

RE-IMAGINING PRACTICAL LEGAL TRAINING PRACTITIONERS — SOLDIERS FOR ‘VOCATIONALISM’, OR DOUBLE AGENTS?

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ABSTRACT

I adopt a constructivist approach in order to study Australian PLT practitioners’ engagement with scholarship of teaching and learning (SoTL) in institutional practical legal training (PLT). Drawing on Bourdieu’s *reflexive sociology* and Certeau’s *heterological science*, I argue PLT is *enclosed* by discursive operations that constrain PLT practitioners’ engagement with SoTL. I contend SoTL could address a knowledge gap in *practice research* in law and legal education. I propose to *re-imagine* PLT teaching work by conceptualising it as an emergent professional trajectory, engaged in practice research, teaching and learning. By considering ways in which structures are inscribed into legal education practice, and conversely, whether practice can modify such structures, I re-imagine PLT practitioners as *double agents* or *resistance fighters*, enriching legal education through SoTL as practice research.

I INTRODUCTION

I study Australian PLT practitioners’ engagement with SoTL in institutional PLT. In doing so, I adopt a constructivist approach, with qualitative methodologies,¹ conceptualising PLT practitioner engagement with SoTL as *practice*. I draw on Bourdieu’s ‘reflexive sociology’² and de Certeau’s ‘heterological science’.³ Australian legal education history frames PLT’s enclosure via judicial, professional, and academic discursive operation, and James has *nominated* PLT as a ‘strategy’ of ‘vocationalist’ discursive operations.⁴ I argue that PLT’s enclosure constrains SoTL as practice research in PLT, and that marginalising SoTL impedes PLT practitioners’ agency in teaching and learning work. I propose to *re-imagine* PLT practice as an emergent professional trajectory.

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1 David H Jonassen, ‘Objectivism versus constructivism: Do we need a new philosophical paradigm?’ (1991) 39(3) *Educational Technology Research and Development* 5.

2 Pierre Bourdieu and Loïc J D Wacquant, *An invitation to reflexive sociology* (1992); Loïc J D Wacquant, ‘Towards a Reflexive Sociology a Workshop with Pierre Bourdieu’ (1989) 7(1) *Sociological Theory* 26.

3 Michel de Certeau, *The Practice of Everyday Life* (1984).

4 Nickolas John James, *Power-knowledge and critique in Australian legal education: 1987–2003* (PhD Thesis, Queensland University of Technology, 2004).

There is little literature specifically studying PLT practitioners' engagement with SoTL, save for Maxwell and Pastellas' report of interviews with nine PLT practitioners in 2004.⁵ Here, I discuss extra-individual and individual dimensions of PLT practitioners' engagement with SoTL, involving Australian legal education history, sociological studies of lawyers, and interviews with Australian PLT practitioners. Considering ways in which social structures are inscribed into legal education practice, and conversely, whether practice influences those structures, I imagine PLT practitioners as more than soldiers enrolled in a *vocationalist* strategy. I re-imagine PLT practitioners as *double agents* engaged in practice research, enriching understandings of legal education and practice through SoTL.

In Part II I explain why SoTL is important. I explain my 'reflexive-dialectical' approach,⁶ involving 'individualist' and 'non-individualist' accounts,⁷ drawing on Bourdieu's 'sociological tools'⁸ and Certeau's 'heterological science'.⁹ In Part III I explore historical materials to frame extra-individual dimensions, in which PLT is enclosed as *vocationalist*, *non-academic*, and *critique-free*. I turn to individual dimensions in Part IV, drawing on interviews with PLT practitioners. I discuss professional trajectories to PLT, and interviewees' dispositions regarding lawyer and teacher thinking. In Part V, I re-imagine PLT practitioners as *double agents* operating between dominant structures.

II EXTRA-INDIVIDUAL AND INDIVIDUAL DIMENSIONS OF 'PRACTICE'

A *Why Scholarship of Teaching and Learning?*

Why should SoTL be part of PLT practitioner practice? I offer ten reasons:

- 1 Discover how 'learning is made possible';¹⁰
- 2 Raise 'the status of teaching';¹¹
- 3 Support practitioners 'to teach more knowledgeably';¹²
- 4 Enable assessment of 'quality of teaching';¹³
- 5 Improve learning experiences of lawyers-to-be;¹⁴
- 6 Professionalism — conceptualise PLT practitioners' dual professionalism as lawyer and educator;¹⁵
- 7 Pragmatism — contemplate PLT as 'transparent' to external scrutiny and evaluation;¹⁶
- 8 Policy — recognise existing policies of both legal and higher education regulators. Participate in policy-making;¹⁷

5 Kay F Maxwell and Julie Pastellas, 'Valuing practice: The place of practical legal research in academic life' (Paper presented at the AARE International Educational Research Conference, Melbourne, 28 November–2 December 2004).

6 Stephen Kemmis, 'What is Professional Practice? Recognising and Respecting Diversity in Understandings of Practice' in Clive Kanen (ed), *Elaborating Professionalism — Studies in Practice and Theory*, Innovation and Change in Professional Education (Springer, 2010) 139.

7 Theodore R Schatzki, Karin Knorr Cetina and Eike Von Savigny (eds), *The Practice Turn in Contemporary Theory* (Sense Publishers, 2001).

8 Yves Dezalay and Mikael Rask Madsen, 'The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law' (2012) 8(1) *Annual Review of Law and Social Science* 433.

9 Michel De Certeau, *Heterologies: Discourse on the other*, Theory and History of Literature (1986).

10 Mick Healey, 'Developing the scholarship of teaching in higher education: a discipline-based approach' (2000) 19(2) *Higher education research and development* 169, 171.

11 Keith Trigwell and Suzanne Shale, 'Student learning and the scholarship of university teaching' (2004) 29(4) *Studies in Higher Education* 523.

12 Ibid, 523-4.

13 Ibid.

14 Ibid.

15 Lee S Shulman, 'From Minsk to Pinsk: Why a scholarship of teaching and learning' (2000) 1(1) *Journal of Scholarship of Teaching and Learning* 48, 49.

16 Ibid.

17 Ibid.

- 9 Recognise the legislative purpose of mandatory PLT to improve protection of lawyers' clients and the administration of justice, and promote quality legal services;¹⁸
- 10 Self-actualisation of PLT practitioners - using SoTL to do PLT better, rewarding efforts, improving work satisfaction through a sense of doing work one is 'fitted for'.¹⁹

Discovering how learning is made possible, and how to teach more knowledgeably, involves engagement with manifold aspects of teaching and learning. How teaching and learning *works* is an area subject to a plethora of theories approaching the subject in highly abstract and *scientific* ways. An appreciation of their ontologies, epistemologies, and methodologies helps to navigate and critically engage with them in making choices about how to enable learning. This can involve identifying the learning objectives, teaching and learning methods, methods for assessment and evaluation. Giving an account of these for external scrutiny helps to make connections between theories, methods, and outcomes, assess the quality of teaching, and provides information to practitioners to teach more knowledgeably. Giving an account provides opportunities for learners to comment on their learning experiences, and to compare those insights with others derived from SoTL. Further, exposing SoTL to external scrutiny not only provides opportunities for comment and critique, but also can make positive contributions to perceptions of the status of teaching and PLT, by demonstrating the thoughtful, informed and methodical approach undertaken in teaching and learning work. In this study, several interviewees commented that teaching-only PLT work was not accorded support, status, and prestige connected to academic legal research, and that SoTL work was similarly lacking in status. Recognising this work as part of the dual professionalism of PLT practitioners as lawyers and educators involves practitioners conceptualising their practice as encompassing SoTL activities, and PLT providers providing support and resources to them. From a pragmatic perspective, given the costs associated with PLT, together with PLT's regulation by the admission bodies and higher education statutory requirements, it is reasonable to expect external evaluation of teaching and learning practices in PLT. In that context, it is prudent to engage with SoTL on a consistent basis to produce knowledge about the effectiveness of teaching and learning practices in PLT, in readiness for the review of existing policy and formulation of new policies concerning legal education. In that context, it useful to recall that the purposes of the Legal Profession Acts that mandate PLT as an eligibility requirement for admission to the profession underscore the aim to protect lawyers' clients and the administration of justice, and to improve legal services and the learning experiences of lawyers-to-be. Lastly, but certainly not least, I contend that PLT practitioners' personal satisfaction with their teaching and learning work is partly contingent on succeeding as teachers in informed, professional and visible ways.

B *A Reflexive-Dialectical Approach*

My approach is constructivist, focusing on how knowledge is constructed through perceptions of the external world.²⁰ I adopt a 'reflexive-dialectical' construction,²¹ involving 'individualist' and 'extra-individualist' accounts,²² focused on 'subjective-objective' and 'individual-social' relations and connections.²³ I accept Kemmis' proposition that 'practice has extra-individual features', without reference to which practice, or changes in practice, cannot be understood.²⁴ I incorporate *practice* as 'professional, theoretical or scientific knowledge'; 'professional craft

18 For example *Legal Profession Act 2004* (Vic) s 2.3.2.

19 Abraham Harold Maslow, 'A theory of human motivation' (1943) 50(4) *Psychological Review* 370.

20 Denis C Phillips, 'The good, the bad, and the ugly: The many faces of constructivism' (1995) *Educational Researcher* 5.

21 Stephen Kemmis, 'What is Professional Practice? Recognising and Respecting Diversity in Understandings of Practice' in Clive Kanes (ed), *Elaborating Professionalism — Studies in Practice and Theory*, Innovation and Change in Professional Education (2010) 139.

22 Theodore R Schatzki, Karin Knorr Cetina and Eike Von Savigny (eds), *The Practice Turn in Contemporary Theory* (Routledge, 2001).

23 Kemmis, above n 21.

24 Ibid.

knowledge, or knowing how to do something'; and 'personal knowledge about the self as a person and in relation with others'.²⁵

C Bourdieu's Thinking Tools

In working with individual and extra-individual dimensions of practice I draw on 'thinking tools' described by Pierre Bourdieu.²⁶ These tools include *field*, *habitus*, *capitals*, *symbolic power* and *doxa*. In Bourdieu's nomenclature, a 'field' is a 'locus of struggles', in which individual or organisational agents strive to acquire (or monopolise) certain capitals to maintain or improve their position.²⁷ *Capitals* include economic capital, 'social capital' and 'cultural capital'.²⁸ *Social capital* identifies accumulated 'actual or potential resources' connected to a 'durable network' of institutionalised relations of 'mutual acquaintance and recognition', e.g. Private school alumni, exclusive social clubs, professional memberships.²⁹ *Cultural capital* might be 'embodied', 'objectified', or 'institutionalised'.³⁰ Dispositions of the mind and body (e.g. thinking and acting like a lawyer, years of professional experience), are 'embodied' cultural capital.³¹ Cultural artefacts such as artworks, books, law reports and statutes are 'objective' cultural capital.³² Academic and professional qualifications are examples of 'institutionalised' cultural capital.³³ In academia, cultural artefacts such as publications in peer-reviewed journals or books might be more valuable than professional practice experience, whereas the reverse might be true in some areas of professional practice. The valorisation of specific items of capital endows them with degrees of 'symbolic power', or prestige, by which those in the field structure their reality and identify dominant individuals or organisations.³⁴ Decisions regarding the appointment of a chief justice, for example, might be conceptualised in terms of social and cultural capital, and symbolic power. *Habitus* involves dispositions unconsciously and collectively inculcated within field agents by an 'education system',³⁵ involving 'primary' and 'secondary' pedagogies.³⁶ *Primary* pedagogies involve inculcation of dispositions (eg values, norms, tastes, dialects) through family and community; *secondary* pedagogies involve institutional education and social structures (eg the law, the legal profession and academia).³⁷ *Doxa* is that which emerges when the discursive operations of field, *habitus*, capitals and symbolic power pass from 'explicit' beliefs that define 'what ought to happen' (orthodoxy) to the unconscious 'immediate agreement elicited by what is self-evident ... a normalcy in which realisation of the norm is so complete that the norm itself, as coercion, simply ceases to exist'.³⁸ *Practice*, as conceptualised by Bourdieu, is a product of *habitus*, capital and field.³⁹

25 Stephen Kemmis, 'Knowing practice: searching for saliences' (2005) 13(3) *Pedagogy, Culture & Society* 391, citing Eraut (1994); Higgs et al (2001).

26 Loïc J D Wacquant, 'Towards a Reflexive Sociology a Workshop with Pierre Bourdieu' (1989) 7(1) *Sociological Theory* 26.

27 Pierre Bourdieu, 'The Specificity of the Scientific Field' in Charles C Lemert (ed), *French Sociology: rupture and renewal since 1968* (1981) 257.

28 Pierre Bourdieu, 'The Forms of Capital' in J G Richardson (ed), *Handbook of theory and research for the sociology of education* (Greenwood Press, 1986) 241; Pierre Bourdieu, *The social structures of the economy* (Chris Turner trans, Polity, 2005).

29 Pierre Bourdieu, 'The Forms of Capital' in J G Richardson (ed), *Handbook of theory and research for the sociology of education* (1986) 241.

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid.

34 Pierre Bourdieu, 'Symbolic Power' (1979) 4(13-14) *Critique of Anthropology* 77.

35 Pierre Bourdieu and Jean-Claude Passeron, *Reproduction in Education, Society and Culture*, Theory, Culture and Society (Sage Publications, 1990).

36 Ibid.

37 Ibid.

38 Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1986) 38 *Hastings Law Journal* 805.

39 Pierre Bourdieu, *Distinction: A social critique of the judgement of taste* (Harvard University Press, 1984).

These are useful ‘thinking tools’ for studying the individual and extra-individual dimensions of practice.⁴⁰

D Certeau’s ‘Heterological Science’

Bourdieu’s tools, in my opinion, give insufficient attention to notions of agency and alterity, although Bourdieu did concede:

The dominated, in any social universe, can always exert a certain force, inasmuch as to belong to a field means by definition that one is capable of producing effects in it (if only to elicit reactions of exclusion on the part of those who occupy the dominant positions), thus of putting certain forces into motion.⁴¹

Michel de Certeau (Certeau), however, framed a *heterological science* which explicitly interrogates alterity in *everyday practice*.⁴² Certeau’s approach is to ‘make explicit’ the *modus operandi* of ‘dominated’ individuals, in which ‘creative practices’ comprise a ‘poetics’ of resistance against domination (de Certeau 1984, p. 156).⁴³ Certeau also allied structures with *pedagogy*, ‘all institutions are pedagogical, and pedagogical discourse is always institutional’.⁴⁴ In Certeau’s framework, structures adopt overlapping ‘strategies’ to assume dominance⁴⁵ (eg *historiography*, *specialisation*, *nomination*, *universality*, and *colonization*).⁴⁶ Through historiography, structures normalise some practices, and *other* alterity, by ‘objectifying and organising representations’.⁴⁷ ‘Specialisation’ of disciplines facilitates their distribution among dominant institutions, which ‘insure’ disciplines against ‘accidents’ of alterity.⁴⁸ ‘Nomination’ involves identification of that which is ‘noble’ or ‘rotten’.⁴⁹ Institutions assume control of admission procedures, disciplinary processes and sanctions, ‘to produce acceptance’ of a discourse, and initiate subjects into the ‘reality’ of practices.⁵⁰ ‘Nomination’ or ‘naming’ identifies, colonises, censors, and confines alterity.⁵¹ For Certeau, dominant strategies are covertly challenged by tactical alterity. Possibly, ‘walking the city’ is the most famous and concrete of Certeau’s examples of alterity, in which Certeau describes ‘birds-eye’ and ‘kerb-side’ views of pedestrian practices,⁵² circumventing gridded pavements, taking shortcuts, secret routes, desire paths, “indirect’ or ‘errant’ trajectories obeying their own logic’.⁵³ Certeau’s approach admits a multi-vocal, multi-perspectival, conception of alterity in practice, involving ‘Brownian movements’ of ‘inertia’,⁵⁴ ‘appropriations’, ‘mentalities’, ‘deviations’, ‘nuances’, and ‘microinventions’.⁵⁵ Certeau’s approach involves studying a discipline, its discursive operations, and the relation between them, in the context of specific times, subject matter, and place.⁵⁶

40 Yves Dezalay and Mikael Rask Madsen, ‘The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law’ (2012) 8(1) *Annual Review of Law and Social Science* 433.

41 Wacquant, above n26, 36.

42 Michel de Certeau, *The Practice of Everyday Life* (Steven Rendall trans, University of California Press, 1984); Michel De Certeau, *Heterologies: Discourse on the Other* (Brian Massumi trans, University of Minnesota Press, 1986).

43 Certeau (1984), *ibid*, xi-xii, 156.

44 Certeau, *Heterologies*, *ibid*.

45 Certeau, *Practice*, above n 42.

46 Certeau, *Heterologies*, above n 42.

47 *Ibid*.

48 *Ibid*.

49 *Ibid*.

50 *Ibid*.

51 *Ibid*.

52 Certeau, *Practice*, above n 42.

53 *Ibid*.

54 *Ibid*.

55 Certeau, *Practice*, above n 42; Ben Highmore (ed), *The Everyday Life Reader* (Routledge, 2002); Mark Poster, ‘The Question of Agency: Michel de Certeau and the History of Consumerism’ (1992) 22(2) *diacritics* 94; Tony Schirato, ‘My space or yours? De Certeau, Frow and the meanings of popular culture’ (1993) 7(2) *Cultural Studies* 282; Roger Silverstone, ‘Let us then Return to the Murmuring of Everyday Practices: A Note on Michel de Certeau, Television and Everyday Life’ (1989) 6(1) *Theory, Culture & Society* 77.

56 Certeau, *Practice*, above n 42.

I treat the *nomination* of PLT as a *vocationalist strategy* as an instant of *enclosure*, which obscures struggles that marginalise agency, alterity, multi-vocality, and multi-perspectivity in PLT practice. This *enclosure* constrains, but fails to repress, PLT practitioners' struggles to carve out alternate emergent trajectories in legal practice.

III EXTRA-INDIVIDUAL DIMENSIONS: PLT AND LEGAL EDUCATION 'HISTORY'

A *PLT in Australian Legal Education History*

Institutional PLT emerged in Australia during the 1970s.⁵⁷ Within the context of a profession descended from centuries-old English common law tradition, it is but a baby.⁵⁸ In this part, I sketch PLT's place in Australian legal education history, and argue the struggles of dominant players — the judiciary, profession, and academia — combine to enclose PLT as *vocationalist*, *critique-free* and *non-academic*.

English common law was received into Australia, embodied at first in English 'settlers' and later, by statute.⁵⁹ Reception, largely uncritical,⁶⁰ includes legal doctrine such as *stare decisis* and reliance on precedent.⁶¹ At first, the education and admission of lawyers remained centred in England, Ireland or Wales, restricting the profession to a monied minority.⁶² When training commenced in Australia, it was undertaken under articulated clerkships supervised by qualified practitioners, for which clerks paid their supervisor a fee.⁶³ Later, it was possible to combine a law degree with a reduced period of apprenticeship.⁶⁴ By the 1950s, law schools were established in several jurisdictions, and the 'academic lawyer' emerged as a professional trajectory.⁶⁵ The 1960s witnessed the rise of critical approaches to law.⁶⁶ The Martin Report criticised deficiencies in the articulated clerkship system,⁶⁷ and the Trew Report's survey of NSW articulated clerks supported those criticisms.⁶⁸ The Ormrod Report⁶⁹ and McDowell Report⁷⁰ were instrumental in conceptualising legal education as three *stages*: academic/intellectual, pre-admission institutional PLT with work experience, and post-admission continuing legal education.⁷¹ The 'compartmentalisation' of legal education was adopted literally by regulators,

57 K Winsor, 'Innovations in Practical Legal Training' (1984) 2 *Journal of Professional Legal Education* 40.

58 Theodore Frank Thomas Plucknett, *A concise history of the common law* (The Lawbook Exchange, 2001).

59 Alex C Castles, 'The Reception and Status of English Law in Australia' (1963) 2 *Adelaide Law Review* 1 citing Blackstone; *Cooper v Stuart* (1899) 14 AC 286, 291–3.

60 Michael Chesterman and David Weisbrot, 'Legal Scholarship in Australia' (1987) 50(6) *The Modern Law Review* 709.

61 James Holland and Julian Webb, *Learning Legal Rules: A Students' Guide To Legal Method And Reasoning* (Oxford University Press, 2013).

62 Linda Martin, 'From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales' (1986) 9 *University of New South Wales Law Journal* 111.

63 Paul K Cooper, 'Training Solicitors: The Expectations of the Profession' (1985) 3 *Journal of Professional Legal Education* 56.

64 Horst Lucke, 'Legal history in Australia: The development of Australian legal/historical scholarship' (2010) 34(1) *Australian Bar Review* 109; David Barker, 'Colonial cap, gown and wig' — The Origins of Australian legal education, Macquarie University ResearchOnline (2012); Leslie Harold Martin, 'Tertiary education in Australia: report of the Committee on the Future of Tertiary Education in Australia to the Australian Universities Commission (Martin Report), (Committee on the Future of Tertiary Education in Australia, Australian Universities Commission, 1964).

65 Chesterman and Weisbrot, above n 60.

66 Ibid.

67 Martin Report, above n 64.

68 John Labatt Trew, *A Survey of Training Received by Articled Clerks in New South Wales* (Sydney University Law School, 1966) (Trew Report).

69 The Committee on Legal Education, 'Report Of The Committee On Legal Education' (Ormrod Report) (The Committee on Legal Education, 1971).

70 Christopher Roper, 'The Practical Experience Component of the Proposed Professional Program in New South Wales' (1992) 10(2) *Journal of Professional Legal Education* 235.

71 Ormrod Committee, above n 69, [185].

who resisted integrated approaches to legal education and PLT.^{72,73} From the 1970s, non-university and university-based PLT courses were established in most jurisdictions.⁷⁴

The introduction of academic legal education was not smooth sailing. Early law schools struggled for acceptance and resources, such as teaching venues and faculty.⁷⁵ Acceptance of the LLB as qualification for admission was subject to protracted judicial and political negotiations.⁷⁶ The judiciary managed assessment procedures for academic qualifications for many years.⁷⁷ An underlying preference, manifest in judicial and professional statements, was for apprenticeship through articulated clerkships, for example:

[Y]oung men gain in morale by feeling that they are not still just pupils who after further tedious years will some day be lawyers, but that already they are in the lower ranks of their guild; that they are doing something, not merely learning to do something; that by attendance in court, and by seeing particular matters through in the office, they are participating in the working of the law; that, in the mediaeval sense of the word, it is already their mystery.⁷⁸

Innovations, or *deviancy*, in academic curriculum prompted clashes between academia and judiciary (eg Adelaide University Law School and South Australian Supreme Court judges in 1973;⁷⁹ the NSW Admission Board and University of NSW Law School in 1983 ('retribution for [a] mildly critical thrust'); and teachers' participation in 'law reform activities').⁸⁰ In 1987, the Pearce Committee⁸¹ pondered whether Macquarie University Law School's law course was 'too deviant or too short on "hard law" to meet admission requirements.⁸² Feelings about intellectualisation and critical thinking in legal education were at times acrimonious:

In the whole of Australia ... there are only one or two academic teachers of any real value ... There are, to be sure, multitudes of academic homunculi who scribble and prattle relentlessly about such non-subjects as criminology, bail, poverty, consumerism, computers and racism. These may be dismissed from calculation: they possess neither practical skills nor legal learning.⁸³

B Enclosure of PLT

Arguably, given professional and judicial discomfort with intellectualism and critique, expectations for PLT were that it would be *practical*, *vocational*, instil *professionalism* in trainees, and produce entry-level lawyers ready for work.⁸⁴ Pearce observed that PLT teaching was done by members of the profession, and this was 'probably the most significant' factor 'in maintaining real links between the courses and the profession'.⁸⁵ Compartmentalising PLT *out* of the academic domain might draw fire away from law schools with academic,

72 Winsor, above n 57; Noel Jackling, 'Academic and Practical Legal Education: Where Next' (1986) 4 *Journal of Professional Legal Education* 1; Victorian Council of Legal Education (VCoLE), 'Standards for PLT Courses and Providers' (VCoLE, 2013) [4.9].

73 Jeff Giddings, *Promoting Justice Through Clinical Legal Education* (Justice Press, 2013): an excellent case study of the introduction of Newcastle University's integrated program.

74 APLEC's website lists PLT providers; it was last updated in 2004 and is out of date at time of writing — for example, it lists the discontinued Griffith University and University of Wollongong's PLT courses: <<http://www.aplec.asn.au/Pdf/ACFD815.pdf>>.

75 Barker, above n 64.

76 Chesterman and Weisbrot, above n 60.

77 Barker, above n 64.

78 Victor Windeyer, 'Learning the Law' (1961) 35 *Australian Law Journal* 102.

79 Chesterman and Weisbrot, above n 60.

80 *Ibid.*

81 Dennis Pearce, Enid Campbell and Don Harding, 'Australian law schools : a discipline assessment for the Commonwealth Tertiary Education Commission ("Pearce Report")' (Commonwealth Tertiary Education Commission 1987).

82 Chesterman and Weisbrot, above n 60.

83 Rod Meagher QC, 'The Scope and Limitations of Legal Practice Courses: Should They Replace Articles and Pupilage? How can you learn practice in theory?' (Paper presented at the Proceedings and Papers of the 7th Commonwealth Law Conference, Hong Kong, 18–23 September 1983). Meagher was a former President of the NSW Bar Association.

84 Martin Report, above n 64, 71ff; Trew Report, above n 68.

85 Pearce Report, above n 81.

non-vocational, preferences. Some law schools' decision to integrate PLT with the academic degree was described as, 'clearly a market-driven development'.⁸⁶ The Johnstone Report quoted one 'senior law academic' as characterising a 'skills focus' in law school as:

We've acceded absolutely. We've tugged the forelock to the profession, and I think this is another reason for actually dumbing down what's happening with the law schools now ...⁸⁷

The Johnstone Report commented that 'some law schools clearly did not believe PLT was within their domain', quoting one 'Law Dean': 'We don't see it [PLT] as part of our role. It wasn't historically and we don't need to move into it'.⁸⁸ Nickolas James has written extensively on 'vocationalism' as a discursive operation in legal education,⁸⁹ involving:

[The] set of statements about legal education produced by law schools, law teachers and legal scholars which prioritised the teaching of legal skills and emphasised the importance of employability as an objective of legal education.⁹⁰

James describes PLT and clinical legal education as a 'vocationalist strategy', 'an explicit effort to train students as future employees ... exercised expressly to accord with the perceived needs of employers'.⁹¹ I contend that *nomination* of PLT as a vocationalist strategy operates as enclosure, marginalising alternative accounts involving agency and alterity. I acknowledge that James adopts Foucault's theory of power relations focused on panoptic *extra-individual* dimensions,⁹² and I offer an alternative multi-vocal and multi-perspectival conception of PLT involving both *extra-individual* and *individual* dimensions.

I draw on Bourdieu to help conceptualise the extra-individual dimensions of PLT. The judiciary, profession, and academy are allied by shared interests in preserving PLT as vocational, non-academic, and critique-free.⁹³ They are organisational *players* in a juridical field, operating to maintain or improve positions. The judiciary, proximate to power, protects its jurisdiction to determine disputes and to control its officers. The profession, proximate to commerce, guards its autonomy, its right to represent disputants, and to counsel business and commercial activity. The academy, as intellectual gatekeeper, safeguards its recently acquired authority to inculcate intellectual prerequisites for admission. These operations underscore what is self-evidently *worth knowing* and doing, the field's *doxa*.

What place is there for SoTL in this? Why is this a question? I contend that knowledge about learning professional skills invites critique of practice for currency, effectiveness, improvement, and confronting *doxa*. PLT's effectiveness has implications for protection of clients, administration of justice,⁹⁴ and the quality of legal work. In 1987, the Pearce Committee observed:

[A tendency] to emphasise the mastery of practice as an aim in itself without looking to the reasons why certain practices are followed and asking what might be better practice in the given circumstances ...⁹⁵

86 Richard Johnstone and Sumitra Vignaendra 'Learning Outcomes And Curriculum Development In Law — A report commissioned by the Australian Universities Teaching Committee (AUTC)' (Australian Universities Teaching Committee 2003) (Johnstone Report).

87 Ibid.

88 Ibid.

89 James, above n 4; see also his 'Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education' (2004) 27 *UNSW Law Journal* 147; 'Why has vocationalism propagated so successfully within Australian law schools' (2004) 6 *University of Notre Dame Australian Law Review* 41; 'Liberal legal education: the gap between rhetoric and reality' (2004) 1(2) *University of New England Law Journal* 163; 'The Marginalisation of Radical Discourses in Australian Legal Education' (2006) 16 *Legal Education Review* 55; and "'How dare you tell me how to teach!": Resistance to educationalism within Australian law schools' (2013) 36(3) *University of New South Wales Law Journal* 779.

90 James, above n 4.

91 Ibid.

92 Ibid.

93 Critique could emanate from practitioners, academics and PLT practitioners who engage with SoTL or other forms of scholarship around practical legal training. For example, such critique could focus on professional practices, teaching and learning professional practices, and regulation and policy concerning PLT.

94 I conceptualise this as including social justice and equal opportunity.

95 Pearce Report, above n 81 (emphasis added).

Any practical understanding of the work of a solicitor, even at its most basic, cannot be seen in terms of an objective never-changing body of knowledge. It is based on subjective values and standards and any statement of aims and objectives should make this clear... it points out the human element in practical training.⁹⁶

Enclosure of PLT marginalises opportunities for practice research around professional practice, and teaching and learning practice. Are PLT practitioners condemned to ‘soldier on’, reproducing practices, preparing entry-level lawyers for professional consumption? Perhaps not — in Part D I draw on interviews with PLT practitioners to explore individual dimensions of PLT practice and their collective singularities around teaching and learning in PLT.

IV INDIVIDUAL DIMENSIONS: PLT PRACTITIONER TRAJECTORIES AND DISPOSITIONS

A Interviews with PLT Practitioners

To explore individual dimensions of PLT practice, I recorded semi-structured interviews with thirty-six PLT practitioners in Australia (‘the interviewees’).⁹⁷ Invitations to participate were emailed to one hundred potential participants identified from PLT provider websites. Additional invitations were posted on social media (LinkedIn and Twitter). Most of the thirty-six participants responded to the emailed invitations. The interviewees were located in six jurisdictions and affiliated with fourteen PLT courses (Figure 1).

Affiliation	ACT	NSW	QLD	TAS	VIC	WA	
A				1			
B			1				
C	1						
D					4		
E					1		
F					2		
G			2				
H	7						
I		1					
J		2					
K			2				
L		8					
M						1	
N		3					
	8	14	5	1	7	1	36

Figure 1: Interviewees by Location and Affiliation

The PLT courses are de-identified in Figure 1 because anonymity was a condition of participant consent, to encourage interviewees to speak freely. Duration of the interviews was usually 60–90 minutes and they were largely conducted face-to-face, although Skype and telephone were used for some. Recordings were transcribed and analysed using NVivo10 computer-aided qualitative data analysis software, and emergent and explicit coding techniques.⁹⁸ In this

96 Ibid.

97 Ethics approval obtained before interviews: Deakin University Human Research Ethics Committee, Certificate 2013–083.

98 Juliet M Corbin and Anselm L Strauss, *Basics of qualitative research: Techniques and procedures for developing grounded theory* (3rd ed, 2008); Bernard G Glaser, *Emergence vs Forcing: Basics of Grounded Theory Analysis* (1992); Udo Kelle, ‘“Emergence” vs. “Forcing” of Empirical Data? A Crucial Problem of “Grounded Theory” Reconsidered’ (2005) 6(2) *Forum: Qualitative Social Research* <<http://www.qualitative-research.net/index.php/fqs/article/view/467/1000>> at 3 August 2012.

qualitative research, the aim is to collect data that provides multi-vocal and multi-perspectival insights, with less emphasis on quantitative concepts such as sample size, response rate, and statistical significance. Some statistical methods are used, however, to generate lines of inquiry and to aid description of insights.

The interviews involved a semi-structured approach. The structure of the overall format included initial open-ended questions, intermediate questions, and ending questions.⁹⁹ Semi-structured interviews, however, do not require detailed interview schedules, and can involve ‘an incomplete script’, an interviewer might prepare some questions but there is ‘a need for improvisation’.¹⁰⁰ Questions should be framed to be ‘sufficiently general to cover a wide range of experiences as well as narrow enough to elicit and explore the participant’s specific experience’.¹⁰¹ Interviewees were asked about family connections to the legal profession and their parents’ educational background. They were asked about how they came to be working in PLT. They responded to questions such as, ‘Is thinking like a lawyer different to thinking like a teacher?’ ‘Are you attracted to teaching work? Why?’ Interviewees’ discussed their interest and capabilities regarding SoTL activities, and symbolic supports and resources their organisation supplied for SoTL.

B Trajectories, Family and Education

Previous socio-economic studies of Australian lawyers and law students indicate they are more likely than the general population to have familial connections to the legal profession, to attend high-status private secondary schools, and have tertiary-educated parents with professional or managerial occupations.¹⁰² These studies found that between 32 per cent and 54 per cent of participants had familial connections to lawyers. Between 35 per cent and 47 per cent of participants had university-educated parents. In my study, of thirty-three PLT practitioners who disclosed information about their parents, approximately 6 per cent had familial connections to lawyers, and 66 per cent were the first family member to join the legal profession. Less than 29 per cent had university-educated parents; nearly half (47 per cent) were a first university-educated family member.

Bourdieu argues that family and educational background, and social connections, are social and cultural capital¹⁰³ on which individuals draw to take up and hold positions in a field. As *primary* and *secondary* pedagogies, family and education inculcate dispositions within individuals as embodied capital, supply institutional capital through educational qualifications, and durable social networks as social capital, supporting individuals’ professional trajectories.¹⁰⁴ Consistent with this, Weisbrot observed: ‘some young lawyers come to the profession with the personal and clan contacts, self-confidence, financial safety net and private sector orientation necessary to get on’ in their careers.¹⁰⁵ Tomasic found a ‘significant correlation’ between lawyers’ first and last employment position, with ‘limited options available’ after the first position — suggesting the first employment position tended to define the practice area (eg property, litigation, government) in which lawyers worked throughout their career.¹⁰⁶ He also identified certain practice areas,

99 Kathy Charmaz, ‘Qualitative Interviewing and Grounded Theory Analysis’ in Jaber F Gubrium and James A Holstein (eds), *Handbook of Interview Research* (Sage, 2001) 675, 680.

100 Michael D Myers and Michael Newman, ‘The qualitative interview in IS research: Examining the craft’ (2007) 17(1) *Information and organization* 2, 4.

101 Charmaz, above n 99, 679.

102 D S Anderson, J S Western and P R Boreham, ‘Law and the Making of Legal Practitioners’ in Roman Tomasic (ed), *Understanding Lawyers* (1978) 181; Margaret Hetherington, ‘Lawyers in the Community — Report on Research in Progress by the Victoria Law Foundation’ in Roman Tomasic (ed), *Understanding Lawyers — Perspectives on the Legal Profession in Australia* (Law Foundation of N.S.W. and George Allen & Unwin, 1978) 319; Roman Tomasic, ‘Social Organisation Amongst Australian Lawyers’ (1983) 19(3) *Journal of Sociology* 447; John Goldring, ‘Appendix 4 — An Updated Profile of Students Entering Law Courses’ in Pearce Report, above n 81, vol 3, 1; John Goldring and Sumitra Vignaendra, *A social profile of new law students: in the Australian Capital Territory, New South Wales and Victoria* (1997); David Weisbrot, ‘Recent Statistical Trends in Australian Legal Education’ (1990) 2 *Legal Education Review* 219.

103 Bourdieu, above n 28, 241.

104 Bourdieu and Passeron, n 35.

105 David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990).

106 Tomasic, *Social Organisation*, above n 102, 447.

‘client types’, and practice ‘cultures’ that tend to cluster together.¹⁰⁷ Lawyers involved in certain types of legal work were more likely to adopt one or the other ‘value orientation’.¹⁰⁸ Those value orientations: ‘cynical realism’, ‘laissez-faire’, and ‘*Gemeinschaft*’, emphasise commercialism, professional autonomy, and protection of professional community.¹⁰⁹ Overseas scholars made similar findings regarding social stratification and trajectories in the profession (eg Jewel¹¹⁰ and Kay and Hagan).¹¹¹ Given Tomasic’s findings about ‘consistently clear’ patterns of educational and family backgrounds of lawyers within certain practice areas,¹¹² and the interviewees’ profiles, PLT practitioners in PLT practice might represent an emergent trajectory, further challenging ‘the frequently articulated myth of a homogenous legal profession’.¹¹³

C Interviewees’ Attributes

The interviewees were a diverse group. There were near-equal affiliations to university-based and non-university-based PLT providers.¹¹⁴ The proportion of females to males was 1.4:1.¹¹⁵ Post-admission practice experience (PAE) ranged from 0–30+ years (median = 20 years).¹¹⁶ Median PLT teaching experience was 8 years, with a range of 2–30+ years.¹¹⁷ Interviewees were in *clinical practitioner*, *lecturer*, *senior lecturer*, and *leadership* roles.¹¹⁸ The majority of interviewees indicated an interest in pursuing scholarly activity connected with their teaching work, with about half of these self-assessing as *capable* of doing so (several were interested in research training). The majority of interviewees indicated their employer gave symbolic support for SoTL, however interviewees overwhelmingly identified *time* as insufficiently allocated to SoTL, followed by *funding*, then *personnel* (assistance and advice). Few interviewees were *resistant* or *ambivalent* about engaging with SoTL.

107 Ibid.

108 Ibid.

109 Ibid.

110 Lucille A Jewel, ‘Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy’ (2008) 56 *Buffalo Law Review* 1155.

111 Fiona M Kay and John Hagan, ‘Raising the bar: the gender stratification of law-firm capital’ (1998) 63(5) *American Sociological Review* 728.

112 Roman Tomasic, *Social Organisation*, above n 102.

113 Ibid.

114 For example, the Leo Cussen Institute and the College of Law Australia and New Zealand are non-university PLT providers, whereas the Australian National University, Bond University, Newcastle University, Queensland University of Technology, and the University of Technology, Sydney, offer PLT extensions to their law degree courses. Arguably, university-based providers operate within an academic research culture under higher education regulation and funding arrangements, whereas non-university-based providers do not. For example, Chapter 2 of the *Higher Education Standards Framework (Threshold Standards) 2011* made under subsection 58(1) *Tertiary Education Quality and Standards Agency Act 2011* (Cth) distinguishes ‘Australian University’ from other higher education providers. A ‘university’ ‘self-accredits and delivers undergraduate and postgraduate courses of study that meet the Qualification Standards across a range of broad fields of study (including Masters Degrees (Research) and Doctoral Degrees (Research) in at least three of the broad fields of study it offers) ... is authorised for at least the last five years to self-accredit at least 85 per cent of its total courses of study, including Masters Degrees (Research) and Doctoral Degrees (Research) in at least three of the broad fields of study ... undertakes research that leads to the creation of new knowledge and original creative endeavour at least in those broad fields of study in which Masters Degrees (Research) and Doctoral Degrees (Research) are offered.’

115 Maxwell and Pastellas, above n 5.

116 Anecdotally, different PLT providers value PAE differently. Some value lengthy PAE as creditable evidence of ‘know-how’. Others value less PAE, preferring practitioners with memories of entry-level experiences and empathy for students’ experiences. In the context of Bourdieu’s theories about reproduction in culture, education and society, lengthy PAE might be construed as signifying entrenched dispositions.

117 There was a mix of ‘old hands’ with insider knowledge about PLT history and regulation, and newcomers in the formative stages of PLT practice.

118 Some ‘clinical practitioners’ reported being expressly discouraged from engaging in research. Some practitioners described themselves as ‘academics’, but most did not. Almost all interviewees identified as lawyers first, regardless of their teaching role.

D Interviewees' Trajectories to PLT Practice

In context of trajectories, I asked interviewees how they came to PLT practice. Figure 2 displays a cluster analysis of responses of word similarity between themes.¹¹⁹ Theme names are indicative paraphrases of interviewee statements. Themes with the highest correlation coefficient are paired and themes with lower correlation coefficients appear further apart. Themes with the highest number of correlations appear to the right of the figure and those with lower correlations appear towards the left of the figure.

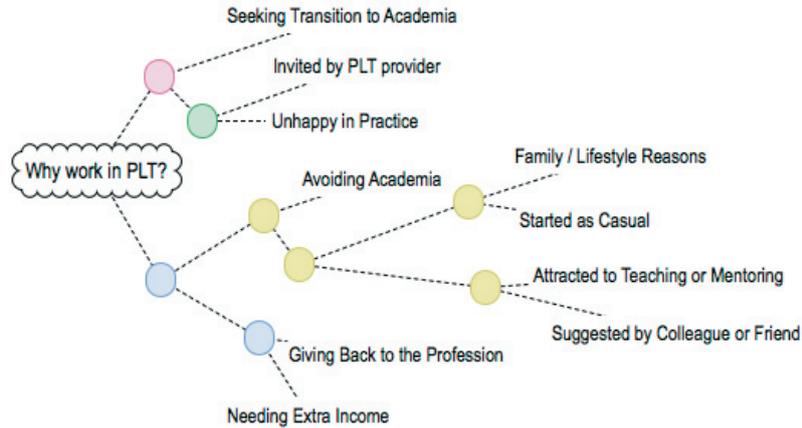


Figure 2: Cluster Analysis — Trajectory To PLT Practice Themes

The cluster with most sources includes themes of leaving legal practice to work in PLT for *family or lifestyle reasons*, *started as a casual teacher*, being expressly *attracted to teaching or mentoring*, or being *suggested by a colleague or friend*. These themes often overlapped (eg A friend suggested teaching because, ‘you like teaching / you’d like that / you’d be good at that’). The connection between *family/lifestyle reasons* and *started as a casual* was linked to comments by practitioners with young families seeking flexible arrangements. This is consistent with Pastellas and Maxwell’s observations in 2004.¹²⁰ Interviewees attracted to teaching clustered closer to *avoiding academia* than *seeking a transition to academia*. Three interviewees were *unhappy in practice*, citing an ethical crisis (‘I had to get out’), office culture issues, or inability to detach from a specific practice area (‘I was stuck with doing ...’). Anecdotally, PLT practitioners are sometimes described as *refugees from practice*, but I contend that this is overly simplistic.¹²¹ For example, being *attracted to teaching or mentoring* was much more prevalent than *unhappy in practice*. An attraction to teaching (not academia), and lifestyle considerations, were most prevalent in interviewees’ trajectories to PLT. Arguably, the monothematic *refugee from practice* trope obscures complex forces in play.

119 Figure 2 represents a cluster analysis using Jaccard’s coefficient: Paul Jaccard, ‘The Distribution of the Flora in the Alpine Zone’ (1912) 11(2) *New phytologist* 37. See also QSR NVivo, How are Cluster Analysis Diagrams Generated <http://help-nv10.qsrinternational.com/desktop/deep_concepts/how_are_cluster_analysis_diagrams_generated_.htm>.

120 Maxwell and Pastellas, above n 115.

121 A small number of interviewees (5) maintained part-time professional practice.

E Interviewees' Attraction to Teaching

Interviewees were prompted to discuss their attraction to teaching. Figure 3 displays themes clustered by similarity:

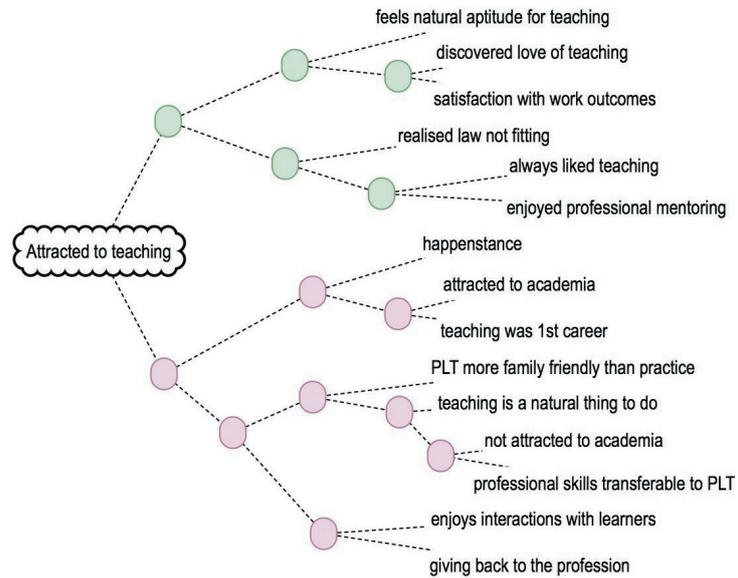


Figure 3: Cluster Analysis — Attraction To Teaching Themes

Here, themes clustered to two parent branches. The uppermost parent discloses intrinsic/subjective themes (*feel, love, liked, enjoyed*). The other parent includes extrinsic/objectifying themes (*teaching was/is, PLT [is] more ...*). Generally, interviewees used affective terms in describing attraction to teaching before, or *discovered* after, starting PLT practice. Further, interviewees distinguished affect from rationalism in responding to another question: *Is thinking like a lawyer different to thinking like a teacher?*

F Is Thinking Like a Lawyer Different from Thinking Like a Teacher?

Much legal education literature worries at teaching law students how to *think like a lawyer*.¹²² *Thinking like a teacher* seems under-represented. Searching Google Scholar for the phrase, *thinking like a lawyer* elicited more than 2,900 references and 80 relevantly titled articles in English. By comparison, a phrase search for *thinking like a teacher* elicited just over 300 references, with eight relevantly titled articles (Figure 4).¹²³

122 For a recent example see Bridgette Dunlap, 'Anyone Can "Think Like a Lawyer": How the Lawyers' Monopoly on Legal Understanding Undermines Democracy and the Rule of Law in the United States' (2014) 82(6) *Fordham Law Review* 2817.

123 Searches performed 21 May 2014.



Figure 4: Screenshots — Google Scholar Search Results

In examining ‘thinking styles’ and law student well-being, O’Brien et al observed:

There has been a great deal of discussion about what it means to think like a lawyer. For some, thinking like a lawyer requires a ‘complex understanding of the moral dimensions of experience’. To others, it is the ‘ability to think precisely, to analyse coldly, to work within a body of materials that is given, to see, and see only, and manipulate, the machinery of law’. Welch Wegner describes the concept as aggregating ‘the process of reasoning, the nature of the law, and the role of lawyers’. It has been described as a ‘crucial focal point of professional identity’.¹²⁴

Here, lawyerly professional identity is linked to a thinking style involving *complexity, morality, precision, coldness, detachment, manipulation, mechanism, and rationality*. Such qualities are associated with potential detriments in lawyers’ and law students’ well-being.¹²⁵

Lowenstein and Brill observe many ‘have written about learning to think ... like a lawyer’, but there is ‘some debate about a similar purpose in educating teachers’.¹²⁶ Lowenstein and Brill conceptualise *thinking like a teacher* as involving reflective practice, envisaging classrooms as ‘places for thinking’, ‘knowing students ... curriculum ... the purpose of education’, with critical reflection ‘as a foundation for trust’.¹²⁷ It is a ‘democratic trust between teachers and students’, necessary for an ‘emotional climate’ in which change, and the risk of failure, is valued.¹²⁸

These conceptualisations of *thinking like a lawyer* and *thinking like a teacher* are different. Did interviewees conceptualise these thinking styles in similar ways? Of all questions asked during interviews, *Is thinking like a lawyer different to thinking like a teacher?* gave interviewees most pause. Responses were often preceded by a long pause and/or an exclamation (eg ‘Oh! What a difficult/interesting/strange question!’). For simplicity, I group responses as *Yes* (it is

124 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 (footnotes removed).

125 O’Brien et al, *ibid*; Martin E P Seligman, Paul R Verkuil and Terry H Kang, ‘Why Lawyers are Unhappy’ (2005) 10(1) *Deakin Law Review* 49; 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); Massimiliano Tani and Prue Vines, ‘Law Students’ Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?’ (2009) 19(1) *Legal Education Review* 3.

126 Karen L Lowenstein and Andra Brill, ‘A Culture of Thinking Like a Teacher: The Role of Critical Reflection in Teacher Preparation’ (2010) 5(2) *Journal of the National Association for Alternative Certification* 9.

127 *Ibid*.

128 *Ibid*.

different), *No* (it is not, or should not, be different), and *Yes & No* (there are similarities and differences). Figures 5–8 visualise cluster analyses of the responses.

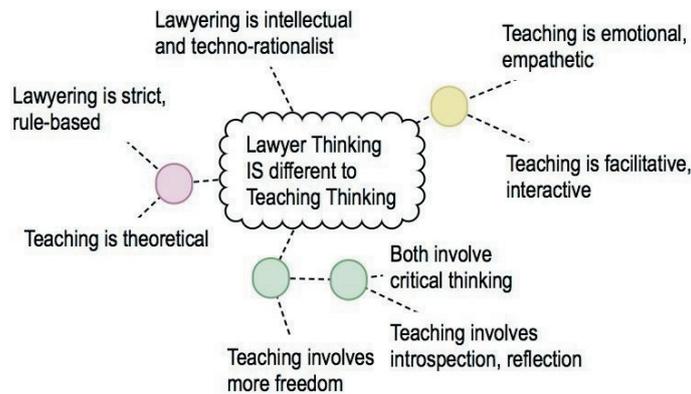


Figure 5: Cluster Analysis — Lawyer and Teacher Thinking IS Different

Figure 5 (*Yes* cluster) shows *teaching is emotional, empathetic* and *teaching is facilitative, interactive* were prevalent themes, followed by *lawyering is intellectual and techno-rationalist*. Several interviewees indicated both thinking styles involved *critical thinking*. This clustered close to *teaching involves introspection, reflection*, and *teaching involves more freedom* (than lawyering). While both thinking styles involved critical thinking, teacher thinking clustered to *theoretical, freedom, introspection* and *reflection*, whereas lawyer thinking is *strict, rule-based*, consistent with the literature cited above. Some themes clustered around *Yes & No* responses (Figure 6):

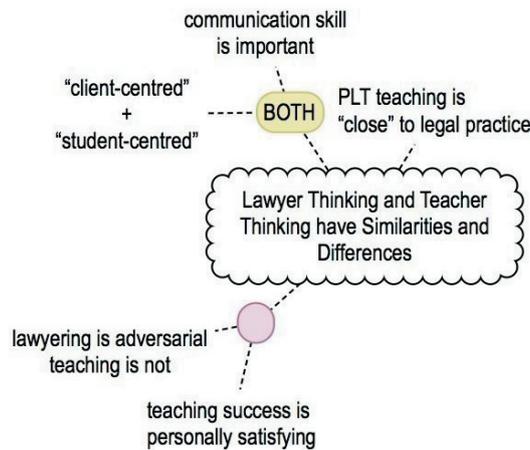


Figure 6: Cluster Analysis — Similarities and Differences in Thinking

Similarities and differences included *communication* skills, and *client-centred* and *student-centred* approaches to practice. Discussions about PLT teaching as *close to practice* alluded to the importance of thinking like a lawyer, and challenges in synthesising thinking styles. I contend this challenge relates to the *dual professionalism* of PLT practitioners as lawyers and educators. Interviewees identified lawyer thinking as *adversarial*, and some identified teaching successes as more *personally satisfying* than lawyering successes. The *Yes* and *Yes & No* clusters shared correlations with other themes (Figure 7):

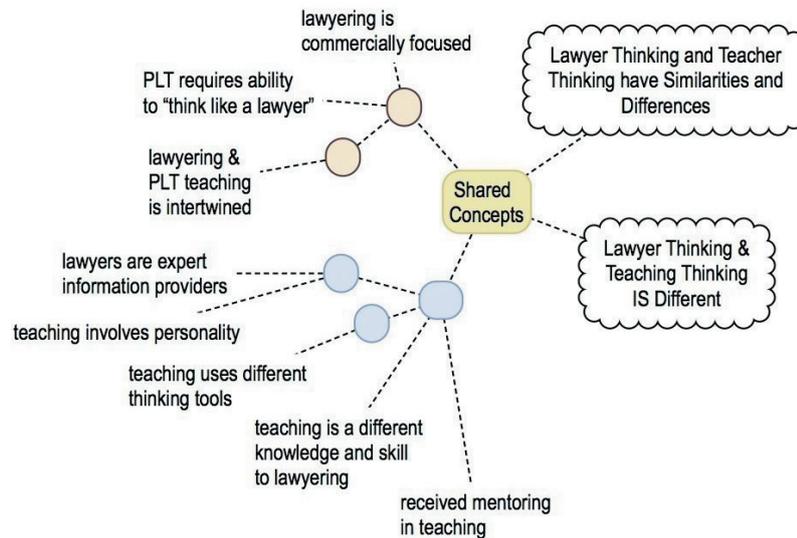


Figure 7: Cluster Analysis — Shared Concepts About Thinking

Although these themes were less prevalent, they warrant attention. Interviewees who described being mentored in teaching skills clustered to *teaching is a different skill and knowledge to lawyering* and *teaching uses different thinking tools*. One interviewee’s account of developing understanding about teaching, ‘You don’t know what you don’t know’, recalled the much-cited ‘Dunning-Kruger effect’.¹²⁹ One cluster of themes, *lawyering is commercially focused*, *PLT requires ability to think like a lawyer*, and *lawyering and PLT teaching are intertwined*, recalls the double professionalism mentioned above, and evoke a pragmatic approach to bridging professional practice and PLT teaching work. The theme, *teaching involves personality*, implies that lawyering does not! The least prevalent concepts clustered to the *No* theme (Figure 8):

129 Justin Kruger and David Dunning, ‘Unskilled and Unaware of It: How Difficulties In Recognizing One’s Own Incompetence Lead to Inflated Self-Assessments’ (1999) 77(6) *Journal of Personality and Social Psychology* 1121.

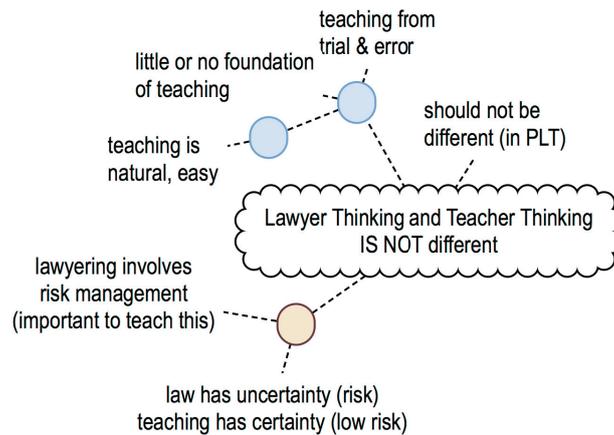


Figure 8: Cluster Analysis — Lawyer and Teacher Thinking Is NOT Different

Two interviewees expressly stated that there was no difference in thinking style, or ‘ought not to be’. One focused on *risk*, and the other on *teaching is natural, easy*. *Risk* arose from the interviewee’s concern about students’ readiness for *real life*, and seemed to pervade the interviewee’s thinking. The other interviewee contended that *teaching is natural*, one has ‘either got it or not’, and theory of teaching was ‘useless’. Conceptually, the two interviewees adopted a purely experiential, *practice is the pedagogy*, approach.

Many interviewees identified distinct differences between *thinking like a lawyer* and *thinking like a teacher*. Challenges facing interviewees included knowledge gaps about teaching and learning, and ways to synthesise thinking styles in PLT practice. Shared themes emerged from interviewees’ responses. There were, however, multi-vocal and multi-perspectival qualities in this dimension, resistant to a monothematic nominalisation of PLT.

V CONCLUSIONS: SOLDIERS, DOUBLE AGENTS AND SOTL

I have argued that *nomination* of PLT as a *vocationalist strategy* operates to enclose PLT as a non-academic and critique-free field. I identified historical struggles between dominant players — judicial, professional, and academic — with an interest in maintaining this enclosure. I’ve adopted *soldiers* and *double agents* as metaphors to dramatise a point argued here about heteronomy and autonomy in PLT. If PLT is a vocationalist strategy, then arguably PLT practitioners are soldiers deployed to achieve strategic aims: ‘training students ... for perceived needs of employers’.¹³⁰ It is a strategy to which an *industrialised* approach to legal education might be, or is, adopted.¹³¹ Certainly some interviewees spoke of ‘top-down’, ‘bottom-up’ pressures in which PLT practitioners feel pressure from the *top* (PLT practitioners’ and students’ employers) and the *bottom* (students) to expedite PLT to increase completion rates and to avoid prolonging PLT so students are available to work as quickly as possible.

However, the enclosure of PLT by its nomination as a vocationalist strategy does not completely succeed, partly because PLT practitioners operate with *double-agency*. This *double-agency* is resident in individuals forging a still-emergent trajectory as PLT practitioner, embodying a dual professionalism as *lawyer* and *educator*, striving to synthesise *thinking like a lawyer* and *thinking like a teacher*. From a sociological perspective, preliminary indications are that PLT practitioners might share a collective *habitus*, drawing on dispositions inculcated via familial, educational, and professional backgrounds that diverge from others. For many, their dispositions gravitated them towards teaching. Many interviewees were the first lawyer in their family — indeed the first university-educated member. The challenges faced to succeed in what has long been regarded as an elite profession implies intellectual resilience and

130 James, above n 4.

131 Otto Peters, ‘Distance education and industrial production: a comparative interpretation in outline’ in D Stewart, D Keegan and B Holmberg (eds), *Distance Education: International Perspectives* (Croom Helm, 1983) 95.

resourcefulness. Resourcefulness underlies a clever tactical turn — the move to PLT practice exploits embodied cultural capital in *being a lawyer*, amplifying the symbolic power of taken for granted professional skills, by transfer to PLT practice. The *cost* of transfer is loss of status when PLT is treated as *low status* in comparison with other practice areas such as academic research, professional areas such as litigation or business law, or the Bar.¹³² The cost appears to be offset by the opportunity to *have a personality*, be *facilitative*, *interactive*, and *empathetic*, and to enjoy *teaching successes*. Overwhelmingly, interviewees cared about their students, and their PLT practice.

Teaching success connects double-agency in other ways. Some interviewees appropriated PLT towards facilitating social justice, diversity, and equality of opportunity in the legal profession. They described instances of autonomy, diverting attention and resources to students needing extra support. In this context, SoTL was connected to notions of social justice, with interviewees' interest in SoTL heightened by teaching and learning problems that *pro forma* approaches failed to resolve. Those instances motivated individuals to learn more about how *learning is made possible* and sometimes confronting the *doxa*.

Many interviewees were interested to engage with SoTL, but need support to do so, particularly training to improve teaching knowledge and research capabilities and resources such as time, funding, and personnel. Several described questions or problems they would pursue given opportunity and support. Some described a double bind in which PLT teaching was perceived to be low status. SoTL could raise the status of PLT, but interviewees perceived SoTL lacks support and status too. To counter this, we could re-imagine PLT practice as a teaching-research space of discovery and synthesis.¹³³ In that space, and with support, PLT *double agents* can synthesise, through practice research, intellectual domains of rigour, know-what, and external validity, with vocational domains of relevance, know-how and internal validity.¹³⁴ Imagine PLT as more than a vocationalist strategy aimed at satisfying employers. Re-imagine PLT practitioners as canny double agents operating in a multi-vocal, multi-perspectival field of practice, engaged in SoTL, scrutinising *professional practice*, and *teaching and learning in practice*.

It is not usual to apply the statistical concept of *limitations* to qualitative research; however, it is acknowledged that this is a relatively small study and that a more extensive study would provide opportunities to tease out further insights and to explore their nuances more thoroughly. This article does highlight how using sociological and theoretical theories to study individual and extra-individual dimensions of PLT practitioners' engagement with SoTL not only problematises the notion of PLT as a *vocationalist strategy*, but generates manifold potential lines of inquiry concerning PLT practitioners and teaching and learning in PLT.

132 As mentioned previously, the Johnstone Report quoted legal academics' descriptions of PLT as 'dumbing down' legal education. In the present study, some university-based interviewees described how teaching-only PLT practitioners did not enjoy prestige and advancements accruing to doctrinal or discipline-specific researchers (one interviewee described academics' perceptions of PLT practitioners as 'mavericks'). Bibliometric analysis (the author, doctoral thesis, forthcoming) of Australian legal education literature concerning PLT demonstrates that it lacks visibility and influence due to low citation counts and the lack of rankings for legal education journals.

133 Garnett J Smith et al, 'Pasteur's Quadrant as the Bridge Linking Rigor With Relevance' (2013) 79(2) *Exceptional Children* 147; Donald E Stokes, *Pasteur's quadrant: Basic science and technological innovation* (Brookings Institution Press, 1997); Michael Tushman and Charles O'Reilly, 'Research and relevance: Implications of Pasteur's quadrant for doctoral programs and faculty development' (2007) 50(4) *Academy of Management Journal* 769; Robert M Mason, 'Not Either/Or: Research in Pasteur's Quadrant' (2001) 6(1) *Communications of the Association for Information Systems* 16.

134 Stokes (1997) above n 133.