990s, have proven to be significant obstacles, especially when exacerbated by the slow embrace of teaching professionalism. But Australian legal education's proud tradition of scholarship and innovation has proven up to the challenge and, with the benefit of some regulatory nudging, has been a significant force for good and incremental enhancement. Specifically, our Academy's embrace of broader sector agendas and regulatory imperatives has been the stimulus for positive improvement in the vacuum created by the absence of professional accreditation drivers.

This presentation will review Australian legal education's pedagogical progress over the last two decades through its scholarship lens. While it remains the case that legal education is subject to five different layers of regulation, as CALD identified when it endorsed the LLB's Threshold Learning Outcomes (TLOs) in 2010 (Kift, Israel & Field, 2011, 6), it will be concluded that our current educational orientations are now more fit-for-purpose than ever and stand up favourably to international comparison. Even when the impact on Law Schools of the persistent disruption to the legal services industry is considered, Australian legal education remains well positioned to prepare students to take their place, personally and professionally, as global citizens in complex and dynamic legal and other workplaces. In moving forward, it will be suggested that we have a choice. We can tie ourselves up in disciplinary knots and approach the next wave of regulatory discussions with the practising profession defensively or we can harness the good scholarship work done to date and continue on our journey of conscientious innovation and virtuous compliance. Our major, not insubstantial, challenge will be to bring the profession with us and persuade them of, and by, our strong evidence- and research-base. But persuade them we must, for to do so is to do the right thing by our discipline, our students and their future clients, and society at large. It is also infinitely more satisfying.

3. John Flood, Griffith University

"What Law and Innovation Can Offer Legal Education"

Although legal services, legal practice, and the legal profession are slower to adopt innovative methods, innovation is happening. We have ROSS Intelligence and donotpay.co.uk operating on IBM Watson and accelerating legal research; Kira and RAVN are providing algorithmic means of interrogating documents; quantitative analyses of case dockets enable forecasting of litigation outcomes; and these are only a few. These developments may give a misleading idea of technical

expertise in the legal profession: that it is greater than it truly is. Most lawyers don't know how to code; most don't know what blockchain is; and the prospect of moving from Boolean concepts to Bayesian ones would probably scare most lawyers. The innovations are coming from startups that are developing new big data or AI modes of analysis that are on the whole outside the mainstream of law. Law firms are moving in the right direction by investing in innovation and hiring the relevant expertise from outside law. A CTO in a law firm is no longer unusual.

Business schools commonly teach innovation in its varieties (e.g. Christensen) and even run incubators for startups. We would find it difficult to discover equivalent moves in law schools. This isn't to say there are none, but they are rare. Some years ago the American Bar Foundation, a leading law and social science research institute, asked the question: why isn't there the equivalent of a Bell Labs in law? Bell Labs produced the transistor, the laser, and UNIX. It could be there are fundamental differences in the knowledge bases that don't permit such comparisons. Yet legal education appears stuck in the *ancien regime* and even resistant to innovation on the grounds that the "purity" of law could be contaminated. Some law schools are bucking the trend and offering innovative courses such as Law Without Walls, Iron Tech Law or Reinvent Law. They are designed to break barriers between disciplines, encourage team work and collaboration, and engage students with real world problems. Within the economy of law schools these are not cheap courses to run. Perhaps it is time that universities start investing in innovative and experimental courses. The benefits would be seen in employability (a common buzzword in politics and university management), increased skills and ideas about what constitutes career paths. Students typically consider legal practice to be solicitor or barrister whereas innovation is now creating multiple trajectories for students to follow.

4. Julian Webb, Melbourne Law School

"I'm reviewing the situation…. Trends in legal education reform and the (im)possibility of evidence-based policy making"

This paper draws on my work and experience as research lead for the English Legal Education and Training Review (2011-13) and as a consultant to the Comprehensive Review of Legal Education and Training in Hong Kong (ongoing). In this presentation I draw briefly on a comparison of reforms across six jurisdictions in the last decade, to identify apparent trends in legal education and training policy internationally. I consider the drivers for change, and the ways in which policy-making in these jurisdictions has been mimetic of other review processes. The presentation particularly highlights the lack of research, at scale, into legal education policy and practice, and the limits this sets for evidence-based policy making in the field. It explores the strengths and weaknesses of the LETR research team's response to this problem, which sought to reconstruct reform as a process of creating 'socially robust' solutions to complex problems, and discusses a number of cultural and systemic reforms that would potentially enhance the legal education and training sector's capacity for better evidence-based policy-making in the future.

Parallel Panel Session 1
Assessment and Students' Perception of it

1. Cathy Sherry, UNSW

"(Re)Introducing a closed book law exam"

Over the past three decades, universities have consistently moved away from closed book exams. Closed book exams have been associated with cramming, rote learning and superficial understanding. In contrast, open book exams, take-home exams and research assignments have been shown to promote deeper learning and genuine understanding. From its inception in the 1970s, UNSW Law only ever used open book exams.

However, as a result of increasing concern among staff, in a number of subjects, about the way in which students now do open book exams, we decided to introduce a closed book exam in the compulsory Land Law course in 2016. Staff concern centred on the practice of dumping as much information as possible into exam scripts, rising incidents of plagiarism in formal exams, as well as the availability of other students' notes via the internet, a phenomenon that did not exist when open book exams were initially introduced.

This paper will discuss the findings of research that was conducted on the use of a closed book exam. The research included a literature review and post-exam staff and anonymous student surveys. Some of the key findings of the research include very high rates of students using other students' notes in exams, high rates of students copying directly from notes, articles or books into exam papers and very high rates of student anxiety. The paper will also explore a number of statistically significant 'paired' answers which allowed us to exam the responses of particular cohorts of students, including those who had and had not experienced significant anxiety in the course of their legal studies. The paper will argue that law schools need to be both perceptive and responsive to changes in our student bodies and to changes in the post-internet educational environment.

2. Julian Laurens, Alex Steel, Lyria Bennett Moses, UNSW

"**E-Exams - Students, laptops, and Wi-fi: Can technology enhance exam performance? Insights into assessment and pedagogical practice from the UNSW Law E-Examinations Trial research data."**
It is often said that 'assessment drives learning'. Technological change in the legal sector should give us pause to ask whether our methods of assessment are hindering or helping our graduate's ability to participate in the profession. The idea that assessment should be regarded as a learning activity rather than simply a categorisation tool is associated strongly within the 'constructivist' theory stream of educational psychology, which posits that desirable deep learning occurs when students are engaged in their own construction of meaning. Assessment tasks further encourage student engagement when they are 'authentic' in the sense they have practical resonance beyond mere administrative aims. This is relevant for a professional program such as law. In this context the continuing dominance of final end of year *hand written* examinations in law has been questioned. Criticisms include that they do not encourage deep learning, and are not 'authentic'. For the purpose of this paper, I argue that part of this 'authenticity' criticism can be centred within observation that students overwhelmingly use lap-top computers during the semester, making the *hand written* exam an anachronism. It is not that the exam itself is not 'authentic'. Rather it is potentially the *manner and form* by which students participate that is not authentic, hindering the leveraging of learning benefits.

How can the final examination task better promote a deep learning experience, in essence, providing opportunity for students to demonstrate cognitive ability more fully, whilst retaining the administrative benefits? Can technology help? This paper will explore the above general points, critically drawing upon empirical data from the 2016 UNSW Faculty of Law E-Examinations trial. This trial saw students completing final invigilated law examinations on their laptop computers. Further questions to be explored are whether 'E-Exams' can help provide a 'bridge' between the administrative aims of examinations and 'authentic learning' in a modern law school, and whether the E-Exam technology platform can encourage improved student cognitive functioning, *quality* of responses, and wellbeing. Finally, the paper will explore general insights into pedagogical practice identified from the trial research data, and contextualise their application.

3. Kate Sainsbury, Western Sydney University

"Student perceptions of a pilot seen closed book exam in Criminal Law"

This paper reports on research of criminal law students' perceptions of a pilot seen closed book exam in criminal law in second semester 2016 at Western Sydney University. First the paper critically analyses the arguments for and against different types of exams (open book/closed book; seen/unseen; invigilated/take home) examinations in legal and other discipline education scholarship. Second, the paper reviews the literature on student perceptions and preferences for different types of assessments, in particular different types of examinations. This literature explores the underlying reasons for perceptions and preferences for particular types of examinations, and includes quantitative studies exploring correlations between preferences for examination types and other variables, such as, personality, discipline and year of study, learning styles (deep/surface/strategic), examination outcomes and longer term retention.

Third, the paper describes the reasons for trialling seen closed book examination in Criminal Law at Western Sydney. Fourth, the paper reports on the findings of ethics approved research on student perceptions of the pilot seen closed book examination. Data was collected using a paper survey distributed to students immediately after the exam, and three focus groups with students within a month of sitting the exam. The findings describe student perceptions of the way the pilot impacted on their preparation for the exam, stress, workload, depth and breadth of learning, confidence in skill development and fairness. The paper concludes with reflections on the extent to which student perceptions and responses to the pilot aligned with the reasons for the pilot.

4. Sonya Willis, Macquarie Law School

"Assessing assessment: Is an unexamined life the inevitable future of law schools?"

This paper will analyse the existing educational theory supporting different methods of legal assessment and its application to modern law schools. Assessment remains a critical aspect of legal education. Assessment strongly influences student employment prospects, student satisfaction and perceptions of education quality. It can also be a key learning tool for students. However, assessment is also a time consuming aspect of legal education for academics. There has been considerable research supporting methods of teaching delivery including the advantages of small group learning, experiential learning and face to face learning. Unfortunately, there is limited scholarship on methods of legal assessment and their value to stakeholders including students, universities, legal employers and legal institutions. This paper will assess the extent to which the modern university environment including large cohort groups, increased reliance on technology, increased centralisation, pressure on space, reductions in administrative staff and increased academic time pressure may provide disincentives for academic staff to employ certain methods of assessing law students. Forms of assessment including formal examinations and oral examinations may be perceived as too costly in terms of space, time and administrative resources. My analysis will consider that modern law school assessment preferences may undermine the optimum education of law students, the academic rigour of the legal profession and the long term reputations of law schools as centres for pedagogical excellence. The paper will conclude with consideration of whether the disincentives to undertake certain forms of assessment outweigh the pedagogical advantages of such assessments and, if so, whether this is a rectifiable problem in the current tertiary environment.

Parallel Panel Session 1
Supporting Student Learning

1. Josh Krook, University of Adelaide Law School

"Is the problem question paradigm too restrictive?"
The problem question generates a convergent response, directing students to a narrow range of possible solutions that exclude political, moral and social considerations on law. As law is a system directed towards generating convergent interpretations of legal texts this aligns with the imperatives of the discipline. However, does our educational practice go too far in its emphasis on the virtues of narrow, technical solutions? In this article, I explore other potential aims for legal education that are less well served by the problem question, and explores the question of balancing vocational knowledge with issues of justice, morality and fairness.

2. Jenny Chan, Chinese University of Hong Kong

"Collaborative and Cooperative Learning in Legal Education – the Case of Hong Kong"
This paper explores the potential benefits of collaborative or cooperative learning exercises in legal education in Hong Kong. Legal educators increasingly adopt a variety of innovative in-class assessment methods to replace or supplement conventional examination types. One of the most widely documented innovative assessment methods is the group exercise model in the form of e.g. group discussions, role-plays, simulations or group presentations. These activities are often referred to by inconsistent terminology, such as "collaborative learning", "student collaboration", "cooperative work", "group work" or "cooperative peer learning". Furthermore, there is little hard evidence of the pedagogical value of these models. This paper is designed as a "desk research" to establish a framework to assess the collaborative or cooperative learning exercises in legal education. It introduces their common features, discusses their differences and actual and potential pedagogical values. Against this background the paper then explores if and how group exercises can improve the learning experience of law students in Hong Kong.

3. Fiona Martin and Margaret Connor, UNSW

"Adaptive eLearning: An approach to online teaching of taxation law and legal problem solving"
Australian taxation law is commonly taught as an elective subject to Australian law students. It is also a core or elective subject in accounting and commerce degrees throughout Australia. This area of the law is widely regarded as complex and complicated, involving a large amount of content that is unrelated to most student's everyday lives, making it hard to teach and difficult for students to understand.

Another issue that faces academics who teach any legal subject is that, over the last twenty years there has been a shift away from traditional teaching of detailed content of substantive law subjects towards an emphasis on higher order thinking skills. These skills include legal problem-solving. Problem-solving skills are also integral to the skills required of undergraduate business students at UNSW.

Considering these issues, the authors developed two web based online learning modules designed to enhance student learning of taxation law and taxation of capital gains. The software used was designed by a group called Smart Sparrow and uses an approach commonly referred to as adaptive eLearning. Integrated into these online modules were the principles of legal problem-solving.

The modules were developed in late 2015 and have now been used as part of several taxation law courses at two major Australian universities. This paper analyses how the principles and processes of an adaptive eLearning system can be used to assist and support the teaching of capital gains tax and legal problem solving. Students in these courses have been surveyed about their use of the modules and whether they consider that their understanding of capital gains tax and legal problem-solving has improved. Their exam results have also been analysed. The paper concludes with an analysis of the student feedback and their exam results.

4. Ilija Vickovich, Macquarie Law School

"Students as Partners: Student Collaboration on Law Journal Production"
The notion of 'students as partners' will be explored in a presentation that focuses on issues arising from student collaboration on the publication of a university law school journal. The *Macquarie Law Journal* has in recent times embarked on a model of student editorship under the leadership of an academic as general editor, and within the parameters of a selective unit of undergraduate study. As editor of the journal, the presenter will explore ethical and pedagogical issues that arise in the context of managing a team of student editors. This will include practical issues of curriculum design and assessment, and elaboration on student feedback about participation in the journal production process. The presentation will also focus on the benefits to law students of partnering in the legal education process in terms of threshold learning outcomes and graduate skills, experiential learning, transition to work, and capstone possibilities.

Parallel Panel Session 2
Building Community

1. Justine Rogers, UNSW

"The Learning Community in Law: the quest for mutual interchange between the classroom, online, the academy and the profession"
All academic teachers manage and inhabit learning communities. A significant body of research demonstrates the pivotal role 'community', or the social dimension of learning, plays in motivation, sustained inquiry, effective learning and wellbeing. The shift towards blended learning in higher education means that academic teachers face the added challenge of how build that community into what Garrison, Anderson and Archer developed in this context, 'a community of inquiry', one that integrates the classroom with online. To use Wenger's distinction from his theory of 'communities of practice', these dimensions of community are 'internal' or centred on the learning arrangements.

However, as Wenger recognised, learning communities involve the 'external' communities of academics as well, both subject matter discipline(s) and the wider academy. It concerns questions of the degree to which and on what basis to connect students to outside communities, particularly industry. Within a larger contest about the role of the university, all academic teachers grapple with these boundaries. We teach a student body that increasingly expects work-integrated learning that supports their careers, and that regards the insights, experiences and attitudes of industry as

1 Ryan, R. M., & Deci, E. L. (2000). Intrinsic and extrinsic motivations: Classic definitions and new directions. *Contemporary Educational Psychology, 25*(1), 54-67; M Hartnett, Motivation in Online Education (Springer Verlag, 2016).
2 D.R. Garrison, T. Anderson, W. Archer (2000) 'Critical inquiry in a text-based environment: Computer conferencing in higher education' 2(2-3) *Internet and Higher Education* 87-105
3 E Wenger *Communities of practice: Learning, meaning, and identity* (Cambridge university press, 1998).

especially valid. The universities, meanwhile, have renewed their engagement with the outside world, in which industry especially is a welcome member of the learning community. Yet, to be faithful to their own purported values, academic teachers must take seriously their responsibilities to transform these professional communities as well.

This article looks at the issues of 'community' in the context of legal education. It argues that the complexity of the learning community is distinctly and powerfully felt by legal academics and, perhaps most so, legal ethics academics. Legal academics have long had formal obligations to a wider profession, but the correspondence of membership and shared knowledge and values of these two groups have fluctuated over the last half century. Legal ethics education, meanwhile, is a site in which these vacillations of community are concentrated and where students' perceptions of professional norms and legitimacy can undermine even the most well-planned learning objectives.

As the start of this paper shows, the legal education and legal ethics education scholarships reflect these trends: from congruence to conflict and now efforts towards restoration. The paper then illuminates how these 'internal' and 'external' communities interact for the legal (ethics) academic and the ways in which they can be conceived of and organised for the end goals of: (i) developing student capacities that are both professionally functional and transformative, and (ii) building learning partnerships with the professions that are based on mutual recognition. It does so by examining the trajectory and strategies of UNSW's Law's core legal ethics course, Lawyers, Ethics & Justice (LEJ) that was introduced in 2014. The paper focuses on a particularly 'transformative' component of the course in which students address and resolve ethics issues within a team-based 'community of inquiry'. Early evaluative research on the course revealed a decidedly problematic relationship to the professional legal community, which presented significant challenges, then, to the effectiveness of the learning. The paper explains how these problems are being addressed by entering into active learning partnerships with the legal profession. The paper ends by reflecting on the limits of pedagogical frameworks that invoke 'community' while not accounting for the larger social dynamics of loyalty, legitimacy and power. It picks up and extends, though, Wenger's notion of mutuality in learning communities and points to future innovations to more fully support the learning interchange between the academy and the professions.

2. Helen McGowan, Australian National University

"Adapt, improvise and overcome: Strengthening ethical acuity within professional communities of practice"

Despite the innovation and scholarship which shape contemporary legal education, the pedagogy which informs legal education for the practising lawyer remains under developed. This paper draws on recent research into the way that country lawyers resolve ethical dilemmas to suggest the benefit of participation in professional communities of practice.

Historically, the majority of offerings in the 'continuing professional development' field are delivered in didactic mode, by subject matter (often black letter law) experts. This type of delivery perpetuates the belief that knowledge can be absorbed by passive listening (attendance) at a seminar. Such activities do not foster collegiality or reflective practice.

In addition, these offerings tend to focus on 'face to face' delivery in the capital cities and are run by commercial businesses, or for member law societies as income generating activities. This mode of delivery can be professionally isolating and create barriers to access; distance to travel, cost to attend, residual perception of being the only ignoramus in the room with the consequent constraint not to be exposed (therefore keep quiet!).

In a profession characterised by adversarial posturing and commercial competitiveness, is there an opportunity to reshape the thinking behind the development and delivery of professional development? What are the implications for the rising number of women in legal practice and a cultural preference for collaborative learning? What would it take to refresh our approach to continuing professional development for the practising profession?

The *Legal Profession Uniform Professional Development (Solicitors) Rules* 2015 which mandate a minimum of ten units of continuing processional development each year, foreshadow a breadth of activities which can be undertaken. These include the preparation and presentation of a CPD activity (one unit for one hour) and participation in a practice section (one unit for two hours).[1] Of the four areas in which CPD must be undertaken, only one area is 'substantive law'. The other areas are 'ethical and professional responsibility', 'practice management and business skills', 'professional skills'.[2] These latter three areas suggest activities which depend on the lawyer's active engagement and reflection on their law practice. Didactic delivery of content by subject matter experts may not maximise participants' learning experience.

My research into the ethical conduct of country lawyers explored how participants identified and responded to conflicts of interest. Lawyers used resources such as informal referral networks, local regional planning groups, internal case conferences and informal professional gatherings to discern what they 'should' do. Unlike traditional modes of CPD, these informal approaches foster collegiality and encourage reflective practice. In a profession characterised by norms, an appreciation of colleagues' attitudes helps to moderate one's ethical stance. The judgment of peers in discerning what is professional conduct was established in *Allinson v General Medical Education and Registration* [1894] 1KB 750. However, rather than relying on this principle at the tertiary end of a disciplinary hearing, collegial moderation of ethical conduct can shape situational, ethical judgment.

This paper highlights the emerging use of professional communities of practice as an ethical tool which helps lawyers to navigate uncertain terrain. It draws upon the historical work of Jean Lave and Etienne Wenger which suggests that when people gather for the explicit purpose of shared learning, tacit practice wisdom is recognised and outlier conduct is moderated.[3]

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Legal Profession Uniform Continuing Professional Development (Solicitors) Rules, 2015 (New South Wales)

[1] *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules, 2015* (New South Wales). Rules 8 and 9.
[2] Ibid. Rule 6 CPD Obligations.
[3] Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation* (Cambridge University Press, 1991).

3. Marina Nehme, UNSW

"The Promotion of a Community of Inquiry: Benefits and Limitations"
In its 2025 strategy, the University of New South Wales Sydney (UNSW) aims 'to blend the highest quality face-to-face teaching with digital education to inspire curiosity and innovation across a collegiate learning community of peers, academics, employers and alumni.' However, the challenge this strategy may face relates to fact that technology can create disengaged and unmotivated learners. This would especially be problematic in law, a discipline that thrive on discussion and debate of key legal concepts and issues.

Consequently, the adoption of blended learning should embed online learning with face to face classes. The greatest pitfall would be to view the online environment as just an add on or an extra. Ideally, blended learning should lead to the establishment of a community of inquiry which is designed to support the learner. The promotion of such a community may also result in a greater motivation and engagement of students with class activities. It may further enhance their critical legal thinking.

This paper considers the literature regarding blended learning to discuss the strategies that may be used to build a community of inquiry. It further considers the challenges and benefits that may be accompanied with the promotion of such a community. In doing so, the paper focuses on one law course, responses to corporate wrongdoing, to highlight how the pedagogical framework adopted in the course has resulted in the establishment of a community of inquiry and has led to a more constructive and critical engagement of students with their peers.

4. David Newlyn, Western Sydney University

"Legal Education: Its boundaries and benefits. A comparison with other professions"
While the body of research in legal education has greatly expanded in recent years, the credibility of this area of scholarship has been open to question, with the suggestion that it falls into the bailiwick of education rather than law. However, as the stewardship of the legal profession relies upon ongoing education of its members, surely legal education is fundamental to the integrity and rigour of this profession. This paper explores the limits of the definition of legal education, and discusses why the scholarship of legal education should be valued by the legal profession and more broadly by wider society.

Further, this paper will draw on the approach to education scholarship in other professions in both historic and contemporary contexts, to seek a broader understanding of the value, standing and direction of education in these areas, and how this may apply to the field of law. The paper will make an argument for including legal education as a fundamental part of the body of legal scholarship, that contributes significantly to a dynamic, rigorous and informed profession.

Parallel Panel Session 2
The Landscape of Legal Education Scholarship

1. Kate Galloway, Bond University, Melissa Castan, Monash University, Alex Steel, UNSW

"Towards a Taxonomy of Legal Education Research"
The purpose, content, and approach of legal education together create the lawyer many of our students will become. Beyond discipline knowledge, the skills and attitudes the law graduate brings to the profession find their foundation in the experiences of the student in law school. In turn, through their actions in legal practice, the law graduate-cum-lawyer performs, and arguably, creates the law.

Legal education is thus not only integral to law, but might validly be seen as law itself.

Based on the premise that legal education is law, the debates within law including about its purpose—positivist, doctrinal, critical, normative, etc—are reflected within legal education. By extension, these positions are reflected within the scholarship of legal education ('SoLE') whether explicitly or implicitly: where the educational standpoint of a legal education scholar reflects their own discipline identity and commitment to the law. Just as legal scholarship reflects diverse forms and perspectives, so too will SoLE. These standpoints all form part of the 'performance' of law.

This paper reports on a pilot project seeking to develop a taxonomy of SoLE research papers published in a sample of Australian journals between 2006–2017, according to three domains: the article's contribution to the *discourse* of legal education; the *style* of educational research; and what we describe as *themes* of research. Themes relate to recognized trends in legal education—recently exemplified by the interest in student wellbeing. While some themes represent a particular episode, or respond to a particular period, others persist over time.

The aim of this research is to recognise and chart the diversity of SoLE. In doing so, the resulting taxonomy is designed to make explicit the methods, approaches, and purposes of legal education scholarship as a reflection of the intersection of scholars' discipline practices in both law and education, as both teachers and as researchers, as both lawyers and teachers. Through description and theorization of legal education research, it substantiates the contribution of SoLE to the legal academy, and to law and legal practice, within an explicit research framework.

2. Kristoffer Greaves, The College of Law Australia

"A meta-survey of scholarship of teaching and learning in practice-based legal education"
This presentation describes the methods used to qualitatively analyse over 700 items of legal education scholarship, and the resulting insights in relation to scholarship of teaching and learning in practice-based education contexts.

3. Amy Barrow, Macquarie Law School, Angela Melville, Flinders University, Angel Armstrong, Macquarie Law School

"Innovation and multidisciplinary perspectives in legal education: an empirical investigation of silos in Australian law schools"
Gillian Hadfield has argued that the legal profession is remarkably closed to innovative and multidisciplinary perspectives. She notes that law students are trained by law academics who are rarely exposed to different disciplinary perspectives, and then as students become graduates and then teachers, reproducing this cycle. Other commentators have also noted that law schools continue to disregard multidisciplinary approaches. These critiques, however, are largely based on personal experiences and opinions and most have focused on the US. The aim of this paper is to use original empirical data to test the assertion that legal education, and by extension the legal profession, is closed to innovative, multi-disciplinary perspectives.

This paper presents initial findings from a project aimed at investigating the sources, extent, and impact of innovative and multidisciplinary perspectives in Australian law schools. The project involves the collection of empirical data in the form of a law academics' biographical information sourced from the institutional webpages of Australian law schools. Using this data, we report on sources of innovative and multidisciplinary perspectives in Australia legal education, including whether alumni tend to remain within the same institution, the engagement of international staff, formal

qualifications of legal academics, and their stated research interests. We also investigate whether there are patterns between law schools in terms of openness to innovative and multidisciplinary perspectives.

Parallel Panel Session 2
Critical Thinking

1. Gabrielle Appleby and Rosalind Dixon, UNSW

"Teaching critical thinking in the core curriculum through rereading"
In this seminar, we will introduce our recent book, *The Critical Judgments Project: Re-reading Monis v The Queen* (Federation Press, 2016). This book was specifically collated as a tool for teaching critical theory and critical thinking in public law subjects. It was inspired by and builds upon the pioneering work of the *Feminist Judgments Project*, but extends that project in two ways. The first is the extension and diversification in *The Critical Judgments Project* of the critical perspectives from which the rereading exercise can be conceived. The second is that, to develop a teaching-specific tool, we have selected a single judgment for rereading through the selected perspectives. This, we believe, is more likely to lead to students being exposed to the full variety of critical legal perspectives, identify those aspects of commonality and difference across the perspectives and thus develop a more nuanced understanding of the critiques.

We envisage that the book could be used as the basis for a standalone advanced course or seminar in constitutional law legal theory. It is also designed to be used as the basis for a single class in a general public law/constitutional law class, so as to increase the theoretical depth and range of such a course, and introduce students to a broader range of critical perspectives as part of the core curriculum. In the seminar, we will explain how we deployed *The Critical Judgments Project* in this latter way in the UNSW Federal Constitutional Law course in semester 1, 2016.

2. Nigel Stobbs, Queensland University of Technology

"The Relationship Between Sterility of Vision in Legal Education Scholarship – and the Atrophy of Metacognition Among Law Students"
In Australian higher education, metacognition receives even less attention than it does in primary school education. An inevitable consequence of that, is a stream of learners who, unable to assess their own cognitive abilities, develop virtually no ability to diagnose and remediate obstacles to their own learning, or who rarely optimise the cognitive abilities they do have. In the context of the law school, I argue that this has resulted in two critically important but mostly overlooked consequences.

The *first consequence* is that in the absence of metacognitive awareness, law students over-rely on skills within the meta-strategic and meta-normative domains to achieve their goals. Meta-strategically, they ask themselves which non-academic strategies will help them to succeed (such as appealing grades, obtaining notes from past students and identifying subject offerings with high pass rates). If they fear failure, they are likely to be convinced that they are receiving inadequate feedback from academics, because they are unable to give it to themselves. Meta-normatively, they may adopt a moral view of their own conduct which diverges markedly from that which the institution would approve of, or which they would not adopt in other areas of their life. This can lead to a willing displacement of values which would ordinarily self filter behaviours which constitute cheating on assessments, bullying of academics and lying to professional staff. A cohort becomes extremely adept at these unethical practices as (for example) the clumsy plagiarists are caught and more successful methods are disseminated. These meta-normative strategies may then become part of the informal

socialisation process of a legal education, with potentially catastrophic consequences for the individual and the profession.

The *second consequence* of the atrophy of metacognition is that *pedagogy* may well be becoming irrelevant to *learning* in legal education, and that legal education scholarship is largely travelling down a conceptual cul-de-sac. If it is true that meta-strategic and meta-normative skills are filling the void left by the absence of metacognition, then students who do well at law school will probably do well regardless of the pedagogy adopted, or of the relative quality of the teaching. Similarly, the number of students who fail at law school is unlikely to change regardless of what pedagogy is embraced by the Faculty. In that case, what becomes (has become) the true object of the scholarship of legal education?

In considering the fact that such questions as why students do not attend classes and why they do not complete readings are seemingly perennial among legal educators – it is surely worth considering the possibility that both of these activities are largely irrelevant to what law students themselves consider to be successful outcomes. The outcomes which the faculty consider to be successful are contingent upon sound metacognitive skills, the outcomes which the student cohort considers successful are almost certainly far less so.

The conclusion I reach is that a curriculum which purports to prepare a person for a career in law ought to be founded on a framework of metacognitive development, but in the absence of that framework, rhetoric about autonomous, self-regulated learning among law students will lead to a curriculum - and to instructional methods - based on a spectacular misconception of the nature of the learner cohort.

3. Elen Seymour and Liesel Spencer, Western Sydney University

"Confidence and competence: teaching the 'digital native' law student legal reading and information literacy"

The traditional role of the law teacher has included teaching students how to read challenging legal materials, and motivating students to complete heavy law school reading loads. Imparting those competencies to law students remains part of the job; however, these teaching responsibilities are now overlaid with additional responsibilities to impart digital literacy to law graduates. Information literacy (including digital literacy), as well as legal reading skills, are part of the Threshold Learning Outcomes for Law endorsed by the Council of Australian Law Deans, and therefore part of what a law graduate is expected 'to know, understand and be able to do as a result of learning' under the Australian Qualifications Framework.

The current crop of law students is, for the most part, drawn from the 'digital native' generation who are familiar and confident in their interactions with digital materials. Familiarity and confidence, however, do not necessarily translate to information literacy and competence. Teachers of law are now therefore faced with students who may over-estimate their ability to navigate legal materials in digital learning environments, and who equally may be resistant to library and resource instruction. This paper considers how students' digital familiarity and confidence may be translated into effective teaching practice to deliver learning outcomes in both information literacy and legal reading skills. The approach suggested draws on the literature on student motivation, and uses the vocational relevance of literacy in digital legal resources as a motivational tool to catalyse student's engagement with law school reading loads. Contextualising legal reading skills, as information mediated by technology which is integral to contemporary legal practice, can engage law students with learning both how to read law and how to use legal technology.

Parallel Panel Session 3
Technology: disrupting legal education?

1. Lyria Bennett Moses, UNSW

"The Need for Lawyers"

We will need lawyers to establish governance frameworks for automated decision-making, to construct expert systems creating legal documents and providing legal information, as well as to understand the relationship between intentionality in a contract and automated processes (including "smart contract" elements). This paper argues, despite the rhetoric around automation, new technologies, including artificial intelligence, *create* as well as *reduce* legal work. But the lawyers of the future will need to be in a position to understand and challenge the roles that technology plays. And that is a challenge that universities need to take on. This paper will outline some of the changes that UNSW Law is making to its core and elective curriculum to prepare students for legal practice in an increasingly technologically-mediated world.

2. Tania Leiman[1], Flinders University

"Equipping the legally literate leaders of tomorrow"

The professional services industry is undergoing seismic and rapid change globally and locally, with particular impact on the legal services sector. Structural changes include unbundling, outsourcing, fee arrangements and alternative business models. Technological innovations include including automated document production and review, e-discovery, data analytics, predictive analysis, artificial intelligence, and blockchain distributed ledger technology. These changes, either sustaining or disruptive, are occurring in a broader context of global societal change – robotics, connected automated vehicles, and smart cities, and the Internet of Things. The future of work itself is being re-visioned, with legal professionals challenged to consider how they intersect and add value to with increasingly sophisticated levels of automation and technology.

In light of these changes, the recent FLIP Report[2] and others recommend that law graduates of the future will need new skills and competencies. These include the capacity to engage effectively with emerging sustaining and disrupting technologies, capacity to collaborate effectively within and across discipline, business skills (including basic accounting and finance and expanding current markets), legal project management, legal risk management, international and cross-border law, creative and critical thinking skills, innovation and entrepreneurship and resilience, flexibility and ability to adapt to change.

The necessity to educate students for these skills and competencies - those broad 'top of the T' skills, have not traditionally been regarded as the core business of law schools. These new demands of legal education raise big challenges for legal educators.

This presentation will start to imagine the possibilities for a new future of legal education by revisiting the foundations of our existing paradigm, and explore some big questions. What is the purpose of legal education? Who is legal education helping, how is it helping them, and what does it mean for them? What legacy is legal education creating and is this the legacy that we want to create?

It will go on to use Susskind's[3] analysis of the future of the legal profession as a framework to consider a possible evolution of legal education. Is legal education a place of space or is it a service? Should legal education measure inputs or outputs? Does legal education need to be linear just-in-case or is nonlinear just-in-time education sufficient or beneficial? Should there be single or multiple entry and exit points?

How we answer these questions will be crucial in equipping our students to be the legally literate leaders of tomorrow that our community needs.

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1 Associate Professor and Dean of Law, College of Business Government & Law, Flinders University, South Australia

2 Law Society of New South Wales Commission of Inquiry, *The Future of Law and Innovation in the Profession*, (2017).

3 Richard Susskind, *Tomorrow's Lawyers: An introduction to your future* (Oxford University Press, 2nd ed 2017).

Parallel Panel Session 3
Experiential Learning

1. Wilson Chow, Michael Ng, Julienne Jen, The University of Hong Kong

"Experiential Learning in Law at the University of Hong Kong – Connecting Teaching Pedagogies, Empirical Research and Legal Education Scholarship"

Legal education globally, and in Asia, has been undergoing significant changes in the past decade, requiring learners to 'do the thing' in real life and/or through simulations. In enhancing the interactivity and the degree of realism in students learning, some of these law schools have recently been taking advantage of experiential learning, with or without the aid of information technology.

This paper showcases the experientialization of legal education, with necessary adaption and modification, at the University of Hong Kong by implementing pedagogical practices which have been proven overseas namely: (a) a clinical legal education (CLE) programme; and (b) standardized client (SC) interviews. Through an unprecedented empirical study of these experiential learning initiatives in Hong Kong, a common law jurisdiction in Asia, we argue that any sustainable transplant of pedagogical practices for legal education needs substantial adaptation to the regulatory regime and societal needs of lawyering in a specific jurisdiction.

In addition, this paper sketches out directions for further refinement, as well as teaching and learning (T&L) research, of such practices. While the CLE programme and the SC interviews are highly regarded and well received by many including the students, we advocate for linking the two together by offering SC interviews as part of the training for the law students before they embark on interviewing real clients in the CLE programme. In terms of contribution to the scholarship of T&L, we call for an unprecedented empirical and comparative study of client communicative competence of law students both within the same jurisdiction (i.e. Hong Kong) and across different jurisdictions (including Hong Kong, UK and Australia) in their learning preparative to entry into the legal profession.

The proposed study, specifically, seeks to fill important gaps left by legal scholarship by (a) assessing the level of competence in client interviewing skill based on standardized rubrics prescribed for SC interviews; and (b) identifying statistically significant factors (including, e.g., gender, age, first language, mode of study, career aspiration, possession of a non-law first degree, course selection and alike) that have impact on the client communicative competency of those law students. The hypothesis that student's client interviewing skill is affected by student's gender, education, cultural and linguistic background, if so verified, will be a discovery in the field which (a) will be useful in assisting law schools to develop and improve strategies and pedagogic practices in devising their professional training of client interviewing skill via the SC interviews, and other aspects of communicative competence, that adapt to their jurisdiction-specific needs; and (b) may even be further tested and inform professional education for other occupations in professional services.

2. Svetlana German[1] and Robert Pelletier[2], University of Notre Dame Australia

"Clinical Legal Experience: The Benefits of Practical Training in Teaching - Student Perspectives"

The use of clinical legal education has expanded in recent years. Predominantly, universities have formed partnerships with community legal centres to provide students with clinical legal experience. This experience is often administered solely by the legal centre. The authors conducted a pilot survey to test whether students volunteering in a community legal centre made a significant difference to their learning of the law as hypothesised by the academic literature. They surveyed student volunteers and their supervisors at Macarthur Legal Centre ("MLC"), a community legal centre in South West Sydney. Their survey indicates that students perceived a greater understanding of their legal and ethical obligations, enhanced client communication skills and growth in confidence. The experience also motivated students to consider pro-bono work in their professional life. However, students were unable to articulate the specific benefits of the experience to their legal studies, highlighting the need for a greater connection between theory and practice. Furthermore, the externship model of clinical training comes at a significant cost to the centre which can detract resources from the primary functions of serving community interests.

Clinical programs offer students the opportunity to apply doctrinal learning to specific problems posed by real clients. In such a way, clinical legal education, serves as a half-way house, moving students away from the classroom to experience real problems and clients (but still outside the full responsibilities of practice without supervision). The integration of clinical methodologies with the law curriculum provides opportunities to extend student insights and understanding of the law.[3] Current scholarship supports the need to integrate academic learning with practical training.[4] In recent years, clinical legal education has come to the forefront of legal education in Australia. In a book published earlier this year on the best practice of clinical programs, the authors aptly state: "Australian law schools without a reputable clinical presence are fast becoming an anachronism. However, as law schools dip their toes into clinical experimentation, we see potential for superficial courses and lower-quality educational outcomes".[5] Some Australian law schools have over time developed in-house clinical programs[6] however, at present half of all clinical placements in Australia are now administered as "externships"[7] relying on placements in community legal centres. Student placements in community legal centres are both costly and reduce the amount of time supervisors can devote to their primary duties. Our pilot study was aimed at testing the effectiveness of one clinical externship/ practice based learning program at MLC.

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2 Executive Officer, Macarthur Legal Centre, Lecturer, UNDA Law, BA/LLB (Hons) (Syd), B Theol (MCD), LLM (UNSW), GCUT (UNDA)

3 Jeff Giddings and Sandra McCullough, *Promoting Justice Through Clinical Legal Education* (Justice Press, 1st ed, 2013) 50

4 Judy Gutman, Silvia McCormack and Matthew Riddle, 'ADR in legal education: Evaluating a teaching and learning innovation' (2014) 25 *Australasian Dispute Resolution Journal* 190.

5 Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press, 1st ed, 2017) ix.

6 Evans et al, n 10; Jeff Giddings, 'The Commonwealth Discovers Clinical Legal Education' (1998) 23(3) *Alternative Law Journal* 140.

7 Evans et al, n 10, 107.

Parallel Panel Session 3
Indigenous Legal Education

1. Melanie Schwartz, UNSW

"Retaining our best: supporting Indigenous law students through to graduation at UNSW Law"

From its beginnings, UNSW Law has taken Indigenous justice as one if its core values, and alongside that has come a strong commitment to attracting and retaining Indigenous law students. The Faculty has one of the most advanced offerings nationally for Indigenous law students, aimed both at providing pathways for entrance into legal studies and academic and pastoral support throughout degree programs (working alongside the UNSW Centre for Indigenous Programs, Nura Gili).

The successes of UNSW Law in establishing structures to support Indigenous law students through to graduation are many. They include a dedicated Director, Indigenous Legal Education, intensive academic support in the first year of study, an active Faculty-level Indigenous Legal Education Committee, and a Faculty Reconciliation Action Plan (RAP). These structures have largely developed organically over the years, demonstrating the high level of dedication to responding to the needs of this cohort.

In 2017, as part of RAP commitments, research was conducted into the experience of Indigenous students in the Faculty of Law, with a view to stocktaking what has been done well, what could be done better, and where the Faculty should look to next in growing its support for Indigenous law students. The research included a digital survey sent to all present and past Indigenous law students. There were 75 responses to the survey, representing about 50% of all students for whom contact details are held: current, discontinued and graduates. There were also two small focus groups held, one with current students and one with graduates, to deepen discussion of the issues that students raised in the survey.

This paper will be the first presentation of the findings of this research. It will outline the things that Indigenous students say are most challenging about attending law school, and what factors are most protective against discontinuation of studies. With the voices of the students firmly at the forefront, the paper will include recommendations for the next priorities in Indigenous student support at UNSW Law.

2. Jeni Engel, UNSW

"The Humanities Pathway Program at UNSW Law: A means to effectively increase access to legal education for Indigenous students"

Over the past decade, the Bradley Review, the Behrendt Review and Universities Australia have highlighted the critical importance of improving access of Indigenous Australian to tertiary education so that parity between the Indigenous Australian population and the overall Australian population is achieved. As part of its long-standing commitment to providing legal education for Indigenous Australians, UNSW Law has a range of alternative entry programs available to Indigenous students. In 2009, a one-year enabling program – the Humanities Pathway Program (HPP) – was introduced to bridge the academic gap that existed for some Indigenous students between the shorter, preparatory Indigenous Pre-Law Program and the combined law degree.

This paper will discuss the development and implementation of the HPP, as well as situate it in the broader UNSW context for increasing Indigenous students' access to tertiary education. Further, it will consider the value of the HPP and similar enabling programs in the current Australian higher education climate, as the sector strives to ensure that entry, retention and completion rates of Indigenous students keep pace with those of the overall Australian population. Drawing on intake, articulation and completion data, this paper will evaluate the HPP's success to date; identifying its strengths, limitations and the scope for further improvement such that the HPP is as successful as possible in

offering opportunities for Indigenous students to undertake and successfully complete combined degrees at UNSW Law.

Keynote 2

Fiona Cownie, Keele University

"Well, here we are again… the past present and future(s) of legal education research"

Legal education research has had a chequered history in the U.K. (as is the case with many other jurisdictions), and has generally not been well-regarded – an attitude neatly reflected in the comment of the Law Research Exercise Framework (REF) Sub-Panel in its Report on REF 2014, which said: "The sub-panel was pleased to receive submissions relating to legal education, but the methodological rigour and significance exhibited by some of these outputs was uneven".

In the light of the ambivalent reception of legal education research, focusing mainly on the U.K. situation as a case-study, this paper will evaluate some of the significant developments in legal education research in universities since its inception in the late 19th / early 20th centuries. It will identify some of the features of best practice in legal education research and will go on to consider the challenges faced by legal education researchers as they seek to ensure that the legal education research of the future focuses on matters of significance to the development of our knowledge of higher education, in particular as it is delivered in law schools.

Tuesday 5 December 2017

Parallel Panel Session 4

Supporting Student Learning 2

1. Christopher Pearce and Shaunnagh Dorsett, UTS

"Be Prepared! The Value of Tutorial Preparation Exercises to Legal Education"

This paper proposes to explore the connection between the introduction of low stakes tutorial preparation assessments, and students' final marks and experiences in the compulsory law subject, Real Property. To date, there has been much interest and focus upon low stakes assessment, but it has proven difficult for scholars to draw meaningful connections between low stakes assessment and truly high stakes assessments.[1] Most scholarship has demonstrated that the crux of the issue rests upon the level of motivation that students bring to low-stakes tasks, and that performance in these tasks will correlate directly with the student's own motivation to complete the task.[2] This paper seeks to demonstrate the value of low-stakes assessment, and how such assessment can be directly linked to high-stakes assessment so as to improve performance and student motivation to complete the task.

1 Attali, Y, 'Effort in Low-Stakes Assessments: What Does it Take to Perform as Well as in a High-Stakes Setting?' (2016) 76(6) *Educational and Psychological Measurement* 1045-1058.

2 See for example, Wise, S and DeMars, C, 'Low Examinee Effort in Low-Stakes Assessment: Problems and Potential Solutions' (2005) 10 *Educational Assessment* 1-17; Liu, O, Bridgeman, B and Adler, R, 'Measuring Learning Outcomes in Higher Education: Motivation Matters' (2012) 41 *Educational Researcher* 352-362.

The assessment scheme in the course was amended at the beginning of 2017, to include an additional assessment which required students to prepare written answers to the in-class tutorial problems. The answers are provided on an IRAC template, and students are marked on their best five attempts out of a possible seven preparation exercises. Each tutorial in the course focusses upon an isolated topic within Real Property, for example: mortgages, leases or easements. As such, the preparation exercise for each tutorial aligned with a discrete topic within the course.

The results from these preparation exercises ultimately established a positive correlation between whether a student had elected to undertake the preparation exercise on a particular tutorial topic and their mark on the final exam question for the corresponding topic. There was a corresponding correlation between students who elected not to complete the task for a given topic and their mark on the related exam question.

This paper posits the view that preparation tasks of this kind are a valuable and worthwhile addition to Law Schools striving to flip the classroom and engage students in classroom exercises. This view is supported by the Student Feedback Survey results for the first semester where this task was implemented. Students were asked whether by preparing answer plans, they felt more confident speaking in tutorials. In addition, students were asked whether they felt that the task helped them to get more out of their tutorials. To both questions, the answer was an overwhelmingly positive response.

Preparation exercises and low-stakes assessment in general can be valuable contributors to student experience and to an improved legal education, provided that there is an appropriate value attributed to the task, and a clear connection between the task undertaken and the subject matter of the course.

- Christopher Pearce is a Scholarly Teaching Fellow in the Faculty of Law, University of Technology Sydney. He is currently completing his PhD at the University of Sydney, focusing upon the intersection between Equity and the *Personal Property Securities Act 2009* (Cth).
- Shaunnagh Dorsett is Professor of Law in the Faculty of Law, University of Technology Sydney. She has taught Property Law for over 20 years and is one of the authors of Gray et al Property Law in New South Wales (LexisNexis 2017).

2. Prue Vines, UNSW

"Teaching torts to international Chinese students: class participation and comparativism"

This year UNSW did an experiment of separating International students from domestic students so that there was one class which international students could opt into. Other classes had a mix of international and domestic students. The class was 98% Chinese from different parts of China. Their backgrounds were varied but many had a law degree. This paper explores some of the techniques that were used to build willingness to participate orally in class in a group who were mostly extremely reluctant. The class participation was very much focused on developing techniques for dealing with negligence law (other torts are mostly dealt with in another subject) and included using one case as a basis for moots which were done about every 4th class. It also included using the Chinese Tort Law of 2010 as a comparator when possible. At time of writing the outcome for the students is not known. I will be able to report on that at the conference. The paper also tries to consider how problems of authority for different legal systems (including comparing civil law with common law systems) might be thought about as an aid to developing confidence in international students who already have a law degree.

3. Ming Gu[1], UNSW

"Where Progressive Legal Education Meets the Chinese Culture: A Perspective from a Chinese Law Graduate"

Over the past decade, the Chinese international student population in the Australian tertiary institutions has experienced a major growth. Chinese students have become and will continue to be the largest international student cohort on Australian university campuses. Traditionally, non-law degrees, for example Business and Commerce, have been popular among prospective students from China. Since 2014, an increasing number of Chinese applicants, particularly recent law graduates and experienced lawyers, have begun to knock on the doors of leading Australian law schools seeking well-recognised common law qualifications and professional admissions.

UNSW Law is one such highly desired destination with its intake of students from China increasing dramatically during the past four years, with no sign of slowing down. In Semester 1 2017, international students constituted more than half of the Faculty's Juris Doctor and Postgraduate cohorts, with Chinese students representing the majority. Naturally, their admission comes with substantial financial and emotional commitments. For many, undertaking a law degree at UNSW is their first ever experience of living and studying in a foreign country with a different culture, language and legal system.

This paper takes a unique angle in critically examining the relatively unexplored Chinese law student body in Australia, through the experience of UNSW Law under its motto: "where law meets justice". The increasing representation of Chinese law students at UNSW surely presents unique challenges as well as invaluable opportunities, where the Faculty's progressive legal education philosophy meets the not-so-familiar cultural values which its Chinese students bring as they embark on their UNSW Law journey.

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1 The author of this research thesis is supervised by Mehera San Roque and Dr Dominic Fitzsimmons, Faculty of Law, UNSW Sydney.

This paper examines the difficulties that Chinese students face through the unique law school context. Chinese law students face hefty barriers as the differences in legal system and culture present some unique challenges in studying an extremely cultural-based discipline, in addition to the common difficulties in adjusting to a new social environment and tertiary education system shared by students of other disciplines.

The author reviews the existing issues identified and the corresponding strategies implemented by UNSW Law, through comparisons with the educational practices of the Chinese education system. In light of this critical examination, this paper claims a new dimension of cross-cultural awareness should be added to the current pedagogical critics in law academia. Good teaching practices must now be one that effectively engages students from another culture to assist their transitioning into a completely different pedagogical approach at UNSW Law, and to promote and facilitate their deep learning in this new environment.

The author argues that the presence of Chinese law students should not be viewed as a mere revenue raising strategy with the drop in the number of domestic applicants to the Juris Doctor program. Rather, it is an invaluable opportunity to engage with a dynamic student body that will soon represent future practitioners, scholars, and political and business leaders both in China and in Australia's Chinese communities.

Parallel Panel Session 4
The Politics of Legal Education Scholarship

1. Peter Burdon, University of Adelaide Law School

"Engaging Neoliberalism in Legal Education Research"
Neoliberalism has become one of the dominant languages for describing developments in higher education in Australia and overseas. One aspect of this literature seeks to defend the Humanities because of the role they play in creating a competent demos (Nussbaum 1998, 2016; Washburn 2006; Donoghue 2008; Newfield 2011; and Ginsberg 2013). With respect to law, Margaret Thornton (2012) has provided the most sustained and detailed analysis of how neoliberalism has impacted the curriculum and pedagogical methods of Australian law schools. Far from offering resistance, Thornton observed that reform has proceeded "with alacrity". Alongside this literature, Wendy Brown (2015) has sought to describe neoliberalism not just as an economic policy but as a governing rationality which extends market logic into all aspects of human and social life. For Brown, higher education is increasingly perceived (by students, staff and the community) as a mechanism for producing human capital and maximising competitiveness. This paper seeks to understand the relationship between neoliberalism and legal education research (LER). It is motivated by the following questions: to what extent does LER engage with neoliberalism or understand its relevance to current pedagogical practices; in what ways are we academics configured by neoliberal rationality in our approach to LER; and what role can a critical literature play in furthering commitments to the public good, democracy and valuing individuals and knowledge for their own sake.

2. David Dixon, UNSW

"The cultural cringe and Australian legal education"
This paper will discuss how analysing the concept of the 'cultural cringe' may assist understanding of the masochism often found in work by legal academics on Australian legal education. It starts from a position of undeniable bias. Having been dean of a leading Australian law school for a decade, I obviously have personal reasons to resent this kind of denigration. However, it also draws on my

earlier experience as an academic in England and on the extensive investigation of law schools internationally which I was able to carry out while I was dean.

It would, of course, be foolish to understate the constraints on Australian law schools. Public funding is tight and getting tighter. Australia lacks the tradition of philanthropy which supports leading US law schools. Consequently, we have to take in too many students. We carry a heavy burden of state and professional regulation. Within universities, we have constantly to defend our academic standing and methods in a context where STEM rules.

Despite all this, Australian legal education has great strengths. These include: combined degrees; teaching methods; research quality; experiential learning; and international engagement. For obvious reasons, I will focus on UNSW, explaining how the strength of our founders' vision has perpetuated a distinctive approach and culture. However, this is not to suggest that UNSW is unique. In varying ways, a number of Australian law schools are internationally competitive. This paper should act as an invitation to them to be more forthright about their achievements.

The critics of Australian legal education come from both right and left. From the right, the cultural cringe is most apparent. From this perspective, Australia has nothing to match Oxbridge or the top fifty or so US law schools. One can't help wondering why the proponents of this view continue to take salaries from such poor quality employers. From the left, some of the critique is equally ideological, with significant misrepresentations of the Australian legal education. On this side, one wonders why the proponents' conscience allows them to work in such conservative and oppressive environments.

However, the left also includes work of real substance notably by Margaret Thornton, which requires more systematic analysis. This paper will argue that Thornton's valuable work on legal education is marred by a perspective which I have labelled in another context 'Left pessimism'. The common elements and deficiencies of this left pessimism will be examined. (To anticipate the question, I do not purport to be apolitical. My sympathies are demonstrably on the left. My disagreement with Thornton stems from conviction that there is nothing authentically left about inaccurate accounting.)

The paper is primarily concerned with academic critique of Australian legal education. It will however include some comments on the profession's view of the academy, drawing on my discussions with many legal professionals while I was dean. In brief, while a cultural cringe can sometimes be detected clearly, more significant is the high regard for Australian legal education expressed by professionals.

3. Nicole Graham, UTS

"Legal Education in the Anthropocene"

There is evidence that the planetary boundary for biodiversity decline has been exceeded and that we are part of a mass extinction event comparable to those marking the geological timescale.[1] This event has been identified as defining the onset of the Anthropocene, a period characterised by the overwhelming influence of humanity on Earth's processes.[2] The United Nation's *Agenda 21*[3] identified higher education as a key player in the development of an environmentally sustainable future, given its role in teaching and qualifying the several professions whose roles, collectively, shape our world. In response to a growing and global interest in the role of education in effecting change, sustainability education has developed as a coherent and centralised policy of educational reform in the UK, the US and Australia.[4] Accepting the rationality and desirability of a systemic approach to sustainability education, this paper explores how that could be manifest in legal education. Legal scholars and professionals contend that the taxonomy of law is deeply involved in the persistence of an unsustainable status quo[5] and effectively operates as a 'barrier to adaptation.'[6] The role of legal education in anthropogenic environmental change is important in its contribution to the intellectual

and professional skills of generations of legal professionals and policy-makers whose work legitimates and prohibits certain economic practices. Legal educators therefore have the opportunity to develop the capacity of future law makers to adapt Australian law and legal practice to the challenges of the Anthropocene by, for example, teaching them how to connect and review the interaction of law's categories with, and as part of, the environment. This paper considers this opportunity seriously and in detail.

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Parallel Panel Session 4
Technology as Transformation

1. Michael Adams, Western Sydney University

"Law and Teaching Technology – the last 20 years"

The last 20 years has been a huge growth in the availability of teaching technology across the sector. Many barriers of entry, such as the cost of internet access and availability of tools for all students and academics, has virtually disappeared. The general acceptance that law students demand maximum flexibility and expect a "flipped classroom" environment and 24/7 access to materials and academic advice. As an academic and then as an academic leader (Law School Dean), it has been an interesting journey to use the developing tools and encourage legal scholars to use the various technologies to maximise on the effectiveness of blended learning. The fine balance between University policies and goals compared to the demands of the legal profession, individual law schools and personal agendas. The time an effort to re-design curriculum and use new technologies, compared to teaching the old and more traditional way. This paper develops the changes in law teaching technology from 1997 to 2017 and evaluates its impact and predicts ways forward as new technologies develop.

2. Jenny Buchan, UNSW, Courtenay Atwell, UNSW, Sonal Bhalla, UNSW, Leela Cejnar, Australian Catholic University, Margaret Connor, UNSW, Shaun Katz, UNSW

"Using online learning to transform teaching and learning in the classroom and across the globe"
This paper explores the capacity of online learning, a UNSW Massive Open Online Course (MOOC), *International Franchise Law: The World is Yours*, to enhance face-to-face learning within the classroom, while at the same time, contributing to the globalisation of education, including by transcending cultural, socio-economic, political, educational and other boundaries (Boal and Stallivieri, 2015; Daniel, 2012; Godwin-Jones, 2014; Rutherford et al, 2008) and empowering participants who are challenged by their circumstances (Kirby 2011; Adham and Lundqvist, 2015; Chun, 2011).

Informed by internationally recognised academic research in the area of franchise law and in learning and teaching (focusing on educational design), this MOOC was modelled on a face-to-face UNSW elective in the BCom program. Drawing on industry and cross-border contributions, online curricula and supporting resources were developed around a scenario-based (or case study) design. This paper discusses how this approach to learning and teaching exemplifies best practice by fostering independent and self-directed learning that supports learners in developing knowledge, skills (e.g., information gathering, decision making, critical thinking) and digital capabilities, which can be directly applied to learning to each learner's own contexts, as the learning takes place.

Qualitative and quantitative MOOC data was aggregated from pre- and post-course surveys, online forums and comments, and institutional learning analytics dashboard that is used for visual analysis of learner interactions. The data, in turn, has also contributed to research into this dashboard – enabling sustainable and accessible data outputs, and new and improved approaches to learning, teaching and development of high quality courses at UNSW.

The MOOC's impact and credibility, again as benchmarked from data, emanates from its ability to transfer knowledge across boundaries, including to learners in countries adversely affected by instability or where the opportunity to engage in learning about specialised topics might not otherwise be present (Sharples et al, 2015; Martin et al, 2013).

It is a model for efficiently delivering online courses globally, as well as enhancing the on-campus/face-to-face, blended and online learning and teaching environment and can extend learning opportunities, including by reducing or eliminating additional expenses associated with seeking to pursue an education (Yuan and Powell, 2013).

3. Jennifer Dickfos, Craig Cameron, Catherine Brown, Griffith University

"An Engagement Toolkit for the Disengaged"
Business students generally find the study of law challenging as they may perceive their law courses to be boring, difficult and only relevant to lawyers. To transform such student perceptions, law teachers must create an engaging learning environment where students understand and appreciate the law's relevance to business.

The purpose of this paper is to describe the ongoing evolution of a technology –based student engagement strategy in law courses for accounting students and to evaluate its impact on student learning outcomes. A case study approach is used to describe the development of a number of engagement tools used in law courses within a commerce degree over a six year period commencing in 2012. Teacher and peer observations as well as student feedback via online surveys provide an evaluation of the respective engagement tools and their impact on student learning outcomes. The

case studies reveal the benefits of the technology –based engagement tools but also the logistical, behavioural and technological issues and how these issues were addressed. Evidence from student online surveys and reflections suggests that the technology-based engagement tools facilitated student learning by providing relevant learning and assessment activities that engaged students in deep learning experiences.

The study identifies the benefits of and accompanying issues with deploying technology-based engagement tools to teach law to business students. The paper contributes to pedagogy by describing the innovative and interactive use and refinement of each technology tool over an extended period of six years.

Keynote 3

Carrie Menkel-Meadow, UC Irvine School of Law

"Thinking or Acting Like A Lawyer? What We Don't know about Legal Education and are Afraid to Ask"

CMM will focus on generational changes in what is considered "good" legal education, ranging from "hide the ball" Socratic dialogue, to more recent "movements" in clinical and experiential education, with the growing tendency to teach with, but deny use of more conventional didactic (power point anyone?) methods. She will comment on the relative paucity of good research on what actually is effective in legal education and comment on why that is so (funds, academic prestige and financial incentives). The real question (and an old one) is whether all kinds of lawyers should be trained the same way –is law a "thinking" (intellectual) discipline or a "doing" (practicing/acting) profession and what difference does the answer make for pedagogy.

Parallel Panel Session 5

Face to face or online?

1. Christina Do and Leigh Smith, Curtin Law School

"The importance of face-to-face teaching in legal education in the technological age"

The advancement of technology has had a substantial impact on higher education as it has transformed the traditional classroom-based learning and teaching model. Technology has not only influenced teaching strategy and the learning environment (for example, through the use of lecture recordings, blended-learning, and collaborative spaces), it has also expanded the reach of higher education as many institutions now offer (at least some of) their courses fully online.

Legal education and the legal profession have not been immune from the influence of technology; there is an increasing recognition, reflected in the academic literature, and in professional publications, of the impact of technology upon legal education and the legal profession.[1] Therefore, legal education must adapt to ensure that law graduates are adequately equipped with the requisite knowledge and skills to meet the changing needs of their chosen profession.

As we continue to move through the technological age, the transmission of information in legal education and the profession has increasingly moved online. As information continues to be disseminated virtually, the authors contend that face-to-face teaching and student contact with academics and peers becomes increasingly important, not only for student learning but also to develop essential soft skills such as interpersonal skills. Face-to-face teaching, in particular in the early in the stages of a law degree, is essential as it assists students to establish the necessary building blocks to construct a robust foundation for their legal education.

In 2017, a small scale project was conducted at Curtin Law School to explore academic staff and students' perceptions of face-to-face lectures and lectures recordings made available online. The data collected from the project highlighted a preference for the availability of both face-to-face lectures and lecture recordings by academic staff (when asked to consider the question from a student's perspective) and students. The objective of this paper is to present the data collected from the project to provide insight into the learning and teaching preferences of academic staff and students. Furthermore, the paper will outline the importance of face-to-face teaching in legal education in the technological age.

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1 See generally, Stephen Colbran and Anthony Gilding, 'E-Learning in Australian Law Schools' (2013) 23(1) *Legal Education* Review 201; Suriyakumari Lane, 'Information Age to Interaction Age in Legal Education: How Far Have We Progressed' (2015) 3(12) *American Journal of Educational Research* 1511; The Law Society of New South Wales, 'FLIP Report: The future of law and innovation in the profession' (2017) 2<http://lawsociety.com.au/ForSolictors/Education/ThoughtLeadership/flip/Onlinereport/index.htm>.

2. Simon Kozlina, Western Sydney University

"Technology-enabled Learning and Critical Pedagogy: back to the future in 'Law and Public Policy'?"
The push for 'technology-enabled learning' is often presented in an 'agnostic' pedagogical context - these are 'tools' to be 'incorporated' into 'active learning'. However, the failure to consider that context undermines both the use of the technology and the outcomes that can be achieved.

In a self-declared 'innovative' law elective subject, 'Law and Public Policy', I incorporated a number of 'technology-enabled' learning activities - online research tasks, Blackboard discussion board activities, digital poster design, digital photography posted on Tumblr, peer feedback via Turnitin - in order to prepare and train students for the 'real' world of policy development and implementation. I matched this with an openness to 'critical pedagogy' - an approach to teaching that emphasises the role of the individual in both critiquing the world around them and acting reflexively to change that world.

This paper examines the lessons learned so far from that unit. It appraises and critiques the use of 'critical pedagogy' in legal education and highlights the ways that the right kind of technology can indeed enhance student learning. The paper argues that 'student-centred learning' as often used in the Australian tertiary sector debate misunderstands the role of the university lecturer and that an awareness of critical pedagogy can re-cast that approach as 'student liberated' learning.

The practice of 'critical pedagogy' as established by Friere[1] and Giroux[2] has been examined in the context of legal education scholarship by James in a series of compelling articles a decade ago.[3] Even before that, the Pearce Report demolished the relevance of 'radical theory'/'critical legal studies' to contemporary law schools who should be focused on vocational training.[4] 'Critical pedagogy' is not the same as 'critical thinking'[5] nor is it antithetical to professional training.[6] A subject influenced by 'critical pedagogy' need not suffer the same criticisms as noted in the Pearce Report. Given the changes in changes in technology since James wrote, this paper re-examines the relevance of critical pedagogy, highlights some flaws with its application and suggests a modest step forward in 'technology enhanced learning' in the modern Law School.

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1 Paulo Freire, *Pedagogy of the Oppressed* (Penguin, 1972).

2 Henry A Giroux, *Pedagogy and the Politics of Hope: Theory, Culture, and Schooling, A Critical Reader* (Perseus Books, 1997).

3 Nickolas John James, 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16 *Legal Education Review* 55, Nickolas J James, 'A Brief History of Critique in Australian Legal Education' (2000) 24(3) *Melbourne University Law Review* 965, Nickolas James, 'Expertise as Privilege: Australian Legal Education and the Persistent Emphasis Upon Doctrine' (2004) 8 *University of Western Sydney Law Review* 1, Nickolas James, 'Why Has Vocationalism Propagated So Successfully within Australian Law Schools?' (2004) 6 *University of Notre Dame Australia Law Review* 41, Nickolas James, 'Power-Knowledge in Australian Legal Education: Corporatism's Reign' (2004) 26 *Sydney Law Review* 587, Nickolas James, 'Liberal Legal Education: The Gap Between Rhetoric and Reality' (2004) 1 *University of New England Law Review* 163–186, Nickolas John James, 'The Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education' (2004) 27 *University of New South Wales Law Journal 147,* Nickolas John James, 'Australian Legal Education and the Instability of Critique' (2004) 28(2) *Melbourne University Law Review 375.*

4 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law School: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987).

5 Gabrielle Appleby, Peter Burdon and Alexander Reilly, 'Critical Thinking in Legal Education: our journey' (2013) 23 (1&2) *Legal Education Review* 345.

6 See especially Nickolas J James, 'More Than Merely Work-Ready: Vocationalism Versus Professionalism in Legal Education' (2017) 40(1) *University of New South Wales Law Journal* 186.

3. Noeleen McNamara, University of Southern Queensland

"The legal classroom and online students: who is listening?"

There is a clear consensus that the legal classroom has changed over the last 15 years. One can no longer assume that all internal students will dutifully attend each class, recording the lecturer's every word. Part of the reason might be attributable to the requirement at many law schools (including the author's) to either record the live lecture or record a summary of the lecture. The issue is even more vexed with online students, who generally have very little or no direct contact with the lecturer, relying on other resources – both on the virtual classroom and presumably textbooks - to distil knowledge.

Online students account for around 70% of the total enrolment at the author's law school. Anecdotal evidence and correspondence from various students suggests that not all students are listening to the lectures – something that could be regarded as the best starting point when studying law, particularly in the first year. These factors have led to an investigation as to what resources online students are relying upon to study a course. A study has been conducted over several years in both a first year core course (Contract Law) and a second year elective course (Environmental Law – where half the enrolment consists of non-law students), to audit what use is made of recorded lectures (and other documents that students have been advised are 'critical'), all of which have been placed in the virtual classroom for each course. The final results achieved in the course have been correlated with student access to these resources.

In particular, the questions asked were:

- are the online students accessing the recorded lectures;
- are those who are listening to the lectures accessing the resources regularly throughout the semester, or 'binge listening' before assessment is due; and
- does listening to the recorded lectures result in better marks?

Surveys have also been conducted with students to determine the utility of the recorded lectures or whether some other form of recording (such as a summary, rather than the whole class) is preferable. Staff have been consulted, to gauge the range of options that are utilised within the law school to delivery lecture content.

Whilst a higher level of access to the recorded lectures was generally associated with higher grades, failing the course did not necessarily mean limited engagement with the resources. Not surprisingly, the group who, generally speaking, were least engaged were the group who obtained the lowest passing grade.

The presentation will discuss these and other findings of the audit and the qualitative data in order to draw conclusions as to the importance of the traditional 'lecture' in teaching online students in a first year core course and also where a course in taught to both law and non-law students.

Parallel Panel Session 5
Skills as Substance

1. Kenneth Yin[1], Edith Cowan University

"The Deconstruction of the Tort of Negligence into its Syllogistic Elements"

I-R-A-C is the formulaic problem solving method taught to first year law students including in tort law. Negligence can be considered the paradigm application of the I-R-A-C approach to problem solving.

The typical negligence curriculum in first year tort studies introduces the various components of negligence as 'elements', which are taught progressively, and also the idea that in order to succeed, there must have been a breach of duty owed to the plaintiff; the harm must have been caused by the defendant's breach; and that damages must have resulted from that breach.

A difficulty often encountered by first year law students is that, without an understanding of the correlation between those elements, they cannot connect them as a coherent whole. This outcome is a propensity variously to elide the elements of negligence or to omit the contents of those elements.

This paper suggests that the solution to this difficulty is to present the teaching of problem solving in tort by using the framework of syllogistic logic as the blueprint to an understanding of the application of the I-R-A-C method. This in turn requires a close understanding not only of the idea that the tort as a whole can be presented as a meta syllogism comprising those elements, but that each element of that tort might attract its own internal mini-syllogistic analysis.

In order to do so, the various fundamental rule structures must be introduced; so, taking again the paradigm of negligence, these might be explored as follows: *first*, that establishing liability in negligence attracts a 'conjunctive test' namely that negligence comprises elements, each of which must be satisfied; *secondly*, that each such element might itself attract an application of some separate rule structure of which, apart from the conjunctive test itself, the most common is 'factors analysis', which is characterised by a process of flexible weighting.

It cannot be suggested that this will entirely resolve the difficulties that students might encounter – certainly none of this can be any substitute for doctrinal knowledge. But a close understanding of the fundamental syllogistic underpinning to an answer will: *first,* at least suppress the propensity for students to elide the various elements of a tort; *secondly* ensure that the presentation of the internal ingredients (to use a neutral expression) of each element is logically supportable; *thirdly* ensure that the ultimate answer, in the form of a meta-syllogism is, rationally presented and supportable.

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[1] Kenneth Yin, Lecturer in Law, School of Business and Law, Edith Cowan University. Ken was a Solicitor until 1996 and then a Barrister at Francis Burt Chambers, Perth, and retired from legal practice altogether in 2013.

2. Dominic Fitzsimmons and Tamar Ruiz, UNSW

"You can't think outside a circle, until you know what a circle is"

Students often are asked to be critical about the law. But it is difficult to be critical about something if you don't really know what that thing is yet, and to be critical in a law context. The Law Peer Tutoring program has been an effective way to engage with these kinds of questions since 1996. I will divide this paper into 4 short sections to show how LPT is able to help students both recognise the circle and to then think outside of it: space and time; art and craft; mutual learning; the value of small groups

A place to 'talk law' outside of class time: students learn from peers in a quite different ways from teachers. After initial wariness there is recognition of a peer's authenticity and credibility. The peer is much closer to the student's 1st year experience, and is liberated from acting as an authority, which leads to a different exchange of views.

Thinking about law is both art and craft: the craft consists of techniques like asking questions, types of reading, and writing in specific formats; the art consists of making the decision of how and when to apply these techniques and to what content. The peer can both model this type of thinking as well as quite clearly point out what these techniques are, and then help students put them into practice.

Mutual learning: peer to peer learning means that both have something to learn. Peer Tutors learn how to design and run small groups, of being patient and honest, of being firm, of being able to explain an idea in a number of different ways. They also learn a breadth of experience outside their own and are able to then question it.

Small group interactive: Concepts are the hardest to learn because they are not fixed, until we fix them into a context. This process often requires a dialogue where explanations are batted back and forth before arriving at a provisional answer. Often the best way of playing with concepts is to use metaphor (it's like….). Small groups, then, provide a good option for this kind of experimental thinking because of trust and familiarity built up over a number of weeks.

3. Werner Schäfke, Bente Kristiansen, Karina Kim Egholm Elgaard, University of Copenhagen

"Implementing Research Based Teaching in an LLM program"

Research-based teaching is high on the agenda of university education development in many disciplines. In legal education, this approach can address some of the challenges that lawyers increasingly experience in the Danish labour market (Madsen 2008; Hammerslev 2010; Hammerslev 2011), but are comparable to challenges faced by lawyers in other countries (Dezalay & Garth 2004) and by graduates of other disciplines.

These changes challenge traditional legal education, and law school curricula are in close competition with business law and political sciences programs. This need for adjustment of legal education is also voiced by employer organizations. They express their wish for graduates with thorough academic competences, better innovation skills, the ability to think and work interdisciplinarily, and a better understanding of how the law is used to solve complex, "real life" problems (Det Juridiske Fakultets Aftagerpanel 2013; jf. Det Juridiske Fakultets Aftagerpanel 2016; 2017). In short, employers follow a sentiment already formulated in 1950by the American legal philosopher Lon Fuller (1950, p 36): "[w]hatever it is we want the student to get, it is something more durable, more versatile and muscular, than a mere knowledge of rules of law." In order to address these challenges and demands, the course design follows a problem oriented, research based approach. By this we mean that students learn to research by conducting their own research projects under the supervision of researchers (Healey & Jenkins 2009, p 8), and the researched problems being complex problems lawyers are dealing with in practice.

The paper presents the course design and its pedagogical underpinnings that address these issues. The course in question, which is held for the first time during fall semester 2017, is an inquiry based LLM course connected to an e-journal at the University of Copenhagen. The course implements several didactic features considered beneficial for student learning regarding academic writing, research skills as well as innovative and entrepreneurial competences. As students choose their own research problems, they retain ownership over their learning. Through extensive formative peer feedback and supervisor feedback (Nicol & Macfarlane-Dick 2006) aided by rubrics (Andrade 2005; Andrade & Reddy 2010; Andrade & Warner 2012), students are guided through their research process, while retaining autonomy over their research process. After receiving a thorough review of their exam papers, students can then voluntarily revise and submit their articles to the newly established peer reviewed *UCPH Fiscal Relations Law Journal*.[1] The course was developed by the Research Group on Law Teaching and Learning (University of Copenhagen), and the Research Group for Fiscal Relations (University of Copenhagen).

1 http://jura.ku.dk/firejournal/english/.

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Parallel Panel Session 5
Student Engagement without Tears

1. Sally Varnham, UTS

"Creating a culture of engagement: students and tertiary institutions working in partnership towards enhancement"

An Australian Learning and Teaching National Senior Teaching Fellowship

The Fellowship builds on the momentum developed during the OLT Strategic Commissioned Priority Project: '*Student Engagement in university decision making and governance"* (2014-2016). The project asked the questions: **What** is 'student engagement' leading to 'student partnership' in institution decision-making? **Why** is student partnership valuable to institutions, their students and to the sector as a whole? **How** may student engagement processes be embedded effectively to lead to an ethos or

culture of student partnership? The project report is available on the Fellowship website: www.studentvoice.uts.edu.au.

International research showed how student partnership through engagement is now firmly embedded in higher education sectors elsewhere and evidence shows clear benefits for all institutions and their students. It is recognised as both enhancing the quality of teaching and learning and the educational experience of students, and facilitating their personal development in terms of leadership and citizenship. Authentic involvement of students in faculty and university wide decision making from course and subject representation to matters of strategy and direction has a strong role to play in developing the critical thinking skills essential to legal education.

The Australian research revealed considerable interest here with many universities working to embed a range of student partnership processes across all facets of their institution's operations. The Project report contains a series of case studies of these processes, including the pilot Student Staff Consultative Committee undertaken in the UTS Faculty of Law.

The National Senior Teaching Fellowship was awarded to Sally Varnham to undertake a sector-wide collaboration. The inclusive approach involved all stakeholders including student leaders, senior management and policy makers, student engagement staff and academics through a series of workshops in main centres in the first half of 2017. The outcome of this national conversation was to produce a set of principles and a framework to assist facilitation of a culture of student partnership in our tertiary institutions.

In this presentation Sally will discuss the collaboration, the principles and the framework with particular relevance to legal education.

2. Maxine Evers, UTS

"Student engagement in legal education scholarship – giving value to voices"
Student engagement in legal education scholarship is centred on giving value to the student voice. The notion of the student voice includes themes of active participation, shared respect and rights and responsibilities. Engaging students in their education also enables them to develop skills in advocacy, negotiation and communication. As importantly, engagement contributes to the building of a community with students and academics, something which may well have been lost with the emergence of emails, online discussion boards and recorded lectures.

Student course representatives have been used in universities in the United Kingdom and elsewhere to improve continuously the student learning experience. These students represent their fellow students' views and experiences on all matters relating to learning and teaching. They provide feedback to staff and act as a communication channel between staff and students.

As part of the OLT project on '*Student Engagement in university decision making and governance"* (2014-2016), the Law Faculty at UTS trialled a pilot Student Staff Consultative Committee (SSCC) for undergraduate law students in 2016. The positive feedback from the student and academic Committee members encouraged the Faculty to continue the SSCC in 2017, including its extension to postgraduate students.

This presentation considers the scholarship on student partnership in the design and delivery of legal education through the case study of the SSCC established in the UTS Law Faculty. The experience of student and academic members is discussed with the objective of sharing a model that, we believe, enhances the experience of both student learning and academic teaching.

3. Brett Freudenberg and Anna Mortimore, Griffith University

"The Firm: Re-thinking tutorials to provide greater professional identity"
Professional identity and business awareness are seen as key generic skills that graduates need in their professional careers. However, a number of studies demonstrate that such skills are lacking in graduates, with current students not appreciating their importance. Creating curriculum and learning opportunities for such skill development can be challenging in an already crowded curriculum. This paper reports a simulated work integrated learning scenario – The Firm – which was integrated into tutorials. The Firm involved students being appointed to professional advisory firms, were they were treated as employees working on client case studies each week, with their boss (the tutor) mentoring them as they developed their advice. The client case studies enhanced the students' professional identity and business awareness, as they had to extend beyond the traditional ILAC method (Issue; Law; Application and Conclusion); and formulate: (a) further facts required from the client; (b) possible solutions to assist the client; and (c) recommendations about what the client should do in the future. Through online submissions with random checks, students were encouraged to prepare prior to tutorials, with time then allocated in tutorials for the firm's employees to finalise and refine their answers. Then one employee would present on behalf of the firm their findings and recommendations. Consequently, this client case study activity involved a rich learning environment with notions of active learning, team work, problem solving, researching, oral presentation, and overall - professional identity as business advisors. This paper will report the findings into outcomes of the firm case study, including observations about the advantages and disadvantages of the approach. It is argued that with a re-think of tutorials, it is possible to provide a learning environment that can assist to enhance the students' professional identity, as well as their technical knowledge. It is with such enhancement, that students will be better placed to commence their careers.

Parallel Panel Session 6
Interdisciplinary Approaches to Education in Law

1. Catherine Nguyen, UTS

"A lawyer, an engineer, and a graphic designer walk into a classroom. Lessons from a Graduate Certificate in Transdisciplinary Learning and its implications for challenges in legal education"
In recent years there has been an increase in the need for transdisciplinary (TD) research and strategies as a response to increasingly complex and contemporary "wicked problems". It is generally accepted that there is no universal theory or methodology of TD. However there are key similarities across explanations including: shared teaching; shared research; a new form of learning and problem solving; and a way of thinking and doing.

In an educational context TD involves different academic disciplines collaborating on real-world educational problems to create innovative solutions. This paper will draw on the author's experience as part of the first cohort in the new Graduate Certificate in Transdisciplinary Learning in Higher Education (GCTLHE) at the University of Technology Sydney. The GCTLHE is the first scholarly course in Australia for academics seeking to learn how to teach, design and research TD programs.

The paper will first review the origins and development of TD and provide context for the GCTLHE as a collaborative studio- based course. It will explore challenges with TD including existing institutional frameworks and overcoming disciplinary boundaries. The author will discuss an authentic assessment involving identification of complex educational challenges and a collective undertaking of 'one challenge' project. The challenge project is designed to focus on a particular stage in a degree program. It is anticipated that the outcome of the challenge project will be implemented in law subjects and offerings.

Similar educational challenges exist across institutions and disciplines, however the resources, experiences and results of teaching and learning strategies to address these are often confined to individual schools and faculties. The article concludes that a TD approach can facilitate a climate for creativity through different experiences, holistic thinking, and knowledge sharing and synthesis. A TD approach can better encourage academics to create new solutions to existing challenges outside of the traditional discipline focused approach.

2. Margaret Castles and Bernadette Richards, University of Adelaide Law School

"Two Professions – one learning experience"
Law School creates a silo for the development of future legal professionals where students focus on the complexities of legal principles and potential future application of their knowledge in a practical setting. Along the way they acquire a new language and way of thinking but they rarely interact with other disciplines. The Adelaide Law School has, in collaboration with the Medical School, been running an interdisciplinary teaching initiative that engaged both law and medical students in a mediation role play. Students enrolled in Medical Law and Ethics (Law School) and 6th year Medical Students volunteered for this program as part of their respective subjects. The collaborative learning experience gave students in both disciplines insight not only into dispute resolution processes in their own discipline, but also in the other discipline. Students actively engaged with those outside of their discipline and gained significant communication skills along with knowledge about other professions. It was a deep learning experience that enabled the students to actively engage in self-directed learning.

Whilst this collaboration served to enrich the learning experience of students, it also offered an opportunity for significant contribution to research in exploring the impact of exposure to ADR processes on perceptions and values of participants. Furthermore, as there is little evidence of looking at the attitudes and perceptions of medical and law students together, this presents an opportunity to engage in research in this area. The activity provides us with a chance to examine whether this approach to inter-professional learning using simulation can alter students' perceptions and reduce stigma associated with medico-legal issues.

The study is designed to span a number of years and different cohorts, 2015 served as a 'proof of concept' year and involved only 6 students. In 2016 the activity was rested due to resource constraints and 2017 served as an opportunity to formalise the activity and work on the design. We plan to run a formal study and survey of the students in 2018 and 2019. This presentation will introduce the activity, provide the opportunity to share experiences to date and present preliminary findings.

Parallel Panel Session 6
Writing for Law

1. Philippa Ryan, UTS

"Teaching law students the role of discourse markers in academic writing to improve their experience with automated feedback powered by artificial intelligence"
Analytical writing is a core professional skill for lawyers. For this reason, many law degrees include writing tasks. Providing meaningful feedback before a final essay is submitted gives students an opportunity to close the gap between their performance and instructor expectations. However, it is particularly difficult in core law subjects for teachers to find ways to give formative feedback to students on their draft essays. There is simply not enough time.

This paper discusses a study being conducted by the author and her colleagues at the University of Technology Sydney, in which writing analysis technology is being trialed as a way to provide students with automated feedback powered by artificial intelligence.

Part one of this paper reviews the existing scholarship on the benefits of providing students with pre-submission feedback as well as the frustrating reality of the time constraints faced by many teachers of large cohorts.

Part two will discuss a study that has provided law students with artificial intelligence being developed at UTS that can offer rapid formative feedback on draft essays. By detecting and coding discourse markers in their text, the application makes visible to learners their use (or lack) of these key features of analytical writing. Without discourse markers, an essay is rendered an unrhetorical list of concepts. This innovative technology is intended to improve law students' self-assessments and it also provides an opportunity for students to trial and critique a future tool of their trade. However, it became apparent during the course of this study that automated feedback is only meaningful if students understand how natural language processing works.

Part three of this paper describes an activity that was introduced in Spring 2017, as an intervention before the students used the writing analysis software. They were given a one hour tutorial on the role of discourse markers in good academic writing. The students' feedback revealed that they did not know the particular role that discourse markers play in conveying argument, attitude or position in a text. Teaching the students how discourse markers work improved their understanding of automated feedback, giving them (for the first time) the confidence to make meaningful improvements to their draft essays.

2. Sandra Noakes, Western Sydney University

"Getting it Write: Locating Good Practice Pedagogy to Support and Develop Law Student Writing"
It is well settled that communication skills are essential for law graduates, and that law schools are expected to include them in the curriculum. The Standards for Australian Law Schools, adopted by the Council of Australian Law Deans, require law schools to have a curriculum which seeks to develop communication skills. In addition, the Higher Education Standards Framework mandates standards for law schools in the form of the Threshold Learning Outcomes (TLOs) for Bachelor of Laws (LLB) degrees.[1] TLO 5 (Communication and Collaboration) requires that graduates of an LLB degree are able to communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences. This TLO makes it explicit that law schools are responsible for the development and support of their students' communication skills. However, how this is best achieved is still very much a matter left to individual law schools.

Current pedagogical research posits that best practice for writing support of students in higher education is a fully embedded model, in which writing support is integrated into subject content and taught by academics as discipline experts. This paper is a review of publicly available information on websites of Australian universities to determine the extent to which Australian law schools adhere to a fully embedded model. It employs Briguglio and Watson's classifications of embedded academic language and learning support in HEIs in Australia to map the practices of Australian law schools, and outlines current pedagogical research concerning the efficacy of each of the models identified by Briguglio and Watson.[2]

This research concludes that Briguglio and Watson's 'fully embedded model' of writing support does not appear to be comprehensively implemented in Australian law schools. Instead, a stand-alone 'skills model' of support is still common. As the stand-alone 'skills model' is not supported by current

literacy theory as best practice, the question which inevitably arises is why it remains popular with Australian law schools.

The paper then identifies a number of areas of further research in relation to the support and development of student writing in Australian Law Schools. These include: the experiences of Australian law schools concerning the implementation of TLO 5 in relation to writing; the experience of embedded writing programs in Australian law schools; the extent to which pedagogical theory informs the design of writing programs in Australian law schools; the implications of a fully embedded model of writing support, including practical difficulties associated with a fully embedded model such as academic workload and the skills and confidence of law academics in relation to the teaching of writing; and the requirement of collaboration between literacy (learning development) experts in Higher Education and discipline experts in law in order to implement a fully embedded model of writing support.

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[1] See Sally Kift, Mark Israel and Rachael Field, 'Bachelor of Laws: Learning and Teaching Academic Standards Statement' (Report, Australian Learning and Teaching Council, 2010) for the TLOs for law.

[2] Carmela Briguglio and Shalini Watson, 'Embedding English Language Across the Curriculum in Higher Education: A Continuum of Development Support' (2014) 37(1) *Australian Journal of Language & Literacy* 67.

Parallel Panel Session 6
Failures and Futures?

1. Gabriel Viana, University of Sao Paolo

"The Failure (or not) of Brazilian Legal Education"

In 1827, Brazil created its first Law School with the premise of creating a Brazilian legal identity after the country's independence in 1822 from Portugal. In the early Republic, those graduated in Law were present in almost every important event of history. According to Brazilian Bar Association (OAB), in 2017, there are more than 1,240 Law Schools in Brazil. With a high output of Law graduates there is a saturation in the Law market. Instead of participating in important political decisions, those graduated in Law are facing unemployment and lower wages. They are not automatically lawyers and the Bar Association approval rate have been dropping each year. Law Schools are failing to prepare their students for survival in the competitive market and a globalized world. It is possible to talk about an actual unsynchronized world with very different rhythms (INNERARITY, 2008) and professionals must be ready to adapt themselves to any of these rhythms. The rhythm of the Judiciary does not follow the rhythm of the society and/or the economy. The legal education, on the other hand, doesn't follow neither. Brazilian schools adopt a "law as doctrine" model. This model, focused in training just for practice, doesn't prepare the students to understand the society or being dynamic professionals (SMITS, 2013). There is, in Brazil, a formalist perception of Law: Law is just a set of rules and procedures. Graduates and professors not trained to think analytically are susceptible to changes. Just one decision from the legislators can change the legal system and make all the content studied or taught become useless. The schools, generally, don't understand the importance of courses as mediation or argumentation. The average law student, in smaller colleges and generally coming from weak education backgrounds, faces challenges in understanding grammar or text interpretation. Many Law Schools are not committed in requesting quality from their students or professionals because they see the education just as a source of profit and in a scenario of extreme competition between schools, most of them don't want to lose students to the competitors. Because of that, is it possible to claim that the Brazilian legal education is failing? This paper proposes to answer this question with the analysis of the many factors that probably is making the legal education in Brazil lean to the failure. Resorting to actual and historic data, personal experience and the challenges faced

by other countries' law schools, we wish to answer this question: What should Brazil do to reinvent its law schools, heal the saturation of the job market for lawyers and prepare more competitive and global jurists? The first step is admitting that the actual model is outdated. From this, it is mandatory to open the discussion. Instead of adding more content to the curriculum trying to cover gaps, it is more suitable to create a more flexible, global and innovator system, reinforcing the Brazilian legal identity but, at the same time, educating world citizens.

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2. Jessica Viven-Wilksch, University of Adelaide Law School

"Legal Education Scholarship: Dynamic and Trendsetting and going viral?"

Legal education is dynamic. Its scholarship should reflect this movement by not aiming at reaching a 'state' but instead illustrating its constant evolution. This presentation will address the form of such scholarship in an ever changing and digital world. In an effort to think through the notion of legal education scholarship and legal education itself, it will present a comparative perspective.

This presentation will endeavour to challenge how we might think about legal education and its scholarship in Australia. It will adopt a holistic approach reflecting both the personal journey of the author and her area of expertise, namely comparative law. The aim is to challenge the understanding given to legal education and the place of its scholarship from a global perspective.

Legal education reflects the society in which it is provided. It reflects the values of the society, and the legal system concerned. This is because the purpose of legal education itself differs between legal traditions. This presentation will use examples to illustrate legal education in different jurisdictions and what it reflects: its existence, the student's cohort and the *thelos* of the legal teacher. These are likely to differ depending on the legal system. The purpose or ethos of the teacher might be about the student gaining broad knowledge, or about being able to practice the law, or about applying and interpreting the religious or philosophical foundations of the law. It may be a teacher or student-centered approach. This means that the concept of legal education itself is inherently influenced by the legal structure of its legal system.

The law teacher, who might use legal education scholarship to get an understanding and build on his or her teaching methods and maybe even content, may therefore also gain broader insights. In today's world, it has become easier to experience, read and compare between these different approaches. It is indeed useful to gain insights and represents an opportunity to explore, share globally and compare different methods.

The paper will then focus on the use of technology as a means to show how legal education in some legal systems and its scholarship is being deeply transformed both in content, format and outputs.

Depending the legal system, Legal education scholarship can be found not only in scholarly journal articles but on blogs, opinion pieces and social media creating a broader community of legal education scholars, and redefining who that person is. This represents a new opportunity in systems where legal education scholarship is in its infancy.

The paper will conclude to show that when there is legal education scholarship, it is about trendsetting, driving knowledge-sharing and advancing how we, as law teachers, enable our cohort to get skills to be successful professionals. It is much more than a state of being, a state of the art. Legal education scholarship is dynamic and always evolving and is becoming 'viral'.