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A Model for the Integration of Legal Research into Australian Undergraduate Law Curricula

*Clare Cappa**

The marginalisation of the teaching and learning of legal research in the Australian law school curriculum is, in the author's experience, a condition common to many law schools. This is reflected in the reluctance of some law teachers to include legal research skills in the substantive law teaching schedule — often the result of unwillingness on the part of law school administrators to provide the resources necessary to ensure that such integration does not place a disproportionately heavy burden of assessment on those who are tempted. However, this may only be one of many reasons for the marginalisation of legal research in the law school experience. Rather than analyse the reasons for this marginalisation, this article deals with what needs to be done to rectify the situation, and to ensure that the teaching of legal research can be integrated into the law school curriculum in a meaningful way. This requires the use of teaching and learning theory which focuses on student-centred learning.

The adoption of legal research as an integral part of the Australian law school curriculum is outlined through the use of a normative model. This objective is predicated on the assumption that legal research is an essential skill for lawyers and law students alike, and therefore should be afforded more weight in the law school curriculum. The integration of legal research, not only into the objectives of law schools but also into the fabric of the teaching and learning program, is a fundamental requirement for the production of a superior law graduate.

The model of legal research which is outlined on the following pages is the result of many years of observation of the teaching of legal research, personal experience with the problems resulting from a misunderstanding of the teaching

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and learning process as it applies to legal research, and careful adaptation from ideas and suggestions embedded in the literature on the subject. It is, to a significant extent, an original model, which does not depend in any major way on any other of which the author is aware.[1] The proposed model incorporates five transparent "stages", each of which is interdependent with each of the others, but each of which is important in its own right. The five stages can be summarised as: analysis; contextualisation; bibliographic skills; interpretation and assessment; and application. Their interdependence reflects the characterisation of legal research as a dynamic and holistic process.

Definition of Legal Research

A clear definition of legal research is pivotal to any discussion of its role and context. Over the course of the research conducted into this area it became obvious that one of the greatest causes of the lack of understanding about the appropriate role for legal research is ambiguity in the terminology of this area of knowledge. There are at least three identified categories of legal research. The first can be characterised as "client-centred" or doctrinal research[2] in that it is the type of research that underlies an attempt to formulate an answer to a specific legal question by applying legal doctrine to a factual situation. It is carried out using established bibliographic methodologies, that is, using primary legal sources supplemented by secondary legal resources, and is utilised in both a law school situation and in practitioner's research.

The second type of legal research is reform-orientated research. The first stage of reform-orientated research involves doctrinal research to ascertain the state of the law, which is then followed by a critical analysis of the legal rules that have been discovered. The second stage of reform-orientated research revolves around questions such as, should the law be changed? And if so, how? It involves an evaluation of the law in relation to its objectives. This evaluation often involves both

1 I acknowledge the importance of the work of P Havemann and J Mackinnon, "Synergistic Literacies: Fostering Critical and Technological Literacies in Teaching a Legal Research Methods Course" (2002) 13(1) LER 65, where the authors also emphasise a five-step approach they call the 5 "Cs"; and T Hutchinson, *Researching and Writing in Law* (Sydney: Lawbook Co, 2001) who also uses the terms analysis, contextualisation, and interpreting.

2 This is the term adopted by Hutchinson, supra note 1, in her comparison of legal research methodologies, at 9.

theoretical and empirical investigations which go beyond the question of what is the law.

The third type of legal research is scholarly research, or what the Pearce Report termed theoretical research "which fosters a more complete understanding of the conceptual basis of the legal principles and of the combined effects of a range of rules and procedures which touch on a particular area of activity".[3] Scholarly research is a higher order of research activity, which relies heavily on both theoretical and empirical research, and often incorporates socio-legal methodology.

The definition of legal research which will be used throughout this article is an amalgam of all three of the aforementioned types of legal research, with a large component of doctrinal research, tempered with critical analysis and enlightened by socio-legal contextualisation. This combination is the one most likely to give undergraduate students confidence in their ability to efficiently and effectively research the law.

The Misconception about Legal Research

The major reason for the misconception about the importance of legal research in the law school curriculum is that many course planners adopt a constrained approach, believing that the more narrow definition of legal research, often termed bibliographic instruction, or library-based research, is all that is involved in the legal research process. On the contrary, legal research is an holistic process, made up of a number of distinct stages which combine to form a continuum. Each of the stages is important in itself, and some stages are more important than others, but it is only in its entirety that the real value of legal research becomes apparent.

The acceptance of such a narrow definition of legal research may partly explain the difficulty faced by many course planners who, assuming that it is a one-dimensional concept, fail to afford the legal research process the attention that it deserves. By not understanding that legal research has all of the manifestations of a rigorous academic subject, it is instead assumed that it is an easily learned skill that can be picked up by students along the way. Understandably, there is a reluctance to include space for it in the curriculum, as

3 D Pearce, E Campbell and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (Canberra: AGPS, 1987) 311.

it is seen as a "trade school" skill, a form of data-collection, undeserving of the attentions of legal academics.

This definitional uncertainty may be one of the main reasons for the lack of support at institutional level, which, combined with some of the other factors considered below, helps to explain why the status of legal research has not been on the agenda for change.

A Model of Legal Research

Stage 1: Analysis

The first stage of the model involves analysis, which can be described as the process of formulating the problem from the facts that have been presented, and in light of the question being asked. Many suggested regimes for conducting legal research recognise analysis as a necessary first step in any research problem.[4] Other authors use the term planning, or advocate using "strategy and technique" to identify the "situation", identify the facts and identify the legal issues.[5]

This analysis of the situation, comprising factual analysis and characterisation of the facts presented, is an important initial step as often the analysis of the facts reveals that the situation is more complex than at first appears. An analysis of the situation will result in isolating the legal issues involved, including determining which facts are legally relevant. This step involves going beyond the information provided and asking questions about the way facts are presented. It may even involve being comfortable with questioning the context in which the facts have been presented, and testing the application of an alternative analysis to the facts. It certainly involves reading the facts carefully and with an open mind. In a seminal article on the failure of the legal research process as taught in (American) law schools, Jill and Christopher Wren have written:

> In light of the integral character of reading in the legal research process, the failure of typical bibliographically oriented legal research instruction to teach about this step is incongruous. Perhaps the omission derives from a belief

4 C Cook et al write: "in most cases, commencing a search … without first analysing the question that has been posed will both lead to bad research and result in much time being wasted": *Laying Down the Law* (5th ed, Sydney: Butterworths, 2001) 275.

5 I Nemes and G Coss, *Effective Legal Research* (2nd ed, Sydney: Butterworths, 2001) 55.

> that students' reading of the law in their substantive law courses addresses the skill adequately for legal research purposes. This belief misses the mark, however. Courses on substantive law focus students' attention on thinking about legal doctrines relating to specific subject matter; although the courses require students to engage in various techniques for reading the law, the instruction rarely, if ever, explains how to develop effective reading skills.[6]

This necessity of providing meaning and organisation to the facts and encouraging the researcher to go beyond the information given situates this initial stage in the legal research process well within the part of modern educationalist philosophy which is influenced by constructivist theory. This theory suggests that we "construct" knowledge by testing ideas and approaches based on prior knowledge and experience, applying these to a new situation, and integrating the new knowledge gained with pre-existing intellectual constructs.[7] This theory has implications for how current "traditional" instruction is structured, fitting in as it does with several highly regarded educational trends, such as transforming the teacher's role from transmitter of knowledge to facilitator and coach; teaching "higher order" skills such as problem-solving, reasoning, and reflection; enabling learners to learn how to learn; providing more open-ended evaluation of learning outcomes; and, of course, fostering cooperative and collaborative learning skills.[8]

Constructivist learning is based on students' active participation in problem-solving and critical thinking regarding a learning activity that they find relevant and engaging. When a legal researcher is presented with a statement of facts, only some will be relevant to the legal research being undertaken. As part of the analysis stage, it is necessary to examine the relevance of the various facts, in terms of legally relevant and factually relevant, and in the light of prior knowledge. In order to provide meaning and organisation to the facts of the situation which has been presented to the legal esearcher, it will be necessary for him or her to construct the meaning by reference to his or her current knowledge and socio-legal context.

6 C G Wren and J R Wren, "The Teaching of Legal Research" (1988) 80 *Law Librarians' Journal* 7 at 47.

7 Asynchronous Learning Networks, "What is Constructivism?" (1997) 1(1) *ALN Magazine* <http://www.aln.org/alnweb/magazine/issue1/sener/constrct.htm (accessed 30 October 2001).

8 University of Colorado at Denver, School of Education, *Constructivism* <http://carbon.cudenver.edu/~mryder/itc_data/constructivism.html> (accessed 24 October 2001).

Stage 2: Contextualisation

This therefore segues neatly into the next stage, which encompasses contextualisation — that is, the placing of the legal facts and issues being worked with in to context. This requires assessing the legal and other associated environments in which the problem is situated, knowing how all the aspects of the relevant law fit together, assessing jurisdictional and statutory limitation issues, and also being aware of the resources and authorities which are available and which may be utilised. Olsen identifies this as the first step in the legal research process, and characterises it as finding an "overview — placing a legal issue in its doctrinal or historical context".[9] This process involves the ability to appreciate and situate the problem in the context of the role and function of law and legal institutions. This process is consistent with the belief that an understanding of the law cannot be acquired unless the subject matter is examined in close relationship to the social, economic and political contexts in which it is created, maintained and implemented.[10]

However, contextualisation of a legal problem is not always as easy to achieve as would be thought. Traditionally, legal problem-solving has been approached from the view that it is only necessary to find out which rules to apply. In law school, legal problems are situated squarely within the paradigm of the "block" of law currently being considered, and students are not encouraged to explore outside this paradigm for possible solutions or complications. As Bottomley and Parker remark, "[f]or many law students, immersion in the doctrinal intricacies of the courses they study can make it hard to distinguish the wood from the trees [and they need to be helped to] take a step back and be reminded of the larger picture."[11]

However, for those students who have an expanded conception of the field of legal practice that incorporates a critical and ethically-orientated understanding of how lawyers carry law and legal institutions into the community,[12] law is more than a set of rules. Understanding how the law operates in society, and how their practice of the law might affect it, are integral parts of a complete law school education.

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9 K C Olsen, *Legal Information: How to Find It, How to Use It* (Phoenix, Ariz: Oryx Press, 1999) vii.

10 P Harris, *An Introduction to the Law* (6th ed, London: Butterworths, 2001) 5.

11 S Bottomley and S Parker, *Law in Context* (2nd ed, Annandale, NSW: Federation Press, 1997) 380.

12 C Parker and A Goldsmith, "'Failed Sociologists' in the Market Place: Law Schools in Australia" (1998) 25 *Journal of Law and Society* 33 at 47.

Contextualisation, as an interrelated part of legal research, also involves being aware of how the various aspects of the relevant law fit together, and being able to assess jurisdictional and statutory limitation issues. This is the placing of the legal problem within the context of the law as a whole. Is the law of the federal or state jurisdiction (or both) relevant? Does statute or case law have the greater significance? Is there an administrative law issue? This process is enhanced by making parallels between different parts of the law – for example, drawing an analogy from contract law to help in the solution of a statutory interpretation problem – and being aware of the different contexts within which the law exists.

Stage 3: Bibliographic Skills

The third, and arguably the most important, stage is bibliographic skills. This stage would commonly be recognised as the process of finding and ensuring the currency of the law which is relevant to the facts and issues in the problem being addressed by the researcher, and is variously referred to as doctrinal research or library-based research. This step in the legal research process is often mistakenly assumed to be all that is involved. Much has been written[13] about library-based finding skills and about search strategies, although the emphasis is often on the detailed use of individual tools and resources[14] rather than on an overall research strategy or methodology. This approach is now outdated. The *process* of that part of the legal research continuum which is concerned with bibliographic instruction has changed to accommodate the efficiencies brought about by technological innovation, although the impact on the overall methodology has been minimal.

In addition, the emphasis on bibliographic instruction within a larger framework of information literacy means that bibliographic instruction should focus on the nature of the documents and the ways in which they are indicative of disciplinary processes rather than focusing on an artificial

13 Some of the more recent and significant of which are: Cook et al, supra note 4 at chs 13-17; Nemes and Coss, supra note 5; R Watt, *Concise Legal Research* (4th ed, Annandale, NSW: Federation Press, 2001); AD Mitchell and T Voon, *Legal Research Manual* (Sydney: LBC Information Services, 2000); and some American counterparts: Olsen, supra note 9; RC Berring and EA Edinger, *Finding the Law* (11th ed, St Paul, Minn: West Group, 1999); C Edward, *Good Legal Research … Without Losing Your Mind* (Charlottesville, Va: Wordstore, 1993); PA Hazelton, *Computer Assisted Legal Research: The Basics* (St Paul, Minn: West, 1993).

14 Mitchell and Voon, supra note 13; Nemes and Coss, supra note 13; Watt, supra note 13.

structure that does not reveal the processes. If electronic research is the norm, the skills of electronic research are critical to legal education. But they should be generic skills – not the skills required to search a particular database, but the search skills which will generate the best results over a range of electronic resources.

A crucial aspect of this third stage is an awareness of the range and interrelationship of the tools and resources available. There are basically two schools of thought about how best to introduce law students to the plethora of legal research materials available to them. The functional approach relies on introducing legal materials and their features in the order in which they are to be used in library-based research exercises. The bibliographic teaching approach relies on introducing the tools and their features in isolated units, pointing out the functions of the tools, the various methods for using them and the interrelationship of the resources for any future application. Debate persists as to which of these methods is the more efficient and effective and it has never been adequately resolved.[15] If resources permit, an integrated approach, which combines the best aspects of both methods, would be optimal.[16] To understand how to use law resources the student must be able to view them in context, in the information stream of time and place in which they are published. As Hicks suggests, "[i]t is possible to understand how to use the books only if one understands what they are, how they came to be created, and what their role is in the universe of other research material."[17] In a legal research class that is concentrating on library-based resources, students should be guided through an understanding of the origins and evolution of the legal research tools available to them; be given an opportunity to see how the various aspects of the law which they are assimilating from other classes fit into the overarching scheme; be expected to judge the impact of the publishing conglomerates on what is available and how

15 A summary of the various arguments and quotations from the major proponents of the two camps are summarised in D S Sears, "The Teaching of First-Year Legal Research Revisited: A Review and Synthesis of Methodologies" (2001) 19 (3&4) *Legal Reference Services Quarterly* 5, esp nn 7-12.

16 As advocated by F Hicks, "The Teaching of Legal Bibliography" (1918) 11 *Law Library Journal* 1 in his three phase approach – "legal bibliography proper" (the origin, history and description of the repositories of the law); a process-orientated phase; and the integration of legal writing, research and appellate advocacy.

17 R C Berring and K Vanden Heuvel, "Legal Research: Should Students Learn It or Wing It?" (1989) 81 *Law Library Journal* 431, paraphrasing Hicks, id at 433.

it can be used; and should learn how to find and evaluate information within this context.

Stage 4: Interpretation and Assessment

The fourth stage is interpreting and assessing the results of the process so far. This is a crucial step in the legal research process, but one that is rarely emphasised in any of the practical literature. Too often the focus is on finding "an" answer, instead of finding the correct *or best* answer, and too often quantity is preferred over quality. This fourth stage is a complex step which relates in part to the process of contextualisation but which also has an extra unique dimension that relates to the nature of secondary legal resources. In today's environment of easy access to huge quantities of information, one of the most important skills a legal researcher can develop is to understand the differences among information resources and how to make judgments about the value and appropriateness of the information found. The advent of technology has meant that a different emphasis needs to be placed on what Robert Berring has termed "cognitive authority", which he defines as "the act by which one confers trust upon a source".[18] As he says:

> the way authority is used has changed; the way authority is defined is changing. The search for cognitive authority in legal sources in the new world of information is a major task.[19]

Berring postulates that despite the centrality of legal information to the legal culture, there has never been a serious attempt to question the authority of legal information. One of the reasons for this is that traditional legal information resources have rarely failed to provide the information required, and the "cornerstone tools of legal information have been established as unquestioned oracles".[20] Researchers can no longer assume that every legal research tool is authoritative and reliable. Today's plethora of easily accessed and seemingly inexpensive databases of competing legal authorities mean that every legal researcher needs to be informed about legal information – what constitutes it, who controls it and how it is changing – and most importantly, how that impacts on the legal research process.

18 R C Berring, "Legal Information and the Search for Cognitive Authority" (2000) 88 *California Law Review* 1673 at 1676.

19 Id at 1674.

20 Id at 1676.

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A further aspect of the interpretation and assessment of results is the necessity of assessing the results in the light of the research question. Previous emphasis on library-based research, and what the Americans term the "treasure-hunt" exercise, where students are asked to find a particular resource, has created a mindset that there is one correct answer and that once it has been located, the research process is at an end. It was pointed out, in criticism of the teaching and learning of legal research in the British context, that:

> It appears that undergraduate legal training inculcates little or no research ability, to the extent that many students are incapable of organizing and analysing facts, while those who can research the law have no confidence that they have found the *right* answer – an assumption being that there must be a right answer rather than a range of answers.[21]

The assessment and interpretation stage may often be the stage which prompts further research efforts, as interpreting the results in the light of the research question may reveal that there are other avenues to be followed.

Stage 5: Application

The final step is application of the results of the research to the fact situation as presented. This step is nearly always mentioned in accepted legal research schemas although in undergraduate research exercises this process of applying the findings to the problem is often overlooked in the task-orientated teaching that predominates in today's law school environment. Students who are conducting legal research with the sole aim of finding the "right" answer are often working within a constricted paradigm of legal knowledge – what is commonly known in American legal research and writing programs as a "closed universe" problem, meaning that the resources and solutions have been deliberately limited. However, such exercises have obvious limitations when legal research is being taught as an holistic, life-long skill. It is essential that the legal research process is completed by attempting to apply the solution to the problem. It will often be the case that there will be a lack of fit, in which case the process becomes circular and needs to be embarked upon again, with perhaps a slightly different emphasis or a change in understanding of what the problem was in the first place.

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21 P Kilpin, "Skills Teaching on the Legal Practice Course" in J Webb and C Maughan (eds), *Teaching Lawyers' Skills* (London: Butterworths, 1996) 248.

The recent adoption of legal clinic programs by some Australian law schools[22] is fertile ground for this type of interaction to take place. A student undertaking a clinical program is required to research the law in terms of both substance and procedure, with the emphasis being on the ability to recognise issues, ask the right questions and discover the possible answers. As Grimes has said, "[i]t is this process of formulating and re-formulating the research questions that makes a clinical input so valuable."[23] Practice in applying the results of the research process in a "real world" situation, or even an artificially simulated real world situation, is invaluable for the student legal researcher.

Reflection is also an important part of the final step in the research process. Drawing on Schön's concept of "reflective practice",[24] a primary aim of the educative process should be to produce the reflective student. This is a student who can understand the connections between the methods employed and the results achieved, and who can step back from the result and analyse what has taken place in terms of the learning experience. Beyond teaching students to "think like a lawyer", academic training should aim to train students to "think about what it is to think like a lawyer".[25] Bringing the research process to fulfilment requires assessing the "fit" between the problem and the solution, reflecting on the possibilities which have arisen along the way, and ensuring that the process has been completed as far as possible.

To summarise so far, it is necessary to consider all five elements of the proposed model as a continuum in the whole process, or as inextricably linked parts of an holistic process, in order to gain the full benefits of the proposed model. Although the research model is capable of being adopted and adapted to any research paradigm, in order for the research process to be fully functional within the law school environment, legal research needs to be incorporated as much as possible into the normal learning paradigms which the student is experiencing. The mechanics of the integration of the legal research model will be dealt with in the rest of this article.

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22 *Clinical Legal Education Guide 2003-2004* (Kensington, NSW: Kingsford Legal Centre, 2004) gives a figure of 16 programs in 2003.

23 R Grimes, "Locating the Clinic within the Curriculum" (1998) 7(1) *Griffith Law Review* 62 at 66-67.

24 D Schön, *Educating the Reflective Practitioner* (San Francisco: Jossey-Bass, 1987).

25 C Sampford and D Wood, "Theoretical Dimensions of Legal Education" in J Goldring, C Sampford and R Simmonds, *New Foundations in Legal Education* (Avalon, NSW: Cavendish, 1998) 100.

The Mechanics of Integrating Legal Research into the Law Curriculum

To coordinate the analysis of the five-stage model and the underlying pedagogical theory with the principle of integration of legal research into the law school curriculum requires a consideration of general subject-design issues. These issues include: the objectives of the whole program; the ideal sequencing which allows for the building-up of skills and knowledge over the years; the issue of alignment of assessment with the teaching objectives; and some suggested methods of instruction.

Just as the law is not self-contained and autonomous but is embedded in a social and political context, research into the law cannot be isolated or taught separately from the law. Mere acquisition of legal knowledge is of little value once outside the ambit of the final year examination, because it is likely to be partial, superficially understood, insufficiently appreciated, rarely usable in the form in which it was learned, and often out of date.[26] Therefore, the student should be pursuing a problem or activity by applying approaches he or she already knows, and integrating those approaches with alternatives presented by research sources, experience, knowledge, or other team members. Through trial and error, the student then balances pre-existing views and approaches with new experiences to construct a new level of understanding. The theory of instruction which underlies such activity should recognise: the student's predisposition towards learning; the ways in which a body of knowledge can be structured so that it can be most readily grasped by the learner; the most effective sequences in which to present material; and the nature and pacing of rewards and incentives.[27] It is proposed that the best way to structure the presentation of legal research knowledge is by integration into the substantive law curriculum, which has the advantage of providing the scope for analysis, manipulation of information, and synthesis.

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26 W Twining, "Preparing Lawyers for the Twenty-First Century" (1991) Jan-Apr *Commonwealth Legal Education Association Newsletter* 115, quoting P Wesley-Smith's arguments against the acquisition of knowledge out of context.

27 Based on the work of J Bruner, *Toward a Theory of Instruction* (Cambridge, MA: Harvard University Press, 1966).

The Challenges

The mechanics of the integration of legal research into the law school curriculum poses two challenges. The first challenge relates to the integration of problem-based instruction into the whole of the law school curriculum, so that students are exposed to ways of thinking and learning that encourage them to approach the problem-solving process from an holistic point of view. This should be a fairly straightforward process, which is aided by teaching and learning methodologies concentrating on student-centred learning and relational theories of learning,[28] and which is prompted by a culture of instructional design with this type of learning in mind. As Moust says: "[n]owadays, there seems to be a growing consensus that general problem-solving skills and context specific knowledge should be synthesised in the design of instruction."[29]

The second challenge confronting integration is more problematic, as it involves integrating a particular aspect of the problem-solving methodology, namely legal research, into the substantive law being taught. The basis of the principle of integration is that the modern legal education curriculum should include problem-solving skills (incorporating initiative, self-directed learning, critical thinking skills and other higher-level cognitive skills) and that legal research is a perfect example of such skills.

There is little doubt that the time is opportune for incorporating this more exciting form of learning, which goes beyond reading and understanding what is read and heard in class, into the modern law school curriculum. Student-centred learning, as opposed to the more traditional lecture format, has been diluted over the years, as a more formalistic and teacher-centred approach to learning has found its way into the nation's law schools.[30] The reasons for this trend can largely be found in resource issues, with the teacher-centred model being more efficient in dealing with the increased enrolments experienced by law schools over the recent past. However, teacher-centred learning, with its emphasis on specialised

28 As adopted by the relational or phenomenographical school of P Ramsden, *Learning to Teach in Higher Education* (London: Routledge, 1992) and M Prosser and K Trigwell, *Understanding Learning and Teaching: The Experience in Higher Education* (Buckingham: Society for Research into Higher Education & Open University Press, 1999).

29 J H C Moust, "The Problem-Based Education Approach at the Maastricht Law School" (1998) 32(1) *Law Teacher* 5 at 9.

30 M Le Brun and R Johnstone, *The Quiet (R)evolution: Improving Student Learning In Law* (Sydney: Law Book Company, 1994) 21.

subject matter and coherent arrangement of that subject matter, engenders passivity in students, rather than active involvement in the learning tasks, and an overall orientation to teaching rather than learning.[31] Students who are engaged in the learning process participate actively in and are responsible for their learning. The change of emphasis to process rather than content, on knowing why and how, rather than what is, should be reflected in the objectives of the program.

Therefore, although it is still argued in some circles that the role of a law school is to teach students the substance of the law for future use, it is also recognised that it is necessary for them to learn the skills of analysis and self-instruction. The law changes all the time, and the amount of information contained in what is termed "the law" increases all the time, as new areas and additional jurisdictions become relevant. As her Honour, Justice Atkinson recently said, the challenge for legal education for the twenty-first century is:

> how to combine training in analytical and "body of knowledge" based thinking both with the creative, lateral, theoretical thinking often more highly regarded in disciplines other than law, and with a sense of how the policy decisions embedded in the law affect ordinary people.[32]

Integrated models emphasise the encouragement of critical thinking and larger understanding, and seek more than the transmission of technical expertise. However, as Simpson observed, discussions of the implications of such models frequently also support the idea of "active learning" and other activity-based forms of teaching most appropriate to the imparting of technical skills.[33] It is convenient to teach skills within defined core areas, and a strong argument for doing so is that it is often necessary to isolate a skill to teach it and in so doing to provide opportunities for feedback and assessment. The need to understand a skill at a basic level has been the rationale behind foundation courses where students are introduced to basic-level skills within a limited legal context. To achieve this balance, it may be necessary to have multiple levels of objectives – one level for the overall legal research

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31 S Nathanson, "Changing Culture to Teach Problem-Solving Skills" (1996) 14(2) *Journal of Professional Legal Education* 143.

32 R Atkinson, "Legal Education in the Twenty-First Century" (2001) 9(1) *Griffith Law Review* 1 at 2.

33 A E Simpson, "Information Finding and the Education of Scholars: Teaching Electronic Access in Disciplinary Context" (1998) 1(2) *Behavioral and Social Sciences Librarian* 1 at 6.

skills, and another level for the individual years where the students are exposed to the particular skills – or, as Toohey puts it, there should be "laid out for students … a map or learning hierarchy [showing] how enabling objectives build upon each other and contribute to the final skilled performance".[34]

The Objective of Integration

The overall objective for the teaching of legal research in the undergraduate curriculum must accord with the broad educational purpose of the undergraduate law degree. Therefore, it could be argued that the general objective is that of developing critical thinking and problem-solving strategies within the broad educational goals of being able to think "sceptically, logically, analytically and creatively".[35] However, it is also necessary to align objectives with teaching methods and with assessment, so that an objective for every stage in the process, and every module in the learning schema, is defined. The aims and objectives dictate the activity in the classroom – both the activity of the teacher and the activity of the students, and contain direct implications for particular kinds of assessment.[36]

A suitable objective for a legal research course would read as follows:

> By the end of the law degree, the student should be able to find, analyse, apply, synthesise and critically evaluate cases, legislation, secondary legal material, books and journal articles, using both manual and electronic legal research methods.

The aim, with which the assessment must be aligned, is not to help the student to find the solution so much as to help him or her discover what he or she needs to know to work towards a solution. The achievement of that objective will require sequencing of each section of the process, or each part of the learning hierarchy, which is tailored to the individual resources used in that section. This has been trialled at the University of Western Australia Law School[37] where the key strategies of determining the areas and levels of skill competency of the students, and identifying the year levels in which research

34 S Toohey, *Designing Courses For Higher Education* (Buckingham: Society for Research into Higher Education & Open University Press, 1999) 53.

35 Id at 132-133.

36 Id.

37 R Carroll and H Wallace, "An Integrated Approach to Information Literacy in Legal Education" (2002) 13(2) LER 133.

skills might be taught, were identified[38] and aligned with the overall objectives of the program.

Ideally, law students should be exposed to legal research skills over all the years of the law school curriculum. The preferred model for teaching legal research in Australian law schools would be based upon an introduction in the first few weeks of first year, where the needs of new students are best served by having an intensive introduction to the background and ground rules of the process. Because first year students have as yet learned very little substantive law, the teaching of legal research in these first weeks tends to be in isolation, without the benefit of integration with mainstream subjects. This separation between the substance and the procedure of legal research results in a further problem. As most legal research is not required until later in the degree, it is likely that the procedures learned in previous years have either been forgotten or have become outmoded because of the evolution of legal research method. Bearing this in mind, the objectives for this section of the learning hierarchy should be simple and straightforward – an understanding of the Australian legal system and how its intricacies impact on the legal publishing industry, and what that means in terms of choices and quality of legal research materials. This instruction could take place as part of the first year introductory course, so that students are exposed to legal research resources as an interconnected part of the legal system, and learn to bring to them the same questioning assessment and analytical criticism that they are learning to bring to the legal structures of our society. Over the next three to four years, depending on the structure of the law degree, modules of specialised skills training should be offered to enable students to develop a deeper understanding of legal research methodology, commensurate with their expanding knowledge of the law generally.[39]

To achieve the integration of skills within the core legal subjects as well as the isolation of certain skills to enhance learning, one option may be to fragment mainstream sessions with short excursions into skills to highlight important issues, get practice, and gain feedback on the specific skills used to solve the legal problem or task. However, it is essential to maintain the confluence between skills and the substantive law by incorporating socio-legal research theory and offering students a wider understanding of the intellectual choices

38 Id at 143.

39 A table, which describes in detail the proposed sequencing and relationships between the particular mechanics of doctrinal research which can be incorporated, is available from the author on request.

about content and format which have such an impact on legal scholarship and on the research tools which are available to them.

The teaching method should be based on the "learning-by-doing" method, whereby students are regularly set a research problem. The problems would increase in difficulty as the students are exposed to more and more legal research tools, until by the end of the period they have become familiar with, and have used, the whole range of legal research tools. The exercises will require a critical evaluation of the tools, comparisons where appropriate, and a demonstrated understanding of the intellectual underpinnings of the structure of legal research tools. The final exercise will be an "open-universe" problem where students are required to demonstrate their ability to understand the holistic nature of legal research and how the tools work together, or why a certain type of information is found through the application of certain types of research tools. Hutchinson and Martin[40] advocate the use of a multi-modal delivery approach to teaching legal research skills as it "can assist students in developing their own strategies for dealing with changes in the legal research process … and assists in the development of independent lifelong learning".[41]

Assessment of Legal Research Skills

Assessment must reflect the teaching and learning goals of the subject. Therefore, the emphasis should be on methods of assessment that test students' capacity to think logically, critically and creatively and to evaluate and analyse legal problems, as identified in the learning objectives. To learn skills effectively, students must be given the opportunity to practise them. This indicates that problems and exercises should be drafted in terms of real legal problems (that is, problem-based), which would require students to utilise the five steps of legal research (that is, analysis, contextualisation, bibliographic skills, interpretation and application), and to be aware of the connection between the stages. Learning is then assessed through performance-based projects rather than through the more traditional examination method. This offers a solution to the dilemma posed by evaluations of the effect of different methods of assessment, which

40 T Hutchinson and F Martin, "Multi-Modal Delivery Approaches in Teaching Postgraduate Legal Research Courses" (1997) 15(2) *Journal of Professional Legal Education* 137.

41 Id at 152.

reveal a tendency toward surface approaches to learning by students enrolled in a theoretically-based subject.[42] When assessment relies on the ability of a student to recall, from memory, a large amount of information and isolated facts, the knowledge process is truncated and subverted into an exercise in regurgitation of hastily skimmed lecture notes. In contrast, "learning-by-doing" and its corresponding method of performance-based assessment encourage the deeper approach to learning.

Incorporation of the assessment of the research skills component of the substantive course is an ideal which can, in reality, rarely be achieved. This is often related to work loads, in consequence of which the teacher of the substantive subject feels unable to take on the extra marking required to assess the students' papers in light of their research efforts. A workbook or journal option is often the most workable solution, which, although it does not totally free the teacher from marking, can substantially lessen the load. This is especially so if it is emphasised that the workbook is being kept by the student, for the student – in line with the principles of student-centred learning where it is the process that matters rather than the content. The workbook objectives should describe the interrelationships between the concepts and the learning process, and give the students a measurable standard against which to assess their progress. Although the workbook could ideally fill the role of a formative assessment task, in that it is an ongoing, diagnostic assessment of the student's increasing competence in the area,[43] enhanced by feedback from the teacher about alternative methods or resources, it would not be necessary for the workbook to be marked on a regular or comprehensive basis, as long as students are aware that it may be.

The workbook could take the form of a journal which enables students to keep completed exercises and handouts pertaining to particular tools in one place for repeated referral. This is a method that is used with some success in Advanced Legal Research classes in the United States.[44] The structure of the workbook will reflect the modularised structure of the research skills course. These modules would build on the

42 E Marchetti, "The Influence of Assessment in a Law Program on the Adoption of a Deep Approach to Learning" (1997) 15(2) *Journal of Professional Legal Education* 203 at 211.

43 R Johnstone, J Patterson and K Rubenstein, *Improving Criteria & Feedback in Student Assessment in Law* (Avalon, NSW: Cavendish, 1998) 6.

44 L A Silecchia, "Designing and Teaching Advanced Legal Research and Writing Courses" (1995) 33 *Duquesne Law Review* 203.

information and knowledge previously gained, and continue to offer familiarity with more sophisticated and specialised legal research tools as time goes on. This builds on both the relational and reflective learning skills with which the students are familiar, and also provides the opportunity to expand their knowledge base as more recently developed tools become available. Comparative exercises will also be included, requiring the students to critically evaluate particular resources in terms of how effectively they were able to use them for a stated purpose.

Ideally, the workbook will be produced to reflect the matrix-like structure of the research skills course, so that it will have both vertical and horizontal components. The vertical component will reflect the gradually increasing sophistication of the resources used, building on the information and knowledge previously gained, and continue to offer familiarity with more sophisticated and specialised legal research tools, as time goes on. The vertical component will reflect the move from basic to sophisticated levels of familiarity with tools, with columns headed Case Law 1, Case Law 2 and so on. This also gives the students the opportunity to become familiar with research tools which have been recently developed, a current phenomenon in legal research which is unlikely to be short-lived. The horizontal component, which may sometimes become iterative, will reflect the vitality and open-ended development that characterises the five-stage legal research process. The horizontal component will involve five rows, labelled according to the five-stage process, to encourage students to work through these steps in logical order as they utilise each skill and tool.

This form of assessment deftly relates to the objectives and aims of the course, in that it will make clear to the student his or her progress in being able to find, analyse, apply, synthesise and critically evaluate cases, legislation, secondary legal material, books and journal articles, using both manual and electronic legal research methods.

Conclusion

In respect of legal research teaching, it should be possible to examine teaching methodologies in the light of established knowledge about the way students learn best. Teachers who adopt a conceptual change or student-focused approach to teaching are more likely to produce students who adopt a deep approach to their learning, while teachers who adopt an information transmission or teacher-focused approach to

teaching are more likely to produce students who adopt surface approaches to their study. Previous teacher-centred teaching methods operated on the assumption that legal research was an easily obtained "lower-order" skill that could be picked up virtually by osmosis.[45] The themes, which have emerged from this treatment of the teaching and learning of legal research, are unsurprising. Ultimately, information retrieval is a problem-solving process in which students need to develop the ability to articulate their information needs and discover how to meet those needs. Essentially, teachers involved in legal research need to be able to design courses in which legal research skills are integrated into the substantive law courses. Such courses will encourage students to undertake a deep approach to their learning. And they will allow teachers to move away from being the expert who provides the information which students need, and to move towards being a supporter and facilitator of the open-textured and sometimes indeterminate but rewarding process of legal research.

The conclusion drawn is essentially that a change in the way legal research is approached in the undergraduate law school curriculum would be beneficial. An overhaul of the teaching methods used throughout the law school is an ambitious goal that challenges the inherent conservatism of much of the teaching profession. A change of teaching emphasis may cause insecurity and a concern to protect the academic respectability of legal study against attack from vocationalism or the influence of a training ethos which undermines academic goals. However, this should not prevent an attempt to more fully integrate the teaching of legal research into the undergraduate law school curriculum. Researching the law cannot be a process that occurs separately from considering the law. The symbiosis between legal research and the legal principles involved is necessary for a complete and thorough legal research process. Therefore, the teaching and learning of legal research must be incorporated into the substantive law curriculum and the instructional design of the curriculum will need to reflect this necessity. The fact that this will necessarily involve a re-evaluation of resources, especially in the assessment area, is an inevitable consequence of a shift in the paradigm of thinking, but will ultimately result in a more experienced and competent law graduate.

45 This term is used by S Christensen and S Kift in their article, "Graduate Attributes and Legal Skills: Integration or Disintegration?" (2000) 11(2) LER 207 at 213, when they say, in reference to the reluctance of academics to include skills in the curriculum (while recognising that they are necessary to complete a law degree): "[t]he simultaneous (though inconsistent) expectation is, however, that the student will acquire the skill more by osmosis than by instruction".