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LAW JOURNALS: FROM DISCOURSE TO PEDAGOGY

ILJA VICKOVICH*

I INTRODUCTION

Law journals¹ are a seemingly perennial feature of the university law school landscape in common law jurisdictions. To an uninformed observer, they may appear as benign manifestations of university life and as refined vehicles for academic debate about theory and policy. This image belies the fact that they have been the subject, especially in the United States, of highly polemical and often vociferous battles about their worth and proper role. A large amount of literature has been published in American law journals about the journals themselves. The academic literature on Australian law journals, by contrast, has to date been relatively undeveloped.² Law journals in Australia and the United Kingdom have attracted little attention and have tended to escape the prolonged controversies surrounding their publication in the United States.³ Whereas American attention has focused to a significant degree

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¹ The term 'law journals' used here is generally coterminous with 'law reviews' as used more frequently in the United States. Although most readers of law journals will understand what is meant by the term, it is instructive that the definition of a law journal seems to be at least partly dictated by the jurisdiction in which it is published. For instance, *Black's Law Dictionary* defines it as '[a] periodic publication of most law schools containing lead articles on topical subjects by law professors, judges or attorneys, and case summaries by law review member-students'. This American definition restricts the journal to university faculties and pre-empts its contents and structure. A more inclusive definition recognises that '[t]oday, a law review is more properly defined as a periodic publication which may be general in scope or may focus on a particular area of the law, edited by students, and which may contain lead articles, essays, and book reviews as well as student written articles and case summaries.': Michael L Closen and Robert J Dzielak, 'The History and Influence of the Law Review Institution' (1996-97) 30 *Akron Law Review* 15, 17.

² See Michael Kirby, 'Welcome to Law Reviews' (2002) 26 *Melbourne University Law Review* 1; John Gava, 'Law Reviews: Good for Judges, Bad for Law Schools?' (2002) 26 *Melbourne University Law Review* 560. Note that John Gava, 'Commentary' (1999) 73 *Australian Law Journal* 597 was published as a comment on Fred Rodell, 'Goodbye to Law Reviews' (1936) 23 *Virginia Law Review* 38 and included some observations on Australian law journals. Note also the articles concerning citation analysis of Australian law journals: Ian Ramsay and G P Stapledon, 'A Citation Analysis of Australian Law Journals' (1997) 21 *Melbourne University Law Review* 676; Ian Ramsay and G P Stapledon, 'The Influence of Commercial Law Journals: Citation Analysis' (1998) 26 *Australian Business Law Review* 298.

³ Law journals in Australia are published as either generalist or specialist journals and may be produced totally by law schools or business schools, either solely or in partnership with internal or external research centres, or by professional, industry and

on student involvement, the maintenance of standards, and peer review, the focus on our law journals has primarily been on their real or imagined benefits for academics and law schools.⁴ However, it appears that little has been written about their pedagogical value and the role they can play in the education of law students.

There is no doubt that the immediate *function* of a law journal is to publish the research output of academics and researchers. However, this article argues that the principal *benefit* of law journals is educative, and that this has been undervalued in the discourse to date. Student work on the production and publication of law journals, directed to specific pedagogical ends, is capable of providing tangible benefits as a learning tool, an investment in the intellectual future of law schools and a transition to workplaces of vital interest to the law in the broadest sense. If appreciated as a form of pedagogy, as well as a vehicle for research, scholarly journals create opportunities for achieving a wide range of important learning and teaching objectives for law.

The educational benefits to students of law journals work should prompt law schools to learn from the discourse and focus on law journal pedagogy. Of course, its focus is on journals associated with university law schools and faculties rather than research centres and other institutions. The argument will be presented in three parts, beginning with an overview of the primary discourse to date about law journals in the United States, the United Kingdom and Australia. This will demonstrate that the discourse in the US has been derailed by the question of what students have done to the journals rather than on what the journals can do for them. In the UK and Australia, most of the literature has focused on what the journals can do for judges and academics. The article will then posit a model for a unit of undergraduate study centred on the publication of law journals that maintains their central function and overcomes the weaknesses of exclusive student editorship. It will in the final part outline the pedagogical benefits of such a unit of study, addressing the Threshold Learning Outcomes for Law, capstone possibilities and transition to work through experiential learning.

II LAW JOURNALS DISCOURSE

An ongoing debate about law journals has been engaged in by academics in the English-speaking common law world for most of the twentieth century. However, this debate has been singularly pronounced in the US which, for a variety of uniquely historical reasons, has

research bodies. They are variously run by faculty staff or student editorial teams (or a combination of both), or by editorial boards of the respective research organisations. For a relatively comprehensive list of law journals in Australia, refer to the 'Law Journals' link on the website of the Australian Legal Information Institute at <<http://www.austlii.edu.au/au/journals/>>. See also the list of law journals in the Appendix to Michael Kirby, above n 2. In addition, professional bodies such as state law societies and bar associations publish a variety of journals and bulletins aimed mainly at their professional memberships.

⁴ See Kirby, above n 2, and the response to him by John Gava (2002), above n 2, both of which will be discussed in greater detail in Part II below.

developed a law review culture centred on the primacy of unsupervised student editorship. The students rarely, if at all, seek the advice of experts in article selection and have been regarded as exercising a heavy-handed approach to technical and substantive editing.

A Law Reviews in the United States

In 1936 Professor Fred Rodell of Yale University famously declared he no longer wished to contribute to law reviews, which had become ‘quantitatively mushroom-like’ and ‘qualitatively moribund’.⁵ Venting his frustration with the state of American law reviews in particular, Rodell forged an unforgettable place in law journal folklore with the following censure:

There are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground ... [I]t is in the law reviews that a pennyworth of content is most frequently concealed beneath a pound of so-called style.⁶

For Rodell, verbose and pretentious expression, timidity of ideas, obsequiousness to precedent and lack of interest in reform had made the law reviews redundant. However, in the same edition of the *Virginia Law Review*, Garrard Glenn warned that journals which ‘discard all traditions’ and eschew civility between academics would not last long.⁷ On the other hand, David F Cavers presented a more conciliatory perspective, emphasising that the reviews were ‘an integral part of the American system of legal education’,⁸ with student editorship benefiting the profession as a whole:

[I]t is from this group that the law teachers of today and those other members of the profession given to law review writing are recruited. They who have served their apprenticeship as student editors continue to write notes and comments. These are now expanded to more formidable dimensions ...⁹

These quotes bear witness to the diversity of views in the abundant literature on law reviews in US jurisprudence. American law journals, characterised by commentary and opinion about judicial decisions, emerged in the mid-nineteenth century.¹⁰ Originally, students were

⁵ Fred Rodell, ‘Goodbye to Law Reviews’ (1936-37) 23 *Virginia Law Review* 38, 38 (reprinted in (1999) 73 *Australian Law Journal* 593).

⁶ *Ibid.*

⁷ Garrard Glenn, ‘Law Reviews: Notes of an Antediluvian’ (1936-37) 23 *Virginia Law Review* 38, 47.

⁸ David F Cavers, ‘New Fields for the Legal Periodical’ (1936-37) 23 *Virginia Law Review* 1, 1.

⁹ *Ibid.* 4.

¹⁰ It was not until the 1870s that the first student-run journals emerged, starting with the *Albany Law School Journal* in the state of New York, and followed by similar publications at the Harvard and Columbia law faculties: Closen and Dzielak, above n 1, 34. These provided the template not only for many US reviews, but also the *Cambridge Law Journal* in England in 1921 and Australian law journals that emerged following the Second World War: Closen and Dzielak, above n 1, 41. The authors claim that the *University of Tasmania Law Review* in 1958 and the *Melbourne University Law Review* in 1960 were directly modelled on American lines, and that the *Monash University Law*

recruited essentially to provide doctrinal fodder and commentary for the bench through the journals, which were ‘aimed at use by the thinking practising attorney’ whose practical needs were not being met by the formal treatise.¹¹ The primary aim of the law review was

to serve judges and practising lawyers, rather than the professors, by offering careful doctrinal analysis, noting, for example, divergent lines of authority and trying to reconcile them.¹²

Over time, the journals developed into vehicles for a wide array of general and specialised legal topics and themes, ranging from the narrowly doctrinal to the vastly cross-disciplinary. From the 1930s New Deal period onward, they increasingly incorporated critical perspectives on the law and law reform. Benjamin Cardozo, an Associate Justice of the US Supreme Court during the New Deal era and an apparently keen user of law review ideas and arguments, relished the notion that the judges were inevitably passing the baton of legal thought to the professors and that ‘academic scholarship [was] charting the line of development and progress in the untrodden regions of the law’.¹³ By the end of the Second World War, the training of US lawyers was almost totally in the hands of a new wave of university law schools, with many of their law reviews increasingly becoming vehicles for law reform. There has been ongoing debate about the role of the reviews, with growing recent criticisms aimed at getting the reviews ‘back to basics’.¹⁴

It is true that the pedagogical benefits of law journals have been acknowledged by many observers and commentators. Earl Warren, Chief Justice of the United States, expressed in 1953 the view that legal education is probably their primary end:

The American law review properly has been called the most remarkable institution of the law school world. To a lawyer, its articles and comments may be indispensable professional tools. To a judge, whose decisions provide grist for the law review mill, the review may be both a severe critic and a helpful guide. But perhaps most important, the review affords invaluable training to the students who participate in its writing and editing.¹⁵

Review specifically referred in its first issue to the US tradition of all law schools having law reviews under student editorship: Closen and Dzielak, above n 1, 42.

¹¹ Cavers, above n 8, 4-5.

¹² Richard A Posner ‘Against the Law Reviews’ <http://www.legalaffairs.org/issues/November-December-2004/review_posner_novdec04.msp>.

¹³ Benjamin N Cardozo, ‘Introduction’, *Selected Readings in the Law of Contracts from American and English Periodicals* (Macmillan, 1931) vii, ix.

¹⁴ For example, Harry Edwards, a circuit judge of the US Court of Appeals for the District of Columbia Circuit, expressed concern in 1992 that much law review literature is ‘impractical’ scholarship with ‘theory wholly divorced from cases’: Harry T Edwards, ‘The Growing Disjunction between Legal Education and the Legal Profession’ (1992-93) 91 *Michigan Law Review* 34, 46. Similarly, James Lindgren of the University of Texas Law School notes that what is reflected in many law journals is symptomatic of the fact that ‘some judges feel a bit left out by the law faculties becoming more theoretical, more trendy, and less doctrinal.’: James Lindgren, ‘Reforming the American Law Review’ (1994-95) 47 *Stanford Law Review* 1123, 1125.

¹⁵ Earl Warren, ‘Message of Greeting to the UCLA Law Review’ (1953) 1 *UCLA Law Review* 1, 1.

Similarly, Closen and Dzielak point out that ‘an important aspect of the law reviews is their function of training future lawyers, judges, and the law professors ... This practical aspect of law review membership exposes students to the legal profession before graduation’.¹⁶ However, there has been little attention paid in the US – and none in Australia – to the precise nature and extent of the pedagogical benefits.

The learning and teaching aspects of law journals have largely been sidelined in the American debate, which has paradoxically been characterised by widespread disappointment with student editorship.¹⁷ The single most prevalent and vexed issue in the US commentary on law journals, unresolved over the preceding century, has been the virtually exclusive and unsupervised editorship of students and the concomitant lack of academic peer review. The criticism, a constant over many decades, has come mostly from academics.¹⁸ James Lindgren of Chicago-Kent College of Law went so far as to promulgate in 1994 an ‘author’s manifesto’ because ‘our scholarly journals are in the hands of incompetents’ who

often select articles without knowing the subject, without knowing the scholarly literature, without understanding what the manuscript says, without consulting expert referees, and without doing blind reads. Then they try to rewrite every sentence.¹⁹

Such views have characterised the debate in recent times. Lindgren later identified three fundamental problems with law reviews – prose editing, article selection, and education and supervision²⁰ – and posited four models for improving law reviews, focusing on ‘an educational approach to the problem of competence’ by which students could

¹⁶ Closen and Dzielak, above n 1, 24.

¹⁷ Two short anecdotes, several decades apart, may serve to illustrate the problem. In 1911 Justice Oliver Wendell Holmes of the US Supreme Court is said to have admonished an attorney who cited a law review article, which he saw as the ‘work of boys’. Holmes also ‘thought the limit had been reached when what he had said in his judicial opinions was approved by the students as being “a correct statement of the law”’. Over forty years later, the renowned theorist H L A Hart withdrew an article from the *Harvard Law Review* after it was substantially rewritten by a student editor who had attempted to improve the piece. It was finally published, after editorial board intervention and prolonged negotiations, under the title ‘Positivism and the Separation of Law and Morals’.

¹⁸ Typical of these numerous complaints are the following: Harold Havighurst of Northwestern University in 1956 pointed out that law reviews were not cited in the Supreme Court nearly as much as the treatises and legal encyclopedias, and that, ‘whereas most periodicals are published primarily in order that they may be read, the law reviews are published primarily in order that they may be written.’: Harold C Havighurst, ‘Law Reviews and Legal Education’ (1956) 51 *Northwestern Law Review* 22, 23. Thirty years later, Roger Cramton of Cornell University declared that the law review institution had been undermined by the evolution of the law, which had become ‘too complex and specialized’, and modern legal scholarship, which was ‘too theoretical and interdisciplinary’ for student editors to handle: Roger C Cramton, ‘The Most Remarkable Institution’: The American Law Review’ (1986) 35 *Journal of Legal Education* 1, 5.

¹⁹ James Lindgren, ‘An Author’s Manifesto’ (1994) 61(2) *University of Chicago Law Review* 527, 527.

²⁰ Lindgren, above n 14, 1124.

overcome the grievances of academics.²¹ More recently, Ross P Buckley proposed a solution to the seemingly intractable problem of US law reviews based on practice in the UK and Australia: ‘If one or two such journals were to announce they were now faculty-edited and credible submissions would be peer-reviewed ... then others would likely follow.’²² In 2009, John Doyle of the Washington and Lee University School of Law confirmed the perennial problems and wondered whether ‘some other system is capable of replacing the one we know as we move further into an online information world.’²³

There have also been efforts to better understand the contentious image of the reviews and to find a solution to the impasse. In 2007, a Minnesota study of law review article selection concluded that, despite frequent lack of merit, ‘author credentials, topics, and other factors like format, timing, and thoroughness influenced student editors as they made publication decisions.’²⁴ This underscored the strong perception that the time for mandatory peer review had finally arrived. Changes in publishing technologies also have tended to add a further element of uncertainty about the future of the law review. Much of the recent discussion, therefore, has focused on mandating peer review, instilling academic supervision, introducing codes of conduct for editors and fostering open access in the internet age.²⁵

²¹ Ibid 1129. By contrast, Richard A Posner, Chief Judge of the US Court of Appeals and a University of Chicago academic, suggested ‘law reviews adopt a presumption in favor of the publication of doctrinal scholarship in both the faculty-written and the student-written sections of the reviews’, which students could manage, and to consider seeking expert peer review for interdisciplinary or ‘non-doctrinal’ scholarship: Richard A Posner, ‘The Future of the Student-Edited Law Review’ (1995) 47 *Stanford Law Review* 1123, 1136.

²² Ross P Buckley, ‘It’s Time to Stop the Blind Leading the Sighted: A Proposal to Improve the Editing of US Law Reviews’ (2007) 27 *University of New South Wales Faculty of Law Research Series* 1, 8.

²³ Doyle argued ‘the standard law review criticisms have been of excessive article length, an overabundance of footnotes, a lack of publication speed, an overly theoretical emphasis, overediting by students, and a lack of student knowledge sufficient to select and edit articles ... But while law reviews have frequently been berated, little has changed ...’: John Doyle, ‘The Law Reviews: Do their Paths of Glory Lead but to the Grave?’ (2009) 10(1) *Journal of Appellate Practice and Process* 179, 180.

²⁴ Leah M Christensen and Julie A Oseid, ‘Navigating the Law Review Article Selection Process: An Empirical Study of Those with All the Power – Student Editors’ (2007-8) 59 *South Carolina Law Review* 175, 180.

²⁵ See eg Michael L. Closen and Robert M. Jarvis, ‘The National Conference of Law Reviews Model Code of Ethics: Final Text and Comments’ (1992) 75(3) *Marquette Law Review*, 509; Bernard J Hibbits, ‘Last Writes? Re-Assessing the Law Review in the Age of Cyberspace’, <<http://law.pitt.edu/archive/hibbits/archive/last.htm>>; 2008 Durham Statement on Open Access to Legal Scholarship, <<https://cyber.law.harvard.edu/publications/durhamstatement>>; John Willinsky, *The Access Principle: The Case for Open Access to Research and Scholarship* (MIT Press, 2006); Richard A Danner, Kelly Leong and Wayne V Millert, ‘The Durham Statement Two Years Later: Open Access in the Law School Journal Environment’ (2011-12) 103(1) *Law Library Journal*, 39.

B *Law Journals in the United Kingdom and Australia*

The body of literature concerning law journals in the United Kingdom and Australia has been far less prolific and heated although, again, relatively little attention has been paid to the benefits for students. The primary focus of the discourse has been the purpose of the journals and the role of academics in legal education. In the British case it seems also to have been characterised by two concerns: to extract a degree of unrequited respect for academics from the wider legal profession, and to introduce a critical aspect to legal literature.

In England, legal periodicals before the Victorian era were few and far between.²⁶ Vogenauer notes that '[i]n standard accounts of legal history, law reviews are barely mentioned'.²⁷ There was little interest for them, since there were already collections dealing with judicial decisions by professional court reporters, and there were occasional published collections of legislation. In the mid-nineteenth century a number of commercial periodicals publishing case notes, book reviews and occasional doctrinal issues of interest to lawyers began but mostly folded quickly.²⁸ Some publications aimed at facilitating legal training and study.²⁹ Of course, the writing of treatises and legal texts developed greatly in the final quarter of the nineteenth century, although these were again written mostly by and for legal practitioners rather than academics.³⁰ Students had no discernible role in the production of these journals.

This may not be surprising, since legal training was historically conducted by the inns-of-court, with law schools as such appearing only towards the close of the century.

With the study of law moving slowly to the universities, a new kind of law journal emerged on the English scene. The first law periodical that was devoted to legal commentary, critique and research in the modern sense was the Oxford-based *Law Quarterly Review* (LQR), which began in 1885 and belonged to a new era, being 'both a product of and a catalyst for the new profession of the legal academic.'³¹ The journal was seen by

²⁶ In 1827, the publisher of the first recognised law journal, *The Jurist*, lamented this fact: 'In a country which boasts of the richness and variety of its Periodical Literature ... it is somewhat singular that Jurisprudence, a science in itself so interesting, and in its application so closely connected with the well-being of society, should be absolutely without any regular organ of communication with the public. Such, however, is the case with respect to England.' (1827) 1 *The Jurist* iii.

²⁷ Stefan Vogenauer, 'Law Journals in Nineteenth-Century England' (2008) 12 *Edinburgh Law Review* 26, 28.

²⁸ These included *The Law Magazine and Quarterly Review of Jurisprudence* (1828), *The Law Review and Quarterly Journal of British and Foreign Jurisprudence* (1844), *The Law Amendment Journal* (1857) and others.

²⁹ These included *The Law Student's Magazine* (1844), *The Examination of Articled Clerks* (1851-56), *The Telegram* (1859-79), *The Legal Examiner* (1862-68), *The Bar Examination Journal* (1871-99), *The Law Students' Journal* (1878-1917) and others.

³⁰ This prompted American jurist Grant Gilmore to famously describe English legal textbooks as 'plumbers' manuals' for lawyers: Grant Gilmore, *Ages of American Law* (Yale University Press, 1977) 3.

³¹ Vogenauer, above n 27, 48. On the occasion of its jubilee celebration in 1935, Sir Frederick Pollock wrote that the journal was founded in order to supplement the legal literature of the period, which 'was still sadly lacking in instruments both of exposition

the 1930s as having inspired key American publications such as the *Harvard Law Review*, the *Yale Law Journal* and the *Columbia Law Review*.³² Pollock's jubilee encomium to the LQR did not refer to its educational role or to law students, other than to mention that developments such as the journal meant students had 'little to complain of in the materials of their professional outfit'.³³ Paradoxically, it was the adoption of the 'American model' in the early twentieth century that heralded the limited emergence of student editors, although under academic supervision.³⁴ By the time the *Modern Law Review* (MLR) was founded in 1937, its editor R S T Chorley declared it to be a vehicle principally for promoting law reform.³⁵ On the occasion of the MLR's fiftieth anniversary, Glasser explained that the journal was influenced by continental jurisprudence and aimed to put law faculties at the forefront of legal education so as to gain acceptance from a legal profession sceptical of civil law influences and politicised argumentation.³⁶ It is apparent here again that the primary focus of the literature was the role of law and the status of law academics, with the journals seen as a kind of testing ground for ideas about legal systems and the wider function of law.

Like the English experience, 'the history of law journals in Scotland remains largely unwritten'.³⁷ It has been noted there were attempts in the early nineteenth century to establish two journals, the *Law Chronicle* and the *Edinburgh Law Journal*, both of which were short-lived.³⁸ Further attempts later saw the emergence of the *Scottish Law Magazine*, the *Journal of Jurisprudence* and the *Poor Law Magazine*, all of which focused on legal issues for practising lawyers and suffered from lack of dedicated attention from 'professional men during the hurried intervals of

and of criticism.' Pollock declared the journal to have succeeded in its aim, which was '[f]ree discussion of current decisions [that] goes hand in hand with doctrinal and historical research and critical appreciation of legal literature without respect of persons and with as little editorial interference as may be': Frederick Pollock 'Our Jubilee' (1935) 51 *Law Quarterly Review* 5.

³² Pollock, above n 31, 10.

³³ Ibid 5.

³⁴ When the *Cambridge Law Journal* was commenced in 1921, with mostly student editors, it was seen as part of 'a marked legal renaissance throughout the civilized world' and 'the natural out-growth of ... broader conceptions of the place of the law and of the lawyer in national and international life': Harold D Hazeltine 'Foreword' (1921) 1 *Cambridge Law Journal* 1.

³⁵ Chorley wrote that 'English legal periodicals have hitherto dealt almost exclusively with the technical aspects of the law treated from such varying points of view as the historical, analytical, or descriptive. [This approach] ... isolates the law too much from those contemporary social conditions in which it must always operate, and cannot therefore be safely used as an exclusive method of legal thinking ...': Robert Chorley, 'Editorial Notes' (1937) 1 *Modern Law Review* 1.

³⁶ Cyril Glasser, 'Radicals and Refugees: The Foundation of the Modern Law Review and English Legal Scholarship' (1987) 50 *Modern Law Review* 688, 706.

³⁷ Reinhard Zimmermann, 'Law Journals in Nineteenth-Century Scotland' (2008) 12(1) *Edinburgh Law Review* 9, 9.

³⁸ Ibid 16. Zimmermann has attributed their failure to the prior existence of 'law tracts' devoted specifically to topics of Scots law; the ready availability of law book reviews in popular general audience periodicals such as the *Edinburgh Review*; the very small number of legal practitioners in Scotland at the time; and the tradition of 'oral disputation and discussion' in Scottish clubs and societies that displaced any demand for written discourse.

business of more pressing importance'.³⁹ This was exacerbated by the few law academics at the time working simultaneously as practitioners.⁴⁰ It was only much later, and into the twentieth century, that more successful publications managed to establish reputations because of the growth of law schools with tenured academics. The Scottish experience to a large degree mirrors that in England. Journals focused on practical issues for legal practitioners, including coverage of court decisions, up to the emergence of an academic cadre. Students largely were not part of the scene.

In Australia, the literature about Australian law journals has also been limited and, apart from occasional routine acknowledgment, their pedagogical role has largely been neglected. Only occasional references to our journals may be found at all, and mostly in works focusing on the history of legal education, on judicial decision-making, the writing of judgments and the training of judges. The sole exception is a well-noted 2002 exchange between Hon Michael Kirby and academic John Gava,⁴¹ in which neither author cites a single article or book devoted to Australian law journals, despite the apparently marked influence of American journals on the law journal experience in Australia.⁴²

It is firstly noteworthy that Kirby's article 'Welcome to Law Reviews' was written in 2002 as a 'riposte to perhaps the most famous law review article of them all: "Goodbye to Law Reviews", written by Fred Rodell in 1936'.⁴³ That it took over six decades for this to occur demonstrates the lack of urgency and interest in Australia on the topic. Kirby acknowledges Rodell's frustration with law reviews and presents his own list of their 'ten deadly sins'.⁴⁴ However, Kirby's article proceeds then to offer 'words of praise' for law journals against Rodell's condemnation. The real advantage of the journals, in Kirby's view, is that they contribute to the development of the law and to law reform. Pointing to illustrative decisions of the Mason High Court,⁴⁵ Kirby asserts that judges have finally been liberated from the reasoning techniques of the past, a process to which 'essays of analysis and criticism' in the law journals have contributed.⁴⁶ Journals are useful in providing the judiciary with

³⁹ (1857) 1 *Journal of Jurisprudence* iii (quoted in Zimmermann, *ibid*, 18)

⁴⁰ For eg, the *Juridical Review*, the *Scottish Law Review* and the *Edinburgh Law Review* (beside several professional law society publications).

⁴¹ Gava (2002) above n 2.

⁴² See Closen and Dzielak, above n 1, at 41-42 on the influence of the American law review model on the formation of the *University of Tasmania Law Review*, the *Melbourne University Law Review* and the *Monash University Law Review*.

⁴³ Kirby, above n 2, 1.

⁴⁴ *Ibid* 1-6. These are: publishing for the sake of it; publishing boring and excessively lengthy articles; writing uncritical, unoriginal articles for law reviews that publish them; publishing articles that are 'useless' and do not 'add something new to legal knowledge; setting up editorial advisory boards that do nothing; ignoring economic demands in publication decisions; publishing to gather dust; pandering to mere needs for academic publication; ignoring costs; and failing to embrace electronic publication strategies that are 'kinder to the trees'.

⁴⁵ *Oceanic Sun Line Special Shipping Co Inc v Fay* (1988) 165 CLR 197; *Northern Territory v Mengel* (1995) 185 CLR 307.

⁴⁶ He argued that '[t]he overthrow of the declaratory theory of law has led to the recognition by scholars, practitioners and judges that law is expounded by judges who

information about ‘the history of the relevant branch of the law, the conceptual weakness of past authority, and the social and economic context in which the law must operate.’⁴⁷

On the other hand, Gava argues that Kirby is promoting ‘an instrumental view of the judicial role which is at odds with the traditions of the common law.’⁴⁸ He contends that journals used in this way ‘harm our law schools’⁴⁹ because they are diverting academics from an objective ‘search for truth’⁵⁰ and turning them into advocates. Notably, Gava does not address the pedagogical benefits of law journals, although Kirby does acknowledge they can ‘provide fine training for good legal writing and editing.’⁵¹ Notwithstanding the limited Kirby-Gava exchange, which was concerned primarily with opposing views about the utility of law journals for the judiciary and academia, their contribution to student education has largely been taken for granted or ignored.

The only other discernible issue that has appeared in Australian law journal literature is that of citation analysis – which again focuses on what journals may offer for academics and judges.⁵² Building on American ‘most-cited articles’ literature,⁵³ much of this analysis focuses on who might be reading law reviews, which courts have cited law journal articles and which journals might advance the profiles of researchers and academics in law. The first such analysis in Australia was undertaken in 1996 and published in a library association journal.⁵⁴ The useful work done by Ramsay and Stapledon⁵⁵ also added value to citation analysis by providing information about ‘impact factors’ from publication in law journals, such as the disciplines from which law academics were obtaining their ideas and the research areas in which particular journals

sometimes have choices that will be made by reference to considerations of legal authority, principle and policy.’: Kirby, above n 2, 6.

⁴⁷ Ibid 7. The author offers an example of an academic study of highway authority immunity that contributed to an important High Court decision (*Brodie v Singleton Shire Council* (2001) 180 ALR 145) in which a divided bench resorted to secondary academic sources for support: Barbara McDonald, ‘Immunities under Attack: The Tort Liability of Highway Authorities and their Immunity from Liability for Non-Feasance’ (2002) 22 *Sydney Law Review* 411.

⁴⁸ Gava (2002), above n 2, 565.

⁴⁹ Ibid, 569.

⁵⁰ Ibid.

⁵¹ Kirby, above n 2, 10.

⁵² Citation analysis may refer to the citation practices of courts in citing superior court decisions, the decisions of other courts within and outside jurisdiction, and academic writings: Russell Smyth, ‘The Authority of Secondary Authority: A Quantitative Study of Secondary Source Citations in the Federal Court’ (2000) 9 *Griffith Law Review* 25. See also Russell Smyth, ‘Citation of Judicial and Academic Authority in the Supreme Court of Western Australia’ (2001-2) 30 *University of Western Australia Law Review* 1. It also refers to the analysis of academic writings themselves and ‘measures the influence of journals by studying the number of citations to articles published in those journals’: Ian Ramsay and G P Stapledon (1997), above n 2, 676.

⁵³ See Fred R Shapiro, ‘The Most-Cited Law Review Articles’ (1985) 5(73) *California Law Review* 1540; Richard A Posner, ‘Heavily Cited Articles in Law’ (1995) 71 *Chicago-Kent Law Review* 825; Fred R Shapiro and Michelle Pearse, ‘The Most-Cited Law Review Articles of All Time’ (2012) 8(110) *Michigan Law Review* 1483.

⁵⁴ Dennis Warren, ‘Australian Law Journals: An Analysis of Citation Patterns’ (1996) 27 *Australian Academic and Research Libraries* 261.

⁵⁵ Ramsay and Stapledon, above n 2.

were having most impact. This information was designed to assist academics in choosing journals in which to publish.

III LAW JOURNALS PEDAGOGY: THE MODEL

Much of the opprobrium generated in the US for student-run journals may be overcome if a curriculum design model is adopted that accommodates student editorship under academic supervision. Although some Australian law school journals adopt a comparable approach, others are organised around volunteer work. The model recommended here is premised on the production and publication of a law review within a formal undergraduate unit of study. The most obvious benefit of such a model is that it would teach students how to edit law journals by allowing them to engage with the publication process.⁵⁶ But editing articles for publication would ideally form only part of the curriculum. What follows is an attempt to suggest a learning and teaching model that has been introduced, and at times modified, by the author at final year undergraduate level in a metropolitan law school.

A Learning Outcomes

There is no reason in this context to depart from sound and currently endorsed pedagogical theory and practice. Law graduates have to meet not only admission requirements but also legal education standards at the national level as well as graduate attributes set by their universities. It is beyond reasonable question now that a learner-centred strategy is at the core of an outcomes focused approach to attaining these requirements, standards and attributes.⁵⁷ The outcomes for law students pertain certainly to content knowledge, but equally to skills and capacities to transition successfully to work and between different kinds of work. For a unit of study encompassing law journals work, it is essential to aim for appropriate learning outcomes and assessment tasks that will constructively align with those outcomes.

Learning outcomes for a law journals unit should focus on the skills that final year students may amplify on the foundation of already internalised content. Various iterations of Bloom's taxonomy identify these as higher order skills that allow students to analyse, synthesise, evaluate and create.⁵⁸ Biggs reminded us that we need to articulate the required skills so they may be understood as measures of comprehension:

[Teachers] do not know how to descend from the rhetoric of their aims to the specific objectives of a given course or unit ... To do so, they need a

⁵⁶ As Ross P Buckley admits for the editors reviews: 'The solution to "the editors don't know how to edit" part of the problem is conceptually simple – teach them. If one would expect this to be fairly obvious to universities, one would be wrong. While the lamentations regarding student-edited law reviews are legion, very few law schools teach their student editors formally how to do their job.': Buckley, above n 22, 7.

⁵⁷ See Sharon Christensen and Sally Kift, 'Graduate Attributes and Legal Skills: Integration or Disintegration?' (2000) 11(2) *Legal Education Review* 207 at 208 for the graduate skills law students should acquire.

⁵⁸ Benjamin S Bloom et al, *Taxonomy of Educational Objectives: The Classification of Educational Goals* (Longmans Green, 1956).

framework of some kind to help them operationalise what ‘understanding’ might mean in their particular case.⁵⁹

In the model used by the author, students ideally arrive at ‘understanding’ through a variety of tasks aimed at honing their writing, researching, critical analysis and editing skills in the context of real communications with external stakeholders. These skills are essential to a variety of employment destinations that are critical to the sustainability of the legal profession and the rule of law: academic work; legal research and policy (in government, non-government organisations and business); legal communications; and legal publishing. Biggs’ ‘Structure of the Observed Learning Outcome’ (SOLO) indicates that various aspects of a single task (such as working on the production of a law journal edition) may be experienced at different levels of understanding.⁶⁰ The quality of a task may range from the *unistructural* (such as identifying key characteristics of scholarly publishing) to the most complex *extended abstract* applications (that may involve creating, theorising or reflecting in the critical analysis of articles for publication or the writing of a critical review). Such a structure presupposes also that learning outcomes should be expressed in terms of ‘verb, object and condition’.⁶¹ In the current context, and combining a variety of student work qualities, the curriculum to be designed could include learning outcomes such as the following:

- (1) *To recognise and identify the fundamentals of legal academic publishing.* Some introductory content would be useful to equip students with an appreciation of the history of law journal publication, the principal issues facing law journals (students often express surprise at the disparity between American and Australian discourses about law reviews), and the main features of scholarly publishing compared to popular or professional publications. This requires them also to reflect on those who write for the various forms of publication (their qualifications, reputation and sources), the editorial models behind their production, the demands of their readership, their content and their characteristics in appearance and style.
- (2) *To appreciate and describe the production and peer review processes of an academic law journal.* Before students are given responsibility for the carriage of articles to publication, it will be necessary to introduce them also to an agreed process by which this will happen.

⁵⁹ John Biggs, ‘Enhancing Teaching through Constructive Alignment’ (1996) 32(3) *Higher Education* 347, 351.

⁶⁰ See John Biggs and Kevin Collis, *Evaluating the Quality of Learning: The SOLO Taxonomy* (Academic Press, 1982); John Biggs, ‘Assessing for Learning: Some Dimensions Underlying New Approaches to Educational Assessment’ (1982) 41(1) *The Alberta Journal of Educational Research* 1.

⁶¹ Most universities in Australia have adopted this method of describing the essential outcomes students are expected to attain in individual courses or units of study. For further information about the pedagogical justification for this approach see Karen Hinett and Alison Bone, ‘Diversifying Assessment, Developing Judgement’ in Roger Burridge et al (eds), *Effective Learning and Teaching in Law* (Routledge, 2002) 55.

Confusion dissipates about the publication process, the nature of peer review, the interactions between stakeholders and the timing of the editing work when students are introduced to the structure of the publishing cycle within a semester-long unit. This should ideally cover the concrete steps taken in the three major parts of the process (pre-peer review, peer review and post-peer review), and could be accompanied by reference to templates for correspondence and documentation, which students could be asked to draft and amend as required.

- (3) *To demonstrate a capacity to proofread and edit legal academic works for publication.* Requiring student editors to examine submissions for publication should be a major learning outcome and a principal component of the work they are asked to perform. This will of course demand some level of training and practice. To this end, the author has convened revision classes for the cohort on legal writing, substantive editing, technical editing and legal referencing (with emphasis on the *Australian Guide to Legal Citation* (AGLC)). Students have also been encouraged to present aspects of the AGLC to the class. De-identified extracts from previously unsuccessful submissions have been distributed and discussed in detail as editing and proofing exercises.
- (4) *To critique legal academic articles and other works.* If students are to be given the editorial carriage of articles by academics submitted for publication, they should be asked to carefully read them and become familiar with their structure and the author's argument and style. This will equip students to appreciate and place in context the comments and suggestions of reviewers and to inform the academic supervisor (who would normally act as editor in chief) and the cohort (as a de facto editorial board) of the article's suitability for publication. The author has used this student experience as the basis for a major assessment task, namely a critical review of the article of which students have carriage.
- (5) *To produce written academic work to a publishable standard.* To work on a law journal has been seen in Australia and overseas as an activity reserved for the 'best' students who wish to impress future academic supervisors and employers. Applicants are usually high achievers with strong literacy and intellectual maturity and discipline. As discussed below when addressing assessment, requiring students to submit one or two written works to a high standard capable of publication brings together many of the skills honed in the unit. Exceptional works could be rewarded with publication, if appropriate, in the law school journal or recommended for publication elsewhere. In addition to the critical review, these could include case notes, book reviews, research notes, literature reviews and others.
- (6) *To demonstrate a capacity to collaborate effectively and develop interpersonal and communication skills as part of an editorial team.*

Working on the production of a law journal edition necessarily throws student editors into 'real life' situations with internal and external lines of communication to a variety of stakeholders. They are required to cooperate with the editor in chief and others in the editorial team towards a concrete end with defined deadlines. They must establish working relationships with authors and their reviewers, and all work has to be documented in information systems for which the university is ultimately responsible. They need to maintain high standards visible to the outside world and be mindful of ethical duties in resolving problems as they arise. This adds to resilience and emotional maturity and enhances written and oral communication skills comparable to employment standards.

In summary, the learning outcomes congregate around two strategic goals: firstly, the acquisition and refinement of high order skills, transferable to the legal workplace, that focus on legal writing, editing, research and analysis; and secondly, student participation in the production cycle of a law publication, inclusive of external stakeholder relationships, that replicates the workplace experience.

B Assessment

With the identified strategic aims in mind, the next challenge is to align assessment strategies that maximise the desired outcomes, and reliably measure what students have achieved against those outcomes. With constructive alignment, the learning outcomes or objectives outline what students should achieve; the learning and teaching activities support the attainment of those outcomes; and the assessment regime measures the extent to which they have achieved the outcomes.⁶² The fine tuning of these elements of alignment should also be a continuing process, informed by feedback and reflection. Since law journals work is usually housed within a final year elective unit for high achieving students, the balance between formative and summative assessment may not be comparable to that of core law units earlier in the law degree. Various combinations around the two strategic aims, customised to law school needs and resources, should be tried. One method is predicated on a course outline and structure that requires students to participate in group discussions or 'classes' on legal writing, editing, referencing and the publishing process earlier in the semester, with a focus on the production of the journal edition later in the semester. It is not only the balance that has to be tried and tested, but also the sequencing of assessment tasks and their weighting. A constant challenge is linking the formal assessment requirements to the practical exigencies of producing a journal edition.

⁶² See John Biggs and Catherine Tang, 'Chapter 10: 'Aligning Assessment Tasks with Intended Learning Outcomes: Principles' in *Teaching for Quality Learning at University* (McGraw-Hill, 4th ed, 2011).

Another is monitoring the need, if any, to differentiate between *formative* and *summative* assessment.⁶³

An equal balancing of written work and journal production work may present a viable solution for assessing the two main goals. A model that has been tried asks the students to produce two written works of equal weighting, one requiring independent research and the other being linked to the journal edition in production. An example of the former is to produce a case note, to a publishable standard, on an important and current superior court decision. An example of the latter is a critical review of the submitted article for publication the student is editing. There are many variations possible on this theme: case studies, literature reviews, research notes, legislation notes, articles or book reviews and others. The two writing tasks are summative in the sense that they evaluate the superior writing and research skills that the students have attained throughout their law degree and brought with them. They should then be graded for each task according to known rubrics or marking criteria. Of course, formative assessment takes place spontaneously during the legal writing classes and discussions, unit convenor consultations and in the marking and feedback on the written works.

The remaining assessment could be linked to the second strategic outcome, the students' participation in the journal production process. Again, this may entail several components and alternatives, so that it may, for example, encompass a class participation mark to cover readings, discussions and editing exercises in class. But the largest component should be reserved for the handling of the editor's role in the production cycle. This includes communications with authors and reviewers, presentation of reports on the submissions to the editorial meetings, the technical editing of the articles, the meeting of journal deadlines, and the management of documents and time, for example. The unit convenor (and editor in chief) ideally has electronic access to all communications and acts as supervisor and adviser in relation to all actions. Formative assessment takes place at all given points of the production and publishing process in dialogue (unstructured or otherwise) between editor and supervisor. The end of the cycle results in summative assessment based on shared criteria, such as participation in the editorial meetings, carriage of submitted works, communications with authors and reviewers and attendance to journal production matters in a competent and timely manner. It is also beneficial to formalise reflection into this process by way of a student editor portfolio or reflective journal, which could be graded. It could require students to construct a body of evidence, via a medium of their choice, of their activities and communications and of their reflections on substantive matters, the journal production process, and personal progress and growth.

⁶³ It is generally understood that summative assessment is customarily reserved for the conclusion of a semester, and is aimed at evaluating acquisition of skills and knowledge for the recording of formal grades. On the other hand, formative assessment occurs throughout a teaching period and is aimed at feedback and teaching modifications to ensure that students are learning as planned.

C Collateral Design Issues

The structure of a functioning law journals unit for student editors under academic supervision presents challenges and logistical issues that are not normally experienced in law unit curriculum design. This is mainly because the conduct of such an academic unit of study, with credit point outcomes, needs to be coordinated with the production of a law journal edition. Three collateral challenges should be kept in mind, and monitored between unit iterations.

The first relates to cohort selection. Since the nature of law journal participation is not appropriate for large cohorts, and necessitates advanced skills, the composition of the student editorial team has to be addressed. The author has used a model based on a selection process for a small group of student editors. Relevant selection criteria could involve consideration of academic record (a grade point average minimum in law may be an option), submission of completed academic writing in a law unit, experience with writing and editing of student and other publications, and stated motivations for involvement. This may to some extent be influenced by the theme of the imminent edition, so that a particular interest in and record of achievement, for example, in human rights law, international law, economics or science may tip the scales in their favour. Experience here and overseas demonstrates that competition for selection to this kind of activity is pronounced, so difficult choices often need to be made.

The second collateral design issue relates to the coordination of the formal unit of study with the publication of the journal. It should be explained to students, in the selection process, that the publication of a journal edition may not align neatly with the conclusion of the law school semester. Editors may need to work beyond the close of semester to accommodate publishing demands, author availability and a range of other technical issues, mostly unanticipated. This in turn will be influenced by whether the journal is published online or in hard copy, or perhaps both. The increasing trend to online open access publication minimises logistical problems with external designers and printers and facilitates the model under discussion here. What has worked well in the author's experience, in relation to an annual journal edition, is the following time cycle. The first stage is the issue of a call for papers soon after the publication of an edition. This allows several months for potential authors to prepare submissions. The second stage is the coordination of the submission deadline with the beginning of semester, at which time the cohort selection process has been completed and classes have begun. As submission are received, they are allocated to student editors who immediately commence communications and enter the production cycle. The third stage is the running of writing, editing and referencing classes (for a limited number of weeks) during the peer review process. This could include the first written work. The fourth stage is the management of the editorial and production cycle (with no further classes) in the second half of the semester. The second written work and reflective portfolio could be timed for the close of semester and the law school examination period.

The third design challenge relates to the equitable division of production tasks, which are to be translated into fair and transparent grading outcomes. From the perspective of an editor in chief, the ideal scenario includes a healthy number of good journal submissions, an efficient and prompt peer review process, and a small number of dedicated student editors who each experience the full production cycle, including the carriage and editing of an article to publication. This will not always occur. Problems arise when student A's allocated article proceeds to publication while student B's does not. Conceivably, student A will have put in a far greater number of hours of work by semester's end. All options should be explored, and ideally students should participate fully in a transparent discussion about equitable outcomes. Internal communications have to be fine-tuned to avoid confusion and inefficiency in such cases. One option is to ask student B to lessen A's load by sharing editing or communication tasks. Student B may be given the task of checking footnote references while student A executes the technical edit of the text. A third student editor C may then have to share tasks if another submission is rejected after peer review. Other adjustments to student workload may then need to be made. Another option is to allocate to students B and C the task of preparing layout, design and formatting of the journal for publication. This occurs at semester's end as authors complete their amendments and final proofs are authorised. The capacity of students to handle design issues by way of electronic desktop publishing software and other media forms could also be considered when selecting the cohort and planning substantive class content.

IV LAW JOURNALS PEDAGOGY: THE BENEFITS

The material so far demonstrates that literature about law journals has focused on their role in the development of the law and of legal research, and the highly contentious role of students as editors. A model for the editorship of law journals by student editors under academic supervision within formal study was outlined in Part Three. This Part will identify three critical areas with pedagogical value, each of which should be explored more fully with further research. The first focuses on how law journal work fosters the attainment of the Threshold Learning Outcomes (TLOs) for law. The second highlights the potential for transitioning to work through experiential learning. The third explores the capstone learning possibilities of units premised on the model outlined in Part Three.

A *Threshold Learning Outcomes and Graduate Skills*

It is by now well established that the study of law entails not only what law graduates need to *know* but also what they need to be able to *do*.⁶⁴ Calls for embedding legal skills and attributes in university legal education coincided largely with the demands of governments, employers and educational bodies to ensure, through an integrative approach to education, that students attain ‘graduate attributes’. These equate to the qualities and skills graduates need to be able to participate fully in their chosen lines of work, and as citizens. As Kift has suggested, such an integrative approach emphasises

the inculcation of ethical values in preparation for a lifetime of personal and professional citizenship, and a genuine commitment to developing robust intellectual capacities that extend beyond mere technical knowledge and narrow vocational training.⁶⁵

The approach requires the infusion of skills and competencies across a degree program, with the appropriate scaffolding of attributes as students make progress towards graduation. Christensen and Kift have traced the movement to integrate legal knowledge and legal skills in the UK and the US,⁶⁶ and they have argued for the fusion of generic graduate skills and specific legal skills in our law school programs. Specific legal skills include legal reasoning, research and problem solving, while generic graduate skills encompass communication, time management, document management and computer skills.⁶⁷ On the basis that *doing* is just as important as *knowing* for effective transition to work in law, the authors argue that

procedural knowledge is just as important as conceptual knowledge and that a curriculum which successfully integrates and fosters the development of a combination of personal qualities and meta-cognitive functions (particularly self-reflection) will produce a highly desirable graduate.⁶⁸

The academic requirements for admission to practise as a legal practitioner in Australia are located in the Bachelor of Laws (LLB) degree, which must (since 2010) meet six threshold learning outcomes that represent what law graduates should know, understand and be able to do.⁶⁹ The TLOs relate to knowledge, ethics and professional responsibility, thinking skills, research skills, communication and collaboration, and self-management. What follows is an elaboration of the principal tasks for student editors that the model demands, and their

⁶⁴ Australian Law Reform Commission, *Managing Justice: A Review of the Federal Civil Justice System*, Report No 89 (1999), 2.89. See also Sharon Christensen and Sally Kift, above n 57; Sally Kift, ‘21st Century Climate for Change: Curriculum Design for Quality Learning Engagement in Law’ (2008) 18(1&2) *Legal Education Review* 1

⁶⁵ Kift (2008), above n 64, 1.

⁶⁶ Christensen and Kift, above n 57, 208-210.

⁶⁷ Ibid 212.

⁶⁸ Ibid 213.

⁶⁹ Australian Learning and Teaching Council (ALTC), *Bachelor of Laws Learning and Teaching Academic Standards Statement* (2010) 1.

linkage to the TLOs for law. The unit of study model incorporates work by students on the cycle of production for an edition of a law journal. The TLOs will now be addressed in terms of their relatedness to three stages of law journal production (pre-review, review and post-review) and in general overview.

1 *Pre-Review*

A call for papers will generally be issued in the preceding semester and submissions may be anticipated for the beginning of the following study term. Upon receiving a submission, the editor in chief will usually check that the article complies with formalities and is suitable for peer review. At this point the submission may be allocated to a student editor who should be encouraged to verify the author's details and check that the written work is within his or her research area. A plagiarism check should routinely follow and the article should be carefully read by the student editor to become familiarised with its argument and style. At this early stage, TLO 1 (Knowledge) and TLO 2 (Ethics and professional responsibility) are engaged. More will be said about TLO 1 later.

TLO 2 (Ethics and professional responsibility)⁷⁰ develops the ethical and professional dimensions of the study of law. In the course of working on the production of a law journal edition, student editors are frequently confronted with the necessity to exercise professional judgement and make ethical decisions. This may relate to a range of situations including, in the pre-review stage, checking the integrity of submitted works from academics (which do on rare occasions raise issues of plagiarism or lack of attribution), selecting peer reviewers who will not be faced with conflicts of interest or institutional bias, and carefully de-identifying submitted works for peer review. The principal focus of the first step is preparation for the peer review process.

2 *Review*

The peer review process, generally on a double blind basis in Australia, is the key integrity factor that ensures the sustainability of law reviews. It is fundamental also to the engagement of student editors in the editorial process because they will need to identify relevant experts as potential peer reviewers, enter into communications with them, and engage them for the reviews with the appropriate documentation. This stage requires students to attend to the following tasks: liaise with academic experts at a respectful and collegial level; ensure that the peer review brief is satisfied; assess reviewers' comments for adoption by the editorial team and decide on their possible redaction for communication to authors; decide upon the criteria for selecting submissions for

⁷⁰ 'Graduates of the Bachelor of Laws will demonstrate: (a) an understanding of approaches to ethical decision-making, (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts, (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and (d) a developing ability to exercise professional judgement.'

publication; maintain the integrity and confidentiality of the review process with all relevant stakeholders; and resolve related incidents or problems that may arise as the publication is prepared. The focus on ethical decision-making and professional judgments foreshadowed by TLO 2 is continually exercised in this intermediate phase.

Further, by becoming familiar with the submitted work and its peer reviews, student editors should be prepared to argue at editorial meetings for its inclusion or rejection in the edition. TLO 3 (Thinking skills)⁷¹ is concerned with graduates' capacity to reason, analyse, research and be creative with legal concepts and issues. Graduates should be able to 'engage with the law in an analytical and critical way'⁷² and to have the 'cognitive skills to critically review, analyse, consolidate and synthesise knowledge'.⁷³ Student editors are typically required to familiarise themselves with submitted articles in order to: identify the stated aims of the piece and its theoretical underpinnings; locate and analyse the central arguments and methodologies; assess the provided evidence; appraise the author's standard of communication and fluency; place the article in the context of the wider literature of the topic; and undertake other analytical and critical functions if they are to produce a critical review of the piece. All of this, and any written assignments they will have to submit, will require compliance with recognised forms of advanced legal writing that will engage students' creativity and their analytical and critical skills.

3 *Post-Review*

It is in the third stage that most of the editorial activities take place. The editor's role comprises both substantive and technical editing,⁷⁴ with the former comparable to the peer review in which the submitted article is analysed as a whole. But the technical edit provides the necessary editorial assistance authors often require prior to publication. TLO 5 (Communication and collaboration)⁷⁵ focuses on oral and written communication skills and team work. Law journals work promotes high level communication and collaboration in several ways. In the technical editing stages, the students are primarily proofreading submitted articles and checking carefully for errors, discrepancies, inconsistencies and ambiguities in style, grammar and syntax. Where fidelity to the

⁷¹ 'Graduates of the Bachelor of Laws will be able to: (a) identify and articulate legal issues, (b) apply legal reasoning and research to generate appropriate responses to legal issues, (c) engage in critical analysis and make a reasoned choice amongst alternatives, and (d) think creatively in approaching legal issues and generating appropriate responses.'

⁷² Council of Australian Law Deans (CALD), *The CALD Standards for Australian Law Schools* (2009) para 2.2.2.

⁷³ *Australian Qualifications Framework* (AQF) (2010) 82.

⁷⁴ See, eg, Anne Enquist, 'Substantive Editing versus Technical Editing: How Law Review Editors Do Their Job' (2000-2001) 30 *Stetson Law Review* 451.

⁷⁵ 'Graduates of the Bachelor of Laws will be able to: (a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and (b) collaborate effectively.'

*Australian Guide to Legal Citation*⁷⁶ is paramount, the style guide should be studied in detail. This frequently requires discernment and high level language skills; the editing of views, language or images that may be offensive, discriminatory or potentially defamatory; discussion in the editorial team; and communication with the author.

The students' course work will usually demand superior undergraduate legal writing skills, 'a knowledge and ability to work in plain English, as well as the use of legal, specialist terms where appropriate'.⁷⁷ If they are working on an interdisciplinary edition, they may be required to deal with technical terms from economics, sociology, science or other unfamiliar disciplines and assess their usage for a legal audience. Oral communication skills are continually stimulated and nourished at editorial meetings where the above matters are debated. Working as a team towards the fulfilment of a joint project with a finite end typifies the collaboration and team work that are anticipated by TLO 5. Again, the demands of ethical decision-making may frequently arise. Even though TLO 2 (Ethics and professional responsibility) is concerned with a 'developing ability', many of the situations referred to require mature and sophisticated reflection and consideration of stakeholder interests. Many of the issues that arise do so 'in relation to the duties owed by lawyers ... and may involve conflicts of professional values.'⁷⁸ Students often have to consider the relative interests of the journal, the law school, the university, authors, reviewers, researchers and the profession as a whole.

Verifying sources is an important part of this third stage, which fine tunes research skills perhaps already acquired earlier in the degree. TLO 4 (Research skills)⁷⁹ overlaps with TLO 3 (Thinking skills) but its focus appears to be on equipping students with the capacity to locate information in a technologically changing environment and to discriminate between reliable and unreliable sources. This underpins one of the principal justifications for student involvement in law journal work – maintaining a scholarly standard in the face of the increasing 'democratisation' of the written word.⁸⁰ Law graduates are meant to acquire certain *skills* directed to information literacy in order to select and use 'appropriate' information sources and 'determine their authority'.⁸¹

⁷⁶ Melbourne University Law Review Association, *Australian Guide to Legal Citation* (Melbourne University Law Review Association, 3rd ed, 2010).

⁷⁷ ALTC, above n 69, 21.

⁷⁸ ALTC, above n 69, 15.

⁷⁹ 'Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.'

⁸⁰ Larry Sanger, a co-founder of Wikipedia, has articulated the issue: '[W]e are now confronting a new politics of knowledge, with the rise of the Internet and particularly of the collaborative Web—the Blogosphere, Wikipedia, Digg, YouTube, and in short every website and type of aggregation that invites all comers to offer their knowledge and their opinions, and to rate content, products, places, and people ... The collected content and ratings resulting from our individual efforts give us a sort of collective authority that we did not have ten years ago.' Larry Sanger, 'Who Says We Know? On the New Politics of Knowledge' *Larry Sanger's Edge Bio Page*, <http://www.edge.org/3rd_culture/sanger07/sanger07_index.html>.

⁸¹ ALTC, above n 69, 19.

Editors necessarily will need to discern what is authoritative and reliable in law. Much of the work done by student editors involves precisely these skills – comprehending and paraphrasing documents, referencing sources, ensuring academic integrity and managing information.⁸² They are called upon to locate and verify each source claimed by an author, and to request clarifications where required. This activity is replicated in the students' own written works, through which they develop a sensibility for not only authoritative legal sources but also factual and policy information, the provenance of which may at times be questionable.

4 *General Overview*

In general terms, exposure to law journal work places students in the position of acquiring advanced contextual knowledge of an interdisciplinary nature by reading, discussing, critiquing and editing submissions from academics on a wide variety of topics and issues. TLO 1 (Knowledge)⁸³ focuses on legal knowledge and the context in which that knowledge is found. Most of this knowledge, of course, covers 'fundamental areas' acquired through core units. But, more importantly, it is very common for submissions to law journals to be concerned with 'the broader contexts within which legal issues arise' and how they relate to principles and values of justice and ethical practice in a range of lawyering roles. It has been noted by the Council of Australian Law Deans (CALD) that the 'broader contexts' encompass 'political, social, historical, philosophical, and economic context'.⁸⁴ The ethical rules and responsibilities that are to be understood relate to the legal profession in the widest possible sense, including not only practitioners but also, *inter alia*, 'government counsel ... academics, and legal publishers'. Law journal student editors are ideally readied for transition to these kinds of legal work.

Furthermore, law schools are constantly challenged to provide opportunities for students to depend less on teachers, develop self-reliance and 'manage their study and time autonomously and effectively'.⁸⁵ TLO 6 (Self-management)⁸⁶ fosters personal growth, fulfilment and reflection that prepares law graduates for a life of learning. Although law journal editors work closely with a production team, they will invariably need to create their own time and agenda to complete their editing tasks. Much of this is determined by the nature of the work being edited and the timetables and demands of other stakeholders, primarily

⁸² *Ibid.*

⁸³ 'Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes: (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts, (b) the broader contexts within which legal issues arise, and (c) the principles and values of justice and of ethical practice in lawyers' roles.'

⁸⁴ CALD, above n 72, para 2.3.3a.

⁸⁵ ALTC, above n 69, 22.

⁸⁶ 'Graduates of the Bachelor of Laws will be able to: (a) learn and work independently, and (b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.'

the authors and peer reviewers. Whereas one editor may have an ‘easy run’ with prompt reviewers, a cooperative author and a compliant manuscript, others may be faced with difficulties and delays that require major time adjustments and diplomatic negotiations towards achieving deadlines. Under such pressure, student editors quite often manage to achieve things they had not previously known they were capable of.

This points to two important attributes emanating from TLO 6. The first is what ‘legal employers have identified [as] a need for graduates to have emotional intelligence – the ability to perceive, use, understand, and manage emotions.’⁸⁷ Maturity of this kind ‘incorporates a capacity for resilience through personal awareness and coping skills that might include openness to assistance in times of personal and professional need.’⁸⁸ The second is self-reflection with the benefit of feedback. Working in small teams towards a common set goal creates a dynamic of mutual feedback, but so does communication with reviewers and authors about amendments – from argument structure down to punctuation. Self-reflection can of course also be incorporated into the assessment regime. In view of the ‘growing awareness of the high levels of psychological distress being experienced by law students and the practising profession in Australia’,⁸⁹ developing self-management skills and professional resilience is a major benefit of work of this kind. Enhancing self-management as envisaged by TLO 6 invites strategies that are

grounded in Biggs’ framework of engagement, which centres on motivating student learning, providing a learning climate that supports engagement and ensuring that learning is active ... [and adopting] learning, teaching and assessment approaches that promote student autonomy ... [and] reflective practice.⁹⁰

Informal feedback received from students working on law journal publication indicates strongly that very high satisfaction and engagement levels are attained, with students enjoying the ‘fruits of their labour’ permanently recorded in print.

B The Capstone Experience

A capstone experience⁹¹ is one way in which a law school may prepare students for transition to the workplace. For the purposes of this article, it would suffice to avert to well-known work done by Kift and

⁸⁷ ALTC, above n 69, 23.

⁸⁸ Ibid.

⁸⁹ Anna Huggins, Sally Kift and Rachael Field, ‘Implementing the Self-Management Threshold Learning Outcome for Law: Some Intentional Design Strategies from the Current Curriculum Toolbox’ (2011) 21(2) *Legal Education Review* 183, 183.

⁹⁰ Ibid 184.

⁹¹ A commonly used definition of a capstone is that of ‘a crowning (unit) or experience coming at the end of a sequence of (units) with the specific objective of integrating a body of relatively fragmented knowledge into a unified whole ... through which undergraduate students both look back over their undergraduate curriculum in an effort to make sense of that experience, and look forward to a life by building on that experience’: Robert J Durel, ‘The Capstone Course: A Rite of Passage’ (1993) 21(3) *Teaching Sociology* 223.

others⁹² as a framework for considering the pedagogical benefits of participation by students in law journals work. Of course, a single unit of study that encompasses such work may not necessarily satisfy all of a capstone's indicia, but there are various approaches to achieving capstone.⁹³ Firstly it should be noted that the call for greater attention by law educators to capstone experiences formed part of the plea for final year curriculum renewal and promotion of the 'final year experience' for law students. Kift and others have noted that very few Australian law schools provide for capstone programs, and that this is a weakness in our legal education:

In our view, an important *first step* in achieving final year curriculum renewal that will better meet the educational needs of final year law students, involves moving towards inclusion in the final year curriculum of pedagogically grounded, specifically designed, capstone units ... [which] can be used as a tool to effect closure on the students' experience of higher education, and on their degree, as well as to ready them for the transition from university to the profession.⁹⁴

The need to remedy this situation is evident in the pedagogical justifications for capstone, which have been described as comprising three valuable components or themes: reflection, closure and transition.⁹⁵ The first theme of reflection corresponds to the experiential learning phase of reflective observation, in which the learner explains and interprets experienced events and draws conclusions about them and his or her participation. Reflecting on a course of law study as it draws to an end 'concentrates the mind' about its benefits and the participant's growth.

⁹² Sally Kift, Rachael Field and Ian Wells, 'Promoting Sustainable Professional Futures for Law Graduates through Curriculum Renewal in Legal Education: A Final Year Experience' (2008) 15(2) *eLaw: Murdoch University Electronic Journal of Law* 145; Judith McNamara et al, 'Work-integrated Learning as a Component of the Capstone Experience in Undergraduate Law' (2012) 13(1) *Asia-Pacific Journal of Cooperative Education* 1; Sally Kift and Karen Nelson, 'Beyond Curriculum Reform: Embedding the Transition Experience' in Angela Brew and Christine Asmar (eds), *Higher Education in a Changing World: Research and Development in Higher Education*, Proceedings of the 28th HERDSA Annual Conference, Sydney, 3-6 July 2005 (Higher Education Research and Development Society of Australasia, 2005) 225; Sally Kift et al, 'Conceptualising a Capstone Experience for Law Students', *Australasian Law Teachers' Association 65th Annual Conference 2010*, 4-7 July 2010, University of Auckland, Auckland.

⁹³ New York Law School students, for example, have the option of preparing a journal article for publication as part of a capstone experience: Sally Kift et al, 'Curriculum Renewal in Legal Education: Capstone Experiences in Law - Capstone Examples', QUT, 2012, 30-31: <https://cms.qut.edu.au/_data/assets/pdf_file/0003/424506/Capstone-in-Legal-Education-Examples.pdf>.

⁹⁴ Kift, Field and Wells, above n 92, 149-150.

⁹⁵ Ibid 151. The authors draw on the ideas and categorisations employed by the following three studies: Jack Rosenberry and Lauren Vicker, 'Capstone Courses in Mass Communication Programs' (2006) 61(3) *Journalism and Mass Communication Educator*, 267, 269-70 (integration, application and transition); Robert L Heinemann, 'The Senior Capstone: Dome or Spire?' (Paper presented at 83rd NCA Annual Convention, 1997) (closure and exploration/extension); John N Gardner and Gretchen Van der Veer, *The Senior Year Experience: Facilitating Integration, Reflection, Closure, and Transition* (Jossey-Bass, 1998) (integration, reflection, closure and transition).

Because a capstone unit should 'be designed to provide space for meaningful reflection on the students' overall tertiary experience, as well as reflection on the future potential and possibilities of life after university',⁹⁶ it is critical to closure and transition.

The second capstone theme of closure allows students to 'pull together all the ideas presented in different (units) and construct some sort of integrated, meaningful whole.'⁹⁷ Anecdotally, it is not unusual for student editors to comment on how the experience 'brings it all together' as a crowning high order activity that integrates the knowledge and skills they have acquired at law school. This confirms the view that 'capstones should concentrate on the integration of existing knowledge and skills rather than the acquisition of new content'.⁹⁸ Working on law journal production also validates the law school program in the eyes of the student editors because it allows them to envisage themselves on the other side of the law school gates with their teachers' imprimatur:

Capstone subjects are likely to be the only opportunities within the degree programme that traverse the breadth of the curriculum, adding depth and meaning to concepts and ideas previously introduced, and encouraging students to use this synthesised knowledge in authentic professional contexts.⁹⁹

The capstone component of transition is therefore directly facilitated by such closure. Transition to professional practice (or legal publishing, research or academic work) helps 'students to develop transferable skills, to gain an awareness of the culture of their discipline and to provide career direction.'¹⁰⁰ Seeing themselves as practitioners working on the drafting, composition and editing of legal documents, as researchers arguing a policy position with verifiable authority, as academics preparing articles or books for publication – or even as legal editors in a publishing house – builds on their reflection upon the organic closure of their studies. All of these mentioned activities are vital to the integrity and development of the law. By looking forward, a capstone experience of this kind is a 'more future focused objective that will achieve extension and exploration through facilitating each student's metamorphosis from student to legal professional.'¹⁰¹

C Experiential Learning and the Transition to Work

Much of the above demonstrates that units of study focused on law journal production belong to the few law undergraduate activities that address all the TLOs in such emphatic fashion. It also posits the possibilities for capstone study centred on law journal production. But it also points to a further important pedagogical benefit of law journals, and that is that the model outlined in Part Three facilitates the transition to professional legal work. The model offers the potential for meaningful

⁹⁶ Kift, Field and Wells, above n 92, 151.

⁹⁷ Heinemann, above n 95, 5.

⁹⁸ McNamara et al, above n 92, 3.

⁹⁹ Ibid.

¹⁰⁰ Ibid, 2.

¹⁰¹ Kift, Field and Wells, above n 92, 152.

experiential learning, in a qualified sense, since it is not full immersion in legal employment.

Experiential learning has a long and well known provenance and is as old as wisdom itself.¹⁰² In principle, experiential learning ‘involves direct encounter with the phenomenon being studied rather than merely thinking about the encounter or only considering the possibility of doing something with it.’¹⁰³ David Kolb described learning as ‘the process whereby knowledge is created through the transformation of experience.’¹⁰⁴ There are various versions of experiential learning theory and its practical iterations,¹⁰⁵ but here we can avert usefully to Kolb’s approach and then apply it to work that students do, by illustration, on the publication of law journals.

The work of Kolb and others in this area is founded on a constructivist perspective, which gives priority to the learner constructing his or her own meaning from personal experience. Kolb’s Experiential Learning Model (ELM) sets out a learning process in which ‘ideas are not fixed and immutable elements of thought but are formed and re-formed through experience’.¹⁰⁶ It is based on propositions¹⁰⁷ about learning and incorporates different modes of learning¹⁰⁸ that may be adopted by individuals. The learner may experience different stages in the learning cycle. Typically, the stage of *concrete experience*, in which the learner is immersed in a real or simulated life experience, is followed by *reflective*

¹⁰² Confucius (Kong Qiu) is often reputed to have said ‘I hear and I forget, I see and I remember, I do and I understand’. Aristotle is reputed to have said ‘For the things we have to learn, before we can do them, we learn by doing them’. Experiential learning theory saw a revival in the twentieth century with earlier roots in American pragmatism and, later, the work of David A Kolb and others. Of course, there are behaviouralist and other views that disagree with such approaches, but that discourse is not within the ambit of this paper.

¹⁰³ Morris T Keeton and Pamela J Tate, ‘The Boom in Experiential Learning’ in Morris T Keeton and Pamela J Tate (eds), *Learning by Experience - What, Why, How* (Jossey-Bass, 1978) 1.

¹⁰⁴ David A Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice Hall, 1984) 41.

¹⁰⁵ See, eg, Laura Joplin, ‘On Defining Experiential Education’ (1981) 4(1) *Journal of Experiential Education* 17; David Boud, Rosemary Keogh and David Walker, ‘Promoting Reflection in Learning: A Model’ in David Boud, Rosemary Keogh and David Walker (eds) *Reflection: Turning Experience into Learning* (Kogan Page, 1985), 18-40; Gary J Dean, ‘Developing Experiential Learning Activities for Adult Learners’ (Paper presented at the American Association for Adult and Continuing Education National Conference, 1993).

¹⁰⁶ Kolb, above n 104, 26.

¹⁰⁷ Learning is best conceived as a process, not in terms of outcomes; learning is a continuous process grounded in experience; learning requires the resolution of conflicts between dialectically opposed modes of adaptation to the world; learning is a holistic process of adaptation; learning results from synergistic transactions between the person and the environment; learning is the process of creating knowledge: Alice Y Kolb and David A Kolb, ‘Learning Styles and Learning Spaces: A Review of the Multidisciplinary Application of Experiential Learning Theory in Higher Education’ in Ronald R Sims and Serbrenia J Sims (eds), *Learning Styles and Learning* (Nova Science, 2006) 45.

¹⁰⁸ These are described as *diverging*, *assimilating*, *converging*, and *accommodating* styles of learning: Alice Y Kolb and David A Kolb, *The Kolb Learning Style Inventory—Version 3.1, 2005 Technical Specifications*, 4 <http://learningfromexperience.com/media/2010/08/tech_spec_lsi.pdf>.

observation, which may be facilitated by a supervisor. The thinking stage, or *abstract conceptualisation*, follows, during which the learner uses analytical skills to extract lessons from the experience that may be applied to further or other experiences. This is followed by *active experimentation*, which allows the learner to venture into further experiences with the acquired knowledge.¹⁰⁹ However, social interactions are fundamental to experiential learning, because it is related to broader social learning theories, which focus on learning taking place in social milieus. Lave and Wenger, for example, see experiential learning as based on collaborative engagement within ‘communities of practice.’¹¹⁰ Envisaging the stakeholders in law journal publication (editorial supervisors, authors, expert reviewers, student editors, printers) as a community within which all actors engage in the experience of acquiring knowledge from each other opens the door to further pedagogical benefits that need to be explored.

By participating in law journal production as a member of an editorial team, a student will be exposed to real, not simulated, experiences that could (summarised here for convenience) include the following: communicating with authors about received submissions; checking for plagiarism; locating appropriate reviewers in the field of specialisation and arriving at working arrangements and deadlines for peer review; de-identifying submissions for reviewers; managing time stipulations and deadlines; attending to any problems that arise in this process through negotiation and adroit time management; reading, comprehending and paraphrasing peer reviews; discussing the reviews at editorial meetings; setting out matters pertinent to the acceptance or rejection of submissions; drafting qualified acceptance letters and summarising editorial requests for amendments; creating, applying and amending precedent correspondence and document templates; liaising with authors about deadlines; checking for compliance with editorial requests; attending to the often exacting technical edits of articles; keeping careful track of all relevant documentation; creating and recording various iterations of submissions throughout the editing phase; and formatting articles to comply with AGLC, law journal, law school or university style, branding and image criteria. Here we see the very generic graduate skills, identified by the Vignaendra Report¹¹¹ and referred to by Christensen and Kift,¹¹² that legal employment requires: communication, time management, document management, and computer skills. Furthermore, such experiences are clearly not typical for undergraduate study, and correspond in considerable measure to the real work experiences undertaken in a legal publishing house or the publishing and marketing division of a large law firm or other legal institution.

¹⁰⁹ Kolb, above n 104, 26.

¹¹⁰ Jean Lave and Etienne Wenger, *Situated Learning: Legitimate Peripheral Participation* (Cambridge UP, 1991). See also Sarah Yardley, Pim Teunissen and Tim Dornan, ‘Experiential Learning: Transforming Theory into Practice’ (2012) 34(2) *Medical Teacher* 161.

¹¹¹ Sumitra Vignaendra, *Australian Law Graduates Career Destinations* (Centre for Legal Education, 1998) 39.

¹¹² Christensen and Kift, above n 57.

What is important in this context is reflection, which may be structured as a formal assessment task such as a reflective portfolio. There are numerous models of reflective writing, so that any of them may be expected to cover at least the following: recording and describing tasks undertaken during the experience; explaining and interpreting the experienced events and their significance, identifying what was learned, considering emotional and other responses, and drawing conclusions; evaluating and making judgments about the responses and conclusions; and commenting on the ways in which the experience is relevant to the overall task and how it may inform future steps and experiences. Students frequently focus also on their personal journeys through the experience, and what they learned about *themselves* as well as the process. Of course, reflection builds emotional intelligence and maturity and eases transition to legal work and professional service. Whereas reflection focuses on the self and on one's emotional responses to experience, the stage of *abstract conceptualisation* focuses the mind on analysing the experience and extrapolating theories, ideas and lessons from what has been observed and felt. Students often express frustration at how they handled difficult reviewers or authors, or they anticipate 'solutions' to future experiences. This ushers in the *active experimentation* phase, in which lessons that have been learned affect active planning and conduct to influence and change further conduct in practical ways. Further research in this area could clarify the extent to which law journal work bears the hallmarks of experiential learning, and how student editors learn from (and contribute to learning by) supervisors, authors, reviewers and editor colleagues in the law journal production cycle. It could also explore the possibility of larger cohorts of students experiencing the journal production cycle.¹¹³

V CONCLUSION

Although university law journals in the English-speaking common law jurisdictions have played an appreciable role in the development of the law and in legal research, most of the literature about them in the common law world has been dominated by those very themes. The educational benefits to students involved in their production have largely been assumed and attention to this area remains under-developed. In the US the literature has focused on the drawbacks of unsupervised student editorship and the need for more rigorous standards. In the UK and Australia, peer review and academic editorial control have avoided replication of the American dilemma. In both cases, a mature look at the learning and teaching aspects of law journal work has therefore been avoided. This article has attempted to redress the imbalance and provoke interest in how law schools may adopt models of student editorship that

¹¹³ Whereas Kolb's model is concerned with *direct* experiential learning, there may be potential for group learning through *vicarious* experiential learning. See, for example, J Duane Hoover and Robert Giambatista, 'Why Have We Neglected Vicarious Experiential Learning?' (2009) 36 *Developments in Business Simulation and Experiential Learning* 33.

achieve desirable outcomes for educators, researchers and students alike. Lessons from the discourse now invite attention to the pedagogy.

