

# LEARNING LEADERSHIP IS IN YOUR HANDS: TOWARD A SCHOLARSHIP OF TEACHING IN PRACTICAL LEGAL TRAINING

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## ABSTRACT

This article seeks to promote discussion about scholarship of teaching in Australian post-graduate pre-admission practical legal training (PLT). This is germane to perceptions of the quality of accreditation of young Australian lawyers practicing in a globalised profession. The article gives a definition and outlines the prerequisites for scholarship of teaching. The present position of teacher engagement with scholarship of teaching in Australian PLT is considered, together with the historical and organisational epistemological approaches to professional practical training. Problems of validity, measurement, performativity, and engagement in teaching scholarship are discussed. Possible methodological approaches, including Schön's conception of action research, together with other methodologies, technologies, and practical considerations, are considered. These discussion points are directed toward future exploration of PLT teachers' engagement with, and leadership in, the scholarship of teaching in PLT.

## I. INTRODUCTION

The aim of this article is to introduce the notion of the scholarship of teaching lawyers' skills,<sup>1</sup> in post-graduate pre-admission practical legal training (PLT) that can be further developed in Australia.<sup>23</sup> In the context of globalised conceptions of legal professional practice, a scholarship of teaching in PLT is a necessary contribution to the value of Australian legal professional qualifications in a globalised profession. This article introduces discussion points concerning scholarship of teaching in PLT, and identifies possible historical issues arising in connection with scholarship of teaching in PLT. Potential avenues for the pursuit of practitioner scholarship

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- 1 The term, "lawyers skills", is used here as specified in the national *Competency Standards for Entry-Level Lawyers*, and includes 'communicating effectively', 'interviewing clients', 'writing letters', 'drafting other documents', 'negotiating settlements and agreements', 'facilitating early resolution of disputes' and 'representing a client': Australasian Professional Legal Education Council and Law Admissions Consultative Committee, *Competency Standards for Entry Level Lawyers* (2002) Australasian Professional Legal Education Council <[http://www.aplec.asn.au/aplec/dsp\\_resources.cfm](http://www.aplec.asn.au/aplec/dsp_resources.cfm)> at 10 September 2012.
- 2 Practical legal training is a mandatory post-graduate pre-admission competency-based training requirement for law graduates seeking admission to the legal profession in Australia: *Legal Practitioners Act 1981* (SA) s 14C; *Legal Practitioners Education and Admission Council Rules 2004* (SA) r 2; *Legal Profession Act 2004* (NSW) s 24(b)(i); *Legal Profession Act 2004* (Vic) s 2.3.2(1)(c); *Legal Profession Act* (Vic) 2004; *Supreme Court Admission Rules 2004* (QLD) ss 7-7A; *Legal Profession Act 2006* (ACT) s 21(b)(i); *Legal Profession Act 2007* (QLD) s 30(1)(c); *Legal Profession Act 2007* (TAS) s 25(b)(i); *Legal Profession (Admission) Rules* (Vic) 2008; *Legal Profession Act 2008* (NT) s 29(1)(c)(i); *Legal Profession Act 2008* (WA) s 21(2)(c).
- 3 Australian practical legal training involves coursework and work experience components. In some jurisdictions PLT can be undertaken internally within a law firm, such as supervised workplace training in Victoria. External PLT providers can be stand-alone organisations, or operate as an extension of law school. PLT coursework involves competency-based training in 'skills', 'practice areas', and 'values' in accordance with the national Competency Standards for Entry-Level Lawyers specified by the Australasian Professional Legal Education Council and the Law Admissions Consultative Committee. Above n 1. These standards are incorporated by reference into the legislation for admission of lawyers. Above n 2.

of teaching in PLT, with reference to social media, emergent methodologies, and other resources are identified. Notions of validity and performativity connected to scholarship are also discussed.<sup>4</sup> The article concludes by arguing for an invigorated research and scholarship of teaching under the leadership of practitioner teachers.

## II. SCHOLARSHIP OF TEACHING

For present purposes, scholarship of teaching in PLT is not confined to the academics' production of peer reviewed journal articles, although this is important method for the external scrutiny and dissemination of scholarly work. Modern global scholarship, may be expressed through writing, exegesis, and other forms of expression (including live and recorded performances). That said, Boyer's criteria provides a framework for defining work that genuinely qualifies as scholarship of teaching in PLT: there should be clear goals, adequate preparation, appropriate methods, significant results, effective presentation, and reflective critique with analysis, criticism, syntheses and comparison.<sup>5</sup>

For Boyer, scholarship of teaching requires teaching academics to be 'well-informed' in their field. It is a 'dynamic endeavour'<sup>6</sup> between the teachers' understanding and the students' learning, the planning and design of pedagogical procedures, creativity, innovation, and transforming, extending, and providing continuity of knowledge.<sup>7</sup> Or, as Healey expresses it, teaching is to 'make learning possible'; scholarship of teaching is 'to make transparent how learning is made possible'.<sup>8</sup> This includes learning goals, teaching methods, assessment of learning, and the evaluation of teaching.<sup>9</sup> For Healey, scholarship of teaching can involve all four forms of scholarship enumerated by Boyer: (1) discovery research into the nature of learning and teaching; (2) integration of material from several disciplines to understand what is going on in the classroom; (3) application of what is known about how students learn to the learning and teaching process; and (4) teaching, not only transmitting knowledge, but transforming it and extending it as well.<sup>10</sup>

Scholarship of teaching need not be confined to the 'academy'. Practitioner teachers can produce scholarship of teaching through: face-to-face and blended online programs, including academic, skills based, practice-oriented, and experiential schools of study. Scholarship of teaching can be interdisciplinary work, drawing on the research and scholarship of education, psychology, sociology, anthropology, economics, legal education, critical legal studies, and the natural sciences. Adopting this definition, the next section describes a contemporary context for scholarship of teaching in PLT.

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4 The term, "performativity", is used in the context where individual teachers 'must organize themselves as a response to targets, indicators, and evaluations': Stephen J. Ball, 'The teacher's soul and the terrors of performativity' (2003) 18(2) *Journal of Education Policy* 215.

5 Ernest L Boyer, 'Highlights of the Carnegie Report: The Scholarship of Teaching from Scholarship Reconsidered: Priorities of the Professoriate' (1991) 39(1) *College Teaching* 11; Charles E Glassick, 'Boyer's expanded definitions of scholarship, the standards for assessing scholarship, and the elusiveness of the scholarship of teaching' (2000) 75(9) *Academic Medicine: Journal of the Association of American Medical Colleges* 877.

6 Here, "dynamic endeavour" is interpreted to mean a reflexive approach involving monitoring, reflection, evaluation, feedback, discussion, and incremental changes aimed at improvements.

7 Boyer above n 5, 23-4.

8 Mick Healey, 'Developing the scholarship of teaching in higher education: a discipline-based approach' (2000) 19(2) *Higher Education Research and Development* 170-1.

9 *Ibid* 169, 171.

10 *Ibid*.

### III. SCHOLARSHIP OF TEACHING IN PLT

This section aims to contextualise and justify teaching scholarship in Australian PLT. It refers to PLT teacher teaching qualifications and scholarly works. It identifies potential conceptual differences concerning teaching scholarship between academic legal education and PLT. In Australia, teachers in PLT are usually experienced legal practitioners drawn from the profession.<sup>11</sup> A survey of the relevant legislation does not disclose any express requirement that PLT teachers (or supervised workplace training supervisors) possess qualifications or equivalent experience in teaching and learning theory and practice,<sup>12</sup> nor do they explicitly stipulate any eligibility requirements for PLT teachers. In most cases, PLT course providers for the Australian Graduate Diploma of Legal Practice (GDLP) are Higher Education Providers (HEPs) and subject to regulation by the Tertiary Education Quality and Standards Agency (TEQSA),<sup>13</sup> within the Higher Education Standards Framework (“the standards”).<sup>14</sup> The standards require HEPs to promote and protect ‘free intellectual inquiry’ and expression in learning, teaching, and research activities, with academic staff ‘active in scholarship that inform their teaching’.<sup>15</sup>

In July 2012, the author conducted an informal survey of website data for 15 Australian PLT providers and 125 PLT teachers. A comparison of state jurisdictions disclosed that 60% of the Victorian PLT teachers identified in the sample held some form of formal teaching qualification, followed by New South Wales: 23.5%; Queensland: 15%; Western Australia: 12.5%; and the Australian Capital Territory: 11.8%. The proportion of teachers holding a formal teaching qualification ranged from 0% to 69%. The form of teaching qualification ranged through graduate certificate, graduate diploma, bachelor degree and master degree.<sup>16</sup> In August 2012 the author conducted another informal survey to learn what outputs Australian PLT teachers have published concerning scholarship of teaching. The author searched databases,<sup>17</sup> and journals,<sup>18</sup> and found that of 135 Australian PLT teachers, 16% had published an item that touched on scholarship of teaching. The proportion of teachers at each PLT provider who had published a scholarship of teaching item ranged from 0% (at 5 sites) to 56% (at 1 site).<sup>19</sup> These results should be treated cautiously because the website information may be out of date or inaccurate. It is not suggested that formal qualifications or publications determine the existence or quality of teaching scholarship at a site. However, the fact that proportions of teachers do acquire such teaching qualifications and produce written scholarship of teaching suggests that this may be thought worthwhile. The fact that there is a substantial variability between the concentration of

- 11 In Victoria, for example, *Legal Profession (Admission) Rules 2008* (Vic), r 3.05, requires that a ‘supervised workplace training’ supervisor for in-firm practical legal training must have at least 5 years post-admission experience in legal practice. Anecdotally, it seems to be assumed that external practical legal training providers should recruit legal practitioners with practice experience.
- 12 Here, “formal qualifications” means those consistent with the Australian Qualifications Framework (AQF): (*Department of Education Employment and Workplace Relations, Australian Qualifications Framework, July 2011*. Australian Qualifications Framework - July 2011).
- 13 *Tertiary Education Quality and Standards Agency Act 2011* (Cth) s 134.
- 14 *Higher Education Standards Framework (Threshold Standards) Act 2011* (Cth).
- 15 *Higher Education Standards Framework (Threshold Standards) 2011 Act* (Cth): ‘Provider Category Standards’, regs 1.2-1.4. (Note the standards apply where a higher education provider’s practical legal training course results in a post-graduate academic award such as the Graduate Diploma of Legal Practice, or a graduate certificate. The standards do not apply to PLT in the form of supervised workplace training, provided internally at law firms.)
- 16 Kristoffer Greaves, *Formal Qualifications of PLT Teachers in Australia - a sample* (2012) <<http://youtube/IsNJO0tnltY>> at 18 July 2012.
- 17 Scopus, LegalTrac, and Web of Science.
- 18 The Legal Education Review, the Journal of the Australasian Law Teachers Association, the Law Teacher, the Clinical Law Review, the International Journal of Professional Legal Education, and the Journal of Professional Legal Education.
- 19 Kristoffer Greaves, *Australian PLT Teachers Scholarship of Teaching Publications* (2012) <<http://youtube/f4GGTq0JkXM>> at 15 August 2012.

qualifications and publications, between providers and between jurisdictions, warrants further research.

These exploratory findings suggest there is room to expand an Australian research and scholarship of teaching in PLT. This kind of scholarship might be further advanced in jurisdictions comparable to Australia. In time, any disparity might have substantial implications for the perceived quality of the Australian graduate diploma of legal practice accreditation, nationally and globally.

In relation to published scholarship, an Australian journal, *The Journal for Professional Legal Education* was published from 1983 to 1998, but no similar Australian journal seems to exist at present. A full text search of the Australian 'Legal Education Review' from 1994 to 2011 produces 12 'hits' on the terms, "practical legal training" or "PLT", of which four were published in the last 5 years.<sup>20</sup> *The Journal of the Australian Law Teachers Association* commenced publication in 2008; perusal of the issues published from 2008 to 2011 inclusive, disclosed one article specifically dealing with PLT.<sup>21</sup> Overseas, however, the *International Journal of Clinical Legal Education* is published by the University of Northumbria in Newcastle, United Kingdom; *The Law Teacher* is published by the UK-based Association of Law Teachers; and the USA-based *Clinical Law Review*, a 'journal of lawyering and legal education' sponsored by Clinical Legal Education Association and others, are each specifically dedicated to areas that overlap with the field covered by Australian practical legal education. Journals are not the only means to provide a forum for scholarship of teaching in PLT; however there does seem to be a lacuna for Australian practitioners interested in this area.

While one view holds that 'good teaching' that draws on teachers' professional skills and knowledge, and based on pedagogical principles, has been successfully 'propagated' in Australian law schools,<sup>22</sup> 'academic' legal education is usually treated as conceptually separate from the 'vocational' lawyering skills taught in PLT, the teaching of which has been identified as 'challenging work' that requires 'additional teaching skills and commitment'.<sup>23</sup> It is not clear from the literature reviewed so far, that the majority of legal practitioners involved as teaching-practitioners in PLT, are caught by the 'successful propagation' of pedagogical principles, or

20 Vivienne M. Brand, 'Decline in the reform of law teaching?: the impact of policy reforms in tertiary education' (1999) 10(2) *Legal Education Review* 109; Margaret Castles, 'Challenges to the academy: reflections on the teaching of legal ethics in Australia' (2001) 12(1-2) *Legal Education Review* 81; Judith Dickson and Susan Campbell, 'Professional responsibility in practice: advocacy in the law school curriculum' (2004) 14(1) *Legal Education Review* 5; Jeff Giddings, 'A circle game: issues in Australian clinical legal education' (1999) 10(1) *Legal Education Review* 33; Robin Handley and Damien Considine, 'Introducing a client centred focus into the law school curriculum' (1996) 7(2) *Legal Education Review* 193; Colin James, 'Lawyer dissatisfaction, emotional intelligence and clinical legal education' (2008) 18(1-2) *Legal Education Review* 123; Sally Kift, 'Lawyering skills: finding their place in legal education' (1997) 8(1) *Legal Education Review* 43; Gaye T Lansdell, 'Have We 'Pushed the Boat Out Too Far' in Providing Online Practical Legal Training? A Guide to Best Practices for Future Programs' (2009) 19(1 & 2) *Legal Education Review* 149; Alan Leaver, 'Contextualising law: an attempt to operationalise theory by teaching interviewing in the law school' (1994) 5(2) *Legal Education Review* 195; Arlie Loughnan and Rita Shackel, 'The travails of postgraduate research in law' (2009) 19(1-2) *Legal Education Review* 99; John H. Wade, 'Legal skills training: some thoughts on terminology and ongoing challenges. -Revised version of paper presented to Conference on Teaching Skills (1994: Bond University)' (1994) 5(2) *Legal Education Review* 173; Asmi Wood, 'Law studies and Indigenous students' wellbeing: closing the (many) gaps' (2011) 21(1-2) *Legal Education Review* 251.

21 John Anderson, 'Identification Evidence - Proof And Doubt: An Experiential Teaching And Learning Strategy To Promote Deep Analytical Understanding Combined With Incremental Development Of Practical Legal Skills' (2008) 1(1&2) *Journal of the Australasian Law Teachers Association* 123.

22 Nickolas John James, 'Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education' (2004) 27 *University of New South Wales Law Journal* 147, 148.

23 Sally Kift, 'Lawyering skills: finding their place in legal education' (1997) 8(1) *Legal Education Review* 43, 55.

have embraced, or have the opportunity to embrace, educational theory and practices relevant to teaching lawyering skills in PLT. Anecdotally, where PLT teachers are employed on a sessional basis, or where the business model of the training provider does not incorporate actual resources and support for pursuit of scholarly work, there is little opportunity to embrace scholarship of teaching.

Educational theories and practices may have consequences beyond measures of successful achievement of learning outcomes. For example, certain attributes of legal education and legal practice have been linked to rates of mental health issues reported by law students and legal practitioners that are significantly higher than any other profession, in recent Australian and international research.<sup>24</sup> Seligman et al observe that the ‘Socratic teaching method’ used as the primary pedagogy in legal education, emphasises adversarial thinking in ‘zero-sum’ situations, in contrast to collaborative approaches taken in other disciplines, and that this contributes to ‘inherent’ pessimism amongst law students and lawyers.<sup>25</sup> Recently, Maharg and Maughan have argued against the dominance of the Socratic tradition, and for new engagement with the affective domain of teaching and learning in law, based in part on new scientific knowledge about cognitive processing and the physiology of learning.<sup>26</sup> In the context of scholarship of teaching in PLT, it would be relevant to investigate whether PLT teachers *reproduce* the primary pedagogy inculcated at law school,<sup>27</sup> Bourdieu and Passeron,<sup>28</sup> for example, describe a sociological theory of education systems in which pedagogical work inculcates dispositions in institutions, teachers, and students, to reproduce practices that preserve a status quo. A scholarship of teaching in PLT might test the proposition that a particular pedagogy is reproduced throughout law school and PLT, and the implications for innovations in teaching. This line of inquiry also relates to the organisational epistemology of PLT providers (discussed below). In this context, and assuming pursuit of scholarship of teaching in PLT is justified, the next section identifies critical questions for research concerning PLT teacher practitioners’ engagement with scholarship of teaching.

#### IV CONSIDERATIONS FOR RESEARCH ON SCHOLARSHIP OF TEACHING

In this section, certain critical questions are identified regarding PLT teachers’ engagement with scholarship of teaching. These involve what counts as knowledge PLT providers, research methodologies for teacher research, and problems of validity and performativity. Research concerning the scholarship of teaching in PLT could uncover information concerning the current state of Australian scholarship in the area, how it might compare to scholarship of teaching in legal education, and the policies and practices that shape the scholarship of teaching in PLT. Research could also investigate the forms in which scholarship of teaching in PLT might be undertaken and expressed and, from the teachers’ perspective, the theories and practices that influence their engagement with scholarship of teaching.

24 Colin James, ‘Lawyer dissatisfaction, emotional intelligence and clinical legal education’ (2008) 18(1-2) *Legal Education Review* 123; Dr Norm Kelk et al, ‘Courting the Blues: Attitudes towards depression in Australian law students and legal practitioners’ (Brain & Mind Research Institute, 2009); Molly Townes O’Brien, Stephen Tang and Kath Hall, ‘Changing Our Thinking: Empirical Research On Law Student Wellbeing, Thinking Styles and the Law Curriculum’ (2011) 21(1/2) *Legal Education Review* 149; Martin E P Seligman, Paul R Verkuil and Terry H Kang, ‘Why Lawyers are Unhappy’ (2005) 10(1) *Deakin Law Review* 49.

25 Seligman, Verkuil and Kang above n 24, 54.

26 Paul Maharg and Caroline Maughan (eds) *Affect and Legal Education - Emotion in Learning and Teaching the Law*, (Ashgate, 2011).

27 “Reproduce” is used here in the Bourdiesian sense: Pierre Bourdieu and Jean-Claude Passeron, *Reproduction in Education, Society and Culture, Theory, Culture and Society* (1990).

28 Ibid.

Lynch et al,<sup>29</sup> identified ‘four critical’ questions that might illuminate the ‘conduciveness (or otherwise)’ of certain teaching contexts to ‘the pursuit of scholarly activities around teaching practice’:<sup>30</sup>

1. Are individuals motivated to pursue scholarly activities in relation to their own teaching work?
2. Do individuals have the capabilities required to pursue scholarly activities in relation to their own teaching work?
3. Does the organisation’s symbolic representation of teaching support the pursuit of scholarly activities around teaching work?
4. Does the organisation’s allocation of resources support the pursuit of scholarly activities around teaching work?

These four critical questions provide focus for further research in relation to PLT teachers’ engagement with the scholarship of teaching. Additional avenues of inquiry include:

- To what extent do practitioner-teachers capture, or are *caught* by, scholarship of teaching in PLT?
- If the teachers’ own education and professional experience of scholarship is shaped by legal positivism and ‘techno-centrism’,<sup>31</sup> how might that affect their perceptions of a cross-disciplinary scholarship of teaching that involves non-legal knowledge?
- Are teachers affected by ‘counterintuitive impulses’ of ‘performativity’ and ‘passion’, of ‘being seen to be good’ and ‘doing good’?<sup>32</sup> Is this particularly so if the ‘delivery’ of PLT is a ‘business’ and scholarly activities are framed by the college’s business and performance expectations?<sup>33</sup>
- What opportunities, if any, do teacher-practitioners have to engage with the research and scholarship?
- What goods (improvement in teaching quality and teacher self-actualisation, for example) might result from the pursuit of scholarship of teaching?<sup>34</sup>

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29 Julianne Lynch et al, ‘Individual and Organisational Factors Influencing Academics’ Decisions to Pursue the Scholarship of Teaching ICT’ (2005) 4 *Journal of Information Technology Education* 219, 232.

30 Ibid 232.

31 Margaret Thornton, ‘Technocentrism in the law school: Why the gender and colour of law remain the same’ (2010) 36(2) *Osgoode Hall Law Journal* 369, 388. Thornton defines “technocentrism” as ‘the way in which rules rationality exercises a centripetal pull within legality so as to disqualify other forms of knowledge.’

32 Jill Blackmore, ‘Leading as emotional management work in high risk times: the counterintuitive impulses of performativity and passion’ (2004) 24(4) *School Leadership & Management* 439. Blackmore discusses how teachers perceive organizational performance management and marketing processes as a distraction from the ‘passionate’ work of teaching.

33 Ibid. Blackmore above describes education reforms ‘premised upon twin strategies of “managerialism” and “marketisation”’, so that teaching organisations run on business principles. This might have implications for scholarship of teaching difficult to justify for purely business purposes.

34 Paul Ramsden, ‘Managing the Effective University’ (1998) 17(3) *Higher Education Research & Development* 347, 362-8. Ramsden makes the point that management processes are important for improvement and accountability in higher education, However, he observes that managerialism alone will not help academics to ‘deliver the goods.’ It is also relevant to consider what qualifies as a ‘good’. For example, scholarship that produces new insights about teaching in PLT ought to qualify.

From the four ‘critical questions’ outlined above, the next section relates to the question of how PLT providers symbolically represent and allocate resources to the pursuit of teaching scholarship.<sup>35</sup>

### A. Organisational Knowledge

In considering how PLT providers symbolically represent the pursuit of teaching scholarship, it is relevant to consider the epistemology of the school that delivers PLT.<sup>36</sup> Organisational epistemology goes to what the school counts as ‘knowledge’, and how the school symbolically represents a model of teaching.<sup>37</sup> Does the school see itself as simply a ‘finishing school’ for graduates to enter the profession? Does it accordingly constrain its ways of knowing, or does the school’s epistemology encompass a vision of research and scholarship that contributes to expansive ways of knowing? As Schön records, this question is not confined to the legal profession. Historically the ‘normative professional curriculum’ has come to involve the teaching of the basic subject,<sup>38</sup> followed by the applied subject and then a ‘practicum’ in which to apply classroom knowledge to professional practice.<sup>39</sup> This design evolved out of a position that held professional practice knowledge was not ‘fundamental’ intellectual knowledge, and that practitioners were not scholars.<sup>40</sup> Consequently, it was appropriate to separate academia as a place of higher learning from preparation for professional practice.<sup>41</sup> This separation, however, risks excluding research and scholarship from practice. As Schön argues: ‘research finds little place to stand in the turbulent world of practice’.<sup>42</sup> There is also the ‘dilemma’ of rigor versus relevance - many interesting technical or intellectual problems can be managed through rigorous research-based theory and techniques; however, these solutions are often not relevant to the ‘messier’ problems that arise in practice.<sup>43</sup>

The risk of separating scholarship from practice can be relevant to both PLT and the teaching of PLT. It is a challenge to transform professional know-how into something teachable – a ‘knowing-in-action’ that relies on non-logical practices, and involves a kind of tacit-knowing.<sup>44</sup> When professionals strive to transfer this kind of knowledge through teaching, it is not unusual for them to be misunderstood.<sup>45</sup> Partly, this is because professionals teaching this kind of knowledge can ‘mis-state’ what they know how to do, because they lack the clarity that pedagogical reflection and planning provides.<sup>46</sup> It is in context of that challenge, that the next section considers methodological issues concerning teaching scholarship in PLT.

35 Lynch, above n 29, 225. “Symbolic representation” refers to the support and resources an organisation commits to scholarship of teaching, including ‘organisational values and priorities reflected in institutionalised systems and processes.’

36 Donald A Schön, ‘The New Scholarship Requires a New Epistemology’ (1995) 27(6) *Change* 26, 27. “Epistemology” is used here in the sense of one’s theory of knowledge, what is construed as valid knowledge, and how something is known.

37 Ibid.

38 Ibid 29. Schön cites Schein’s “normative professional curriculum”, as describing the basic-applied-practicum process of teaching professional knowledge.

39 Ibid.

40 Ibid.

41 Ibid 27-28.

42 Ibid 29.

43 Ibid, 28.

44 Ibid, 29.

45 From experience, the process of teaching professional practice can involve struggles (or omissions) to make explicit tacit professional knowledge. Sometimes this involves the instructor’s assumption that the learner already knows a fact. To use a simple example, from the writer’s own experience two years ago, it emerged during a review session for the trust and office accounting subject that most of the graduates in the class did not know what a ‘bank cheque’ is. Less tangible items of professional knowledge might be more challenging to identify and teach.

46 Ibid 30.

### B. 'New' Methodologies for PLT Scholarship

If PLT teacher practitioners are going to lead research into the scholarship of teaching in PLT, it is important to consider appropriate methodologies. This section outlines potentially appropriate research methodologies, and points to social media (such as Twitter), and qualitative research software, as useful tools for research and scholarship of teaching.

Schön argues that 'if we want to teach about our "doing", then we need to observe ourselves in the doing, reflect on what we observe, describe it, and reflect on our description'.<sup>47</sup> This process of 'reflection-in-action' and 'reflection-on-action' offers opportunities for scholarship in PLT by applying the reflective approach to actions comprising professional legal practices, and actions that comprise teaching of professional legal practices.<sup>48</sup> By 'playing back' the action, and thinking about the strategies and 'knowing-in-action', as theories that inform the performance of the action, it is possible to subject those theories to analysis and critique, and then develop repertoires of professional practices for further performance and testing.<sup>49</sup> Schön's version of action research provides to teacher practitioners a methodology well adapted to the pursuit of scholarship of teaching in PLT, in which teacher practitioners can reflect on their own practice as teachers *and* as lawyers.<sup>50</sup>

There are other emergent methodologies, such as narrative inquiry, and auto-ethnography which are well adapted to complement the kind of reflective approach that Schön describes. Narrative inquiry is described as a methodology for 'studying lived experience' that can involve a both a 'mode of knowing' and a 'way of thinking about experience'.<sup>51</sup> Auto-ethnography can take different forms including, 'evocative auto-ethnography' and 'analytic auto-ethnography'. The latter involves the researcher as a 'full member' in the research setting, 'visible' through publication, and 'committed to developing theoretical understandings of broader social phenomena'.<sup>52</sup> Anecdotally, those experienced in teaching legal skills learn the value of story-

47 Ibid 28-29.

48 For more detailed explanation of 'reflection-in-action' and 'reflection-on-action', see Donald A. Schön, *The Reflective turn: case studies in and on educational practice* (Teachers College Press, 1991); ---, *The Reflective practitioner: how professionals think in action* (Arena, 1995).

49 Above n 37, 30.

50 For an account of an action research approach in the PLT context, see Chris Trevitt, 'Universities learning to learn? Inventing flexible (E)learning through first- and second-order action research' (2005) 13(1) *Educational Action Research* 57. The reflective approach is developing in Australian scholarship of teaching in law school, for example: Kate Galloway et al, 'Using sustainability to inform renewal of the LLB foundation curriculum: knowledge skills and attitudes for the future' (2012) 12 *Queensland University of Technology Law and Justice Journal* 1; Shane Mathews, Linda Andrews and Edwina Luck, 'Developing a Second Life virtual field trip for university students: an action research approach' (2012) 54(1) *Educational Research* 17; Judith McNamara, Tina L Cockburn and Melinda J Shirley, 'Creating and enabling opportunities for increased student participation in experience based learning in professional practice' (Paper presented at the Experience Based Learning Association Inaugural Conference, University of Technology Sydney, 7-9 December 2009); Des A. Butler, 'Air Gondwana: teaching basic negotiation skills using multimedia' (2008) 1(1&2) *Journal of the Australasian Law Teachers Association* 213.

51 D Jean Clandinin, 'Narrative inquiry: A methodology for studying lived experience' (2006) 27(1) *Research Studies in Music Education* 44. For further information about narrative inquiry see: J.S. Bell, 'Narrative inquiry: More than just telling stories' (2002) 36(2) *TESOL quarterly* 207; D Jean Clandinin, *Handbook of narrative inquiry: Mapping a methodology* (2007); Carola Conle, 'Narrative inquiry: Research tool and medium for professional development' (2000) 23(1) *European Journal of Teacher Education* 49.

52 Leon Anderson, 'Analytic autoethnography' (2006) 35(4) *Journal of Contemporary Ethnography* 373. For an introduction to narrative inquiry and auto-ethnography as a qualitative methodology see Ruthellen Josselson, 'Narrative Research - Constructing, Deconstructing and Reconstructing Story' in Frederick Wertz and Kathy Charmaz (eds), *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research, and Intuitive* (2011) 224.



telling (or “war stories”) as a way of providing real life narratives of ‘how things work’ in practice. By adopting narrative inquiry as a qualitative methodology it is possible to develop scholarship of teaching in a way that is rigorous and accountable, and directed to achieving learning goals.<sup>53</sup>

Today, academics and practitioners can conduct research, express and exchange ideas, and make cross-disciplinary and cross-jurisdictional connections with others by harnessing social media.<sup>54</sup> This can involve discussions that move quickly between, and sometimes blend, professional, scholarly, and personal discourses. Social media is now recognised by qualitative researchers as a fertile source of data for research. Computer-assisted qualitative data analysis software tools (CAQDAS), such as QSR-NVivo10, have been developed to include social media, such as Twitter streams, as sources for research.<sup>55</sup> It is now possible to use a range of analytical tools, to transcribe and analyse online discussions between practicing lawyers, teacher practitioners, and academics, toward scholarship of legal practice and scholarship of teaching legal practice skills.<sup>56</sup> The opportunity to experiment with emergent methodologies and technologies in PLT teaching scholarship is exciting. However, it is important to remember that our definition of scholarship implies regularity and accountability, as necessary qualities. This leads to a discussion of the ‘problem’ of validity, and performativity, in practitioner research.

### C. Problem of ‘Validity’ and ‘Performativity’ in Scholarship

The notions of ‘validity’ and ‘performativity’ are two realities that confront the practitioner. It is unlikely that others will accept the fruit of a teacher’s research if it is not arguably valid. It is also time consuming to initiate, and carry out, practitioner research. The teacher’s employer might not accept that the work should count toward the teacher’s performance of her or his employment obligations, or might be unsupportive if the research does not align with the employer’s notion of validity. Employers may reject exploratory research, if the purpose does not include a ‘business case’ approach. Practitioner research and scholarship is difficult and challenging work by itself, and without organisational support, many opportunities for discovery may be lost.

Schön observes there is a problem with having his type of action research accepted as valid where technical rationality is the primary epistemology underlying institutional arrangements and norms.<sup>57</sup> Healy summarises some of the tension underlying the notion of validity:

In common with the other quantitative rational sciences, we need theories of measurement of human variables which satisfy the requirements for scientific measurement. On the other

53 For a recent example of narrative inquiry as a methodology in legal education research, see Peter Jones and Kate Galloway, ‘Professional Transitions in the Academy: A Conversation’ (2012) 10(2) *Journal of Transformative Education* 90.

54 For example, see Melissa Castan, 64 (and more) *Australian legal tweeters* (2011) <<http://amicaecuriae.com/2011/08/14/64-or-more-australian-legal-tweeters>> at 14 December 2012.

55 For information about how CAQDAS can be used in research see, for example: Jenine Beekhuyzen, ‘Putting the pieces of the puzzle together: Using Nvivo for a literature review’ (2007) *Qualitative Research* 18; Jenine Beekhuyzen, Sue Nielsen and Liisa von Hellens, ‘The Nvivo Looking Glass: Seeing the Data Through the Analysis’ (Paper presented at the 5th Conference on Qualitative Research in IT, Brisbane, 29-30 November 2010); Andrew John Hutchison, Lynne Halley Johnston and Jeff David Breckon, ‘Using QSR-NVivo to facilitate the development of a grounded theory project: an account of a worked example’ (2010) 13(4) *International Journal of Social Research Methodology* 283; Elaine Welsh, ‘Dealing with Data: Using NVivo in the Qualitative Data Analysis Process’ (2002) 3(2) *Forum: Qualitative Social Research* 20.

56 Such research should comply with ethical and research integrity standards such as the National Statement on Ethical Conduct in Human Research (March 2007), and the Australian Code for the Responsible Conduct of Research (2006), developed by the National Health and Medical Research Council pursuant to *National Health and Medical Research Council Act 1992* (Cth) s 13.

57 *Ibid* 31.

hand, we need substantive theories about the human condition that allow us to examine how the responses that candidates make ... are connected with the human attribute under investigation.<sup>58</sup>

Healey argues that the 'improvement of teaching and learning' [and the development of the 'status of teaching'] depends on the development of scholarship of teaching;<sup>59</sup> that means exposing teaching to the scrutiny of theoretical perspectives, methods, evidence and results. At least two controversies emerge here: firstly, there are the usual dichotomies of objectivism/subjectivism and qualitative/quantitative methods, and there are arguments about measurement, validity, positivism, and empiricism.<sup>60</sup> These would emerge in a research and scholarship of teaching in PLT, as they do elsewhere in education research. For example, a dilemma arising from these debates concerns the use of randomised controlled trials (RCTs) and systematic reviews in connection with evidence-based approaches to education research.<sup>61</sup> These methods are worth exploring, as part of a quantitative 'rational' methodology; however they require significant resources and they are controversial.<sup>62</sup>

Secondly, the issue of measurement also attaches to the notion of performativity. As Blackmore has observed 'policies around standards and best practice now link the social practices of leadership and teaching to indicators of learning outcomes in tighter circles of performativity' and that the ways in teachers' effectiveness is measured within a performative culture are 'not reflected in their own evaluations of their experiences as practitioners'.<sup>63</sup> It would be unfortunate if individual teachers' scholarship of teaching is dominated by performance review processes, so that teachers focus their scholarship only on those areas deemed to prove compliance, at the expense of more innovative or problematic problems needing research.<sup>64</sup> For example, in a study by Lynch et al, some respondents described colleagues that pursued scholarship of teaching as having 'intrinsic or altruistic motives' that resist 'organisational agendas', whilst others chose to concentrate 'on other more highly rewarded areas of scholarship'.<sup>65</sup> There is a risk if teacher-practitioners do not choose to lead scholarship of teaching, that the exploratory, creative, and innovative approaches to teaching scholarship could be submerged by performative processes, in which teachers satisfy performance indicators by obtaining minimal teaching qualifications, or by only adopting 'approved' methodologies.<sup>66</sup>

58 Above n 9, 171.

59 Ibid 182.

60 See, for example, Jeffrey P. Aguinaldo, 'Rethinking Validity in Qualitative Research from a Social Constructionist Perspective: From "Is This Valid Research?" to "What Is This Research Valid for?"' (2004) 9(1) *Qualitative Report* 127; Trevor G Bond, 'Validity and assessment: a Rasch measurement perspective' (2004) 5(2) *Metodologia de las Ciencias del Comportamiento* 179; Joe L Kincheloe, Peter McLaren and Shirley R Steinberg, 'Pedagogy and Qualitative Research - Moving to the Bricolage' in Norman K Denzin and Yvonna S Lincoln (eds), *The Sage Handbook of Qualitative Research* (4th ed, 2011) 163.

61 See, for example, Ann Oakley, 'Resistances to 'new' technologies of evaluation: education research in the UK as a case study' (2006) 2(1) *Evidence & Policy: A Journal of Research, Debate and Practice* 63; Grover J Whitehurst, 'Identifying and implementing educational practices supported by rigorous evidence: A user friendly guide' (US Department of Education, Institute of Education Sciences, National Center for Education Evaluation and Regional Assistance, 2003).

62 ; See, for example, Jill Blackmore, 'Is it only 'What works' that 'Counts' in New Knowledge Economies? Evidence-based Practice, Educational Research and Teacher Education in Australia' (2002) 1(03) *Social Policy and Society* 257; Scott R Webster, 'How evidence-based teaching practices are challenged by a Deweyan approach to education' (2009) 37(2) *Asia-Pacific Journal of Teacher Education* 215.

63 Jill Blackmore, 'Policy, practice and purpose in the field of education: a critical review' (2010) 51(1) *Critical Studies in Education* 101.

64 Ibid 108.

65 Lynch et al, above n 29, 226.

66 It may be that state and federal legal professional organisations could encourage innovation, by contributing funding and support to independent practitioner research and scholarship of teaching.

## V. CONCLUSION

This article seeks to encourage discussion around teacher engagement and leadership in scholarship of teaching in PLT, particularly in relation to teacher-practitioner research, and to promote the view that there is scope to expand Australian scholarship of teaching in PLT. It is hoped that by introducing some framing concepts concerning scholarship of teaching, historical issues affecting perceptions of scholarship of teaching in PLT, together with a notion of an organisational epistemology in PLT, future discussions will develop the critical approach to traditional paradigms of teaching scholarship and research. Emergent methodologies and technologies (including social media), adapted for the pursuit of scholarship of teaching in PLT, provide new opportunities for teacher practitioners to lead creative and innovative research and scholarship. Debate regarding organisational epistemologies of teaching scholarship, the validity of varieties of scholarship, and the potential threat to innovative scholarship posed by a performative approach to scholarly work, should be vigorously pursued by PLT teachers, with a view to leading teaching scholarship. The teaching of PLT involves practitioners teaching vocational legal skills used in practice. PLT teachers must lead an Australian research and scholarship of teaching in PLT, because learning leadership is in their hands.

