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***PRO BONO LEGIS DOCTORUM:\****  
**FORTY YEARS OF THE LAW TEACHER**

By **NIGEL DUNCAN\*\***

**FINAL DRAFT**

## **Titles and Purpose**

This journal came into existence in 1967 as 'The Journal of the Association of Law Teachers'. This remained its title until 1971, when the current title: 'The Law Teacher' was substituted. The original title, however, has continued to be used as a subsidiary title and can be found in this issue at the head of the Contents page. A further change in subsidiary title was introduced in 1994 when 'The International Journal of Legal Education' first appeared on the cover. It is worth exploring briefly the motives which underlie the inception of the Journal and the adjustments in title.

The context is a major expansion of law teaching both within, but particularly outside the universities. Stan Marsh, one of the founding members, identifies three main reasons:

- The bulge in the post-war birth rate which increased the demand for higher education, responded to by the growth of external London degree courses of which the LLB was especially popular;
- The introduction of the Council for National Academic Awards in 1964 to accredit degree courses offered outside the universities;
- The White Paper of 1966 which laid the foundations for the new polytechnics.<sup>1</sup>

At the same time professional and business studies courses were developing, most of them providing for law subjects, mostly 'General Principles of Law' or one or other aspect of Contract or Commercial law. These were widely offered by further education colleges. Thus a growth in vocationally-oriented law teaching to students from other disciplines spread throughout the non-university sector, and the larger colleges, emerging as polytechnics, started LLB degrees.<sup>2</sup> In the

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\* The current popularity of the *pro bono publico* movement prompted me to use this title, to reflect the fact that the journal has, throughout its existence, operated on the voluntary work of its editors, authors and supporters.

\*\* Inns of Court School of Law, City University.

<sup>1</sup> S. Marsh, *The Association of Law Teachers: The First Twenty-Five Years*, Sweet & Maxwell, 1990, p. 5-6.

<sup>2</sup> The usual 1960s pattern was for such colleges to begin offering external London LLB tuition courses and eventually to replace these with CNAAC-accredited BA (Law) courses (which became LLBs a few years later). For an analysis of the work of the Legal Studies Board of the CNAAC, see: S.B. Marsh, (1983), "The CNAAC Law Degree," *The Law Teacher* Vol. 17, 74.

further education sector resources were often very limited. For example, in 1965 there were 63 colleges without a single law book in the library.<sup>3</sup>

The original purpose of the journal is closely bound up with the original reasons for establishing the Association of Law Teachers in 1965. This flows in part from the refusal of the (then) Society of Public Teachers of Law to admit into membership law teachers who worked outside universities.<sup>4</sup> The problem this created is best presented in the words of a long-standing friend and erstwhile President of the Association.

'Law teachers outside the universities could not gain admission to the Society of Public Teachers of Law, which, with anomalous exceptions, limited membership to law teachers within the universities. Law teachers outside the universities felt excluded, without a "home", with no organisation to which they could belong, and which could represent them in matters relating to legal education.'<sup>5</sup>

This was a doubly-serious handicap, as a significant proportion of these teachers were the only lawyer teaching in their institution. They thus had no-one with whom to discuss legal or pedagogical developments. An association which could organise conferences and provide resources to assist with keeping up to date and with designing lessons was invaluable for colleagues in such positions.

This objective was reflected in the 'Comment' in the first issue, which said:

'It is the purpose of the Association, and of the Journal, to help achieve effective law teaching at all levels, and to provide the maximum communication between teachers of law wherever, and whatever they teach.'<sup>6</sup>

The basic structure of those early issues comprised three regular sections: Articles, Recent Legal Developments and Book Reviews and Notes (modelled on the venerable structures of the *Modern Law Review* and *Law Quarterly Review*). This can still be seen today with the addition of *Government & Education News*, introduced in 1989.

The fifth volume launched the current title with the following reasons given:

'The Association's committee and Editorial Board have agreed that for the purposes of the front cover of this publication, its title should be shortened to "The Law Teacher", although it remains, of course, the journal of the

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<sup>3</sup> *Ibid.* p. 7. David Royall, a former editor of the *Law Teacher*, comments: 'I arrived in 1964 in Coventry to teach law in the then College of Technology, to find that the nearest thing to a bookshop in the city was a kiosk selling only religious tracts! This in the country's 7th/8th largest city...'

<sup>4</sup> This policy (now of the Society of Legal Scholars) has continued to this day, although the expansion of the university sector in 1992 to encompass the former polytechnics has had a significant impact. The two organisations have always collaborated on matters of mutual interest and the relationship these days is constructive and cordial.

<sup>5</sup> Sir Jack Jacob, QC, Foreword to S. Marsh, *supra* n.1.

<sup>6</sup> *JALT*, Vol. 1, No. 1, p. 1

association of Law Teachers. The shortened version of the title is, it is felt, less cumbersome, and it also makes some acknowledgement of the fact that there is a substantial body of subscribers to the Journal outside the membership of the Association.<sup>7</sup>

This stimulated a discussion about the publishing priorities of the journal, with a letter from J P Tillotson and J D Buckle<sup>8</sup> the consequences of which will be explored in the section entitled 'A Journal of Legal Education?' below.

The only subsequent change in subsidiary title (adding 'The International Journal of Legal Education') in 1994 was explained in the following terms:

'It is an appropriate time, as the Association of Law Teachers and Sweet & Maxwell relaunch *The Law Teacher* as a fully-refereed academic journal, to restate the objectives of the journal. It is concerned, as its name suggests, with the teaching of law, and all that that involves. This is a varied activity. The membership of the Association in the UK includes teachers working in schools, sixth form and further education colleges, and in higher education, in both the new and old university sectors and in other institutions. Increasingly, members overseas, not only in the European Communities and Commonwealth but elsewhere as well, are contributing to the breadth of experience the Association can bring to its activities. *The Law Teacher* intends to reflect that diversity. It will publish articles reflecting the practical experience of those developing new pedagogical methods and others developing the theoretical underpinning of our tasks, articles explaining the changing environment of legal education and exploring how developments in the law impact on the practice of teaching it. The experience of law teachers in other countries will be a part of this concern. The articles themselves will be supported by three regular sections: Government and Education News, considering how developments in both the political and educational worlds impact upon law teachers; Current Legal Developments, noting new cases and legislative and other changes in the law; and Book Reviews and Notes, reviewing books which may be of use to law teachers and their students.'<sup>9</sup>

There are two salient aspects to the diversity identified here. The first reflects the desire to meet the needs of law teachers in schools and further education colleges as well as in higher education. The second reflects the desire to become more international in perspective. As editor since that date, it seems to me that we have had only modest success with the first goal and rather more with the second.

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<sup>7</sup> *Law Teacher* 5, No. 1, p. 3

<sup>8</sup> *Law Teacher* 5, No. 3 p. 226

<sup>9</sup> Duncan, N, *Editorial*, 28 *Law Teacher*, p. 3.

It has proven significantly difficult to attract articles written from the pre-degree legal education perspective. Thus only a very few of the mainstream articles reflect the concerns of this sector. There have been exceptions. The special issue in 2000<sup>10</sup> was entitled 'Teaching Law in Further and Adult Education' and contained five articles on diverse issues of special interest to teachers in this sector.<sup>11</sup> It is particularly pleasing that one of the authors in this issue, Wendy Foy, was, at the time a first-year law undergraduate who had just completed an Access course. The Government and Education News section in that issue also contained a piece on the developing Joint Colleges Network. Apart from this focussed issue, the redeeming feature of the journal from this perspective is, perhaps, the strength of the other sections. These provide information on the context of law teaching and developments in the law. The book reviews include a significant proportion of books aimed at students on pre-degree courses and are focussed on the value of the books reviewed for teaching and learning purposes.<sup>12</sup> These sections offer a real resource to teachers of pre-degree students. However, the editorial board would be delighted to receive more articles from the pre-degree sector and hope that this may yet develop as a characteristic of the journal.

The aim of introducing a more international perspective has probably been more successful. There were always occasional contributions from the USA, continental Europe or Commonwealth countries and this provided a useful basis on which to build. The number of articles which are either written by authors from outside the UK or address issues which have arisen outside the UK is shown in the following chart. Some degree of international perspective is evident in every volume since this became a stated objective, and has dominated in a couple.

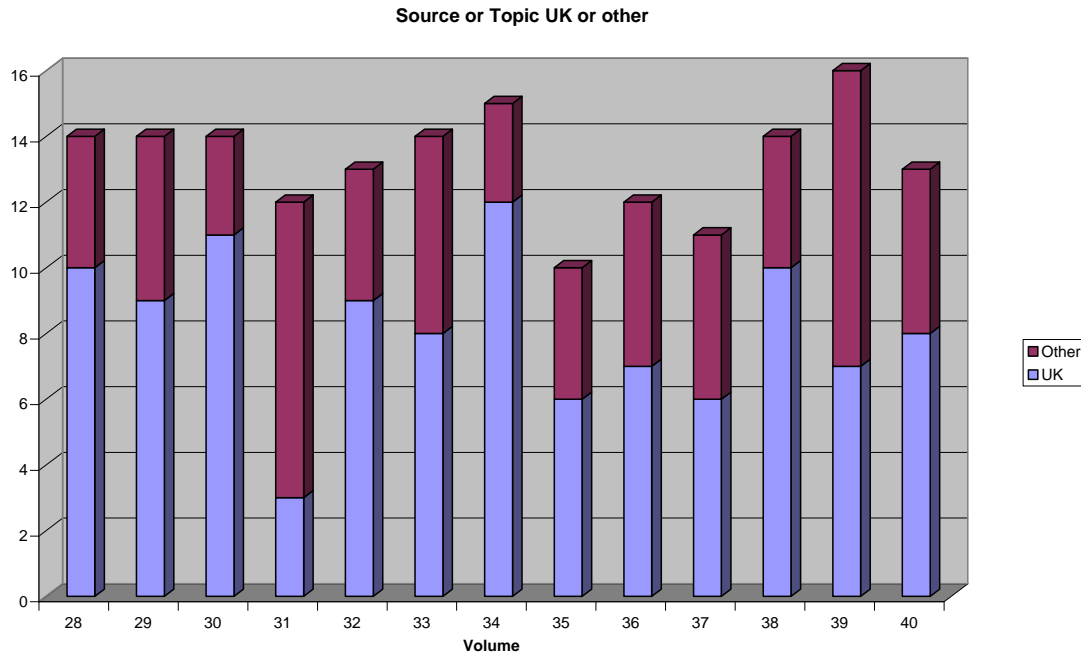
Figure 1

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<sup>10</sup> 2000, 34 *Law Teacher*, No 3.

<sup>11</sup> Responding to the Demands of Curriculum 2000 by Rebecca Huxley-Binns; Access Courses: Meeting the Needs of the Adult Learner by Pam Carter; Widening Participation and Access Students by Sue Owen and Wendy Foy; Developing Special Teaching and Learning Strategies for Business Law at Levels I and II using Behaviourist and Cognitive Models of Assessment by Lynne Norris and Merger: the Name of the FE Game by Sue Wall.

<sup>12</sup> In the current (2006) volume some 50 books have been reviewed.



A significant factor in the international development of the journal has undoubtedly been the ubiquity of email. It has facilitated authors in many jurisdictions sending articles in for consideration virtually instantly and at negligible cost. What is more, the editor is able to seek colleagues from around the world to act as referees. This has developed the strength and diversity of views expressed in the journal. At the same time, the challenges identified and the solutions explored in these articles probably speaks more profoundly of what binds us than it does of what separates us.

### **Editorship and the Editorial Board**

The first three issues of the journal, published in 1967, were edited by J R Lewis, who was supported by an editorial board of W G Sparrow, E F Wilson, N Merritt and C Champness. Christopher Champness took over as editor for volumes 2 – 6 inclusive, and was supported initially by a board including John Freeman, Neil Merritt, Geoffrey Sparrow and Eric Wilson with David Royall joining for volumes 3 – 6.

Volume 7 (1973) saw a change in editor, with David Royall and John Tillotson taking the responsibility jointly. The editorial board appeared to change on a regular basis during the following years. In addition to those mentioned above, Bruce Renton, Keith Whitesides and Neil Hawke played a role.

In 1980, Nigel Bastin took over from John Tillotson, with David Royall providing continuity. Shortly after this, David Royall becoming the sole editor, the editorial

board took on a form which has been reflected ever since. Specific responsibilities were identified: Recent Developments Editor (Graham Stephenson, later Chris Barton), Book Reviews Editor (Nigel Bastin, later Nick Johnson) and Business Editor (Marianne Giles).

In 1988, Patricia Leighton became General Editor and added a new role to the Editorial Board: that of Associate Editor, initially occupied by Julie Macfarlane. In 1989, Christopher Vincenzi took over as Book Reviews Editor and in 1990, Bill Coles as Business Editor. In 1991 I became involved for the first time in the role vacated by Julie Macfarlane, with a specific responsibility for the Government and Education News section of the journal.

This small editorial board, each member having responsibility for a specific part of the journal, continued until the end of 1993. In 1994 I became the General Editor and the *Law Teacher* was re-launched as a fully-refereed journal with an international perspective. The Board now required enlargement, to assist the editor with the contacts to ensure effective refereeing of the diverse articles which are submitted. The expanded Editorial Board included Patricia Leighton as Consultant Editor and Government & Education News Editor and Sarah Nield, Patricia Hassett, Jan Reijntjes, Diana Tribe and William Twining. The current Chairman of the Association of Law Teachers also sits on the Board. This has remained the structure of the Board since. Tracey Varnava took over responsibility for Government & Education News in 2002. Michael Jefferson took over as Recent Legal Developments editor in 1994 and recently handed over to Edwina Higgins and Laura Tatham. Graeme Broadbent became Book Reviews Editor in 1994, joined for a few years<sup>13</sup> by Vera Bermingham. The current Board appears on the inside front page of this issue.

The other relatively recent development is that of the International Advisory Panel, also presented on the inside front page. This group provides the editorial board with support in a number of ways: with the refereeing process, particularly where knowledge of other jurisdictions is significant, and occasionally providing articles concerned with developments in those jurisdictions. This is a resource of which we are not making enough at the moment.

### **A Journal of Legal Education?**

The initial mission statement of the Association of Law Teachers and its journal was 'to help achieve effective law teaching at all levels, and to provide a maximum communication between teachers of law wherever, and whatever they teach'.<sup>14</sup>

The comment goes on to explain the editorial approach to be adopted:

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<sup>13</sup> While he was teaching at the University of the West Indies.

<sup>14</sup> Op. cit. n. 6

‘To that extent articles which appear in the Journal will deal with developments in legal education, methodology and syllabuses, new teaching aids and so on. They will also deal with wider issues, with important decisions in substantive law that are relevant to law teaching, and they will also include material of an academic nature.’

In 1971, (Vol 5) the Journal published a letter by J P Tillotson and J D Buckle, pointing out the hierarchy of aims presented in this paragraph. Aim 1 concerned ‘developments in legal education, methodology, and syllabuses, new teaching aids ...’. Aim 2 concerned relevant substantive developments. Aim 3 concerned ‘academic’ material. The authors’ concern was that this hierarchy had in the event, been reversed. Over the first thirteen issues the proportion of Aim 1 articles had dwindled. In their words: ‘it is sad to reflect that publishing aims 1 – 3 above have apparently been reversed both in order and importance.’

The authors call on members of the Association to submit more ‘Aim 1’ articles, possibly to a ‘Teaching the Law’ section of the journal, and to produce responses to the contributions published. This would return the journal to the intended primacy of ‘Aim 1’ articles and encourage developed communication between law teachers.

This call initially had limited success. Figure 2, below, shows the proportion of articles in each volume over the history of the journal. Certain salient years may be worthy of particular attention. John Tillotson, co-author of the letter quoted from above, became editor (with David Royall) in 1973 and was responsible for volumes 7 – 13. While initially achieving some success in increasing the proportion of ‘Aim 1’ articles, this was not maintained, and other articles soon predominated. Volume 12 only managed one out of a total of 15 articles!<sup>15</sup> Things gradually improved during the 1980s and by 1986 (vol. 20) ‘Aim 1’ articles were beginning to dominate. Vol 22 marked a change in that Patricia Leighton took over editorship and announced the decision that the journal would become one largely devoted to issues of legal education, rather than substantive law.<sup>16</sup> Two years later this was cemented by the publication of a special issue marking the Silver Jubilee of the Association. Entitled ‘Developments in Legal Education 1987-89’<sup>17</sup>, it contained fourteen articles on a variety of legal education issues. It does not appear in Figure 2. The new policy was successfully implemented and since taking over editorship in 1994 (vol 28) I have been able to maintain that pattern.

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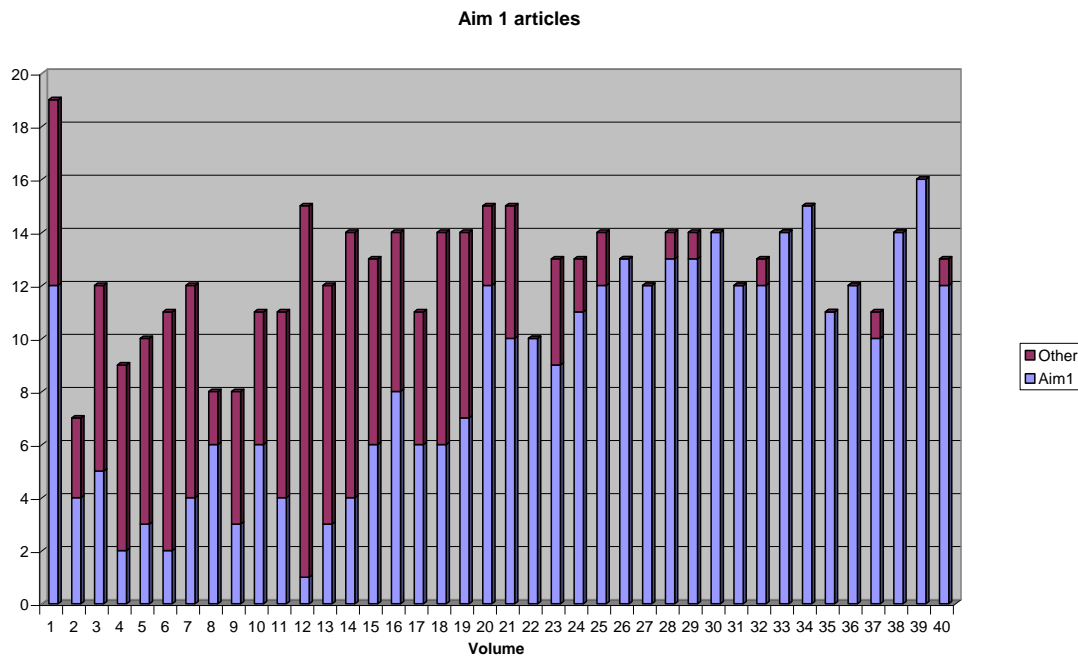
<sup>15</sup> An important contextual point is that during this period the ALT’s *Bulletin*, usually published four times a year, was regularly publishing ‘Aim 1’ articles. Thus the Association, if less so the journal, was responding to this need of its members.

<sup>16</sup> 22 *Law Teacher* 1, p.

<sup>17</sup> This special issue (1990) Vol. 24, Special) was based on a conference held at Danbury, Essex, in December 1987, and was edited by Julie Macfarlane and Jenny Chapman.



Figure 2



It may be wondered why an occasional substantive law article continues to be published. This, in recent years, has been the result of decisions to publish certain of the Lord Upjohn Lectures. These annual lectures, organised by the ALT are given by highly-regarded senior judges or academics. Particularly where there is some reference to the significance of the developments for the task of the law teacher, these lectures may be published in the Journal.

The reasons for this changing pattern have not been thoroughly researched. What follows is therefore somewhat speculative and based on anecdotal experience.

It is probably the case that the earlier years of the journal's publication were a time when the Association's members will have been predominantly concerned with developing their ideas about the subject they were teaching: the law. At that time, the status of pedagogy as the subject of study was low. A number of changes have contributed to the raising of that status over the period.

The introduction of an increasing expectation that further and higher education lecturers will have a teaching qualification, or will, once appointed, undertake such a course, has alerted lecturers to teaching and learning issues and the theory underlying pedagogy.<sup>18</sup> It is true that many have resented this requirement and the letters page of the *Times Higher Education Supplement* has regularly hosted exchanges between those who regard it as an infringement of their

<sup>18</sup> Courses preparing lecturers in this way have recently been accredited by the Higher Education Academy. The wide variety of accredited courses may be seen at <http://www.heacademy.ac.uk/accredited-associateship.asp>

academic freedom and those who regard it as an essential element of professionalism. Regardless of this, no-one can be ignorant today of pedagogical issues, and many find it an area of genuine interest.

The low status of pedagogy relative to research in higher education has resulted in government initiatives to redress the situation. The introduction of the Institute of Teaching and Learning<sup>19</sup> and its subsequent development into the Higher Education Academy<sup>20</sup> has introduced resource streams designed to raise the status of teaching and learning in higher education. The development of the subject network has had a particular impact on the legal education community. The UK Centre for Legal Education (originally the National Centre for Legal Education) has been one of the more active Subject Centres. It has organised roadshows<sup>21</sup> going to different venues to run workshops with colleagues on a variety of pedagogical issues. It has published a number of manuals and other documents, made available both in hard copy and through its website.<sup>22</sup> It is responsible for a key text on teaching law.<sup>23</sup> It has promoted regular conferences through its Learning in Law Initiative (LILI)<sup>24</sup> and Vocational Teachers' Forum (VTF).<sup>25</sup> It has also provided space and links on its website for other groups working in the area of legal education, including the ALT. Recently it has introduced UKCLE Associates, who receive funding to work with the Centre generally and on particular projects and are designed to involve the legal education community more closely in the Centre's work.<sup>26</sup> It has made a significant contribution to the legal education community.

These developments, however, are relatively recent and cannot explain the success of the shift in the late 1980s. My suspicion is that this is really due to the prescience of the editors at that time. David Royall had achieved a real shift towards 'Aim 1' articles during the 1980s and Patricia Leighton, in formally announcing that the journal would largely be devoted to issues of legal

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<sup>19</sup> The precursor of the Higher Education Academy, which was a membership body which aimed to enhance the status of teaching, improve the experience of learning and support innovation in higher education. It has now been subsumed within the HE Academy.

<sup>20</sup> See <http://www.heacademy.ac.uk/>

<sup>21</sup> Available at the time of writing are: 'developing reflection and critical thinking', 'diversifying assessment', 'portfolios and personal development planning', 'preventing plagiarism', 'using ICT in learning and teaching', and 'using multiple choice questions'. See <http://www.ukcle.ac.uk/newsevents/roadshows/index.html>

<sup>22</sup> These include Guidance Notes such as 'Developing reflective practice in legal education', Teaching and Learning Manuals covering family law, human rights and legal system, and Teaching Resource Notes such as 'Designing and delivering clinical legal education'. See <http://www.ukcle.ac.uk/about/publications.html>

<sup>23</sup> Roger BurrIDGE, Karen Hinett, Abdul Paliwala and Tracey Varnava (eds): *Effective Learning and Teaching in Law*, Routledge Falmer, 2002.

<sup>24</sup> For details of LILI and an opportunity to join the network, see: <http://www.ukcle.ac.uk/interact/form.html>

<sup>25</sup> Intended to bring together teachers on professional programmes, see <http://www.ukcle.ac.uk/resources/vtf/index.html>

<sup>26</sup> See: <http://www.ukcle.ac.uk/interact/associates.html>

education,<sup>27</sup> built on this foundation to great effect. The formal identification of the journal's focus helped to encourage the submission of appropriate articles.

## Engagement with Policy Issues

One of the early purposes of the ALT was to participate in the policy debates which arise from time to time concerning legal education. This has been a successful project, with the ALT one of the organisations which is regularly consulted on these issues and with representation on the relevant bodies. Engagement in these activities has been reflected in the journal to varying degrees. Thus, in 1969, when the Ormrod Committee<sup>28</sup> was taking evidence, the ALT's submission was published in the September issue.<sup>29</sup> When the Ormrod Report was published in 1971 Sir Roger Ormrod spoke at the ALT Annual Conference and his address was published in the August issue.<sup>30</sup> Ormrod was of great significance to the development of legal education and provided the platform on which most subsequent discussions have proceeded. The focus was the desire for the proper preparation of effective lawyers, with the potentially conflicting concern to ensure that undergraduate legal education did not become narrowly vocational.

The next reports of significance to legal education were, arguably, the Benson Report of 1980<sup>31</sup> and the Marre Report of 1989<sup>32</sup>. Benson received little focussed attention in the journal although it is worth noting that this was during the period when it focused more on substantive law matters than on legal education itself.<sup>33</sup> However, the Marre report was considered in depth in a new section of the journal which started that year. This was the Government and Education News section which was first proposed by Pat Leighton and first edited by Julie Macfarlane. It was first published in Vol. 23 and can be found in pp 95 -100. This issue included a critique of the Marre Report, focussing on its adoption of the 'master skills' required for legal education. It referred back to Ormrod and Benson<sup>34</sup>, and considered Marre in the context of the Hoffman report (which proposed the new skills-based Bar Vocational Course)<sup>35</sup>. The same issue went on to consider the consequences of the removal of the polytechnics from local authority control<sup>36</sup> and the introduction of student loans.<sup>37</sup> The subsequent two

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<sup>27</sup> *op. cit.* n. 16.

<sup>28</sup> the membership of which included the Chairman and Vice-Chairman of ALT (Marsh, *op. cit.* n. 1 at p. 15).

<sup>29</sup> C. Champness, 1969, 3 *JALT* p. 68

<sup>30</sup> Ormrod, 1971, 5 *Law Teacher* p. 77.

<sup>31</sup> Sir Henry Benson, 1979, *Report of the Royal Commission on Legal Services*, Cmnd. 7648.

<sup>32</sup> Lady Marre, 1988, *A Time for Change: Report of Committee on the Future of the Legal Profession*, General Council of the Bar and the Law Society.

<sup>33</sup> Moreover, the ALT *Bulletin* carried a summary and critique by Penry Oliver and Charles Blake of those parts of the Benson report which addressed legal education (Marsh, *op. cit.* n. 1, p 47).

<sup>34</sup> Macfarlane, (1989) 23 *Law Teacher* p. 95-7.

<sup>35</sup> *Ibid.* p. 98-9.

<sup>36</sup> *Ibid.* p. 99.

issues that year addressed, amongst other matters, the three Green Papers on the reform of the legal profession,<sup>38</sup> the funding of polytechnics and colleges,<sup>39</sup> the White Paper: 'Legal Services: A Framework for the Future' (Cm 740),<sup>40</sup> pay and conditions of staff<sup>41</sup> and the new Research Assessment Exercise.<sup>42</sup> Many of these issues continue to be of current significance today.

This established a forum for the wide and detailed discussion of policy issues and has remained a part of the journal ever since. Julie Macfarlane continued in the role until 1991, when I took over. Pat Leighton took over from me in 1994 when I became General Editor and Tracey Varnava took over the role in 2002. It is hoped that this has become a useful section of the journal for a wide variety of readers.

## The Provenance and Processing of Articles

### *Getting the Copy*

A glance at figure 2 shows a fairly regular flow of published articles. Initially there were significant fluctuations (from 19 to seven in the first two years). This, however, quickly settled down and the mean in recent years has been close to 14 articles annually. The length of articles has changed over the years. Thus, in early years, articles tended to be relatively short. In recent years the average would be in the region of 6-7,000 words, with occasional articles significantly longer.

In the earlier years it was also the case that the editor was sometimes faced with a dearth of submissions. Stan Marsh's *History* indicates that there were times when there were worries about shortage of copy.<sup>43</sup> On occasions the Editor had to provide articles for inclusion at short notice.<sup>44</sup> It is inevitable in such circumstances that there is strong pressure to accept what is submitted for publication. That being the case it is remarkable that, on revisiting those early issues, the quality of the writing is seen to be as high as it is. Since those days a number of developments have given editors more scope for selection of articles and an ability to exercise a more formal approach to quality control.

One such factor was the decision of the Editorial Board, in 1988 (vol 22), supporting Pat Leighton's suggestion to implement a formal policy of accepting

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<sup>37</sup> *Ibid.*, p. 100

<sup>38</sup> *Ibid.* p. 192-6.

<sup>39</sup> *Ibid.* p. 196-7

<sup>40</sup> *Ibid.* p. 301-3

<sup>41</sup> *Ibid.* p. 303-5.

<sup>42</sup> *Ibid.* p. 305-6.

<sup>43</sup> *Op. cit.* n. 1, p. 14.

<sup>44</sup> *Ibid.* p. 44. It is worth noting that even given these exigencies some submissions were still rejected, doubtless for good reason.

(to a large extent) only articles concerned with teaching and learning rather than substantive law issues. This gave a coherence to the purpose of the journal and, as it became more widely known as one of the few journals in the world with a specific focus on teaching and learning in law, more people with an interest in the field would submit their work.

Another factor is the greater attention being paid to issues of pedagogy throughout the further and higher education sectors. Government initiatives to try to raise the status of teaching and learning (as opposed to research) in the universities began to have an impact on institutional behaviour. Although most experts in the teaching and learning field express the view that this has not gone far enough and observe the considerable resistance from many academics, there has been a change in environment. The fact that initiatives such as those of the Higher Education Academy<sup>45</sup> may provide sources of marginal funding makes them of interest to university managers. It thus becomes worthwhile to put energy into exploring the theoretical underpinnings of pedagogic practice and writing about innovatory work that may inform the practice of other law teachers. This development has not been exclusive to the UK and Australia (in particular), the Netherlands<sup>46</sup> and other jurisdictions have also proved sources of fascinating articles about changing practice.

The existence (in the UK) of the Research Assessment Exercise (and of analogous provisions elsewhere) has had a major impact on the publication of all academic journals. Academics need their publications in peer-reviewed journals to be able to make the necessary contribution to their Department and their University's RAE rating. Editors notice a flurry of contributions that correlate with the four-year cycle of the RAE. The lead-in time between submission and eventual publication may create problems for authors who need confirmation that their piece has been accepted. I have frequently been asked for something in writing to say that a particular article has been accepted for publication, and those letters need to be received before RAE submission date.

The design of the RAE has been a particular problem for those whose research interests lie in pedagogy and their students' learning. In its early years the law panel did not accept publications about legal education. The Association in its consultative role put forward detailed arguments to the Law Panel to change this approach and this has been modestly successful. Thus submissions including pedagogical articles are now accepted.<sup>47</sup> This is now accepted across disciplines

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<sup>45</sup> *Op. cit.* n. 19.

<sup>46</sup> The Netherlands is the only European country which has provided a regular flow of article to the Journal. This may be a function of the restoration of institutional autonomy in that country, unlike others in Europe which remain more under central State control (see Alison Wolf's Comment in Times Higher Educational Supplement, 30 June 2006, p. 15).

<sup>47</sup> The current status of the RAE is currently subject to a renewed consultation. There have been proposals (supported by the Chancellor of the Exchequer) to go over to a metrics system. This would tend to award money to those already successful in attracting research funding and unless appropriate safeguards are introduced, may limit opportunities for new researchers to develop

and a Statement on what constitutes pedagogic research in higher education has been published.<sup>48</sup>

There remains the problem of prestige. There is, in most academics' minds, some sort of hierarchy of publication. A journal like the *Law Teacher* faces a number of problems. Its subject-matter does not carry the same kudos as doctrinal study of the law itself, or socio-legal analyses, whether based on original research or not. What is more, one element of editorial policy over the years impacts negatively on the prestige of the journal. Although we are keen to publish articles which are deeply grounded in theoretical perspectives or which are based on original research, we are also keen to publish the more practical article which introduces readers to experiments in teaching and learning which others have conducted. These may be conceptually simpler and less formally academic, but they provide a valuable resource for the readers of the journal. They may not enhance its reputation amongst those adopting a narrower academic focus. Nevertheless, publication in a refereed journal is still of significance to authors and has ensured that there has been no shortage of copy in recent years.

### *Processing the Copy*

The introduction of a requirement that all articles be refereed has, as indicated, had a major impact on the value of the journal. Although, before 1994 many authors would receive advice and guidance in revising their submissions before they were deemed ready to publish, it was not a formal requirement. It is appropriate to say here something about the refereeing process which has been used.

Articles are received and, if within the area of the journal's interest, submitted anonymously to (usually) two reviewers, who also remain anonymous. Reviewers may counsel against publication, and in these cases the editor will be bound by the referees' views. However, it is most common for reports to be basically positive, but to contain a constructive critique. These will be passed by the editor to the author, although inconsistent advice between reviewers (or the lack of diplomacy of some reviewers) may require some mediation by the editor. Authors occasionally challenge the comments, but normally regard this as a positive process and are grateful for the constructive criticism received. Their revised articles are generally pretty much ready for publication although on occasion (where the editor was sceptical of the sufficiency of the revision or he was relatively ignorant as to issues being debated) the revised article was referred back to reviewers.

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fully. Many of those who have been critical of the 'old' RAE are suddenly finding that it did have merits after all.

<sup>48</sup> See: <http://www.heacademy.ac.uk/documents/PedagogicResearchAssessment.rtf>

This process is common to many academic journals, and has a number of significant characteristics. The double-blind anonymity of the process is designed to ensure that factors of perceived status of author or reviewer do not impact on the quality of the review or the response to it. It reduces the risk of personal jealousies affecting the quality of the reviewing process. However, it carries disadvantages. The process rarely develops into discourse and carries with it hierarchical assumptions that may be inhibiting to constructive outcomes. The time taken for busy reviewers to return their responses and for authors to respond with revisions of articles can mean unreasonable demands on one or the other (or on the editor in pulling a particular issue together for the publishers). This was a real problem in the early years of the journal adopting a full refereeing policy. At that time the number of submissions received barely exceeded the space available in the journal. In more recent years the flow of submissions has increased and the editor is able to be more demanding of authors and also to build up a stock of reviewed and revised articles which can be slotted into future issues in advance.

A more specific challenge arises from the journal's practice of organising one issue each year as a 'special issue' around a particular theme.<sup>49</sup> This is easier said than done. Although serendipity may mean that articles submitted in the normal course may be suitable for a special issue it is more likely that most if not all will have to be commissioned. This establishes a different relationship between editor and author. Whereas authors submitting articles for publication are initiating the sought relationship and are generally very willing to respond to referees' suggestions in order to achieve publication, those who have been commissioned may well be very much less so. The editor is the initiator of the sought relationship and may need to exercise much greater persuasive skills to achieve the revisions which referees identify as desirable. I am not suggesting that this is a major problem. Most authors recognise in their referees the role of the 'constructive critical friend' and appreciate the opportunity to have an objective view designed to improve the quality of their finished work. It is not, however, always the case.

Another concern that particularly impacts on the special issues is a risk of a lack of coherence. Authors tend to write in isolation and are unaware of the work of the others whose articles will be bundled with their own. The editor will generally have little opportunity to alert contributors to the content of the other pieces as the timing of submissions, the return of reviewers' observations and the

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<sup>49</sup> Since the current editor took over in 1994 these have been: Vol 28: *Developing and Assessing Legal Skills*, Vol. 29: *Assessment*, Vol. 30: *Clinical Legal Education*, Vol. 31: *Legal Education in Diverse Jurisdictions*, Vol. 32: *Maintaining Quality with a Diminishing Resource*, Vol. 33: *Ethics in Legal Education*, Vol. 34: *Teaching Law in Further and Adult Education*, Vol. 35: *Research into Legal Education*, Vol. 36: *Legal Education in Europe*, Vol. 37: *Justice Education*, Vol. 38: *Policy Issues in Legal Education*, Vol. 39: *Legal Education and ICT*.

submission of final versions is beyond the editor's control (and often runs rather later than planned).<sup>50</sup>

These various concerns led to a collaboration which involved an innovative approach to the peer review process.<sup>51</sup> Paul Maharg<sup>52</sup> and Antoinette Muntjiewerff<sup>53</sup> proposed a special issue focussing on the impact of Information and Communication Technologies on legal education. The peer review process was designed to make active use of those very technologies which were the subject of the special issue and indeed to model some of the innovative practices which were being introduced into the activities being required of students.

Maharg and Muntjiewerff became guest editors for this special issue. They created a web page on which they posted authors' draft articles, guidelines for peer review for this special issue and other relevant information. They then invited all authors to take part in an online discussion where each piece of work produced by authors was reviewed and commented upon by the editors and other authors. Those authors who accepted the invitation were given logins to the website.<sup>54</sup> Authors could set 'alerts' that would send an automatic email to their email address whenever a forum's content was altered. Throughout the period of the forum the community of authors spent approximately one week focusing on each article and discussing it in the context of the other articles, and whatever else was brought to the discussion. The discussions gave authors review points for their articles for the final deadline of the issue. It operated, in effect, as a virtual conference.

This turned out to be a very useful process. Authors, while developing their draft articles, were aware of what other authors were writing and were therefore able to respond in their own work. It was even possible, in a few cases, for authors to cross-refer to other authors' work published in the same issue. The extent to which authors participated actively in the process varied, but those more actively engaged were able to enter into a real dialogue with their co-authors and on a number of occasions a debate ensued, which offered opportunities for both those undertaking the review function and those whose work was receiving critical attention, to reconsider their initial views in the light of others' perspectives on the issues raised.

Another advantage was the non-hierarchical nature of the process. Authors clearly felt confident in challenging, responding and explaining in a free and frank

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<sup>50</sup> This lack of coherence is also commonly noticed in critical reviews of books which are composed of papers presented at a conference.

<sup>51</sup> Readers will find the results in the special issue of 2005 (Vol 39).

<sup>52</sup> Of Glasgow Graduate Law School, Strathclyde University.

<sup>53</sup> Of the University of Amsterdam.

<sup>54</sup> Although the website was hosted at a public site, its status as a private forum was essential to its character. It ensured that the guest editors, the general editor and the authors could engage in a frank discussion which was fully interactive of all those involved in the project, but protected from the public view at that stage of the process.



exchange. They acted, in effect, as a temporary community of practice. The private nature of the website was almost certainly important in achieving this. A number of authors responded later to the editors in private emails indicating that they learned from the process of review. The time spent was strictly controlled and the whole process took no longer than the conventional reviewing process for this number of articles.

It should also be observed that one of the characteristics of conventional peer review was missing. The mutual anonymity of author and reviewer could not be maintained. This does not seem to have been a problem in this case, and the self-selecting nature of the group of authors, knowing what was being proposed, was doubtless instrumental in avoiding difficulties. This certainly means that the system is inappropriate in some situations, and it is not planned to attempt to make it the standard practice in future.

However, its strengths have left the editorial board considering whether it does have a place in future issues of the journal. It seems doubtful whether it would be appropriate for ordinary issues which contain articles from disparate sources on disparate issues. However, it seems that the approach has real potential value for future 'special issues'. To achieve this it will be necessary for the editorial board to identify a group of potential contributors and not only to gain their permission, in advance, to have their work submitted to the scrutiny described above, but also to get their commitment to active participation as reviewers themselves. This introduces the risk that potentially valuable contributors may not be able to commit to this extra degree of engagement, and their contributions could be lost. It also requires the editor to contact potential authors well in advance of the start of the reviewing process.<sup>55</sup> This, however, is no longer a timetable than in the case of other special issues, most of which are planned well ahead. The group of authors in this experiment were a fairly good bet, as the process was intimately bound up with the developments they were discussing. This will not usually be the case. It remains, however, an approach which will be seriously considered in the future.

## **Electronic Publishing**

The burgeoning availability of information technology has not only affected the way in which the journal is produced and the growing development of an international perspective. It also raises serious questions for the future of the journal. Is there a role for making it available on-line, and if so, what impact might that have on the printed version of the journal?

There have been technological changes in the past. When the journal was first produced the printing was done in-house by Sweet & Maxwell, using an offset-

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<sup>55</sup> In the case described, authors were contacted some six months before the review process began.

litho process. This method was used for the first four years of the journal's existence when it was becoming established. In 1971 the shift was made to hot-metal printing. This was combined with a reduction in page size so that the journal would fit better onto the standard academic bookshelf. The advantages of hot-metal printing were a greater clarity of typeface and the ability to justify the text on the right as well as the left of the page. Comparing those early issues makes it clear what a significant step this was towards a professionally-produced publication, appropriate to match the quality of the contents.

When the current editor took over in 1994, everything was done on paper. Authors sent in two copies of their manuscripts typed (usually on a word-processor) double-spaced on A4 paper with wide margins for editorial comment. The editor would then remove identifying details and referees would receive their copy by post. The eventual finished versions also came in as hard copy, the editor bundled everything together and the printers' courier would arrive to collect the whole manuscript. At the printers, typesetters (working on computers now, not hot-metal machines) would re-set the entire journal, first and second proofs would be prepared for editorial checking and the finished journal eventually produced.

The first significant change came with the widespread use of word-processing, quickly followed by the growth of e-mail. By 1996 the editor was requesting that manuscripts be accompanied by a PC-compatible floppy disk. Within a couple of years that became a requirement and the greater speed and reliability of e-mail attachments meant that this quickly became the preferred way of sending electronic versions of manuscripts. From 1996 the editor began to supply the printers with electronic versions of the copy to be set. This obviated the need for copy-typing the entire text, saving a considerable amount of money and significantly increasing the accuracy of the first proofs.

The existence of electronic versions of the text of the journal has not only eased the production process. It also makes it relatively easy to make articles available through the websites of either the publishers, Sweet & Maxwell, or of the Association of Law Teachers itself. This raises both opportunities and problems. The editorial board is essentially keen to promulgate the work of authors who appear in the journal as widely as possible. It would thus be ideal if the journal were to be a free-access web-based journal open to any reader in the world. To do so would then raise questions about whether there should be parallel web- and paper-publication. The major cost of producing the Law Teacher is that of production and distribution.<sup>56</sup> It might become hard to justify incurring those production costs if the material were equally available to all.<sup>57</sup>

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<sup>56</sup> This is, indeed, the main outgoing towards which members' subscriptions contribute.

<sup>57</sup> This flags up a fundamental conflict between the desire for open access to scholarly publications and the other interests of the bodies (commercial and non-profit) who facilitate publication. For an interesting discussion of these issues in the context of US law reviews, see Dan Hunter: 'Walled Gardens', available on the Social Science Research Network, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=635141](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=635141).

There is a more fundamental problem. The *Law Teacher* and its sister publication the ALT Bulletin are the main tangible benefits of membership of the ALT, particularly for those who are unable to participate in the conferences and lectures organised by the Association. If they were freely available on the web there may be very little motive for people to join and this could undermine the viability of the ALT as an organisation and its ability to represent the interests and values of its membership.

This particular problem might be avoided by providing the contents of the journal in electronic form but protected by a password which would only be available to members. If this were to be the chosen route the viability of continuing to produce the paper version would still be in question. Might individuals choose whether to receive the paper version or access to the electronic version? Reduced print runs would lose existing economies of scale. Moreover, most people prefer to undertake extensive reading on paper rather than on the screen, which raises questions about efficiencies of printing and hidden costs to institutions.

These are matters which will not be easily resolved. The Editorial Board is keeping them under review, in consultation with the publishers, and plans to consult widely before any major changes are considered. What can be expected (and is, indeed, already under way) is a considerable development of the journal's website presence, with links from both the ALT and Sweet & Maxwell's websites.

## **Conclusion**

The *Law Teacher* today looks radically different from its first appearance in 1967. The processes used to write, edit and produce it are even more radically changed. It has developed regular features which have become something of a signature in its efforts to meet the needs of a diverse group of readers. It has accepted the challenges of peer review and an international perspective in the interests of its readers, its publishers and the Association which supports it. These, however, are largely changes in response to a developing environment. Its goal remains the same: to provide a resource for law teachers, wherever, and on whatever courses they teach.<sup>58</sup> In so doing the support of Sweet & Maxwell has been crucial. However, the most significant contributors are the authors who write the articles, comments and reviews submitted and the editorial team who ensure that the journal maintains its goals and standards. They are, to a large extent, drawn from the readership of the journal and for their work, offered *pro bono*, I am extremely grateful.

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<sup>58</sup> *Op. cit.* n. 6.