

Book Review – Academic Learning in Law

Bart van Klink and Ubaldus de Vries (eds)

Edward Elgar, 2016, pp 352, ISBN: 9781784714888, £90

In *Academic Learning in Law*, Netherlands academics Bart van Klink and Ubaldus de Vries bring together a bold and challenging collection of 14 theoretical and practical perspectives on legal education. Their contribution is timely. In Australia, interest in legal education is significant and review is ongoing.¹ The issue is also topical globally, following for example the United States Carnegie Report² and the United Kingdom Legal Education and Training Review.³

The book is a valuable addition to the literature, particularly for readers in Australia, the United Kingdom and the United States. In these countries, scholarship on legal education is often country-specific.⁴ Further, authors who do take a comparative approach typically focus on common law countries.⁵ *Academic Learning in Law* contains a wider range of perspectives. Its contributors include academics from the Netherlands, Germany and Turkey. Additionally, the contributions are all designed to be capable of broad application. Consequently, the book is invigorating as it provides new and occasionally radical insights.

The book's overarching thesis is that tertiary legal education requires reform. The editors consider that, as a result of neoliberal policy, tertiary education is becoming excessively 'instrumental and specialised'.⁶ Legal education is not immune from this development.⁷ Law schools should therefore take measures to reinforce the academic character of legal education. This involves encouraging students to engage with legal theory, and to develop a critical perspective.⁸ The contributors share this view. In

¹ See generally Robert French, 'Legal Education in Australia – A Never Ending Story' (Speech delivered at the Australian Law Teachers Association Conference, Queensland University of Technology, 4 July 2011) <<http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj04july11.pdf>>.

² William Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007).

³ Legal Education and Training Review, *Setting Standards: The Future of Legal Services Education and Training Regulation in England and Wales* (2013) <<http://www.letr.org.uk/wp-content/uploads/LETR-Report.pdf>>.

⁴ See, eg, Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011).

⁵ See, eg, Carol Stolker, *Rethinking the Law School* (Cambridge University Press, 2014).

⁶ Bart van Klink and Ubaldus de Vries, 'Introduction: Re-Thinking Academic Legal Education' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law* (Edward Elgar, 2016) 1, 1–3.

⁷ Ibid 4.

⁸ Ibid 5–6.

particular, they all agree that nurturing students' critical faculties should be fundamental to legal education.⁹

The 14 contributions are accessible and engaging. This is particularly true of the chapters in which contributors vividly describe their own innovative teaching programs. However, the final two chapters are especially important. The penultimate chapter provides a critical overview of the book.¹⁰ In this chapter Bleeker summarises each of the contributions, contextualises them within the wider debate on legal education and examines the connections and tensions between them.¹¹ This will be useful for academics researching legal pedagogy. The final chapter is more pragmatic. It is designed to assist teachers who, after reading, are 'tempted' to revise their own courses.¹² Each contributor provides a half-page summary of their thesis for use as a 'stepping-stone' in course development.¹³ The inclusion of these two chapters makes the book accessible to a wide audience.

Academic Learning in Law is not without flaws. Two features of the book are problematic. The first issue is that the contributors often fail to acknowledge or analyse counter-arguments. As Bleeker hints in the penultimate chapter, this uncritical approach is incongruous given the thesis of the book.¹⁴ Furthermore, it leaves unaddressed the issue of why law schools have not adopted the contributors' preferred teaching methods.¹⁵ Assessing the feasibility of their proposals is therefore difficult.¹⁶ For readers with a critical mindset, this aspect of the book will be disappointing.

Despite this weakness, there is diversity among the contributions.¹⁷ As Bleeker notes, some contributors consider that legal education should have the instrumental goal of creating better citizens.¹⁸ Others emphasise the intrinsic importance of education.¹⁹ Others fall somewhere 'in between'.²⁰

⁹ See Tim Bleeker, 'Epilogue: an Overview, Reflections and a Student's Perspective' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law* (Edward Elgar, 2016) 288, 307.

¹⁰ *Ibid* 289–309.

¹¹ *Ibid*.

¹² 'Conclusions: Concrete Proposals for Change: 14 Theses' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law* (Edward Elgar, 2016) 314.

¹³ *Ibid*.

¹⁴ Bleeker, above n 9, 309.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

¹⁷ *Ibid* 307.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

²⁰ Lyana Francot and Luigi Corrias, 'Re-Bildung: An Ideal Reconsidered for Legal Education' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law* (Edward Elgar, 2016) 35, 56.

Consequently, reading several of the contributions does stimulate a degree of critical analysis.

The second issue is the book's indifference towards Clinical Legal Education ('CLE'). CLE has a vocational focus. The editors of *Academic Learning in Law* consider that although vocational legal education may produce effective legal practitioners, it will not produce critical legal minds.²¹ Indeed, van Klink (quoting Nussbaum) characterises the 'skilful legal reasoning' of practitioners as more 'sophistry' than 'philosophy'.²² In his view, the 'clever' arguments employed in adversarial legal practice are often unsound.²³ In this way, the editors establish a dichotomy between the academic and the practical. Only theory-based 'academic' legal education can develop students' analytical abilities.²⁴

In common law countries, this suspicion towards CLE is not the prevailing view. In Australia for example, the mainstream opinion is that participation in CLE stimulates critical analysis.²⁵ There are two reasons for this. First, CLE allows students to observe the impact of the law in the real world.²⁶ Secondly, in the common law tradition the work of legal practitioners is not viewed as 'sophistry'. On the contrary, it is a fundamental premise of the adversarial system that this work is intellectually sound.²⁷ In civil law countries with inquisitorial legal systems, legal practice and legal education are viewed differently.²⁸ Consequently, whether readers find this aspect of the book challenging will depend on their perspective.

However, the book makes some salient points regarding CLE. Despite its benefits, CLE may reinforce unjust traditions and practices.²⁹

²¹ Van Klink and de Vries, above n 6, 5.

²² Bart van Klink, 'Knowledge and Aphasia' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law* (Edward Elgar, 2016) 15, 31, quoting Martha Nussbaum, 'Cultivating Humanity in Legal Education' (2003) 70(1) *University of Chicago Law Review* 265, 272.

²³ Ibid.

²⁴ Van Klink and de Vries, above n 6, 4.

²⁵ Adrian Evans et al, *Best Practices: Australian Clinical Legal Education* (September 2012) Council of Australian Law Deans, 15
<http://www.cald.asn.au/assets/lists/Resources/Best_Practices_Australian_Clinical_Legal_Education_Sept_2012.pdf>.

²⁶ See, eg, Caroline Strevens and Roger Welch, 'Simulation and the Learning of the Law' in Caroline Strevens, Richard Grimes and Edward Phillips (eds), *Legal Education: Simulation in Theory and Practice* (Ashgate, 2014) 43, 63.

²⁷ See generally Felicity Nagorcka, Michael Stanton and Michael Wilson, 'Stranded Between Partisanship and the Truth? A Comparative Analysis of Legal Ethics in the Adversarial and Inquisitorial Systems of Justice' (2005) 29(2) *Melbourne University Law Review* 448.

²⁸ Richard Wilson, 'Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education' (2009) 10(7) *German Law Journal* 823, 836.

²⁹ Christine Schwobel-Patel, 'Teaching International Law Critically – Critical Pedagogy and *Bildung* as Orientations for Learning and Teaching' in Bart van Klink and Ubaldus de Vries (eds), *Academic Learning in Law* (Edward Elgar, 2016) 99, 100.

Consequently, the book is a timely reminder of the need to ensure that CLE programs give significant attention to the critical analysis of 'justice, power and disadvantage' in the legal system.³⁰

In conclusion, this book is recommended to two audiences. First, for teachers it provides a thought provoking insight into legal pedagogy. It will also assist with course development. Secondly, for academics researching legal education it offers a stimulating new perspective. Catering to both these audiences is a significant achievement. *Academic Learning in Law* is therefore a useful contribution to scholarship on legal education.

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³⁰ See, eg, Evans et al, above n 25, 11.

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