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Inbreeding and the Reproduction of Elitism: An Empirical Examination of Inbreeding within Australian Legal Academia

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INBREEDING AND THE REPRODUCTION OF ELITISM: AN EMPIRICAL EXAMINATION OF INBREEDING WITHIN AUSTRALIAN LEGAL ACADEMIA

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I INTRODUCTION

Academic inbreeding refers to the practice of universities hiring their own graduates. Academic inbreeding is not uncommon; in fact, it is so commonplace that it is considered standard practice in some countries and disciplines.[1] For some universities and disciplines, a high level of academic inbreeding is a point of pride as it reflects the ability to retain the highest quality academic talent.[2] However, the few empirical studies that have focused on academic inbreeding show that it is highly problematic.[3] Academic inbreeding stifles diversity, and by doing so, reduces innovation, lowers productivity,[4] and in law schools, maintains and reproduces elitism which then flows into the profession.[5]

Most studies on academic inbreeding have been conducted in the US, and only three have explicitly focused on inbreeding in law schools.[6] This paper provides an empirical analysis of the extent, characteristics and effects of different types of inbreeding among 700

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1 Philip Altbach, Maria Yudkevich, and Laura Rumbley, 'Academic Inbreeding: Local Challenge, Global Problem' in Philip Altbach, Maria Yudkevich and Laura Rumbley (eds) *Academic Inbreeding and Mobility in Higher Education: Global Perspectives* (Palgrave Macmillan, 2015) 1; Elizaveta Sivak and Maria Yudkevich, 'Academic Immobility and Inbreeding in Russian Universities' in Philip Altbach, Maria Yudkevich and Laura Rumbley (eds), *Academic Inbreeding and Mobility in Higher Education: Global Perspectives* (Palgrave Macmillan, 2015) 130.

2 Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 1.

3 Ibid.

4 Ibid; Xavier Bosch, 'Spain Reconsiders its University Reform Law' (2006) 314 (5801) *Science* 911; Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 130; Ding Yimin and Xiong Lei, 'An End to Business as Usual?' (2003) 302(5642) *Science* 43.

5 See, eg, Paul Campos, 'Legal Academia and the Blindness of the Elites' (2014) 37 *Harvard Journal of Law and Public Policy* 179.

6 See, eg, Theodore Eisenberg and Martin Wells, 'Inbreeding in Law School Hiring: Assessing the Performance of Faculty Hired from Within' (2000) 29(1) *The Journal of Legal Studies* 369; Donna Fossum. 'Law Professors: A Profile of the Teaching Branch of the Legal Profession' (1980) 5(3) *Law & Social Inquiry* 501.

legal academics in 17 Australian law schools. It examines whether inbreeding relates to the status of the university and law school in which an academic is employed, level of appointment, gender, and research productivity.

The earliest studies on academic inbreeding were located in the US and largely focused on single universities; most notably Hollingshead's 1932 study of the University of Indiana,[7] and Reeve et al's 1933 study of the University of Chicago.[8] These studies concluded that inbred academics are more likely to be involved in activities that are most visible within their institutions such as outreach activities, teaching and administration. Non-inbred staff are more oriented towards their broader research community and are more research productive. The first effort to investigate academic inbreeding across universities was published by McNeely in 1932.[9] It also found that inbred staff are less research productive than non-inbred staff, who are more focused on teaching and outreach activities.[10]

Since these early studies, research on academic inbreeding has largely continued to focus on whether inbreeding inhibits research productivity. Most studies conclude that inbred academics are less productive than non-inbred academics.[11] Inbred academics also receive

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7 See, eg, August Hollingshead, 'Ingroup Membership and Academic Selection' (1938) 3(6) *American Sociological Review* 826.

8 Floyd Reeves et al, *The University Faculty* (University of Chicago Press, 1933).

9 John McNeely, *Faculty Inbreeding in Land-Grant Colleges and Universities* (US Government Printing Office, 1932).

10 Ibid.

11 See, eg, Debra Blanke and Adrienne Hyle, 'Faculty Tiering and Academic Inbreeding: One Institution's Relationships and Realities' (2003) 6 *Advancing Women in Leadership Journal* 1; Jeffrey Dutton, *The Impact of Inbreeding and Immobility on the Professional Role and Scholarity Performance of Academic Scientists* (National Science Foundation, 1980); Hugo Horta, 'Deepening Our Understanding of Academic Inbreeding Effects on Research Information Exchange and Scientific Output: New Insights for Academic Based Research' (2013) 65(4) *Higher Education* 487; Hugo Horta, Francisco Veloso and Rócio Grediaga, 'Navel Gazing: Academic Inbreeding and Scientific Productivity' (2010) 56(3) *Management Science* 414; Ozlrm Inanc and Onur Tuncer, 'The Effect of Academic Inbreeding on Scientific Effectiveness' (2011) 88(3) *Scientometrics* 885; Noriyuki Morichika and Sotaro Shibayama, 'Impact of Inbreeding on Scientific Productivity: A Case Study of a Japanese University Department' (2015) 24(2) *Research Evaluation* 146; Elizaveta Sivak and Maria Yudkevich, 'University Inbreeding: An Impact upon Values, Strategies and Individual Productivity of Faculty Members' (2012) *SSRN Electronic Journal* 1; Manuel Soler, 'How Inbreeding Affects Productivity in Europe' (2001) 411 *Nature* 132. Although a few studies have found that inbred academics are more productive than non-inbred academics, whereas others have found little difference between inbred and non-inbred academics at elite institutions: See, eg, Lowell Hargens and Grant Farr, 'An Examination of Recent Hypotheses About Institutional Inbreeding' (1973) 78(6) *The American Journal of Sociology* 1381; Manja Klemenčič and Pavel Zgaga, 'Slovenia: The Slow Decline of Academic Inbreeding' in Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1); Reece McGee, 'The Function of Institutional Inbreeding' (1960) 65(5) *American Journal of Sociology* 483; Russell Smyth and Vinod Mishra, 'Academic Inbreeding and Research Productivity and Impact in Australian Law Schools' (2014) 98(1) *Scientometrics* 583; Jean Wyer and Clifton Conrad, 'Institutional Inbreeding Reexamined' (1984) 21(1) *American Educational Research Journal* 213.

fewer citations,[12] and are more likely to be published in lowly rated local or national journals rather than in highly-ranked international journals.[13] Sivak and Yudkevich argue that the tendency for inbred academics to publish locally reflects publication decisions based on social ties.[14] Morichika and Shibayama claim that inbreeding causes risk adverseness and deters creativity in research, and therefore the work of inbred academics is less attractive to highly esteemed publications.[15] In addition, inbred academics lack external networks, and therefore, have lower levels of professional communication.[16] They spend more time on tasks visible to the administrative organisation of their own institutions such as teaching and outreach, and less time on research activities compared to non-inbred academics.[17] Inbreeding also entrenches existing academic culture, reproduces local norms, and stifles change.[18]

While most studies focus simply on the question of whether research productivity is related to inbreeding, some research has examined additional issues. Inbred academics have been shown to be paid less than non-inbred academics, receive less institutional recognition, take longer to gain promotion, have less access to university resources, and have higher teaching loads.[19] It could be argued that an inbred academics' lower level of research productivity (rather than inbreeding *per se*) curtails an academic's career, however, several studies have also

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12 See, eg, Dutton, *The Impact of Inbreeding* (n 11).

13 See Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11) 498; Sivak and Yudkevich, 'University Inbreeding' (n 11); Lea Velho and John Kridge, 'Publication and Citation Practices of Brazilian Agricultural Scientists' (1984) 14(1) *Social Studies of Science* 45.

14 Sivak and Yudkevich, 'University Inbreeding' (n 11) 14.

15 Morichika and Shibayama, 'Impact of Inbreeding on Scientific Productivity' (n 10).

16 See, eg, Dutton, *The Impact of Inbreeding* (n 11); Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 369; Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11) 498; Donald Pelz and Frank Andrews, *Scientists in Organisations: Productive Climates for Research and Development* (Wiley, 1966); Velho and Krige, 'Publication and Citation Practices of Brazilian Agricultural Scientists' (n 13) 45.

17 Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 1; Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11) 498.

18 See, eg, Blanke and Hyle, 'Faculty Tiering and Academic Inbreeding' (n 11); Dutton, *The Impact of Inbreeding* (n 11); Olivier Godechot and Alexandra Louvet, 'Academic Inbreeding: An Evaluation', *Books and Ideas* (Web Page, 22 April 2010) <www.booksandideas.net/Academic-Inbreeding-An-Evaluation.html>; Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11) 498; Laura Elena Padilla, 'How has Mexican Faculty been Trained? A National Perspective and a Case Study' (2008) 56(2) *Higher Education* 167; Donald Pelz, and Frank Andrews, *Scientists in Organisations: Productive Climates for Research and Development* (Wiley, 1966); Francis Rocca, 'In Spain, Inbreeding Threatens Academe' (2007) 53(22) *Chronicle of Higher Education* 31; Sivak and Yudkevich, 'University Inbreeding' (n 11); Hugh Smythe and Mabel Smythe, 'Inbreeding in Negro College Faculties' (1944) 59 *School and Society* 430; Velho and Krige, 'Publication and Citation Practices of Brazilian Agricultural Scientists' (n 13) 45.

19 See, eg, Hargens and Farr, 'An Examination of Recent Hypotheses About Institutional Inbreeding' (n 11) 1381; McGee, 'The Function of Institutional Inbreeding' (n 11); McNeely (n 9); Wyer and Conrad, 'Institutional Inbreeding Reexamined' (n 11).

shown that inbred staff take longer for promotion even when productivity is controlled.[20]

Inbreeding can be considered an extreme form of homogeneity. University departments that lack diversity have lower levels of staff satisfaction and performance relative to those with greater heterogeneity.[21] Academic diversity enhances the sharing of knowledge and thus creates an environment in which academics feel engaged and productive.[22] Universities with greater staff diversity also engage in more effective organizational change as diversity promotes new values and orientations.[23] In contrast, academic departments that have limited diversity risk being inward looking, putting staff under pressure to conform rather than innovate, reward parochialism, and where diversity does exist, minority staff are left to their own devices to cope or their unique contributions are undervalued.[24] The higher education sector is also changing, and departments that limit their sources of new ideas risk failing to adapt to an era of greater accountability, and to be responsive to new education markets and globalisation.[25]

In terms of teaching, staff from diverse backgrounds expose students to a greater range of theoretical and practical concepts, which in turn enhances their graduates' employability.[26] Oleson and Hora tested the oft-repeated mantra in higher education that faculty 'teach the way they were taught'. They found academics primarily model their teaching on the teaching practices used by their previous instructors.[27]

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20 See, eg, Hargens and Farr, 'An Examination of Recent Hypotheses About Institutional Inbreeding' (n 11) 1381; Wyer and Conrad, 'Institutional Inbreeding Reexamined' (n 11).

21 Jakob Lauring and Jan Selmer, 'Is University Internationalization Bad for Performance? Examining Two Different Types of Diversity' (2010) 49(4) *International Journal of Educational Research* 151; Jakob Lauring and Jan Selmer, 'Diversity Attitudes and Group Knowledge Processing in Multicultural Organizations' (2013) 31(2) *European Management Journal* 124.

22 Jan Selmer, Charlotte Jonasson and Jakob Lauring, 'Knowledge Processing and Faculty Engagement in Multicultural University Settings: A Social Learning Perspectives' (2014) 38(2) *Journal of Further and Higher Education* 211.

23 William Tierney and Robert Rhoads, *Enhancing Promotion, Tenure and Beyond: Faculty Socialisation as a Cultural Process* (Jossey-Bass, 1993); Sydney Freeman and David DiRamio, 'Elitism or Pragmatism? Faculty Hiring at Top Graduate Programs in Higher Education Administration' (2016) 8(2) *Journal of the Professoriate* 94.

24 Iris Barbose and Carlos Cabral-Cardoso, 'Managing Diversity in Academic Organizations: A Challenge to Organization Culture' (2007) 22(4) *Women in Management Review* 274.

25 David DiRamio, Ryan Theroux and Anthony Guarino, 'Faculty Hiring at Top-Ranked Higher Education Administration Programs: An Examination Using Social Network Analysis' (2009) 34(3) *Innovative Higher Education* 149.

26 Michael Harris, 'The Current Status of Higher Education Programs' in Michael Miller and Dianne Wright (eds), *Training Higher Education Policymakers and Leaders: A Graduate Perspective* (Information Age Publishing, 2007); Dianne Wright, 'Progress in the Development of Higher Education as a Specialized Field of Study' in Michael Miller and Dianne Wright (eds), *Training Higher Education Policymakers and Leaders: A Graduate Perspective* (Information Age Publishing, 2007) 17.

27 Amanda Olseon and Matthew Hora, 'Teaching The Way They Were Taught? Revisiting the Sources of Teaching Knowledge and the Role of Prior Experience in Shaping Faculty Teaching Practices' (2014) 68(1) *Higher Education* 29.

Therefore, if academics do not have a range of prior teaching experiences, universities risk losing their innovative and transformative potential.[28]

Levels of academic inbreeding ultimately reflect hiring decisions. Long and Fox explain that hiring and promotion decisions can either be based on principles of universalism or particularism. Universalism requires that hiring decisions are based on an academic's contribution to the advancement of knowledge. This may be measured directly through research productivity, but also indirectly through teaching and administration. Particularism involves hiring decisions based on functionally irrelevant factors such as ethnicity, gender or perceptions of institutional prestige, rather than contribution to knowledge. Particularism leads to discrimination and undermines objective, transparent and merit-based criteria for recruitment and promotion.[29]

Inbreeding in academia suggests that hiring is often based on institutional prestige rather than universalist criteria. Academic inbreeding generally follows a distinct pattern, with elite academic departments predominately hiring their own graduates.[30] Selection

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[28] See, eg, Sue Robson, 'Internationalization: A Transformative Agenda for Higher Education' (2011) 17(6) *Teaching and Teachers: Theory and Practice* 619; Angela Melville and Susana Murguzur, 'Perceptions of Teachers at the International Institute of Sociology of Law of International Student Diversity: Barriers, Enrichment or Cosmopolitan Learning?' (2016) 6(3) *Onati Socio-Legal Series* 607.

[29] See, eg, Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 1; Peter Blau, *The Organisation of Academic Work.* (Harcourt, Brace and World, 1973); William Bridgeland, 'Departmental Image and the Inbreeding Taboo within Large Universities' (1982) 16(3) *College Student Journal* 287; Olivier Godechot, 'The Chance of Influence: A Natural Experiment on the Role of Social Capital in Faculty Recruitment' (2016) 46 *Social Networks* 60; Hugo Horta, Machi Sato and Akiyoshi Yonezawa, 'Academic Inbreeding: Exploring its Characteristics and Rationale in Japanese Universities using a Qualitative Perspective' (2011) 12(1) *Asia Pacific Education Review* 35; Scott Long and Mary Frank Fox, 'Scientific Careers: Universalism and Particularism' (1995) 21(1) *Annual Review of Sociology* 45, 53; Godechot and Louvet, 'Academic Inbreeding: An Evaluation' (n 18); Rocca, 'In Spain, Inbreeding Threatens Academe' (n 18).

[30] See, eg, Jeffrey Bair and William Thompson, 'The Academic Elite in Sociology: A Reassessment of Top-Ranked Graduate Programs' (1985) 10(1) *Mid-American Review of Sociology* 37; Jeffrey Bair, William Thompson and Joseph Hickey, 'The Academic Elite in American Anthropology: Linkages Among Top-Ranked Graduate Programs' (1986) 27(4) *Current Anthropology* 410; Jeffrey Bair, William Thompson, Joseph V Hickey and Phillip L Kelly, 'Elitism Among Political Scientists: Subjectivity and the Ranking of Graduate Departments' (1988) 21(3) *PS: Political Science and Politics* 669; Jeffrey Bair, 'Linkages Among Top-Ranked Graduate Programs in Three Physical Sciences and Mathematics' (1991) 94(1) *Transactions of the Kansas Academy of Science* 33; Jeffrey Bair, William Thompson, and Joseph Hickey 'The Academic Elite in Six Social Science Disciplines: Linkages Among Top-Ranked Graduate Departments' (1991) 15(1) *Mid-American Review of Sociology* 33; Jeffrey Bair and Myron Boor, 'Hiring Practices in Dental Education: Comparison of Top-and Lower-ranked Schools' (1992) 70(3) *Psychological Reports* 1163; George Barnett and Thomas Feeley, 'Comparing the NRC and the Faculty Hiring Network Methods of Ranking Doctoral Programs in Communication' (2011) 60(3) *Communication Education* 362; Val Burris, 'The Academic Caste System: Prestige Hierarchies in PhD Exchange Networks' (2004) 69(2) *American Sociological Review* 23; Aaron Clauset, Samuel Arbesman and Daniel Larremore, 'Systematic Inequality and Hierarchy in Faculty Hiring

committees in highly ranked departments prefer graduates who come from similar departments in order to strengthen that culture within their own department. In more lowly ranked departments, selection committees prefer graduates from higher-ranking departments than their own, hoping that these graduates will boost their own research culture.[31]

The belief within highly-ranked institutions that hiring their own graduates is a means of securing the best academic talent is not borne out by empirical evidence.[32] As discussed above, empirical research demonstrates that inbreeding generally hampers research productivity.[33] In addition, Creswell shows that organisations do not change after the influx of new faculty, and over time productivity levels drop.[34] Instead of boosting research performance, hiring inbred staff reduces the ability of staff to perceive the limits of their own institutions. It also reinforces the assumption that internal candidates represent the best quality even when objective criteria would suggest otherwise. This in turn creates a vicious cycle of entrenched inbreeding.[35]

Hiring decisions that are based on prestige rather than merit exclude intellectually capable graduates, who would otherwise be able to perform as well as colleagues from more prestigious PhD programs, but lack mentors and funding opportunities that come with working within an environment where there is a critical mass of researchers in their field.[36] Research has demonstrated that the prestige of an academic's doctorate department has more effect on their first job than other any other factors,[37] including research productivity.[38] The prestige of an

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Networks' (2015) 1(1) *Science Advances* 1*;* DiRamio et al, 'Faculty Hiring at Top-Ranked Higher Education Administration Programs' (n 25).

31 Freeman and DiRamio, 'Elitism or Pragmatism?' (n 22) 104.

32 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6).

33 See, eg, Dutton, *The Impact of Inbreeding* (n 11); Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11) 498; Inanc and Tuncer, 'The Effect of Academic Inbreeding on Scientific Effectivenes' (n 11); Morichika and Shibayama, 'Impact of Inbreeding on Scientific Productivity' (n 10); Sivak and Yudkevich, 'University Inbreeding' (n 11); Soler, 'How Inbreeding Affects Productivity in Europe' (n 11).

34 John Creswell, *Faculty Research Performance: Lessons from the Sciences and the Social Sciences* (ASHE, 1985).

35 Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 1.

36 Freeman and DiRamio, 'Elitism or Pragmatism?' (n 22) 107.

37 See, eg, Burris, 'The Academic Caste System' (n 30); David Fabianic, 'PhD Program Prestige and Faculty Location in Criminal Justice and Sociology Programs' (2011) 22(4) *Journal of Criminal Justice Education* 562.

38 Michael Hadani, Susan Coombes, Diya Das and David Jalajas, 'Finding a Good Job: Academic Network Centrality and Early Occupational Outcomes in Management Academia' (2012) 33(5) *Journal of Organizational Behavior* 723; Jeanne Hurlbert and Rachel Rosenfeld, 'Getting a Good Job: Rank and Institutional Prestige in Academic Psychologists' Careers' (1992) 65(3) *Sociology of Education* 188; Long and Fox, 'Scientific Careers: Universalism and Particularism' (n 28) 58; Yongjun Zhu and Erjia Yan, 'Examining Academic Ranking and Inequality in Library and Information Science through Faculty Hiring Networks' (2017) 11(2) *Journal of Informetrics* 641; Zhiya Zuo and Kang Zhao, 'Collaboration Matters: Faculty Hiring

academic's doctorate program also influences their later career.[39] Thus, the result of preferentially hiring graduates from elite departments is to maintain and enhance prestige, rather than improve academic quality.[40] Preferential hiring thus serves to deepen structural inequalities within academia, or as Clauset et al state, the hiring of elites 'follows a common and steeply hierarchical structure that reflects profound social inequality'.[41]

II INBREEDING IN LAW SCHOOLS

Levels of inbreeding vary considerably between disciplines, however, the limited work that has looked at inbreeding within law schools suggests that it is especially acute within law. Only three previous empirical studies have directly examined inbreeding within law schools, and two of these focus on law schools in the US. In 1980, Fossum conducted the first major study into the characteristics of law teachers on the behalf of the ABA.[42] This study examined the academic qualifications and employment experiences of 90 per cent of law teachers who held tenure or positions likely to gain tenure at all but one of the ABA-accredited law schools. Thus, it represented a 'virtual census' of career-law teachers in the US.[43] Fossum found that the 'level of mobility in the law teaching profession is remarkably low'.[44] A total of 72.1 per cent of law teachers had spent their entire tenured teaching careers at one law school. While more experienced teachers were more likely to have taught at multiple schools, even highly experienced teachers had a high level of inbreeding. Over half of academics who had been teaching for more than ten years had been employed at just the one law school.

The other US study into inbreeding at law schools was conducted by Eisenberg and Wells, and examined the impact upon inbreeding on research productivity for law professors working in 32 US law schools in 1993 to 1994.[45] Eisenberg and Wells defined an inbred teacher as someone who was employed by the same school from which they had received their JD or LLB degree, but did not include any silver-corded teachers who had gained experience elsewhere before returning to their

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Information School' (2018) 55(1) *Proceedings of the Association for Information Science and Technology* 965.

39 Arthur Bedeian et al, 'Doctoral Degree Prestige and the Academic Marketplace: A Study of Career Mobility within the Management Discipline' (2010) 9(1) *Academy of Management Learning and Education* 11; Clauset et al, 'Systematic Inequality and Hierarcy in Faculty Hiring Networks' (n 30).

40 See, eg, Jeffrey Bair, 'Hiring Practices in Finance Education: Linkages Among Top-Ranked Graduate Programs' (2003) 62(2) *American Journal of Economics and Sociology* 429; Jeffrey Bair and Karen Bair, 'Linkages Among Top-ranked Graduate Programs in Special Education' (1998) 36(1) *Mental Retardation* 52.

41 Clauset et al, 'Systematic Inequality and Hierarcy in Faculty Hiring Networks' (n 30).

42 Fossum, 'Law Professors: A Profile of the Teaching Branch of the Legal Profession' (n 6) 501.

43 Ibid 504.

44 Ibid 521.

45 Ibid.

alma mater.[46] The study found that overall 20 per cent of entry-level law teachers were inbred and 13 per cent of law teachers with seven or more years of experience were inbred.[47]

The main aim of Eisenberg and Wells' research was to test the hypothesis that, as law schools possess additional information about the quality of their own graduates, inbred hiring should allow recruitment of high quality candidates.[48] Using the number of citations as their measure for research quality, Eisenberg and Wells found that faculties which were inbred produced lower quality research compared to non-inbred faculties. They concluded that, when hiring, law schools do not objectively evaluate their own graduates as well as they evaluate external candidates.

Outside of the US, there has been one other study that has focused on academic inbreeding in law schools. Smyth and Mishra examined the relationship between inbreeding the research productivity of Australian law academics. They found that inbreeding did not impact upon on the number publications in highly rank law journals, citations, and grant history, although they concluded that this result may reflect overall low publication rates and the tendency to publish book chapters and articles in lower-impact journals.[49]

Several other studies have indirectly looked at inbreeding in law schools, and all of these studies have been based in the US. Most notably, in a study of the impact of affirmative action on law school hiring, Merritt and Reskin found that inbred law faculties have inferior credentials compared to non-inbred law faculties. They concluded that a faculty may overestimate the quality of their own graduates. In addition, law schools may be risk adverse, and prefer staff who adhere to their existing legal training methods and intellectual perspectives, as well as be loyal to the school and promote the institution's interests.[50]

Merritt and Reskin also found being inbred increased the chances of being hired in one of the top 16 law schools in the US by more than 55 times.[51] Other studies show that inbreeding is made more acute by elitism within legal academia, and that US law schools predominantly hire graduates from a narrow range of elite law schools.[52] Fossum found that approximately a third of law teachers had received their JD degree from only five law schools, and that these five represented the oldest

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46 Ibid 374.

47 Ibid 375.

48 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6).

49 Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 10).

50 Deborah Merritt and Barbara Reskin, 'Sex, Race, and Credentials: The Truth about Affirmative Action in Law Faculty Hiring' (1997) 97(2) *Columbia Law Review* 199, 277–278.

51 Ibid 243

52 Jeffrey Bair and Myron Boor, 'The Academic Elite in Law: Linkages Among Top-Ranked Law Schools' (1991) 68(3) *Psychological Reports* 891; Jeffrey Bair and Myron Boor, 'Academic Elite in Law, 1987-1997' (1998) 82(3) *Psychological Reports* 782; Tracey George and Albert Yoon, 'The Labor Market for New Law Professors' (2014) 11(1) *Journal of Empirical Legal Studies* 1; Jeffrey Bair, Myron Boor and Alfredo Montalvo, 'Hiring Practices in Canadian Legal Education: Linkages Among Top Ranked Law Schools' (1999) 84 *Psychology Reports* 1197.

and most prestigious law schools in the US.[53] Eisenberg and Wells found levels of inbreeding varied considerably between law schools, with a marked preference for inbreeding at elite law schools.[54] Harvard had the highest level of inbreeding, where 81 per cent of entry-level law teachers were inbred, and 58 per cent of teachers with seven or more years of experience were inbred. Similarly, Campos reported that in 2013, 83 per cent of non-clinical tenure-track professors at the Yale Law School who have received their initial law degree from a US law school had received this degree from either Yale or Harvard. [55] In an earlier study, Leiter found from 2003 to 2007, just under 40 per cent of tenure-track hires in ABA accredited law schools held a JD from either Harvard or Yale. Over 85 per cent had obtained their JD from just 12 elite law schools.[56]

Whereas high levels of inbreeding occur across a range of disciplines, it can be considered especially problematic in law. Legal education produces the next generation of lawyers. As inbreeding stifles innovation, law schools with high proportions of inbred staff are likely to produce graduates who possess a narrower set of perspectives and skills.[57] This point was made by the Special Committee of the ABA when it commissioned the first in-depth examination of inbreeding within the legal academy. It noted that, 'were we biologists studying inbreeding, we might predict that successive generations of imbeciles would be produced by such a system…'[58] Law graduates from inbred law schools are at risk of producing lawyers who are only willing to practice in limited types of legal practice, and who fail to appreciate or cater to the full diversity of legal clients and legal problems.[59] In addition, in a professional world that is rapidly changing, the ability to be flexible and adaptable, to be able to innovate, and take up new opportunities is becoming increasingly vital.[60]

Law schools are also typically more elite than other academic disciplines. Therefore, law schools risk further entrenching elitism if they only hire from a limited range of law schools. Law schools across a range of jurisdictions are the bastion of the white, middle-class. Even though women have finally managed to encroach law schools in roughly equal numbers, aspiring law students from low socio-economic backgrounds or racial and ethnic minorities face significant barriers to

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53 Fossum, 'Law Professors' (n 6) 508.

54 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 375.

55 Campos, 'Legal Academia and the Blindness of the Elites' (n 5) 180.

56 Brian Leiter, 'Top Producers of New Law Teachers 2003-2007', *Brian Leiter's Law School Rankings* (Web Page, 20 March 2019) <http://www.leiterrankings.com/jobs/2008job_teaching.shtml>.

57 Campos, 'Legal Academia and the Blindness of the Elites' (n 5).

58 Howard Glickstein, 'Law Schools: Where the Elite Meet to Teach' (1986) 10 *Nova Law Journal* 541, 1986.

59 See, eg, ibid; Fossum, 'Law Professors' (n 6).

60 Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2nd ed, 2017); Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2008).

entry.[61] This means that the student body is likely to be highly homogeneous, and that the teaching faculty are the main source of ideas that may challenge established norms and values. However, inbreeding hinders diverse perspectives and creates a tendency for institutions to reproduce themselves, which in turn produces a 'ripple effect' that impacts upon other law schools.[62]

In the US context, Campos argues that as inbred faculty will not have been exposed to a wide range of backgrounds, views and opinions, and that if they have practised at all it will be in 'hyper-elite' settings, then they will have little understanding of the challenges faced by current law graduates.[63] Law professors continue to believe that the rising cost of law degrees is matched by the rising their value, however demand for law graduates, especially in private practice has dropped. As Campos states:

> …law academics today are usually people who have, at best, a wholly abstract relationship to the actual economic conditions law graduates are facing, especially the vast majority of law graduates who graduate from far less elite law schools than those their professors attended.[64]

III INBREEDING IN AUSTRALIAN LAW SCHOOLS: METHODOLOGY

This paper draws on biographical data from 700 legal academics in 17 of Australia's 38 law schools to investigate the extent, characteristics and effects of inbreeding in Australian law schools. Previous studies, including the only other study of inbreeding within Australian law schools conducted by Smyth and Mishra,[65] have focused on the relationship between inbreeding and research productivity, we also examine relationships between inbreeding and status of university and law school, gender, level of appointment, as well as research productivity. Smyth and Mishra define inbreeding as an academic employed within the same law school in which they completed their LLB degree, arguing that many legal academics do not hold a PhD.[66] In our sample, however, 71.1 per cent (N=498) of academics held a PhD qualification, and only 6.3 per cent (N=44) held a bachelor degree. Other research also demonstrates that the proportion of Australia legal

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61 For Australian research, see Angela Melville, 'Barriers to Entry into Law School: An Examination of Socio-Economic and Indigenous Disadvantage' (2014) 24 *Legal Education Review* 45; Phillip Rodgers-Falk and Robert Vidler, 'Growing the Number of Aboriginal and Torres Strait Islander Law Graduates: Barriers to the Profession' (Background Paper to Review of Higher Education Access and Outcomes for Aboriginal and Torres Strait Islander People, Australian Government Publishing Service, 2011); Margaret Thornton, 'The Demise of Diversity in Legal Education: Globalisation and the New Knowledge Economy' (2001) 8(1) *International Journal of the Legal Profession* 3.

62 Campos, 'Legal Academia and the Blindness of the Elites' (n 5) 179.

63 Ibid.

64 Campos, 'Legal Academia and the Blindness of the Elites' (n 5).

65 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6).

66 Ibid 587.

academics who hold a PhD has been steadily increasing,[67] and we argue that having a PhD is now the norm rather than the exception for Australian legal academics.

In addition, previous research has shown that the level and effects of inbreeding vary considerably depending on how inbreeding is defined.[68] Therefore, we also compare academics who are employed at the same university in which they received their first degree and those that are employed in the same university in which they obtained their PhD. Finally, we examine the differences between 'highly immobile' legal academics, meaning those who have remained in the same institution for their entire academic career, and 'silver-corded' legal academics meaning those that have returned to their *alma mater* after working elsewhere.[69]

Previous studies on academic inbreeding have needed to create a biographical database from published sources and surveys of legal academics,[70] whereas it is now possible to source considerable biographical data from law school websites, as well as on other online sources of biographical data such as LinkedIn, ResearchGate, Google Scholar, biographies for conferences, graduation records and press releases. We used these sources to compile biographical data concerning 700 individual academics from 17 universities out of Australia's 38 law schools. Data was collected during early 2018, and the database was finalised in July 2018.

The academics included in our sample were employed at a lecturer position or above but did not include sessional staff as often there is little or no biographical information available on law school websites for sessional staff. Australian academics are usually appointed to 'balanced' roles, meaning that their workload is split between teaching, research and administration. In recent years, however, Australian

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67 Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Australian Government Publishing Service, 1987) 61.

68 Olga Gorelova and Andrey Lovakov, 'Academic Inbreeding and Research Productivity of Russian Faculty Members' (Research Paper No 32, Higher School of Economics, 12 May 2016).

69 This distinction has been examined by previous authors; see, eg, Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 1; Bernard Berelson, *Graduate Education in the United States* (McGraw Hill, 1960) 116; Reece Caplow and Theodore McGee, *The Academic Marketplace* (Basic, 1958) 53; Dutton, *The Impact of Inbreeding* (n 11); Hargens and Farr, 'An Examination of Recent Hypotheses About Institutional Inbreeding' (n 10) 1381; Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11); Shouan Pan, *A Study of Faculty Inbreeding at Eleven Land-Grant Universities* (1993, Iowa State University) 36; Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6); Richard Wells, Natalie Hassler and Elizabeth Sellinger, 'Inbreeding in Social Work Education: An Empirical Examination' (1979) 15(2) *Journal of Education for Social Work* 23.

70 See eg, Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 591.

universities,[71] and elsewhere,[72] have introduced new roles. These include 'teaching-only' and 'teaching-focused' academics who are expected to take on a high teaching workload and administration with lower expectations concerning research output.[73] Some academics are also dedicated to research, such as post-doctorate researchers who are usually attached to a funded research project, however, universities also appoint strategic research posts such as research professors who have little or no teaching duties. Some universities also have a designated 'solicitor' or 'practitioner' role, with staff appointed to these positions involved in clinical legal education. We have only included academics in so-called 'balanced' roles and excluded those occupying teaching/research-only or teaching/research-focused positions and practitioners. We have also excluded visiting academics, adjuncts, emeritus and honorary staff.

IV EXTENT AND DISTRIBUTION OF INBREEDING WITHIN AUSTRALIAN LAW SCHOOLS

Academic inbreeding can be operationalized in several ways and differences in conceptualisation can produce different rates of inbreeding.[74] Table 1 shows the proportions of inbred academics in each law school in our sample depending on three different conceptualisations of inbreeding.

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71 Belinda Probert, 'Teaching-Focused Academic Appointments in Australian Universities: Recognition, Specialisation, or Stratification?' (Office for Teaching and Learning, Australian Government, 2013).

72 William Locke, *Shifting Academic Careers: Implications for Enhancing Professionalism in Teaching and Supporting Learning* (Institute of Education, University of London, 2014).

73 Probert, 'Teaching-Focused Academic Appointments in Australian Universities' (n 71).

74 Gorelova and Lovakov, 'Academic Inbreeding and Research Productivity of Russian Faculty Members' (n 68) 5.

Table 1
Proportion of inbred staff depending on different definitions of inbreeding

University	Type of Inbreed								
	Inbred			1st degree			PhD		
	N	Total	%	N	Total	%	N	Total	%
ACU	3	13	23.1	1	13	7.7	2	10	20.0
Adelaide	22	40	55.0	19	39	48.7	11	27	40.7
JCU	4	12	33.3	3	12	25.0	1	7	14.3
Macquarie	11	28	39.3	7	28	25.0	6	20	30.0
Melbourne	56	106	52.8	47	107	43.9	25	86	29.1
Monash	39	61	63.9	24	61	39.3	32	54	59.3
Murdoch	8	24	33.3	6	24	25.0	5	12	41.7
Newcastle	5	18	27.8	3	18	16.7	5	15	33.3
Queensland	21	49	42.9	15	49	30.6	13	42	31.0
SCU	2	14	14.3	1	14	7.1	1	11	9.1
Sydney	35	78	44.9	26	78	33.3	18	59	30.5
UNE	3	21	14.3	2	21	9.5	1	15	6.7
UniSA	4	27	14.8	4	27	14.8	0	12	0.0
Uni Tas	16	28	57.1	16	28	57.1	9	19	47.4
UNSW	29	82	35.4	18	82	22.0	14	59	23.7
UWA	22	53	41.5	15	53	28.3	8	28	28.6
Wollongong	11	28	39.3	6	28	21.4	8	22	36.4
Total	**291**	**682**	**42.7**	**212**	**469**	**31.7**	**159**	**339**	**31.9**

First, we examine the profile of academics who are inbred at any level. We define an inbred academic as one who is employed at the same institution in which they obtained either their first degree or PhD. It was not possible to determine if an academic was inbred or not in 18 instances. Of the remaining 682 academics, 291 (42.7 per cent) are inbred at either the first degree or PhD level. There is considerable variation between law schools in levels of academic inbreeding. In three law schools, less than 15 per cent of legal academics are employed within the same institution in which they received either their first-degree or their PhD.; namely Southern Cross University (14.3 per cent, N=2), the University of New England (14.3 per cent, N=3) and the University of South Australia (14.8 per cent, N=4). These law schools are relatively young, small, and less prestigious. In contrast, more than half the legal academics in four law schools are inbred at either first-degree or PhD level. These law schools are Monash University, where 63.9 per cent (N=39) of legal academics are inbred, the University of Tasmania (57.1 per cent, N=16), the University of Adelaide (55.0 per cent, N=22) and the University of Melbourne (52.8 per cent, N=56).

These are older and arguable more prestigious law schools relative to those with low levels of inbred staff.

Second, we consider academics who are employed in the same university in which they received their first-degree only. A total of 31.2 per cent (n=213) of academics are inbred at the level of their first-degree. Inbreeding at the first-degree level also varies considerably between law schools. As shown in Table 1, less than 10 per cent of legal academics at South Cross University (7.1 per cent), Australian Catholic University (7.7 per cent) and the University of New England (9.5 per cent) have their first degree from the same universities in which they are employed. The University of Tasmania (57.1 per cent, N=16) has the highest percentage of legal academics who are inbred at the first-degree level, followed by the University of Adelaide (48.7 per cent, N=19) and the University of Melbourne (43.9 per cent, N=47).

Finally, of the 498 academics with a PhD, 31.9 per cent (N=159) are employed at the same university at which they obtained their doctorate. The proportion of academic staff who are inbred at the PhD-level also varies across universities. The University of South Australia had not employed anyone with a PhD from the same university. In contrast, almost 60 per cent of legal academics employed at Monash University who hold a PhD had obtained their qualification from Monash University. In addition, more than 40 per cent of legal academics from the University of Tasmania (47.4 per cent, N=9), Murdoch University (41.7 per cent, N=5) and the University of Adelaide (40.7 per cent, N=11) were inbred at the PhD level.

V INBREEDING AND INSTITUTIONAL STATUS

We measured the status of the university in which an academic is employed by examining whether they worked in a 'Group of 8' ('Go8') university or not. The Go8 refers to a coalition of research-intensive Australian universities consistently ranked within the top 150 institutions worldwide in the Academic Ranking of World Universities from Shanghai Jiao Tong University, the Times Higher Education World Rankings and the QS World University Rankings. The Go8 consists of University of Melbourne, Australian National University, University of Sydney, University of Queensland, University of Western Australia, University of Adelaide, Monash University and the University of NSW Sydney.[75] Of the 291 academics who were inbred at any level, 224 (77.0 per cent) were employed at a Go8 university.[76] Staff who are inbred at the first-degree level are more likely to employed in a Go8 universities.[77] There was no correlation, however, between being employed at a Go8 university and being inbred at the PhD level.

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[75] Simon Marginson, 'Dynamics of National and Global Competition in Higher Education' (2006) 52(2) *Higher Education* 1, 11.

[76] There is a significant correlation between a legal academic being employed at a Go8 university and being inbred at any level (x^2=15.920, df=1, p<0.001).

[77] x^2=9.761, df=1, p<0.002.

Go8 ratings refer to universities, and we used ratings for the 2015 Excellent Research in Australia ('ERA') exercise as a measure of the status of law schools. The ERA is an evaluation conducted by the federal Australian government via the Australian Research Council ('ARC') and involves rating universities and disciplines according to research outputs, research income and reputation.[78] While there is overlap between the ERA performance of law schools and the Go8, there is not an exact match. There was a significant correlation between a law school's ERA performance and being inbred, although again this correlation was only positive for academics who are inbred at the first-degree level rather than at PhD level, and the relationship is weak.[79]

The laws schools with the highest proportion of inbred legal academics represent some of the oldest universities in Australia. Academics who are inbred at a first-degree level were more likely to be located within an older university, although the correlation is weak.[80] There was no correlation between being inbred at PhD level and the date in which a law school was founded. The Law School at the University of Monash opened in 1963, and the law schools at the University of Tasmania, the University of Adelaide and the University of Melbourne were all established in the 19th century and are some of the oldest in the country.

Overall our data shows that the status of the law school in which an academic has received their first-degree, rather than their PhD qualification, correlates with being inbred. Academics with undergraduate degrees from high status law schools are significantly more likely to remain in or return to that law school during their academic career. This suggests that the prestige of the university in which an academic has originally studied influences their subsequent career, although it should also be noted that this relationship is not strong. In addition, as we argue below, being inbred is not always an advantage depending on other structural constraints. For female academics, being inbred may be an outcome of constraints on mobility and may potentially limit rather than advantage a female legal academic's career.

VI HIGHLY IMMOBILE AND SILVER-CORDED LEGAL ACADEMICS

Older law schools also have a higher proportion of highly immobile legal academics, meaning academics who have gained all of their qualifications from the one university and have not worked outside this university.[81] We could not determine if an academic had studied outside the university in which they were currently employed in 12 instances.

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78 Australian Research Council, 'State of Australian Universities Research 2015-2016' (National Report, Volume 1, Commonwealth of Australia, 2015) 3–4.

79 $r = -0.101$, $p<0.01$, two-tailed.

80 $r = 0.198$, $p<0.001$, two-tailed.

81 Altbach, Yudkevich and Rumbley, *Academic Inbreeding and Mobility in Higher Education* (n 1) 1.

Of the remaining cases, 152 (22.1 per cent) academics were employed in the same university in which they had received all their academic qualifications, and 136 (19.8 per cent) also did not appear to have been employed outside the one university.

The law school with the most highly immobile legal academics was the University of Tasmania. Half of the legal academics at this university were classified as highly immobile. This was followed by Monash University (32.8 per cent) and the University of Adelaide (30.8 per cent). The law schools at the Australian Catholic University, James Cook University, Southern Cross University and the University of New England have less than 5 per cent highly immobile legal academics.[82] There was no correlation between being highly immobile and working in either a Go8 university or the ERA rating of the law school. Thus, it would appear that it is highly immobile academics are remaining in highly prestigious institutions. Most of the law schools with the highest concentration of immobile academics are also the largest, and it may simply be that this trend reflects the size of the school.

It is not possible to say for certain why the University of Tasmania has the highest rate of highly immobile academics, although it may reflect the nature of legal practice in Tasmania. Tasmania is Australia's smallest jurisdiction, and has been described as possessing a 'cultural problem' of a high proportion of small, insular, top heavy law firms that are not orientated to attracting and retaining new graduates.[83] It may be that the law school reflects the insular nature of the local legal culture. Alternatively, the difficulties faced by talented, young law graduates to find positions within the Tasmanian legal profession may drive a higher proportion of local graduates into legal academia.

Highly immobile academics are those that have not studied or worked outside of the university in which they are employed. A very different category of immobile academic consists of 'silver-corded' academics. [84] The concept of the silver-corded academic can be operationalised in several different ways. First, a silver-corded academic could be someone who has returned to their university in which they received their bachelor's degree, and then either been employed or obtained a higher degree, before returning to their original *alma mater*. Second, they may have been employed at the same

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82 Smyth and Mishra showed that 6.3 per cent of Australian legal academics were hired by their graduating university immediately after completing their LLB degree. Our higher proportion of highly immobile academics most likely reflects differences in methodologies. Smyth and Mishra drew on survey data of academics, rather than relying solely on academic profiles. It is possible that some academics have worked outside their *alma mater* but do not list this experience on their profile, and thus our proportions are higher: Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 584.

83 Stephanie Quine, 'Running on Empty', *Lawyers Weekly* (Web Page, 12 June 2012) <https://www.lawyersweekly.com.au/features/10242-running-on-empty>.

84 Berelson, 'Graduate Education in the United States' (n 69) 116; Caplow and McGee, 'The Academic Marketplace' (n 69) 53; Pan, 'A Study of Faculty Inbreeding at Eleven Land-Grant Universities' (n 68) 36.

university in which they received their highest degree after a period of employment elsewhere.[85]

Smyth and Mishra considered silver-corded academics as those who return to the university from which they received their LLB after first gaining experience elsewhere. They found that 22.1 per cent of legal academics are silver-corded.[86] Applying Smyth and Mishra's definition, we found that 32.1 per cent of Australian legal academics are silver-corded.[87] However, this is no longer a useful definition of silver-corded. Most legal academics now hold PhD qualifications and so we examined silver-corded academics who were either inbred at the PhD level and had worked elsewhere before returning to their *alma mater*, or academics who did not have a PhD but returned to the university in which they completed their first degree after being employed elsewhere. Using this definition, we found that only 25 (3.6 per cent) of academics in Australian law schools are silver-corded. Silver-corded academics were not concentrated in elite universities or law schools.

There is also significant correlation between being inbred at the PhD level and level of appointment. Academics appointed at lecturer and senior lecturer levels are more likely to be inbred at the PhD level. Academics who are inbred at the PhD level are less likely to appointed at associate professor or professor level.[88] Highly immobile academics were significantly more likely than non-immobile academics to be appointed at lecturer or senior level and less likely to be appointed at associate professor level of above.[89] There are several possible explanations for inbred academics being appointed at a lower level than non-inbred academics. First, this pattern may reflect discrimination against inbred academics. Previous US research has demonstrated that inbred academics, regardless of research productivity, take longer to achieve promotion than non-inbred academics.[90]

It is also possible that some law academics take entry level positions within their *alma mater* institutions but then gain external experience as their career advances.[91] Early career academics may be able to draw

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85 Dutton, *The Impact of Inbreeding* (n 11) 6.

86 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 591.

87 We are not able to account for the differences, although it may reflect that with increased casualisation of the higher education workforce there is now greater competition for tenured posts. See Maarten Rothengatter and Richard Hill, 'A Precarious Presence: Some Realities and Challenges of Academic Casualisation in Australian Universities' (2013) 55(2) *Australian Universities Review* 51. This may mean that social capital, such as having qualifications from an elite institution, have taken on even greater influence in hiring decisions, however we are unable to test this hypothesis.

88 x^2=13.696, df=3, p<0.005.

89 x^2=14.469, df=3, p<0.005.

90 See, eg, Hargens and Farr, 'An Examination of Recent Hypotheses About Institutional Inbreeding' (n 11); Wyer and Conrad, 'Institutional Inbreeding Reexamined' (n 11).

91 Blanke and Hyle, 'Faculty Tiering and Academic Inbreeding' (n 11); Walter Crosby Eells and Austin Carl Cleveland, 'Faculty Inbreeding' (1935) 6(5) *The Journal of Higher Education* 261; Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 376; Fossum, 'Law Professors' (n 6).

on social capital such as the influence of their supervisor, rather than relying solely on merit, as a step onto the tenure-track ladder. Indeed, previous research demonstrates that factors such as the prestige in which an academic has completed their doctorate degree, supervisor's status, gender, and professional connections to members of the hiring committee are more important factors than objective criteria such as pre-appointment productivity in obtaining an initial academic appointment.[92]

VII GENDER

Most previous studies into inbreeding either do not consider gender at all, or if they do, they treat gender as a controlling rather than independent variable.[93] The results from the few studies that have examined the relationship between gender and inbreeding have been mixed, and this variation is partly an outcome of the way in which inbreeding is operationalised. Some studies have found that that women are more likely than men to be inbred, especially at the first-degree level,[94] whereas studies that have operationalised inbreeding at the PhD level have found no correlation between gender and inbreeding.[95]

We also found varying results depending on how inbreeding is operationalised, although overall female academics are more likely to face constraints to mobility than male legal academics. There is no correlation between gender and being inbred at the PhD level. Female legal academics, however, are more likely to be inbred at the first-degree level.[96] They are also significantly more likely to be highly immobile than male legal academics.[97] In addition, female academics are significantly less likely than male academics to have obtained their

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92 See, eg, Stephane Baldi, 'Prestige Determinants of First Academic Job for New Sociology Ph.D.s 1985-1992' (1995) 36(4) *The Sociological Quarterly* 777; Burris, 'The Academic Caste System' (n 30); Susan Cameron and Robert Blackburn, 'Sponsorship and Academic Career Success' (1981) 52(4) *The Journal of Higher Education* 372; Pierre-Philipe Combes, Laurent Linnemar and Michael Visser, 'Publish or Peer-Rich? The Role of Skills and Networks in Hiring Economics Professors' (2008) 15 *Labour Economics* 423; Lowell Hargens and Warren Hagstrom, 'Sponsored and Contest Mobility of American Academic Scientists' (1967) 40(1) *Sociology of Education* 24; Scott Long, Paul Allison and Robert McGinnish, 'Entrance into the Academic Career' (1979) 44(5) *American Sociological Review* 816; Scott Long and R McGinnis, 'The Effects of the Mentor on the Academic Career' (1985) 7(3) *Scientometric* 255; Seung Ho Park and Michael Gordon, 'Publication Records and Tenure Decisions in the Field of Strategic Management' (1997) 17(2) *Strategic Management Journal* 109; Barbara Reskin, 'Academic Sponsorship and Scientists' Careers' (1979) 52(3) *Sociology of Education* 129.

93 See eg, Horta, 'Deepening Our Understanding of Academic Inbreeding' (n 11); Horta, Sato and Yonezawa, 'Academic Inbreeding' (n 29); Wyer and Conrad, 'Institutional Inbreeding Reexamined' (n 11).

94 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 47; Merritt and Reskin, 'Sex, Race and Credentials' (n 50) 228.

95 Laura Cruz-Castro and Luis Sanz Menendez, 'Mobility Versus Job Stability: Assessing Tenure and Productivity Outcomes' (2010) 39(1) *Research Policy* 27; Wyer and Conrad, 'Institutional Inbreeding Reexamined' (n 11) 216.

96 χ^2=7.960, df=1, p<0.005.

97 χ^2=6.036, df=1, p<0.005.

first,[98] or highest degree outside Australia.[99] We also examined the number of previous institutions in which academics employed as detailed on their professional profiles. Female academics listed a mean of 0.34 previous institutions, which is significantly lower than the 0.47 previous institutions listed by male academics.[100]

While our research cannot answer why female legal academics experience lower levels of mobility, other research has examined that ways in which the careers of female academics are constrained relative to the careers of male academics. There has been only one previous empirical study that has considered the impact of constrained mobility on the careers of female legal academics. Merritt et al investigated law faculty hiring in the US between 1986 and 1991.[101] They found that law faculty hiring contains a hidden 'gender paradox,' where family responsibilities and constrained mobility has different gendered effects. The careers of female legal academics were limited by family responsibilities and geographical constraints. In contrast, male legal academics with partners, especially non-employed partners, started their careers at a higher level than men with similar credentials but no partner. White men who had no imposed geographical constraints began teaching at more prestigious institutions and obtained tenure-track positions at a higher rank than white men with geographical constraints.

Outside of legal academia, there is a considerable body of work that has sought to explain why female academics have limited mobility relative to male academics. Female academics are more likely than male academics to have family responsibilities,[102] and having children has been shown to reduce mobility for academics.[103] When female

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98 $x^2=30.268$, df=1, $p<0.001$.

99 $x^2=13.799$, df=1, $p<0.001$.

100 $t=-1.996$, df=698, $p<0.001$, 2-tailed.

101 Deborah Merritt, Barbara Reskin and Michele Findell, 'Family, Place, and Career: The Gender Paradox in Law School Hiring' (1993) 2 *Wisconsin Law Review* 395.

102 See, eg, Namrata Gupta, Carol Kemelgor, Stefan Fuchs and Henry Etzkowitz, 'Triple Burden on Women in Science: A Cross-Cultural Analysis' (2005) 89(8) *Current Science* 1382; Mary Ann Mason, Nicholas Wolfinger and Marc Goulden, *Do Babies Matter? Gender and Family in the Ivory Tower* (Rutgers University Press, 2013); Joya Misra, Jennifer Lunquist and Abby Templer, 'Gender, Work Time and Care Responsibilities Among Faculty' (2012) 27(2) *Sociological Forum* 300; Kelly Ward and Lisa Wolf-Wendel, 'Academic Motherhood: Managing Complex Roles in Research Universities' (2004) 27(2) *The Review of Higher Education* 233–257.

103 See, eg, Kristen Keith and Abagail McWilliams, 'The Returns to Mobility and Job Search by Gender' (1995) 52(3) *ILR Review* 460; Ivy Kennelly and Roberta Spalter-Roth, 'Parents on the Job Market: Resources and Strategies that Help Sociologists Attain Tenure-Track Jobs' (2006) 37(4) *The American Sociology* 39; Mason, Wolfinger and Goulden, *Do Babies Matter?* (n 99); Emory Morrison, Elizabeth Rudd and Maresi Nerad, 'Onto, Up, Off the Academic Faculty Ladder: The Gendered Effects of Family on Career Transitions for a Cohort of Social Science Ph.D.s' (2011) 34(4) *The Review of Higher Education* 525; Kimberlee Shauman and Yu Xie, 'Geographic Mobility of Scientists: Sex Differences and Family Constraints' (1996) 33(4) *Demography* 455; Wayne

academics do move, they often do so as 'tied movers',[104] or 'trailing spouses,'[105] meaning that they relocate in order to support their male partner or spouse's career rather than their own.[106] Female academics who move to enhance their own careers have reported needing to sacrifice their marriages and families in order to relocate.[107]

VIII RESEARCH PRODUCTIVITY

We measured research productivity by using an academic's h-index score according to their Google Scholar citations. The h-index accounts for both the number of papers an academic has published and the number of citations. Most measures of productivity are based on the number of papers that an author has produced or the number of times that their work has been cited. However, one well-cited paper or a large number of uncited papers can produce high productivities, whereas the h-index measures citations of a set of an author's papers. Thus, it is a measure of both quantity and quality of research productivity.[108] The h-index works best for comparing research productivity within the same field,[109] and is appropriate to examining research outputs by academics working in law. It has also been argued that an academic's score on the

Simpson, 'Starting Even? Job Mobility and the Wage Gap Between Young Single Males and Female' (1990) 22(6) *Applied Economics* 723; Carmen Luke, *Globalization and Women in Academia* (Routledge, 2001).

104 Louise Ackers, *The Participation of Women in the TMR Marie Curie Fellowships* (Report, European Commission, Office for Official Publications of the European Communities, 2001).

105 Fang Cooke, "Husband's Career First: Renegotiating Career and Family Commitment Among Migrant Chinese Academic Couples in Britain' (2007) 21 *Work, Employment & Society* 47–65.

106 See, eg, Louise Ackers and Bryony Gill, *Moving People and Knowledge: Scientific Mobility in an Enlarging European Union* (Edward Elgar, 2008); Keith and McWilliams, 'The Returns to Mobility and Job Search by Gender' (n 103); Regula Leemann, 'Gender Inequalities in Transnational Academic Mobility and the Ideal Type of Academic Entrepreneur' (2010) 31 *Discourse: Studies in the Cultural Politics of Education* 605; Maggi Leung, 'Unsettling the Yin-Yang Harmony: An Analysis of Gender Inequalities in Academic Mobility Among Chinese Scholars' (2014) 23 *Asian and Pacific Migration Journal* 155, 168; Katherine Sang, Haya Al-Dajani, and Mustafa Özbilgin, 'Frayed Careers of Migrant Female Professors in British Academic: An Intersectional Perspective' (2013) 20 *Gender, Work & Organisation* 158, 164; Elisabeth Scheibelhofer, 'Gendered Differences in Emigration and Mobility Perspectives among European Researchers Working Abroad' (2010) 7 *Migration Letters* 33; Shauman and Xie, 'Geographic Mobility of Scientists' (n 101); Simpson, 'Starting Even?' (n 103); Marta Vohlídalová, 'Academic Mobility in the Context of Linked Lives' (2014) 24(1) *Human Affairs* 89, 90.

107 Louise Ackers, 'Managing Relationships in Peripatetic Careers: Scientific Mobility in the European Union' (2004) 27 *Women's Studies International Forum* 189; Karen McElrath, 'Gender, Career Disruption, and Academic Rewards' (1992) 63(3) *The Journal of Higher Education* 269.

108 Inanc and Tuncer, 'The Effect of Academic Inbreeding on Scientific Effectivenes' (n 11) 889.

109 Jorge Hirsch, 'An Index to Quantify an Individual's Scientific Research Output' (2005) 102(46) *Proceedings of the National Academy of Sciences* 165, 169.

h-index is a good proxy for academic reputation.[110] Google Scholar citations were preferred over Scopus or Web of Science, as these indices are more attuned to the 'hard' sciences and thus there is too little variation between citations to produce useful data. In addition, Google Scholar citations is a more accurate measure of research productivity for Australian legal academics than US-based databases such as Westlaw and Lexis.[111]

Our measure of research productivity has several limitations. Smyth and Mishra employed a robust method for measuring research productivity,[112] consisting of a combination of the quality of publication according to the ERA ranking, number of citations, citation index including both the h-index,[113] and g-index,[114] and produced by Google Scholar. Smyth and Mishra also conducted a survey of academics, rather than relying solely on profiles, and thus they were able to control for a greater range of variables that may influence productivity such as grant history.[115] Our use of one measure of productivity is not as robust as the use of multiple measures. However, Gorelova and Lovakov report that in previous studies findings on research productivity were not affected by how productivity was measured.[116] Smyth and Mishra also found that findings were the same regardless of measure.[117] A further limitation of our study is that only 38 per cent (N=266) legal academics in our sample have Google Scholar accounts, although whether having a Google Scholar account did not correlate with any measure for inbreeding.[118] In addition, our data analysis is limited to descriptive statistics, whereas Smyth and Mishra were able to use linear

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110 Daniel Hamermesh and Gerard Khan, 'Reputation and Earning: The Role of Quality and Quantity in Academe' (2012) 50(1) *Economic Inquiry* 1; Inanc and Tuncer, 'The Effect of Academic Inbreeding on Scientific Effectivenes' (n 11) 889.

111 Eisenberg and Wells, 'Inbreeding in Law School Hiring' (n 6) 590. Whereas Google Scholar citations may provide a more accurate citation count than other citations indexes, it still has its limitations. For instance, see Enrique Orduna-Malea, Alberto Martín-Martín and Emilio López-Cózar, 'Google Scholar as a Source for Scholarly Evaluation: A Bibliographic Review of Database Errors' (2017) 49(4) *Revista Espanola de Documentacion Cientifica* 1.

112 Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 6) 588–90.

113 See, eg, Hirsch, 'An Index to Quantify an Individual's Scientitic Research Output' (n 107).

114 Leo Egghe, 'Theory and Practice of the G-Index' (2006) 69(1) *Scientometrics* 131.

115 Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 6) 591.

116 Gorelova and Lovakov, 'Academic Inbreeding and Research Productivity of Russian Faculty Members' (n 68) 8.

117 Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 6) 616.

118 Possessing a Google Scholar account did not correlate with any measure for inbreeding (not inbred at all, first-degree, PhD, being 'pure' inbred, or silver-corded) or gender, Go8, ERA, size of law school, year law school founded, level of appointment.

regression analysis to identify variables that effected research productivity.[119]

Despite these limitations, our findings are consistent with Smyth and Mishra's conclusion that for Australian law academics there is no relationship between inbreeding and research productivity.[120] The only variable which correlated with research productivity was the level at which an academic was appointed. Likewise, Mishra and Smyth found that senior academics did not publish more articles in high-quality journals. However, senior academics scored higher on citation indices including the h-index and g-index.[121]

As Smyth and Mishra stress, these results differ from most other studies which show that inbred academics are less productive than non-inbred academics.[122] Smyth and Mishra argue that for Australian law academics, the lack of difference between inbred and non-inbred academics may reflect the use of the number and quality of journal articles as measures of research productivity, rather than other types of outputs such as books and book chapters. Australian legal academics may have a greater focus on outputs other than articles in high-status, peer-reviewed journals due to their closer relationship with the legal profession than their US counterparts. In addition, Smyth and Mishra contend that the standard of publishing by Australian law academics overall makes it difficult to discern differences, as they state:

> …rather than finding inbred staff are less likely to do innovative research capable of getting into the top journals, we find that this is true for a high proportion of legal academics in Australia, irrespective of whether they are inbred. This pattern is swamping any potential inbreeding effect.[123]

The influence of an academic's level of position on their research productivity also appears to mask differences between research productivity for male and female academics. We did not find any correlation between gender and research productivity. However, controlling for level of appointment, male legal academics were significantly more like to score higher on the h-index than female legal academics.[124] This finding is consistent with other research, which demonstrates that the effect of gender can be obscured by other factors, most notable level of position.[125] In our sample, female legal academics were significantly more likely to be appointed at a Lecturer and Senior

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[119] Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 6) 594.

[120] Ibid.

[121] Vinod Mishra and Russell Smyth, 'Are More Senior Academics Really More Research Productive Than Junior Academics? Evidence from Australian Law Schools' (2013) 96(2) *Scientometrics* 411.

[122] Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 6) 609.

[123] Smyth and Mishra, 'Academic Inbreeding and Research Productivity' (n 6) 591.

[124] Pearson, $r=0.842$, $df=259$, $p<0.05$.

[125] Yu Xie and Kimberlee Shauman 'Sex Differences in Research Productivity: New Evidence about an Old Puzzle' (1998) 63(6) *American Sociological Review* 847; Paul Ramsden 'Describing and Explaining Research Productivity' (1994) 43(4) *Higher Education* 423.

Lecturer level, whereas male legal academics are overrepresented as Associate Professors and Professors.[126]

IX CONCLUSIONS

While there is an abundance of previous studies focusing on legal education and law students, those who teach the law remain under-researched. Our study has demonstrated the prevalence of inbreeding varies according to how inbreeding is measured. Approximately a third of Australian legal academics have either completed a first degree or a PhD from the same institution in which an academic is employed. The proportion of academics who have spent their entire academic career in the same institution, however, is much lower. Compared to US law schools, the level of inbreeding in Australian law schools is also considerably lower.

Our research also demonstrates that elite law schools have the highest proportion of inbred academics. While inbreeding can assist emerging higher education systems, in a well-established and mature higher education system such as in Australia, high levels of inbreeding are problematic.[127] The tendency to employ academics from a small number of elite law schools potentially risks stifling teaching innovation, limiting academics' networks, and reducing the exposure of law students (and therefore lawyers) to diverse legal norms and perspectives.

As law teachers are the gatekeepers of the legal profession, inbreeding which privileges elitism may also have a detrimental impact upon both lawyers and their clients. Legal professionals who have only been exposed to a narrow range of legal perspectives and norms may not necessarily appreciate the full range of problems faced by their clients. Margaret Thornton warns that Australian elite law schools have a strong focus on commercial law interests, and that other legal concerns are being overlooked.[128] In the US, elite law schools have also been critiqued for resocialising idealistic students with an interest in social justice to accept careerist norms and elitist ideologies and there appears to be a risk of this occurring in Australia.

Inbreeding reflects the existence of structural constraints on academics' careers. Inbreeding may assist the careers of academics who possess qualifications, especially undergraduate degrees, from elite law schools. High levels of inbreeding, however, may also limit the careers of academics who do not have opportunities for mobility. Female legal academics are more likely to be inbred than male legal academics, and this most likely reflects that female academics are less mobile due to family and other caring responsibilities. Thus, being inbred may create career opportunities for some, for other academics it may reduce their

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126 x^2=19.291, df=3, p<0.001.

127 See, eg, Horta, Sato and Yonezawa, 'Academic Inbreeding' (n 29); Hugo Horta and Maria Yudkevich, 'The Role of Academic Inbreeding in Developing Higher Education Systems: Challenges and Possible Solutions' 113 *Technological Forecasting and Social Change* 363.

128 See Thornton, 'The Demise of Diversity in Legal Education' (n 60).

career opportunities. This result highlights that the nature and consequences of inbreeding is complex and highly contextual and stresses the need for country-specific research to fully understand how inbreeding shapes, and is shaped by, organisational culture.