have committed themselves to curriculum innovation in the direction of student-centred learning. Problem-based learning (PBL) is the most widely discussed innovation in the professional education literature. When PBL is effectively designed, it will probably lead to deeper approaches to learning. Evidence exists, for example, that problem-based courses that integrate the teaching of knowledge, skills and attitudes not only increase the use of deep approaches and improve the retention of information but also develop student independence and motivation.

The investment in time to do this kind of design work is enormous. Successfully designing these assessments to test problem-solving skills is an exceptionally demanding task. Materials must also be regularly revised, improved and completely rewritten, not only to reflect changes in legal practice or to incorporate feedback from the evaluation process, but also because teacher and guest teachers from the profession often tire of the same old fact scenarios. PLT courses, constrained by tight budgets but needing to adopt student-centred methods, are best developed with a large up-front investment in design. Once the initial investment is made, of course, substantial efficiencies may result, especially with large numbers of students. Well designed courses can relieve the burden on other resources, such as teaching.

The root cause of design problems is that designers may not have the necessary depth of understanding of theory and practice in their own field in addition to the instructional-design skills needed to translate that understanding into effective learning activities.

Implanting a culture of design in a law school depends on change in the university. The leaders who run it should develop a heightened awareness of the potential of instructional design. They need to define a role for instructional designers, establish systems and criteria for evaluating their work and accord the productive and creative ones high status. A new category of academic, with a new range of skills and a new set of qualifications, needs to be legitimised.

STUDENTS

What's wrong with faculty-student sex? The law school context
C Forell
47 *J Legal Educ* 1, 1997, pp. 47–72

How should universities in general and law schools in particular treat sexual relations between faculty and students? The Association of American Law Schools (AALS) Statement of Good Practices addresses sexual harassment and favoritism, serious harms associated with faculty-student sex, and says 'sexual relations between a professor and a student...are inappropriate whenever the professor has a professional responsibility for the student in such matters as teaching a course or in otherwise evaluating, supervising or advising a student as part of a school program.' AALS adopted this statement in 1989 at the height of the modern regulatory period in academia, when many universities first adopted codes prohibiting hate speech and sexual harassment. But now the pendulum seems to be swinging back toward deregulation, so is that policy still appropriate?

A debate continues in the university community about such policies. On one side are those who believe that the risks of harm require an institutional response. On the other side are those who argue that such regulations paternalistically infringe on consenting adults' rights of privacy and treat women as victims / objects rather than actors / subjects.

Law schools constitute one of the hardest cases for justifying the regulation of faculty-student sex. First, law students are not naïve just-barely-adults. Their average age is about 26 when they begin law school; that aspect of the power imbalance rooted in disparity of age and experience is therefore minimised for some law students. Secondly, law schools, unlike some academic areas, are no longer male dominated. Today many schools have close to a 50 / 50 division between men and women students. Thirdly, since law students are not nearly as likely as other graduate students to be dependent on one professor / mentor who can make or break their careers, the power dynamic is much less overt. Fourthly, much of the grading in law schools is entirely anonymous, which greatly reduces the possibility that a teacher can punish or reward a student who rebuffs or accepts sexual overtures. Finally, law students, by their nature and training, make particularly unattractive targets for a sexual predator. They know their rights and are trained to be adversarial.

The fundamental reason that faculty-student sex creates serious risks of harm is that the teacher-student relationship is a fiduciary one. The legal relationship between a teacher and each of his many students is the same. But when the teacher becomes sexually involved with one of his students, the other students are no longer on an equal standing with the student / lover. There are conflicts of interest — aptly described by fiduciary law as 'self-dealing' — between the teacher's personal interest in his lover and his educational interest in her and the other students. Providing rules that create clear boundaries, circumscribing what the teacher-student relationship

should and should not involve, lessens the likelihood that the fiduciary duty will be breached and provides remedies when it is.

Even seemingly consensual sexual relations between law faculty and law students may harm the student involved, other students, the institution and the teacher. The critical power imbalance is the one created when a teacher supervises or evaluates a student or is likely to do so in the future — *i.e.* when the teacher's fiduciary duty is implicated. Harm can occur any time a teacher asks a student in his class to go out with him. Even if a student says no and the teacher appears to accept that answer, the pedagogical relationship has been affected. While the widespread practice of anonymous grading can reduce the risk of academic harm, there are many law school contexts, such as seminars or clinics, where anonymity is not available. Another potential source of harm to a law student is the moral disapproval of students, faculty and others. Any sexual relationship with a student creates serious risks for a teacher. The most obvious is that the student will charge him with sexual harassment or retaliation. At a minimum, such an allegation is embarrassing, time consuming and stressful. And it can destroy a career.

There are many arguments against regulation. It is viewed as paternalistic and puritanical and as encouraging a victim mentality. Other objections concern the negative portrayal of faculty and intrusiveness into the private lives of consenting adults. However, sex in a fiduciary relationship is inherently coercive. The reason for regulating faculty-student sex is not that students are immature or that women do not know what they want; the reason is that the power disparity is too great.

One of the fundamental truths that feminism has revealed is that relegating issues to the private realm has often been detrimental to women and other oppressed groups. Prohibiting faculty-student relationships is not really about privacy; it is about abuse of power. Once a teacher starts a sexual relationship with someone under his supervision, his right of privacy must be balanced against the interest of the university in protecting itself and its students.

Sensitivity to perceptions of impropriety, abuse of power, and conflicts of interest are particularly important in law schools because the students are future lawyers. Attorneys need to understand and avoid actual and perceived conflicts with the interests of their clients. If law schools tolerate faculty-student sex, the message to the future lawyers is that attorney-client sex is okay too. If, instead, law schools adopt the AALS policies regarding sexual harassment and faculty-student sex and implement regulations and procedures that effectuate those policies, the message to future lawyers will be the right one: those who have power over others should not abuse it.

The AALS policies provide the framework for identifying appropriate and inappropriate sexual behaviour between law teachers and law students. To ensure that students are adequately informed and protected, law schools should implement these policies. The procedures should not prove unduly burdensome or intrusive but will demonstrate that law faculties hold themselves accountable in their fiduciary relationships to the same extent as do attorneys. Setting an example for future lawyers in their relationships with clients can only have a positive effect on the practice of law and the public's view of law schools and the legal profession.

Indigenous Australians and legal education: looking to the future
H Douglas
7 *Legal Educ Rev* 2, 1996, pp. 225–251

Indigenous people are under-represented in the Australian legal community. Their high attrition rates continue to undermine the efforts of law schools to address the issue by increasing opportunities for indigenous students to obtain places in law schools. Addressing access issues is not in itself sufficient; law schools must also provide a system of support. The focus in Australia has gradually shifted from emphasising access issues to improving success rates in students' studies and therefore reducing attrition through on-going support programs.[1]

There are clearly many barriers to be negotiated by indigenous students in order to first obtain access to and then to succeed at law school. These barriers are inter-linked: low socio-economic background; lack of formal education; language difficulties; a perception by indigenous people that law schools are not places for them; and cultural differences, including ways of understanding what law means.

There are three basic theories to justify special admission processes to minorities. These are reparation, social utility and distributive justice. First, reparation is the repairing of damage caused by historical discrimi-

1 See also *Access to legal education — 1996* by D Barker (Centre for Legal Education, 1996) for an examination of the feasibility of developing access programs for educationally disadvantaged students (not limited to indigenous people) in order to equip them wioth the skills needed to help them succeed at university. This monograph was reviewed in 5 *Leg Educ Digest* 3 (Jan, 1997) pp. 4–5