Is scholarship of teaching and learning in practical legal training a professional responsibility?

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In Australia, applicants for admission to the legal profession must hold appropriate academic qualifications, and competently complete practical legal training (PLT). The author’s research investigates institutional PLT practitioners’ engagement with scholarship of teaching and learning (SoTL). The theoretical framework for the research draws on Bourdieu and Passeron’s reflexive sociology of education and culture. This article focuses on responses to a paramount obligation proposition put to 34 PLT practitioners during semi-structured interviews: “Might lawyers’ paramount obligations to the court intersect with PLT practitioners’ teaching and assessment practices?” The proposition elicited responses and insights about field forces within the individual and organisational dimensions of teaching and learning in PLT. These include top-down/bottom-up pressures that impinge on PLT practitioners’ engagement with SoTL.

Introduction

Background

In Australia, applicants for admission to the legal profession must hold appropriate academic qualifications, and competently complete practical legal training (PLT). The author’s research studies institutional PLT practitioners’ engagement with scholarship of teaching and learning (SoTL) in their PLT practice. The author’s research explores individual and extra-individual dimensions of SoTL. Here, the individual dimension involves PLT practitioners’ interest and capabilities to engage with SoTL, and the extra-individual dimension involves institutional symbolic support and allocation of resources to SoTL. The research data includes semi-structured interviews with Australian PLT practitioners. The research methodology draws on Bourdieu and Passeron’s reflexive sociology of education and culture, including Bourdieu’s concepts of capitals, field, and habitus. This article focuses on the Australian context;

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1Julianne Lynch, Judithe Sheard, Angela Carbone and Francesca Collins, “Individual and Organisational Factors Influencing Academics’ Decisions to Pursue the Scholarship of Teaching ICT” (2005) 4 Journal of Information Technology Education 219.
however, themes arising from the following would be relevant to other international legal and non-legal professional education contexts.

Most PLT practitioners are lawyers with substantial post-admission professional practice experience. Some hold teaching qualifications, but most do not.  

Whilst higher education regulation in Australia obliges self-accrediting institutions to be demonstrably involved in research and scholarship, tradition and statute hold universities to higher expectations for research activity. PLT practitioners’ research obligations vary – those employed in university-based PLT programmes as academics often have a research component in their performance plans, whereas those employed as teaching-only clinical practitioners usually do not. Similarly, non-university PLT providers have lower research expectations of teaching staff. Consequently, institutional expectations for PLT practitioners’ research are diverse, and this includes engagements with SoTL.

Why is SoTL important or relevant to PLT? Like Boyer, we could begin with Aristotle’s proposition that “teaching is the highest form of understanding”. SoTL contributes to understanding “how learning is made possible” to support practitioners to teach “more knowledgably”. By enabling the assessment of “quality of teaching”, and improving learners’ learning experiences, SoTL maintains and raises the “status” of teaching work. PLT practitioners’ engagement with SoTL would acknowledge their dual professionalism as legal practitioners and educators. From an extra-individual perspective, SoTL would also study legal education politics and policy concerning PLT, and pragmatically engage with concepts of transparency, accountability, and evaluation of the effectiveness of teaching and learning in PLT. In this context, SoTL would serve the statutory purpose of mandatory PLT to improve on the traditional articled clerkship model, to protect lawyers’ clients, protect the administration of justice, and ensure the quality of legal services.

2Kristoffer Greaves, “Learning Leadership Is in Your Hands: Toward a Scholarship of Teaching in Practical Legal Training” (2012) 5(1/2) Journal of the Australasian Law Teachers Association 1, p. 3.
3For example, “Australian Higher Education Standards Framework (Threshold Standards) 2011”, chapter 3, clauses 1.3, 4.2. http://www.comlaw.gov.au/Details/F2012L00003/Download (accessed 8 January 2015).
4Ibid, chapter 2, clauses 2.1–2.3.
5Ernest L. Boyer, Scholarship Reconsidered: Priorities of the Professoriate (Princeton, NJ, The Carnegie Foundation for the Advancement of Teaching, 1997).
6Mick Healey, “Developing the Scholarship of Teaching in Higher Education: A Discipline-Based Approach” (2000) 19(2) Higher Education Research & Development 169, p. 171.
7Keith Trigwell and Suzanne Shale, “Student Learning and the Scholarship of University Teaching” (2004) 29(4) Studies in Higher Education 523, p. 524.
8Ibid.
9Ibid.
10Ibid.
11Lee S. Shulman, “From Minsk to Pinsk: Why a Scholarship of Teaching and Learning” (2000) 1(1) Journal of Scholarship of Teaching and Learning 48, p. 49.
12Ibid.
13Legal Profession Act 2006 (ACT) ss. 6, 20; Legal Profession Act 2004 (NSW) s. 3; Legal Profession Act 2006 (NT) s. 3; Legal Profession Act 2007 (Qld) ss. 3, 28; Legal Profession Act 2007 (Tas) ss. 3, 23; Legal Profession Act 2004 (Vic) s. 2.2.1. See also John Labatt Trew, A Survey of Training Received by Articled
What if PLT practitioners have a professional responsibility to engage with SoTL? This article focuses on responses to a proposition put to 34 PLT practitioners during semi-structured interviews: “Might lawyers’ paramount obligations to the court intersect with PLT practitioners’ teaching and assessment practices?” The paramount obligation proposition or POP draws on juridical doxa,¹⁴ to elicit insights about field forces within individual and extra-individual dimensions of teaching and learning in PLT.

The first part of this article provides background regarding Australian PLT, reviews SoTL concepts, and notes the paucity of research regarding SoTL in PLT. The rationale for the POP is explained, followed by a description of Bourdieu’s reflexive sociology, how it is applied here, and reasons for doing so. The second part summarises methods adopted for this study, and the third part provides results and analysis. The fourth part concludes the article and foreshadows PLT as a domain for practice research, incorporating practitioners’ engagement with SoTL.

Practical legal training in Australia

Here, practical legal training (PLT) refers to Australian institutional competency-based training,¹⁵ specified in the National Competency Standards (NCS) adopted by the Law Admissions Consultative Committee (LACC) and the Australasian Professional Legal Education Council (APLEC).¹⁶ The NCS recommend that PLT be undertaken as postgraduate pre-admission training,¹⁷ consistent with recommendations in the 1971 Ormrod Report.¹⁸ In most jurisdictions, admission rules incorporate the NCS by reference and specify satisfactory completion of PLT as

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¹⁴”[A] normalcy in which realization of the norm is so complete that the norm itself, as coercion, simply ceases to exist as such”: Pierre Bourdieu, “The Force of Law: Toward a Sociology of the Juridical Field” (1986) 38 Hastings Law Journal 805, p. 848.

¹⁵For a social and theoretical view of the history of competency-based training, see Steven Hodge, “The Origins of Competency-Based Training” (2007) 47(2) Australian Journal of Adult Learning 179.

¹⁶Law Admissions Consultative Committee (LACC), Practical Legal Training Competency Standards for Entry-Level Lawyers (1 January 2015) (Law Council of Australia, 2014), http://www1.lawcouncil.asn.au/LACC/images/pdfs/LACCCOMPETENCYSTANDARDSFORENTRYLEVELLAWYERS-JAN2015.PDF (accessed 8 August 2014).

¹⁷Ibid., p. 5.

¹⁸The Committee on Legal Education (Ormrod Committee), Report of the Committee on Legal Education (London, The Committee on Legal Education, 1971) (Ormrod Report), paras 100, 185. The Ormrod Report recommended that legal education be planned in three stages: academic education; pre-admission professional training (institutionally and workplace based); and post-admission continuing legal education and training. Other reports expressly or implicitly support the separation of PLT from academic education and post-admission training, for example Martin Report: Committee on the Future of Tertiary Education in Australia, Leslie Harold Martin and Australian Universities Commission, Tertiary Education in Australia: Report of the Committee on the Future of Tertiary Education in Australia to the Australian Universities Commission (Melbourne, Australian Universities Commission, 1964), Vol. 2, paras 52–56; Trew Report, supra n. 13; and Pearce Report, supra n. 13.
an eligibility requirement for admission to the profession. The NCS are divided into four main areas: “compulsory practice areas”; “optional practice areas”; “skills”; and “values”. “Compulsory practice areas” include civil litigation; corporate and commercial; and property law. Optional practice areas include family; criminal; administrative; planning and environment; wills and estates; consumer protection; and banking and finance. “Skills” include lawyers’ skills (communicating effectively; cross-cultural awareness; interviewing clients; writing letters; drafting other documents; negotiating settlements and agreements; facilitating early resolution of disputes; and representing a client in court), and generic professional skills (problem-solving; work management and business skills; and trust and office accounting). The “values” category involves professional responsibility and ethics. Assessment methods in PLT coursework vary between PLT providers, but generally include formative and summative assessments by PLT practitioners using, for example, quizzes, written and oral examinations, viva voce role plays, small group work, and production of documents such as advices, court documents, and transactional documents. Trainees are required to complete a specified period of work experience placement under an approved supervisor, in addition to coursework.

There are situations where PLT is undertaken concurrently with a law degree, which might include clinical legal education. The admission board in a jurisdiction may or may not approve a PLT course undertaken concurrently with a law degree. A survey of PLT programme websites discloses programmes at Adelaide University, Flinders University, Newcastle University and University of Technology Sydney allow concurrent study for a law degree and PLT. Queensland University of Technology allows concurrent study if no more than two law degree units await completion. Australian National University, and the combined Law Society of South Australia – University of Adelaide programme, permit concurrent study subject to consent. The College of Law (Australian and New Zealand) in Queensland, New South Wales, Victoria and Western Australia, Leo Cussen Institute, and University of Tasmania programmes require proof of eligibility to graduate in a law degree at or near enrolment. For a comprehensive case study of the Newcastle University’s concurrent model see Jeff Giddings, Promoting Justice through Clinical Legal Education (Melbourne, Justice Press, 2013), chapter 8.

For example: Legal Practitioners Act 1981 (SA) s. 14C; Legal Practitioners Education and Admission Council Rules 2004 (SA) r. 2; Legal Profession Act 2004 (NSW) s. 24(b)(i); Legal Profession Act 2004 (Vic) s. 2.3.2(1)(c); Supreme Court Admission Rules 2004 (Qld) ss. 7–7A; Legal Profession Act 2006 (ACT) s. 21(b) (i); Legal Profession Act 2007 (Qld) s. 30(1)(c); Legal Profession Act 2007 (Tas) s. 25(b)(i); Legal Profession (Admission) Rules 2008 (Vic); Legal Profession Act 2008 (NT) s. 29(1)(c)(i); Legal Profession Act 2008 (WA) s. 21(2)(c).

For a discussion of “authentic” assessment, see Kelley Burton, “A Framework for Determining the Authenticity of Assessment Tasks: Applied to an Example in Law” (2011) 4(2) Journal of Learning Design 20. For a comparison of the Australian PLT national competency standards and the LLB Threshold Learning Outcomes, see Kristoffer Greaves, “Test Out the Scaffolding: A Qualitative Comparison of LLB Threshold Learning Outcomes and the PLT Competency Standards for ‘Lawyers’ Skills’” (23 August 2013). Available at SSRN: http://ssrn.com/abstract=2314993 or http://dx.doi.org/10.2139/ssrn.2314993 (accessed 11 March 2014).

LACC, supra n. 16.
Institutional PLT was introduced in most Australian jurisdictions from the early 1970s, partly because of dissatisfaction with the quality and consistency of apprenticeships and unmet demand for places under the articled clerkship model. Tensions about the growing intellectual/academic focus and resistance to “vocationalism” in Australian law schools, together with judicial and professional concerns that law graduates lacked professional practice skills, contributed to the introduction of PLT.

Scholarship of teaching and learning

The introduction outlined some reasons why SoTL is important and relevant to PLT. This section engages with the expression, scholarship of teaching and learning (SoTL), for the purposes of this article and to describe the author’s criteria for SoTL in this research. Boyer settled SoTL within four overlapping dimensions of scholarship: “the scholarship of discovery”, “the scholarship of integration”, “the scholarship of application”, and “the scholarship of teaching”. Boyer urged teachers to be “well-informed” in their field, to engage in a “dynamic endeavour” between teachers’ understanding and students’ learning, to plan and design “pedagogical procedures”, to create, innovate, transform, extend, and ensure continuity of knowledge. As Glassick observed, Boyer’s concepts emerged out of earlier research with Rice in 1989, involving 5000 academics at a range of higher education institutions. Glassick, Huber and Maeroff outlined six standards to assess quality of scholarship: “clear goals”, “adequate preparation”, “appropriate methods”, “significant results”, “effective presentation” and “reflective critique”. To explore teachers’ engagement with SoTL, Trigwell et al. devised a multi-dimensional model, involving “information”, “reflection”, “communication”, and “conception” dimensions, each constituted by qualitative variations of teacher engagement. The communication dimension includes nil activity, intra-faculty communications, conference presentations, and publication in scholarly journals. The information dimension includes use of “informal

28Pearce Report, supra n. 13, chapter 20, p. 78.
29For example, Trew Report, supra n. 13; Pearce Report, supra n. 13, chapter 20, p. 78; Campbell Report, supra n. 13.
30For a discussion, see Nicholas John James, “Why Has Vocationalism Propagated So Successfully within Australian Law Schools” (2004) 6 University of Notre Dame Australian Law Review 41.
31For example, Michael Chesterman and David Weisbrot, “Legal Scholarship in Australia” (1987) 50 (6) Modern Law Review 709, p. 716.
32Boyer, supra n. 5.
33Ibid.
34Charles E. Glassick, Mary Taylor Huber and Gene I. Maeroff, Scholarship Assessed: Evaluation of the Professoriate. A Special Report (San Francisco, Jossey-Bass, 1997), p. 36.
35Ibid., pp. 878–879.
36Keith Trigwell, Elaine Martin, Joan Benjamin and Michael Prosser, “Scholarship of Teaching: A Model” (2000) 19(2) Higher Education Research & Development 155, p. 163.
theories” in teaching and learning, engagement with teaching and learning literature generally or “discipline-specific literature”, and “synoptic capacity” or “pedagogic content knowledge”. The reflection dimension includes nil or “unfocused” reflection, “reflection-in-action”, or problem-specific reflection. The conceptualisation dimension involves conceptualisation of teaching and learning as “teacher-centred” or “learner-centred”. The multi-dimensional model provides ways of apprehending research participants’ engagements with SoTL.

In the interviews, the author adopted “four critical questions” framing SoTL within individual and extra-individual dimensions. In the individual dimension: (1) What are PLT practitioners’ interests to engage with SoTL? (2) What are their capabilities to do so? In the extra-individual dimension: (3) What “symbolic support” do PLT practitioners’ institutions give to SoTL? (4) What “resources” do institutions allocate to SoTL? The POP sought to draw out potential intersections or conflicts between these critical questions and their lawyerly dispositions.

### Paucity of research regarding scholarship of teaching and learning in PLT

A review of the literature and a survey of PLT practitioner profiles indicate there is little research focused specifically on Australian PLT practitioners’ engagement with SoTL. From 1983 to 1998, the Journal of Professional Legal Education provided a dedicated forum for “dissemination of thought and discussion of issues” concerning practical legal training and continuing legal education in Australia. Much has changed since 1998, and unfortunately no dedicated journal has emerged since. The Australian Legal Education Review and the Journal of the Australasian Law Teachers Association have published articles mentioning PLT, but few expressly address SoTL. In 2004, Maxwell and Pastellas interviewed nine “PLT academics”; they identified issues around the lack of research in PLT practice generally, e.g. perceptions that skills-based teaching is not amenable to research, or that SoTL is not as valuable as doctrinal/discipline research. In a preliminary survey in 2012, the author found few current PLT practitioners held teaching qualifications, or had published in scholarly journals regarding teaching and learning.

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37Ibid.
38Lynch et al., supra n. 1.
39Greaves, supra n. 2. See also Maxine Evers, Bronwyn Olliffe and Robyn Pettit, “Looking to the Past to Plan for the Future: A Decade of Practical Legal Training” (2011) 45(1) Law Teacher 18–44, p. 21.
40Christopher Roper, “Editorial” (1983) 1(1) Journal of Professional Legal Education 1.
41Kay F. Maxwell and Julie Pastellas, “Valuing Practice: The Place of Practical Legal Research in Academic Life”, paper presented at the AARE International Educational Research Conference, Melbourne, 28 November–2 December 2004.
42Greaves, supra n. 2, p. 3.
Lawyers’ duty of disclosure, and POP! The paramount obligation proposition

A lawyer’s duty of disclosure to the court is paramount.43 Most Australian PLT practitioners are lawyers.44 Does the paramount obligation intersect with PLT practitioners’ work when teaching and assessing legal trainees’ competencies? Most PLT practitioners interviewed in this study (interviewees) seemed to think so.45 In framing the POP, it was reasoned the obligation is unique to lawyers, and deeply embedded through primary and secondary pedagogies, as part of lawyers’ habitus. The POP successfully prompted interviewees to supply insights about forces intersecting with their PLT practice.

The rationale underlying the POP assumes that satisfactory completion of PLT is an eligibility requirement for admission to the profession, for which an applicant must provide evidence. Evidence might be by way of a completion certificate or other document issued by a PLT provider (the document) that is annexed or exhibited to an affidavit in support of the application for admission. In issuing the document, PLT providers rely on representations by one or more PLT practitioners that the trainee had satisfactorily completed specified tasks, to demonstrate prescribed competencies. The document arguably amounts to a representation to the court, albeit indirectly, by the relevant PLT provider and PLT practitioners as to an individual’s satisfactory completion of PLT.

The POP was adopted for the interviews as a provocation, to elicit responses about intersections between professional responsibility and teaching and learning work in PLT. The provocation takes advantage of a “unique” relation between lawyers and the court,46 which exemplifies “practical understandings, rules, [and] teleo-affective structures”.47 Commenting on the relation between lawyers and the court in 1993, Ipp J observed:

This does not mean that duties are owed to a particular judge. On the contrary, duties of this kind are in reality owed to the larger community which has a vital

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43Rondel v Worsley [1969] 1 AC 191; Saif Ali v Sydney Mitchell & Co [1978] QB 95; Saif Ali v Sydney Mitchell & Co [1980] AC 198; Giannerelli v Wraith (1988) 165 CLR 543, 556; D’Ortia-Ekenaike v Victoria Legal Aid [2005] HCA 12. See also David A. Ipp, “Lawyers’ Duties to the Court” (1998) 114 Law Quarterly Review 63; and The Hon Justice Kenneth Martin, “Between the Devil and the Deep Blue Sea: Conflict between the Duty to the Client and Duty to the Court”, paper presented at the Bar Association of Queensland Annual Conference, Queensland, 4 March 2012.

44The author worked as PLT practitioner from 2007 to 2011 in teaching and leadership roles. Anecdotally, PLT providers ordinarily recruit lawyers with professional post-admission experience. There may be exceptions where an individual is recruited on the basis of education, training or accounting qualifications.

45The question was usually framed as: “When we are admitted to the profession as lawyers, we are also admitted as officers of the court. We learn very quickly that our duty to the court is paramount, and we must not mislead the court. Do you think that paramount duty intersects with our work as PLT practitioners, particularly when assessing competency?”

46“…probably unique in imposing common law obligations on a professional person to act contrary to the interests of a lay client…”. D’Ortia-Ekenaike v Victoria Legal Aid [2005] HCA 12, per McHugh J at [113].

47Theodore R. Schatzki, Karin Knorr Cetina and Eike Von Savigny (eds), The Practice Turn in Contemporary Theory (London, Routledge, 2001), p. 58.
public interest in the administration of justice. That public interest is indeed the source of these duties … 48

In relation to lawyers’ specific duty of disclosure to the court, Ipp J added:

… it is the general duty of lawyers not to mislead the court by stating facts which are untrue, or mislead the judge as to true facts, or conceal from the court facts which ought to be drawn to the judge’s attention … 49

In non-adversarial contexts such as ex parte applications, where the court relies on uncontested representations, Ipp J said:

… it is then the lawyer’s unqualified duty to make full disclosure to the court so that the court’s decision is made on a fully informed basis … 50

The duty of disclosure arguably applies to the admissions process, bearing in mind the public interest purpose of legislation governing admission in Australian jurisdictions, including the protection of clients and the administration of justice, and assurance of the quality of legal services. 51 To the author’s knowledge, legal issues arising from the POP and practitioners’ PLT work have not been tested to date.

Here, however, legal issues are supplementary to the utility of the POP to elicit insights about interviewees’ dispositions, regarding teaching and learning within PLT as a field in law. It was reasoned that linking the POP to PLT practitioners’ work would provoke reflection and discussion about engagements with SoTL within individual and extra-individual dimensions, which indeed it did.

The following section describes the application of Bourdieu’s reflexive sociology as a theoretical framework in this study.

Bourdieu’s reflexive sociology

Bourdieu’s “reflexive sociology” aims to synthesise objective and subjective approaches to sociology, 52 by using concepts such as “habitus” and “field”, 53 and non-financial “capitals”. 54 These concepts are useful for studying the

48Ipp, supra n. 43.
49Ibid.
50Ibid.
51Legal Profession Act 2006 (ACT) ss. 6, 20; Legal Profession Act 2004 (NSW) s. 3; Legal Profession Act 2006 (NT) s. 3; Legal Profession Act 2007 (Qld) ss. 3, 28; Legal Profession Act 2007 (Tas) ss. 3, 23; Legal Profession Act 2004 (Vic) s. 2.2.1.
52Reflexivity, in this context, involves the researcher “objectifying one’s own universe”: Loïc J.D. Wacquant, “Towards a Reflexive Sociology: A Workshop with Pierre Bourdieu” (1989) 7(1) Sociological Theory 26, p. 33.
53Pierre Bourdieu, “The Genesis of the Concepts of Habitus and Field” (1985) 2(2) Sociocriticism 11.
54Pierre Bourdieu, The Social Structures of the Economy (Cambridge, Polity, 2005); Pierre Bourdieu, “The Forms of Capital”, in J.G. Richardson (ed.), Handbook of Theory and Research for the Sociology of Education (New York, Greenwood Press, 1986), p. 241.
tensions between structure and agency, and questioning the extent to which structures are inscribed into practice, or whether practice can influence structure.\textsuperscript{55}

Bourdieu’s \textit{habitus} describes the dispositions unconsciously inculcated into individual agents by an education system.\textsuperscript{56} The education system involves \textit{primary and secondary pedagogies}.\textsuperscript{57} The former involves dispositions inculcated through family and community, whereas the latter involves educational and social institutions, such as academia and the law. Through \textit{habitus}, agents accept certain capitals as valuable within the field, and struggle to acquire, maintain, and improve their holdings of capitals. Capitals include cultural capital, social capital, and symbolic capital.\textsuperscript{58} Cultural capital can be “embodied”, “objectified”, or “institutionalised”.\textsuperscript{59} Dispositions of the mind and body (e.g. “thinking” and “acting” like a lawyer) are embodied cultural capital.\textsuperscript{60} Cultural goods such as books, law reports, and statutes, are objective cultural capital.\textsuperscript{61} Educational and legal qualifications are institutional cultural capital.\textsuperscript{62} Social capital involves the accumulated “actual or potential resources” connected to a “durable network” of institutionalised relations of “mutual acquaintance and recognition”.\textsuperscript{63} Symbolic capital “resides in the mastery of symbolic resources based on knowledge and recognition”;\textsuperscript{64} it includes prestige, such as that associated with being a lawyer, or a judge. Capitals can be converted (with potential losses or gains) into other categories as part of struggles for position in a field.\textsuperscript{65} The \textit{habitus}, that unconsciously accepts such struggles as valid and necessary, encourages reproduction of dispositions and practices.\textsuperscript{66} Bourdieu argued “a unanimous tacit complicity”\textsuperscript{67} operates in the juridical field, where social stratification and professional training serve to sanctify cultural objects and relations.\textsuperscript{68} The concepts of \textit{habitus} and reproduction have implications for PLT practitioners’ engagement with SoTL in PLT, if their collective \textit{habitus} disposes them to reproduce practices, rather than engage in SoTL that potentially conflicts with such practices.

In 2012, Dezalay and Madsen observed the “low number” of scholarly articles that engage with Bourdieu’s 1986 call for a reflexive sociology of

\textsuperscript{55}Yves Dezalay and Mikael Rask Madsen, “The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law” (2012) 8(1) Annual Review of Law and Social Science 433, p. 448.

\textsuperscript{56}Pierre Bourdieu and Jean-Claude Passeron, Reproduction in Education, Society and Culture, Theory, Culture and Society (London, Sage, 1990).

\textsuperscript{57}Ibid.

\textsuperscript{58}Bourdieu, “The Forms of Capital”, supra n. 54, p. 241.

\textsuperscript{59}Ibid., p. 243.

\textsuperscript{60}Ibid., pp. 243–248.

\textsuperscript{61}Ibid.

\textsuperscript{62}Ibid.

\textsuperscript{63}Ibid., p. 248.

\textsuperscript{64}Bourdieu, The Social Structures of the Economy, supra n. 54, p. 2.

\textsuperscript{65}Bourdieu, supra n. 54, p. 252.

\textsuperscript{66}Bourdieu and Passeron, supra n. 56.

\textsuperscript{67}Bourdieu, supra n. 14, p. 843.

\textsuperscript{68}Ibid.
law.\footnote{Dezalay and Madsen, supra n. 55, p. 434.} Such engagement involves returning to questions of how practices might influence structures, or how structures are inscribed into practices.\footnote{Ibid., p. 448.} The \textit{paramount obligation} is a structure inscribed in case law, precedent, and practice. It is a “metaphysical” obligation subject to courts’ “inherent” power to control their officers.\footnote{The inherent jurisdiction has been described as a “somewhat metaphysical concept”, with a “range of manifestations … a tribute to the readiness of certain judges to create and use powers ….”. Keith Mason, “The Inherent Jurisdiction of the Court” (1983) 57(August) Australian Law Journal 449, p. 458.} It is in this spirit and context the author investigates PLT practitioners’ engagement with scholarly activities around their teaching work. The next part of this article describes the methods used in this study.

\section*{Methods}

\textit{Research ethics}

Deakin University Human Research Ethics Committee (DUHREC) granted the author ethics approval before he commenced the semi-structured interviews.\footnote{Approval number DU 2013-083. All prospective interviewees were supplied with a copy of the approved plain language statement before recruitment of interviewees commenced.}

\textit{Semi-structured interviews}

The author conducted semi-structured interviews with PLT practitioners working in six Australian jurisdictions.\footnote{Semi-structured interviews are partly scripted, with some pre-prepared questions, but also require improvisation: Michael D. Myers and Michael Newman, “The Qualitative Interview in IS Research: Examining the Craft” (2007) 17(1) Information and Organization 2.} Semi-structured interviews emphasise the interviewees’ “definitions of terms, situations and events and try to tap the participants assumptions, implicit meanings, and tacit rules”.\footnote{Kathy Charmaz, “Qualitative Interviewing and Grounded Theory Analysis”, in Jaber F. Gubrium and James A. Holstein (eds), \textit{Handbook of Interview Research} (Thousand Oaks, Sage, 2001), p. 675.}

The author accessed public PLT provider websites to contact 100 potential participants. An invitation and plain language statement was emailed to the contacts, and circulated via social media. Thirty-six PLT practitioners accepted the invitation.

Wherever possible interviews were recorded face-to-face at a location convenient to the participant. Recordings were labelled with pseudonyms and transcribed. Draft transcripts were emailed to interviewees for checking and
verification. Many interviewees remarked during the interviews they enjoyed the opportunity to engage in discussions about teaching, learning, research and scholarship.

**Coding**

Computer-aided qualitative data analysis software (CAQDAS) was used to store and organise transcripts, and to locate and code responses to the POP. “Coding” involves tagging marked-up parts of the transcript with concepts or themes. For example, responses to the POP were coded as “yes” or “no” or “uncertain”, depending on whether the interviewee accepted or rejected or expressed uncertainty about the proposition. Themes that emerged from close readings of the transcript were coded to theme nodes.  

**Insights and analysis**

**Utility of the POP**

The utility of the POP was demonstrated by the responses the proposition provoked, usually eliciting more than a bald “yes” or “no” answer, and participants expanded on a range of matters and concerns they linked to the proposition. As mentioned previously, this qualitative study is part of a larger project aimed at garnering insights about how PLT practitioners engage with SoTL. It is not claimed that counts for “yes” or “no” responses are statistically significant. The responses, however, provide insights about how structures in the PLT field generate forces rendered visible through effects in PLT practitioners’ reported practices.

**Interviewees’ responses and analysis**

The interviewees’ responses to the POP disclosed insights about professional, social and cultural relations around PLT work. The majority of interviewees expressed interest in pursuing SoTL, although half of these self-assessed as capable of doing so. Whilst many interviewees agreed their organisations gave symbolic support to SoTL activities (some indicated this as “tokenistic”), interviewees overwhelmingly stated that resources allocated were inadequate, including personnel, funding, but especially time. Top-down/bottom-up pressures, described below, show how field forces consume time.

Of 36 interviewees, 34 were asked and responded to the POP. Approximately two-thirds of the respondents agreed the paramount obligation

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76For coding as a qualitative analysis technique see Anselm Strauss and Juliet M. Corbin, *Basics of Qualitative Research: Grounded Theory Procedures and Techniques* (Los Angeles, Sage Publications, 1990). For description of a range of coding techniques see Johnny Saldaña, *The Coding Manual for Qualitative Researchers* (Los Angeles, Sage Publications Limited, 2009).  

77The question was not asked in the two remaining interviews, due to time constraints.
intersected with their work as PLT practitioners when teaching or assessing competence, for example:

I think we have certainly put our minds to it quite a bit … because a lot of us still practise, be it part-time or in the clinical programme or whatever so very much have that professional affiliation – very much in our minds and foremost our duty to the court – and the other part of it I think is because we move their admissions, so there's nothing like that to get that sense, you know, I am responsible … (Garnet)

Yes, I think that we need to keep that in our minds, I think we really do, because we are still officers of the court, and even though PLT is a creature of statute, it is still a profession where as a senior member of the profession we have a duty, I think we are duty-bound to the newer members of the profession to ensure that they are able to do what is expected of them … (Pearl)

These were strong immediate affirmations, and evidenced mindfulness of the duty, and an overriding sense of professional identity as officers of the court. Other responses alluded explicitly to intersections between teacher/lawyer roles:

… I think the original intention of the obligation to the court is to not mislead the court [Int: yes] so that, I don't think that is limited or restricted by any other kinds of obligations that the person has, so as a teacher, as a lawyer who is also a teacher, then in making a decision based on their knowledge of an applicant, they have to be sincere in their assessment whether or not to tick the box whether they are or are not ready to be admitted to practice … (Zircon)

Some interviewees perceived the “market”, partly represented by employment positions for new lawyers, would sort the competent from the not-yet-competent.

… definitely [pause] definitely it's on my mind. It's in the forefront of my mind because … there been occasions where I've heard people talking outside saying well it is the market that will determine what happens, and I don't like that [pause] If someone is not competent enough they shouldn't be leaving until they have the skills … (Jade)

In this context, employers perceived as keen to increase profits (with new recruits able to generate billable hours with minimum necessary supervision) and reduce risk (avoiding the cost of increased supervision and mistakes) would act as quality control and relieve PLT practitioners’ concerns about trainees’ competency. Some felt conflicted by market pressures regarding notions of personal integrity and quality work:

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78 Gemstones are randomly assigned as pseudonyms for interviewees – no onomastic significance intended. Italics are added to emphasise key aspects of responses.
there is a view expressed by other mentors, well, the market will sort them out, so … They will either get jobs, and be fired because they're not competent or they've done something, or stuffed up, but I'm a bit [pause] I think I would rather be getting it right, that's my view… (Opal)

Of those who did not agree with the POP, some emphasised the duty to clients/consumers, or excluded the obligation from personal teaching obligations, or rejected the POP outright:

… well it's not a paramount duty, but a duty to the clients at the other end …

(Sunstone)

Why should our heads be on the chopping block because we haven't stopped these people getting through, I don't, yes, I don't know that it is part of our job …

(Quartz)

… there is supervision of what we do, I think that the accreditation part of the student getting through PLT is an institutional responsibility … I don't feel personally as though I am responsible for the admission of a particular student, my responsibility in fulfilling my obligations as a lawyer, including my obligations as an officer of the court is to do my job … competently, and honourably … (Jasper)

What a fairyland! (Moonstone)

Discussions around the POP extended to risk management, PLT practitioners as gatekeepers, and the credibility of the PLT course or provider:

I talk to people about it … “if my friends went to this person for legal advice” kind of threshold, and I think, you know, clients are so vulnerable … If someone actually isn't competent… then they can do an amazing amount of damage … (Sunstone)

They have to be competent and I think that we are, we are, the gatekeepers I suppose, to ensure that they are competent, but there is only so much that we can do … (Tourmaline)

To a degree it is self-interest, the credibility of our programme, we don’t want people ringing up and say how could you, how could this person get a GDLP when their letters are unintelligible … (Garnet)

For some the paramount obligation was integral to the distinction (symbolic power) of being a lawyer:

I say to the students: someone is going to one day call you “my lawyer”! … it's a huge responsibility, and it's an honour! It's an absolute honour, the huge responsibility, “my doctor, my lawyer”… (Jade)

Sometimes the paramount duty was weighed against students’ needs:
[Pause, exhales] Sometimes it’s about looking at it from their perspective [the students’], and thinking they have done a five or six year degree and then at the end of that they have paid how many tens of thousands of dollars to do this course [pause] so we sort of not wanting to do the wrong thing by them, wanting to make their life go badly … (Sunstone)

Other times the paramount duty was weighed against commercial or business considerations:

... it has been said to me by higher up, that, you know, look, we aren’t the gatekeepers for the profession, that is not our job [pause] I don’t know … I can see the arguments for and against that … (Pearl)

... it’s a business, and there’s a lot of [PLT providers] cashing in on it at the moment – I think there is pressure to pass students – and I think this has been my experience so far, it hasn’t been an overwhelming pressure, but it is there … (Granite)

The pressure usually comes from higher up in the organisation, because they are running a business, and there is a marketing manager … (Opal)

Interviewees mentioned commercial or business considerations in connection with top-down pressure to expedite completion of training, and to focus only on teaching work. Interviewees also identified bottom-up forces, from trainees anxious to expedite completion of PLT because of competition for employment. Top-down and bottom-up forces were fused in the time, costs, and inconvenience of internal review processes, and nuanced decision-making about student competency:

The other pressure is, if you fail a student, in a course, and they appeal that, the amount of justification that is required through internal … mechanisms, for them to go through challenging that result is very onerous on lecturers and teachers, and therefore on a practical level it works … you are more likely to pass someone if it is a line ball decision … (Ruby)

Items of cultural capital – provider reputation and training quality – might be converted or traded away for items of economic capital – enrolment volume, turnover, and trainees’ employment prospects. For example, one interviewee suggested trainees and employers do not value the quality of PLT qualifications:

... it is very hard to maintain quality when the students, neither the students nor the employers, to my mind really care about the quality that you offer, now what I mean by that is that, most employers know what PLT is [pause] But [pause] I still think that the view of most employers is, look when we get the people on board here, we will train them [laughs] so they don’t really care what you’ve done at PLT … (Quartz)
Reference to employers’ expectations of PLT trainees often involved discussions around the status of PLT qualifications amongst employers and trainees. In this context, interviewees described how PLT was perceived as an obstacle, a task to be ticked off, rather than a contribution to graduates’ competencies that improved their institutional and embodied cultural capitals. Several interviewees identified the focus on completing trainees, in the context of commercial competition with other PLT providers, resulted in little time being allocated for PLT practitioners to engage in scholarly activities. Interviewees identified business competition as constraining sharing and external scrutiny of scholarship:

... if you’ve been around for as long as I have in the PLT area, you would undoubtedly come to the view that there is less ... sharing currently than there was in the past, because certainly... competition [pause] protection of, you know, confidential information, this is valuable stuff ... (Obsidian)

How much are we going to share, knowing that our major competitor was going to be [at a conference] – how much will we going to altruistically put the sharing of things that we had done ... (Garnet)

Interviewees described how top-down/bottom-up pressures produce demands for more flexible course structures, dates and modes of delivery, requiring teaching and learning innovations, but these were stymied by regulators’ “old-fashioned” attitudes regarding legal education.

... the admitting authorities play a really important role, I mean just look at the national legal profession, where is that? That would have been, in my way of thinking, a timely opportunity to really have a conversation about the profession, about lawyers, about the diversity of the profession, and that’s fallen over, I think there is not enough [pause] conversation between legal education and practical legal training providers and the profession ... 79 [Later in the discussion] [laughs, shakes head] ... the people in those organisations and institutions are very conservative! (Turquoise)

... there is a very traditional [pause] I think because they are not educationalist ... I do see them as really quite out of touch [pause] and old-fashioned ... (Garnet)

They are still in the day of the quill ... we’ve got [regulators that] are educational troglodytes … (Diamond)

... judges have far too much influence on legal education, they shouldn’t be allowed near it, generally speaking judges can be defined as that group of people who, one, succeeded at law school because of their innate talent rather than the kind of teaching they received, secondly, they spent some time in a law firm specialising in litigation law, a narrow area of law and legal education, three, they went [to the bar] in which individualism is the most important concept; they

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79 For a recent discussion of the Australian national legal profession reforms, see Reid Mortensen, “Australia: The Twain (and Only the Twain) Meet – the Demise of the Legal Profession National Law” (2013) 16(1) Legal Ethics 219.
acquired by dint of their genetic inheritance, the capacity to learn stuff by themselves; they are the last people to offer advice about either the content or the method of legal education … (Moonstone)  

The POP catalysed discussion about connections and relations that affect practitioners’ teaching and learning work, and engagement with SoTL. Figure 1 “Issues and relations” illustrates themes of connections and relations between PLT practitioners, PLT providers, trainees and other agents identified in the interviews.

The interviewees’ comments disclose perceptions that the judiciary, the profession, and trainees generate field forces made visible through top-down/bottom-up pressures in PLT practice. At times the paramount obligation is in tension with commercial forces from PLT providers, students, and employers, to focus on teaching to complete trainees. Interviewees also identified conservative attitudes of judicial regulators as impeding teaching and learning innovations that might improve PLT and better accommodate contemporary conditions – thus potentially undermining professionally responsible efforts to maintain and improve quality and integrity in PLT.

The POP successfully elicited insights from the PLT practitioners that disclose conditions or field forces affecting their teaching and learning work and engagement with SoTL. Whilst most PLT practitioners agreed there was a connection between their primary professional responsibilities and PLT work, top-down/bottom-up forces nuanced this, and impeded engagement with SoTL that might better support realisation of the professional responsibility.

Conclusion

All interviewees, regardless of whether they agreed with the POP, acknowledged that the paramount duty existed and compliance with it is required. Many interviewees alluded to the importance of inculcating the duty in their trainees, 

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80 David Weisbrot, Australian Lawyers (Melbourne, Addison-Wesley Longman, 1990), pp. 98–101, discusses the socio-economic trajectories of Australian superior court judges.
reproducing dispositions and practices, and some practitioners affirmed their gatekeeper role. Several interviewees expressly referred to protection of clients and client vulnerability, and the honour or distinction of being a lawyer in connection to this. These dispositions comprise part of PLT practitioners’ *habitus* that were brought in tension with commercial and judicial top-down/bottom-up forces when interviewees reflected on intersections between primary professional obligations and PLT teaching and learning practice. The interviews indicated extra-individual forces affect the individual interest and capability of PLT practitioners to engage with SoTL. Commercial forces emphasise teaching to expedite turnover and completion of trainees, and discourage extra-institutional scholarly communication of knowledge by treating it as intellectual property. Judicial forces discourage scholarship and innovation in teaching and learning by favouring reproduction of traditional practices. Interviewees perceived there was institutional symbolic support for SoTL in marketing PLT; however, extra-individual pressure to concentrate on teaching toward turnover and completion of training diverted resources, especially time, from engagement with SoTL.

The constraints on scholarly work toward innovation and improvement in PLT undermine its espoused purposes: to improve lawyers’ learning experiences, ensure the quality of legal services, to protect clients and the administration of justice. Most PLT practitioners interviewed agreed that teaching and learning in PLT involve a professional responsibility. As argued in the introduction, there are multiple ways in which SoTL can materially support that responsibility. The author contends the appropriate course is to open up PLT as *practice research*, to encompass dual professionalism and professional practice as lawyers and as educators, to test long-held assumptions, and improve PLT’s effectiveness, standing and value.

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81 Indeed, frequently this was the first response to the POP.

82 For example: Wilfred Carr, “Practice without Theory? A Post-Modern Perspective on Educational Practice”, in Bill Green (ed.), *Understanding and Researching Professional Practice* (Rotterdam, Sense Publishers, 2009), pp. 55–64; Stephen Kemmis, “What Is Professional Practice? Recognising and Respecting Diversity in Understandings of Practice”, in Clive Kanes (ed.), *Elaborating Professionalism – Studies in Practice and Theory* (Netherlands, Springer, 2011), pp. 139–166; Theodore R. Schatzki, “A Primer on Practices – Theory and Research”, in Joy Higgs, Ronald Barnett, Stephen Billett, Maggie Hutchings, and Franziska Trede (eds.), *Practice-Based Education: Perspectives and Strategies* (Rotterdam, Sense Publishers, 2013), p. 12.