BETWIXT AND BETWEEN – PRACTICAL LEGAL TRAINING
PRACTITIONERS – SCHOLARSHIP OF (WHICH) PRACTICE?

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ABSTRACT
I am interested in how Australian lawyers who teach lawyers’ skills at the post-graduate pre-admission stage (“PLT practitioners) engage in scholarly activities regarding their teaching practice. This presentation will relate Bourdieu’s ‘reflexive sociology of law’1 to my doctoral research in which I focus on how PLT practitioners engage in scholarly activities around their teaching work. Drawing on Kemmis’s ‘practice table’,2 Bourdieu and Passeron’s theory of ‘reproduction’ in education and culture,3 and de Certeau’s theory of ‘practice in everyday life’,4 I will describe how PLT practitioners’ professional identity, as lawyers, constrains scholarship around teaching and mentoring practice.

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Presentation Notes
Not for Citation. This is a work in progress. Citations in this document may be incomplete.

Slides 1-3
My background over the last 14 years is as an Australian lawyer and practical legal training practitioner. I practised in litigation and business law, before moving to teaching in a practical legal training (“PLT”) program at the College of Law Victoria in 2007. I worked there as a senior lecturer and occasional academic leader until late 2011, when I completed a masters degree in professional education and training. I commenced full-time candidature for PhD in March 2012. My candidature was confirmed in March 2013, and I recently completed data collection for my research. I chose to do my research within the discipline of education rather than law because I believe education provides opportunities to engage with a broad range of methodologies not usually adopted in law.

The focus of my research is how PLT practitioners engage with scholarship of teaching and learning as part of their PLT practice.

Slide 4
Practical legal training, or “PLT” as I will refer to it, is an eligibility requirement for admission to the Australian legal profession. Although each state and territorial jurisdiction in Australia has its own laws governing admission, they all require academic qualifications such as a law degree or juris doctor, and satisfactory completion of PLT requirements.

Australian PLT involves competency-based training. National competency standards are agreed between two national bodies, the LACC (Law Admissions Consultative Committee), which is comprised of representatives from state and territory admission boards, and APLEC (Australasian Professional Legal Education Council), which is the peak body for PLT providers.

I think of the academic component as the “know what” of legal practice, and PLT as the “know how”.

Slide 5
The official “know what” for PLT is broadly defined by National Competency Standards as “professional areas”, “skills”, and “values”. The “skills” component is directly connected to the concept of practice and practices - skills include advocacy, client interviewing, problem solving, writing & drafting, work management, negotiating, and dispute resolution. These are part of the vocational domain of law, involving practices.
Slide 6
PLT is mostly taught by lawyers, usually practitioners with several years post-admission practice experience. My research, however, suggests that few PLT practitioners have formal training in the theory and practice of teaching / mentoring / coaching, and few PLT practitioners have engaged with scholarship of teaching and learning or, more broadly, practice research. My experience of legal practice leads me to question whether personal theories of practice, and teaching practices, tend to be intuitive and idiosyncratic, with little exposure to external scrutiny.

Slide 7
My research is focused on how PLT practitioners engage with scholarship of teaching and learning. This research involves teaching and learning of legal practices, and draws on theories and methodologies about scholarship and practice research.

Slide 8
What do I mean when I’m talking about scholarship of teaching and learning? I reviewed around 50 peer-reviewed journal articles to identify the concepts of scholarship of teaching, beginning with Boyer5 and Glassick,6 and including researchers such as Trigwell,7 Kreber,8 and Lynch et al.9 This Wordle® presents the most prevalent concepts in the largest text size, followed by less prevalent concepts in decreasing text size. These are the concepts I look for when analysing my data specifically around the concept of scholarship in PLT.

You can see from that “sharing scholarly work” for “external scrutiny”. My literature review of scholarly outputs from PLT practitioners shows a real paucity of this kind of work. The other key concepts appear examples of scholarship that do exist, and also in patches in less formal examples of scholarship such as conference presentations or online discussions.

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5 Ernest L Boyer, 'Scholarship reconsidered - Priorities of the professoriate' (The Carnegie Foundation for the Advancement of Teaching, 1997).


Slides 9-14
I mentioned that PLT involves teaching and learning in legal practice and practices, and of course my research involves the practices of PLT practitioners. I’ve found Kemmis’ five approaches to practice research a useful way of stepping back and thinking about the research in the context of objective and subjective approaches, and in the context of individual and extra-individual aspects. So my work involves individual practitioners’ point of view; discourse analysis of those individual expressions, and texts produced by social structures; and context provided through description of practice traditions, social values and norms, and material and economic relationships. However, you will see I do not give these approaches equal emphasis.

Slide 15
Kemmis also supplies a “practice research table” that maps intersections between individual agency and social structures, objective and subjective paradigms.

Slide 16
The table’s bottom right hand corner represents a “reflexive-dialectical” approach that draws and seeks to synthesis the foundational concepts, and this is the approach I have adopted for my research.

Slide 17
This reflexive-dialectical approach brings me to Bourdieu’s “reflexive sociology”, which I have adopted as part of a theoretical framework and methodology for my research. When I am thinking about how PLT practitioners engage with scholarship of teaching and learning, I’m also thinking about how the objective social structures from which PLT derives its existence are inscribed into PLT practitioners’ practices. And supposing those practices involved purposeful engagement with scholarship of teaching and learning, how might they affect those social structures, if at all?

Slide 18
One way of thinking about this is to consider the categories of non-financial capital that accrue or arise out of PLT practitioners’ practices, and positions within a juridical field. Bourdieu described non-financial categories of capital – social, cultural, and symbolic. Social capital involves accumulated actual or potential resources


11 Ibid.


connected to durable mutually recognised networks or institutionalised relations. Cultural capital can be embodied, objectified or institutionalised. Cultural capital is embodied through PLT practitioners’ dispositions, eg “thinking like a lawyer”. Cultural capital is objectified in goods such as law books, law reports, statutes. Cultural capital is institutionalised through educational and professional qualifications, e.g. a law degree and admission to the legal profession. Symbolic capital involves mastery or prestige, eg being a barrister (a legal specialist in court work) or a judge carries symbolic capital. Individual and organisational agents might valorise these categories of capital differently depending on their field and their position in the field. Part of my research involves asking questions about the PLT practitioner holdings of categories of capital.

Slide 19
The dispositions of PLT practitioners and other agents in the field might be unconsciously inculcated through primary and secondary pedagogies in an education system. For example, the primary pedagogy of family and community might valorise the symbolic capital of being a lawyer. The secondary pedagogies of law school and the legal profession might valorise the embodied cultural capital of “thinking like a lawyer”, which might be characterised as a specific techno-rationalist way of thinking.

Slide 20
The objective social structures in and around PLT can be physically located in places, spaces and procedures such as the courts, the legislature, admission procedures, professional associations, law school, admission bodies, and higher education regulators. A way of identifying the boundaries of PLT is to identify the categories of capital valorised by the individual and organisational agents involved in PLT.

Slide 21
Thinking about PLT practitioners’ agency through their practices, might there be a poetics or metaphysics of practice, as suggested by de Certeau, in which the possibility of language is coupled with the impossibility of communication? I am only just beginning to delve into this. My approach is partly inflected by Aristotle’s poetics (to which de Certeau expressly refers) in which Aristotle objectifies elements of drama, comedy, imitation, representation, clarification, reversals, recognition, miscalculations, plot, character, theme, speech, melody, and spectacle. Might a scholarship of teaching and learning in PLT only ever amount to rhetoric?


Slide 22
Following the dramatic analogy – we could compare the visible “performance” of practice to the backstage manoeuvrings that make performance possible.

Slide 23
When watching performance, we can be momentarily distracted by the realisation that visible practices are just the tip of an iceberg. I’ve only begun to investigate this, so I will use some examples from the theatre for now.

Slide 24
What goes on backstage? De Certeau gives us ways of peeking backstage by through characterisation of backstage tactics.

Slide 25
“Consumption” of dominant strategies and not necessarily following the script (or the recipe). The performer that improvises or extemporises from the script.

Slide 26
“Appropriations” - taking over places, spaces and processes that are part of dominant strategies, for the practitioner’s own ends. The performer uses a prop to conceal their flask of whisky, to keep it within easy reach.

Slide 27
Micro-inventions – innovations and reconfigurations that subvert dominant strategies and processes to produce new outcomes – the performer creates bits of physical theatre, “business”, to upstage another, to attract the audience’s attention, to get a laugh.

Slide 28
Turns and tricks – redirecting the narrative, retelling the story idiosyncratically, creating or exploiting new opportunities in the narrative.

Slide 29
There might be time to introduce key questions and supplementary questions explored in my research through semi-structured interviews with 36 PLT practitioners.

Regarding PLT practitioners’ engagement with scholarship of teaching, I draw on critical questions framed by Lynch et al: What are PLT practitioners’ motivations to engage with SoTL; what are their capabilities to do so? From the perspective of PLT practitioners, what symbolic support do PLT schools give to SoTL? What resources do PLT schools allocate to SoTL?
Do the answers to these questions disclose “field forces”?

When asking PLT practitioners, “is thinking like a lawyer different to thinking like a teacher”, what might the answers reveal about PLT practitioners’ dispositions?

**Slide 30**
Regarding motivation to engage with SoTL as motivated, ambivalent, or resistance, and capability as capable or not currently capable – many appeared to be motivated and capable, with not as many appearing motivated and not currently capable, or ambivalent and not currently capable. Few were apparently resistant.

**Slide 31**
Regarding organisational symbolic support for SoTL, many appeared to perceive symbolic support was present, with few regarding it as absent or tokenistic.

**Slide 32**
Regarding organisational allocation of resources for SoTL, Interviewees identified funding, time, and personnel as relevant. Many appeared to perceive time and funding as inadequate, and some appeared to perceive available personnel as inadequate.

**Slide 33**
Some examples of “field forces” relevant to PLT practitioner engagement with SoTL. Practitioners identified their own employers, students’ employers, students, the profession, and admission boards as players in the field. For example, many PLT practitioners stated they owed a paramount obligation to the courts and admission boards in teaching and assessing competency in PLT, but were conflicted by top down / bottom up pressures, with PLT practitioners’ employers + students and their employers, all keen for completion of PLT for economic reasons. The institutional capital afforded to the PLT qualification and the symbolic capital of the qualification appears to be less valuable than the embodied economic capital of a completed PLT student. If so, what implications might this hold for the capital, if any, that attaches to scholarship of teaching in PLT and the allocation of resources to such scholarship?

**Slide 34**
I asked interviewees, “is thinking like a lawyer different to thinking like a teacher?” to elicit insights about their dispositions regarding lawyering and teaching.

These sample concepts derived from the interviewees’ responses, and are clustered using Jaccard’s similarity coefficient,\(^\text{16}\) and a complete linkage algorithm. You can see that where thinking like a lawyer was conceived as different from thinking like a teacher, teaching was clustered to concepts of being empathetic, emotional,

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\(^{16}\) Paul Jaccard, 'The distribution of the flora in the alpine zone' (1912) 11(2) *New Phytologist* 37.
facilitative and interactive, and lawyering clustered to being techno-rationalist. Lawyering was seen as adversarial where teaching was not. The concept, that client-centred approaches to lawyering and student-centred approaches to teaching were important, clustered close to the concept that teaching in PLT is “close to practice”.

There is not time today to speak to each of the pairs in the cluster, but what might be shown here is how PLT practitioners synthesise lawyering and teaching dispositions in different ways, but mostly with reference to lawyering practices rather than teaching practices.

The data presented here needs to be understood within in the context of a larger body of data and analysis. That said, what implications might these insights have for PLT practitioners’ engagement with scholarship of teaching and learning? Might lawyers’ dispositions, PLT field forces, and scholarship of teaching’s “deficit” of capital, obscure SoTL from PLT providers’ (insufficient allocation of resources) and practitioners’ point of view (insufficient capabilities; ambivalence)?

**Slide 35**
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**Slide 36**
I blog at The PleagleTrainer Blog: http://thekglawyerblog.com/ptblog