

# RECOGNISING AND VALUING TEACHING EXCELLENCE IN LAW SCHOOLS AND TEACHING-INTENSIVE APPOINTMENTS

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JILL COWLEY\*

The intense focus by government and universities on research has been pressed most often at the expense of quality learning and teaching in universities. There is some irony here. The core purpose of universities is the provision of *both* research and education, such purpose being identified in all the universities' statutes. For example s 6 of the *University of New South Wales Act 1989* (NSW), the objects section, provides that both education and research are principal functions. Nowhere in this objects provision (or in any of the other university statutes) is there any suggestion of subservience of one function to another. Further, one only has to ask graduates what they remember and value from their years at law school to realise that it is the teaching which informs their view — both the excellent and the abysmal. Research, on the other hand, is often equated with a closed door and sign indicating that the occupant is on leave.

The suggestion, therefore, of the appointment of certain staff to teaching-intensive, or teaching-only, positions is somewhat curious. If the objective of the exercise is to recognise and value excellence in teaching, then the models proposed do not satisfy that objective.

This paper examines the ways in which universities value education and, then, whether excellence in legal education can be advanced by the appointment of teaching-intensive academic staff.

## I. INTRODUCTION<sup>1</sup>

This paper examines the ways in which universities value education. Such examination is timely given that the intense focus by government and universities on research has been pressed most often at the expense of quality learning and teaching in universities, despite very clear direction provided by all university statutes that *both* research and teaching are primary functions. The question is then asked whether excellence in legal education can be advanced by the appointment of teaching-intensive or teaching-only academic staff. If the objective of the exercise is to recognise and value excellence in teaching, do the models proposed satisfy that objective?

## II. TEACHING AND RESEARCH IN UNIVERSITIES

The core purpose of universities is the provision of *both* research and education, such purpose being identified in all the universities' statutes. For example, s 6 of the *University of New South Wales Act 1989* (NSW), the objects section, provides that both teaching and research are principal functions, as follows:

- (1) The object of the University is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.
- (2) The University has the following principal functions for the promotion of its object:
  - (a) the provision of facilities for education and research of university standard,
  - (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,

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\* Academic Fellow (Learning and Teaching) for Law, UNSW. The author would like to thank Rosanne Quinell, Academic Fellow (Learning and Teaching) Faculty of Science, UNSW for all her assistance.

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- (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community,
- (d) the participation in public discourse,
- (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.<sup>2</sup>

Nowhere in this objects provision (or in any of the other university statutes) is there any suggestion of subservience of one function to another. Indeed it has always been thus: teaching and research go hand-in-hand. '[B]oth involve various aspects of the acquisition of knowledge: acquisition of established knowledge by the student, and the acquisition of new knowledge by the teacher.'<sup>3</sup>

In his informative article, John Scott describes such a statement of purpose, as it applies to a university, as its *mission*.

A modern term applied to universities, "mission" is the broadest word to describe a university's basic purpose ... Ultimately, the life force of any enterprise is its mission, either stated or assumed.<sup>4</sup>

For most modern universities, their mission is based on the triangle of research, teaching and community or public service. These are more than mere aspirations. They are, as in the words of the *University of New South Wales Act 1989* (NSW), '*principal functions*': they are core business. Scott traces the development of these three functions as they relate to universities from their establishment in medieval times to the postmodern era.

From medieval to postmodern times, *service* is the keynote. All universities were and are social organizations designed to provide higher educational services such as teaching, research and a host of other academic services to the church, governments, individuals, and in the future, perhaps, the world.<sup>5</sup>

Service in teaching and research were fundamental to the medieval universities of Europe. They used the scholastic method of instruction, which applied 'Aristotelian logic (philosophy) and dialectic (debate) to Christian doctrine.'<sup>6</sup> Thus, the emphasis was on teaching. 'The *universitas* was a corporation or guild of masters (professors) and scholars (students)'<sup>7</sup> which pursued and disseminated learning, serving both the church and monarchs of the day. Scott dates the emergence of the early modern university to the period 1500–1800, coinciding with the emergence of the nation-states of Europe and the decline of the power of the church.

According to Scott, following the Second World War there was a huge change in the way that universities were funded, with a consequential shift in mission. Funding now came primarily from government and from the corporate sector. The very real involvement of big business is new.

[C]ritics now warn that while this is a legitimate part of the public service mission, commercial pressures threaten traditional missions and institutional autonomy.

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<sup>2</sup> *University of New South Wales Act 1989* (NSW), s6.

<sup>3</sup> Samuel Weber, 'The Future Campus: Destiny in a Virtual World' (1999) 21(2) *Journal of Higher Education Policy and Management* 151, 153.

<sup>4</sup> John Scott, 'The Mission of the University: Medieval to Postmodern Transformations (Educational Changes)' (2006) 77(1) *Journal of Higher Education* 1, 1.

<sup>5</sup> *Ibid* 8-9.

<sup>6</sup> *Ibid* 7.

<sup>7</sup> *Ibid* 6.

Indeed, some analysts fear that the Western university is no longer a social institution but an industry, subservient to blind market forces like any other business.<sup>8</sup>

Although writing of universities in the US, the analysis holds true for Australian universities who are also potentially subservient to 'blind market forces'. Samuel Weber puts it in a similar way when he says:

The mission of the university is thus increasingly understood as that being accountable to those who pay for it, whether these are understood to be large corporations, individual taxpayers or even students.

Examination of such history is both rewarding and revealing. It helps to make sense of the 21<sup>st</sup> century university, but detail is beyond the scope of this paper. Suffice to say that it is clear that scholarly teaching, informed by research, has always been the core business of universities. It still is. The recent involvement of the corporate sector, however, changes the balance struck between the interaction of research and teaching to produce what might be coined an industrial model, largely to the detriment of autonomy for universities and particularly for their teaching function.

### III. RESEARCH PRIVILEGED AT THE EXPENSE OF TEACHING

One only has to ask graduates what they remember and value from their years at law school and university to realise that it is the teaching which informs their view — both the excellent and the abysmal. Research, on the other hand, is often equated with a closed door and sign indicating that the occupant is on leave.<sup>9</sup> And, yet, Australian universities have undergone massive change over the past decade. They have needed to realign their research and teaching at the behest of government and other interested parties. As government funding is reduced, research is rewarded and their missions have altered. Many universities, therefore, identify as research-intensive.

Such emphasis on research comes most often at the expense of teaching and has produced, in the words of Mary Wright, '[a]mbiguity and a [c]ulture of [i]ncongruence'.<sup>10</sup> The ambiguity refers to an individual academic's attitude to his or her own teaching (and the value ascribed to it) as compared to that individual's perception of what the university expects. Her article begins with a quote from Parker Palmer.

'When my opening talk is over, someone will come up to me and confide, "I agree with everything you say about teaching — but I am the only person on campus who feels this way." At the end of the second session, three or four more people will approach me, one by one to share the same secret. By the time I leave, I have met ten or fifteen people who share a common vision for education — each of whom is certain that he or she is alone on this campus.' (1998, pp. 173-174)

Paralleling Palmer's observations, survey data of research university faculty indicate that there are curious discrepancies in the value that faculty [academics] assign to teaching and the worth they believe their colleagues and organizations attribute to instructional activities. A study of faculty in 11 research and doctoral institutions in 1991 and 1996 found that faculty felt they attributed more importance to teaching than their departmental colleagues, chairs, deans, and central administrators did.<sup>11</sup>

According to the study, this disagreement is peculiar to research-intensive institutions.

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8 Ibid 28.

9 This need not always be so, however. See two initiatives which aim to make the linkage explicit. See University of Sydney, Performance indicators for research-enhanced teaching <<http://www.itl.usyd.edu.au/projects/RLT/usydproject/faculties.htm#performance>> at 10 December 2008; Oxford Brookes University (UK), *Building the Linkage Into the Curriculum*, Brookes eJournal of Learning and Teaching <[http://bejlt.brookes.ac.uk/vol1/volume1issue2/perspective/hugginsetal\\_05.html](http://bejlt.brookes.ac.uk/vol1/volume1issue2/perspective/hugginsetal_05.html)> at 10 December 2008.

10 Mary Wright, 'Always at Odds?: Congruence in Faculty Beliefs about Teaching at a Research University' (2005) 76(3) *Journal of Higher Education* 331, 333.

11 Ibid 331.

[P]erson-organization misfit in regard to instructional beliefs, or the pattern of rating one's own value of teaching above that of one's peers, is not found among faculty in other institutional types. ...Therefore, what may be most singular to the research university is not the perceived worth of teaching but the varying beliefs held about the activity. Uniquely, faculty in research universities tend to hold views about teaching that they feel are incongruent with those of their peers, supervisors, and institution.<sup>12</sup>

She asks, 'What is it about a research university that would produce lack of agreement between the individual's values and perceptions of organizational leaders' views?'<sup>13</sup> There are many answers. She claims, for instance, that incongruence occurs in research-intensive universities which have inconsistent and unclear objectives about what they believe to be teaching excellence, and who set ambiguous goals and responsibilities. Further, she maintains that in such institutions, teaching is a lonely activity which is poorly rewarded. Staff in such universities fall far short of creating communities of learning and teaching, even failing to create effective teaching networks.

For the author, the most worrying aspect is the finding that individual teachers feel unable to profess a real commitment to teaching because it is feared that such identification may be career suicide. Even more worrying is that this same sentiment is repeated by Nancy Van Note Chism when she writes about teaching awards, which are '[c]oveted at many liberal arts institutions yet sometimes termed "the kiss of death" at research institutions ...'<sup>14</sup> It goes straight to the value that the research-intensive university is perceived to ascribe to teaching.

#### IV. AUSTRALIAN UNIVERSITIES: CURRENT STATISTICS AND OTHER RESEARCH — WHAT DO THEY REVEAL?

Given that the research above paints such a bleak picture of the status of teaching in universities, particularly research-intensive universities in the US, it is worth asking whether this is what is happening in the Australian tertiary sector too. Certainly, the Australian sector manifests imbalance between teaching and research. However, whether there is real incongruence of the type that Wright describes is not clear. There are, however, two indicators of imbalance in the system which favour research and which point to teaching as having a low value or status.

##### *A. Indicator 1 – the Bifurcation of Academic Work Into Research-only and Teaching-only Roles*

One indicator that research is more highly prized than teaching can be gleaned from the data available through the Australian Government Department of Education, Science and Training (now the Department of Education, Employment and Workplace Relations or DEEWR).<sup>15</sup>

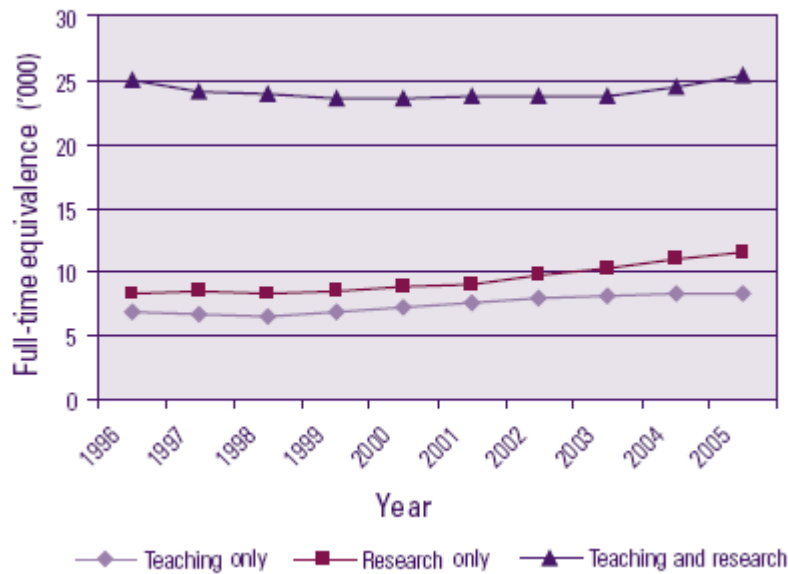
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<sup>12</sup> Ibid 332.

<sup>13</sup> Ibid 332.

<sup>14</sup> Nancy Van Note Chism, 'Teaching Awards: What Do They Award?' (2006) 77(4) *Journal of Higher Education* 589, 589.

<sup>15</sup> Department of Education, Science and Training (now Department of Education, Employment and Workplace Relations or DEEWR) <<http://www.dest.gov.au>> at 10 December 2008.



This above figure, available on the former DEST website

shows the trend of staff toward ‘teaching only’ and ‘research only’ functions, and away from a combined ‘teaching and research’ function.

Of particular interest within the ‘teaching only’ function are the trends in work contract. [A previous table] shows the increase of staff employed on a casual basis (of more than 10 percentage points) from 1996 to 2005, and the corresponding decrease of those employed with a full-time contract. This can be aligned with the trends highlighted in changing work contracts for staff as a whole.

Staff engaged in a ‘research only’ function accounted for 12.1% of total full-time equivalence in 2005. This was an increase of more than two percentage points since 1996, which equated to around 2,000 extra staff employed undertaking ‘research only’ functions. Unlike ‘teaching only’ staff, the majority of staff in this function (76.5%) were employed on a full-time basis. This level has remained steady since 2000.<sup>16</sup>

Three important points arise here. The first is that there has been a movement away from the appointment of staff whose function is both teaching and research. Second, as to the teaching-only staff, there has been an increase in the number employed on a casual basis in the period from 1996 to 2005. Third, the numbers of research-only staff, on the other hand, have increased and the majority of those are employed full-time.

16 See DEST, *Selected Higher Education Statistics: Staff 2005* (2005) <[http://www.dest.gov.au/NR/rdonlyres/6C964624-8DBD-4502-AB81-16366B6C915A/18823/Staff2005\\_SelectedHigherEducationStatistics.pdf](http://www.dest.gov.au/NR/rdonlyres/6C964624-8DBD-4502-AB81-16366B6C915A/18823/Staff2005_SelectedHigherEducationStatistics.pdf)> at 10 December 2008.

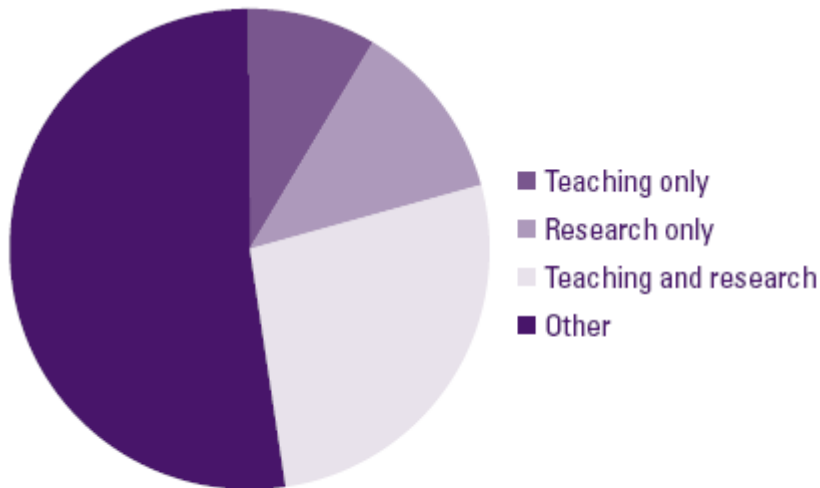


Figure 4: Function of staff, 2005

It should also be noted that the largest number of staff in the above pie chart (Figure 4), are described (picturesquely) as ‘Other’ staff.

[N]early all general staff are formally described as ‘Other’, [although interestingly] Vice-Chancellors are also categorised as having ‘Other’ function (if they have been classified by their universities according to the definitions in the DETYA staff statistics manual).<sup>17</sup>

Further data for 2006 is available in table form in another part of the website.<sup>18</sup> It is not possible, however, to use this same data to make further assumptions along the lines of gender and current duties. Anecdotal evidence suggests that the teaching-only staff (both full-time and casual) are young and female, whereas the research-only staff tend to be male, appointed to Level C and upwards. The above data, however, does not allow for this conclusion to be drawn.<sup>19</sup>

It is worth noting that Australia is not alone here. Marina Angel writes compellingly of the status of women and their appointment by way of less secure, non-tenured (contract) positions in US law schools. Thus, ‘nearly 30 per cent of all women full-time faculty are contract teachers, compared to only 14 per cent of males.’<sup>20</sup> Further,

[i]f the current trends continue short-term contract teachers will become the norm. There may no longer be teacher/scholars who serve their schools, universities, and communities with their professional expertise. With the unbundling of these traditional functions of a tenured professor, a university faculty will consist of three separate groups: those who only teach students in traditional or “virtual” classrooms; those who only teach students through clinical or ‘skills’ experiences; and those who work with small groups of advanced students on applied research fully funded by grants.<sup>21</sup>

17 Ian Dobson, “‘Them and Us’ — General and Non-general Staff in Higher Education” (2000) 22(2) *Journal of Higher Education and Management* 203, 204. The author, believing that she is in good company, also owns up to a classification of ‘Other’. (DETYA became DEST and is now DEEWR).

18 DEST (Now DEEWR) <[http://www.dest.gov.au/NR/rdonlyres/68941E00-2437-4155-BEC7-04FF6B9DB4DA/21673/Staff2006combined.xls#Table\\_1.3!A1](http://www.dest.gov.au/NR/rdonlyres/68941E00-2437-4155-BEC7-04FF6B9DB4DA/21673/Staff2006combined.xls#Table_1.3!A1)> at 10 December 2008.

19 But see Hilary Winchester, Colleen Chesterman, Shard Lorenzo, & Lynette Browning, *National Colloquium of Senior Women Executives in Higher Education. The Great Barrier Myth: An Investigation of Promotions Policy and Practice in Australian Universities*, AVCC Report, 2005. <[http://www.universitiesaustralia.edu.au/documents/policies\\_programs/women/FinalAVCCReportJuly05.pdf](http://www.universitiesaustralia.edu.au/documents/policies_programs/women/FinalAVCCReportJuly05.pdf)> at 10 December 2008.

20 Marina Angel, ‘The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure’ (2000) 50(1) *Journal of Legal Education* 1, 13.

21 *Ibid* 14.

The trend of such division of function does not favour teaching in research-intensive universities. The separation of scholarly enquiry (research) and learning and teaching in universities is regressive. Further, the growth is in research, and the division between the two provides a perception of a privileging of research.

### *B. Indicator 2 – Promotion*

The promotion policies available on some of the websites of Australian universities still indicate favourable weighting against teaching and for research.<sup>22</sup> Under such regimes, while most academics seek promotion on the basis of both teaching and research prowess, it is possible to be promoted, to Level E, relying on research excellence alone. An excellent researcher need not demonstrate more than a satisfactory (sustained) teaching record. Excellence in teaching, however, does not enable promotion unless it is accompanied by excellence (superior standard) in research as well.<sup>23</sup> It is fighting against a culture with one hand tied behind your back.

Sean Brawley's article explains the procedure (and disappointment) of an application for promotion to Associate Professor on the basis of an outstanding contribution to teaching. His initial hurdle was exposed when, '[d]espite allowing me to nominate my teaching as my outstanding field, the form was constructed for a response on outstanding research.'<sup>24</sup> Further, he was compelled to nominate international referees for research, whereas another promotion candidate relying only on research only needed written support from a colleague about his or her teaching. He was not promoted and concluded, 'My standard of evidence was not high enough but what was expected of me if I was to be successful was a standard higher than that of research.'<sup>25</sup> As Christine Asmar wrote (quoting Paul Ramsden in support):

In universities with academic cultures that have traditionally lauded and rewarded disciplinary research, attempts to enhance the status and effectiveness of teaching and learning practices must take account of the ongoing power of the research culture. Ramsden (1992, p235) has noted for example, that in terms of what is likely to be rewarded in universities, 'the reality will always be that teaching performance as a means of gaining promotion will take a secondary role'.<sup>26</sup>

Such policies send a very powerful message about how an institution values learning and teaching.

## V. RESTORING THE BALANCE

So is it possible to 'enhance the status and effectiveness of teaching and learning practices'<sup>27</sup> and to restore the balance between research and teaching under such circumstances? The answer is, of course, yes. However, we, as teachers, 'need to take into account the power of the research culture'.<sup>28</sup>

There has already been significant recognition and valuing of excellence in teaching throughout the Australian university sector. Teaching and Learning units have been established within universities to support learning and teaching and inculcate communities of practice centred on the scholarship of teaching. Teaching is rewarded by teaching awards, which are much sought after.<sup>29</sup> Funding to schools and faculties is most often

22 See, for instance, UNSW, *Academic Promotions: 2008 Policy and Procedures* <[http://www.hr.unsw.edu.au/employee/acad/ap\\_policyprocedure08.pdf](http://www.hr.unsw.edu.au/employee/acad/ap_policyprocedure08.pdf)> at 10 December 2008.

23 Ibid.

24 Sean Brawley, 'Internationalising Peer Review in Teaching and Learning' (2008) 2(1) *International Journal for the Scholarship of Teaching and Learning* <<http://www.georgiasouthern.edu/ijstol>>

25 Ibid.

26 Christine Asmar, 'Strategies to Enhance Learning and Teaching in a Research-extensive University' (2002) 7(1) *International Journal for Academic Development* 18, 18.

27 Ibid 18

28 Ibid.

29 I note the argument advanced by Nancy Van Note Chism, above n 14.

linked to improvement in teaching performance, such teaching performance being measured largely by survey instruments administered to students.<sup>30</sup> Professional teaching development is encouraged by the offering of teaching programs which lead to qualifications in tertiary education. In this way, 'staff engage with current research into student learning and develop practical pedagogical skills.'<sup>31</sup>

However, as stated earlier, the Australian sector manifests imbalance between teaching and research, although fatal incongruence of the type that Wright describes is not really evident. This paper argues that there is imbalance, rather than incongruence, and that there is a real need for correction. There needs to be an appropriate balance struck between research and teaching in universities, given that it is their core business to conduct both. There is a legitimate and meaningful relationship between the two. The numbers of research-only and teaching-only staff are on the rise — but, evidently, teaching-only staff are casually employed, filling much needed gaps in the system. Their job is to teach, not research. Correspondingly, research-only staff are high status and the majority of them are employed on a full-time basis. It is also harder to achieve promotion on the basis of teaching excellence, as opposed to research. Both of these indicators go straight to the value that universities, particularly the research-intensive universities, are perceived to ascribe to teaching.

## VI. TEACHING-INTENSIVE STAFF

So, where do teaching-intensive staff appointments fit within this paradigm?<sup>32</sup> Initially it needs to be established that teaching-intensive (or teaching-focused, the terms are interchangeable) staff do not have the same function as teaching-only staff, who are invariably casual employees with no security of employment and who teach but do not research. Rather, it is proposed that teaching-intensive staff would be full-time (or fractional full-time) staff members whose very teaching focus suggests teaching excellence. It is, however, anticipated that their teaching would be informed by their research into the scholarship of teaching. This is, therefore, not a teaching-only role, but such a role is still contentious. Proposals by the various universities differ but for most, such staff would be distinguished by titles such as Teaching Fellows (not Associate Professor) and promotion opportunity would end at Level D. Further, the hierarchy is inflexible. Once assigned to such a track it would not be possible to revert to the more traditional teaching and researching role.

For many in the tertiary sector, the idea of such a function is too close to the notion of dividing universities into research and teaching institutions. For the National Tertiary Education Union (NTEU), appointment of such staff effectively ensures that they cannot become researchers and potentially creates an underclass of academics. Following is an extract from a bulletin sent by the NTEU to its members at one of the large research-intensive universities:

### **Research and Teaching Intensive Roles – assumptions about you and your work**

The principal change proposed would introduce new categories of Academic staff, comprising 'research intensive' and 'teaching intensive' roles. These could be determined on appointment to the job for new staff, or for current staff be assigned to them, with the balance between these intensities varying over an individual's career, depending upon 'the needs of the unit... as determined by the manager, and the career development goals of the individual'. For new staff this 'intensity' would be determined on appointment, in fact by the proposal for the advertisement of an Academic job to be either research or teaching 'intensive'.

<sup>30</sup> Whether such 'student satisfaction' surveys truly measure teaching performance is another matter which needs to be pursued at another time.

<sup>31</sup> Asmar, above n 26, 23.

<sup>32</sup> There have been many financial arguments put forward in favour of such teaching-intensive appointments. This paper does not address the financial arguments.



The objective of these proposals is alleged to be the goal of ensuring that the University has the best teachers and researchers, and the least amount of ‘underperforming’ staff. There seems to be an inference that the organisation and allocation of work needs to radically change to meet this goal, while in fact there are numerous opportunities currently for University Management representatives to indeed both manage and support all staff to achieve teaching and research excellence, while maintaining the integrity of Academic work, and the rights of Academic employees to have a say in the allocation of their work.

The logic of the justification for these new designations is somewhat confused. The argument in support of ‘teaching-intensive’ positions is based on the notion that ‘teaching-intensive’ staff “would normally be expected to contribute to research in either their discipline or the pedagogy in their discipline”. This is in fact no different to what educational researchers presently do. Likewise, the new category of ‘research-intensive’ staff “would participate in teaching through supervision and instruction of postgraduate students, interaction with Honours students or limited instruction to undergraduate students”, which is what many research-only staff presently do.<sup>33</sup>

According to the latest available information, the University of Queensland (UQ) have appointed 48 such staff (at A to E level). At UQ, they are called teaching-focused;<sup>34</sup> focused apparently on teaching and on the scholarship of teaching.

Further it is claimed that

[t]hey will be apprised of the latest advances in their disciplines, and will be committed to excellence in teaching and curriculum design and engaged in scholarship activities related to their teaching. Teaching-focussed academics whose teaching is informed by professional practice (for example, health clinicians) will be recognised as full academic appointments.<sup>35</sup>

## VII. TEACHING-INTENSIVE STAFF IN A LAW SCHOOL

The above definition of teaching-focused (teaching-intensive) staff in UQ raises some interesting points specifically for law schools, because it envisages that there will be two types of teaching-focused academics. The first type is the individual whose teaching is informed by the scholarship of teaching and learning (SOTL). This position relies on an appropriate balance being struck between the hours of teaching and researching into SOTL and that such SOTL research will be counted as *real* research so that these academics could be classed as young researchers and/or promoted on the basis of this research. There is already some indication that this is not so in UQ.<sup>36</sup>

The second type is the academic ‘whose teaching is informed by professional practice (for example, health clinicians)’.<sup>37</sup> On first blush, this suggests another drawing together of the profession and the academic. Law has not always been taught in universities. It is claimed that in Australia, there has always been a

particularly close link between legal education and the legal profession. The legal profession in colonial Australia was initially comprised of persons who had been admitted in Great Britain or Ireland or who had passed examinations conducted by professional authorities and (in the case of solicitors) undertaken articles in Australia.<sup>38</sup>

The traditional English model was that barristers were educated at the Inns of Court and the more lowly solicitors were apprenticed or articled as clerks. The Inns of Court in

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33 National Tertiary Education Union (NTEU) *Academics Roles Bulletin* May 2008 <<http://www.nteu.org.au/bd/sydney/acaroles/unidoc>> at 10 December 2008.

34 University of Queensland (UQ), *Teaching & Learning Profile. Incorporating the 2008 -2010 Teaching and Learning Enhancement Plan*, 7 <[http://www.uq.edu.au/teaching-learning/download/TL\\_Profile07.pdf](http://www.uq.edu.au/teaching-learning/download/TL_Profile07.pdf)> at 10 December 2008.

35 Ibid.

36 Discussion with a teaching-focused appointee at a recent conference suggests that she is ineligible for a research grant because of her teaching-focused position and that her teaching load is well in excess of her teaching/research peers.

37 UQ, above n 32.

38 Michael Chesterman, and David Weisbrot, ‘Legal Scholarship in Australia’ (1987) 50 *Modern Law Review* 709, 710. See also Linda Martin ‘From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales’ (1986) 9 *UNSW Law Journal* 111.

London had been providers of higher education for barristers for many centuries. Attendance at these Inns, and the quality of education offered, waxed and waned over the centuries. The articled clerk was dependent upon the prowess and personality of his master.<sup>39</sup> Thus few practitioners were university educated.

Law in universities had a faltering start. In England, the two universities of Oxford and Cambridge did not create courses for the study of law until the mid-19<sup>th</sup> century. Oxford first offered a 'BA in law and history in 1850 and a BCL in 1852. Cambridge created a Board of Legal Studies in 1854, initiating the LLB the following year ...'<sup>40</sup> There were few takers. The University College London also opened a law faculty but they found it hard to retain teachers. Towards the end of the 19<sup>th</sup> century, some provincial universities began to teach law, 'although most of their faculty were practitioners teaching part time to prepare articled clerks for the solicitors' examination.'<sup>41</sup> In Australia, the first university to be established was the University of Sydney in 1850. However, the first head of that university proclaimed that 'The soundest lawyers come forth from schools in which law is never taught, the most accomplished physicians are nurtured where medicine is but a name.'<sup>42</sup> Such clear opposition coupled with further political disquiet, meant that the faculty of law in Sydney University was not established until 1890, by which stage both Melbourne and Adelaide had established faculties. It is further claimed by Michael Chesterman and David Weisbrot that even though the number of law faculties (and attending students) grew during the 20<sup>th</sup> century in Australia, it was not until 1968 that there were more university graduates than articled clerks that were admitted to practice — at least in New South Wales. Moreover, a system of admission without university qualifications still flourishes.<sup>43</sup>

The picture one gains of legal education during the 19<sup>th</sup> and much of the 20<sup>th</sup> century in Australia is that it was primarily vocational; content of the programs was largely dictated by the professional admitting bodies and taught by practitioners in a part-time capacity. Such faculties were described in 1952 as being

more rigidly theoretical and more narrowly practical than in the United States, largely because "the profession's assumption that the business of Law Faculties is to train practitioners results in legal education being dominated by practical rather than intellectual interests."<sup>44</sup>

In 2008, less than 50 per cent of university law school graduates are admitted to practice and the weight of reliance on practitioners to teach, while varied across the country, is not the norm. Law is now largely taught in universities by legal academics with postgraduate qualifications, whose teaching is informed by wide-ranging and in-depth research. This is not to begrudge the valuable contributions which have been made, and continue to be made, by practitioner-teachers. The reality is, however, that in the 21<sup>st</sup> century, an LLB is not a narrow vocational degree program. It anticipates more than a direct line to practice and there is no shortage of students who anticipate the same thing.

The web quotation from UQ uses the example of a health clinician as the academic whose teaching is informed by professional practice. In a medical faculty this may well be valid. It appears, to the author at least, that there may be a greater culture of research amongst medical practitioners than with legal practitioners.<sup>45</sup> The model, however, does not fit comfortably in law schools.

39 See Lawrence Stone, 'The Education Revolution in England, 1560-1640 (1964) 28 *Past and Present* 41.

40 Richard Abel, *The Legal Profession in England and Wales* (1988) 263.

41 *Ibid* 264.

42 M Chesterman, and D Weisbrot, above n 38, 711.

43 For instance, through the Law Extension Committee, which is an adjunct of the University of Sydney.

44 E Griswald, 'Observations on Legal Education in Australia' (1952) 5 *Journal of Legal Education* 45, cited in M Chesterman and D Weisbrot, above n 38, 713.

45 However, it is really beyond the scope of the author, and this paper, to test this.

### VIII. CONCLUSIONS

For many commentators in higher education, any strategy which purports to recognise and reward excellence in teaching is a good thing because it raises the profile of teaching. The focus on the scholarship of teaching may also be good, particularly if the position does become a focal point for engagement with the scholarship of teaching. But there are too many 'ifs' and, in a very pragmatic way, it would be possible to achieve all of the above without appointing teaching-intensive staff at all.

Most importantly, the appointment of teaching-intensive staff threatens to entrench the divide between research and teaching and, given the real strength of the research culture, it is more likely to create an underclass than not. This would in turn reduce, not increase, the status of teaching. As the above bulletin from the NTEU indicates, the 'logic of the justification for these new designations is somewhat confused.'<sup>46</sup> Rather than create a new class of academic, it would be more effective to amend promotion criteria to ensure that research into the scholarship of teaching is considered to be a legitimate form of research for promotion purposes. Promotion should also be a level playing field. Recruitment practices, too, could and should be revised to encourage the employment of fractional staff whose teaching is fully supported and who can work towards future full-time employment. In this regard, Sally Kift talks about fractional staff and enabling a 'paradigm shift towards institutional assimilation and a sense of belonging'<sup>47</sup> along the way. Nor is such an initiative to create a new class of teaching-intensive academic welcomed by the legal academy, many of whom see such appointments as winding back the clock.<sup>48</sup>

Excellence in learning and teaching is more likely to be advanced by strengthening the ties between research and teaching. The appointment of teaching-intensive staff does not answer that imperative.

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46 NTEU, above n 33.

47 Sally Kift, 'Assuring Quality in the Casualisation of Teaching, Learning and Assessment: Towards Best Practice for the First Year Experience' (Paper presented at the 6th Pacific Rim First Year in Higher Education Conference 2002: Changing Agendas — Te Ao Hurihuri, University of Canterbury, Christchurch, New Zealand, 8-10 July 2002) <<http://ultibase.rmit.edu.au/Articles/march03/kift1.pdf>> at 10 December 2008.

48 At a recent legal conference, the author sought the views of the audience by way of a short qualitative survey instrument. None of the academics who returned the survey were supportive.

