

tion for the various constituencies? What was its preference as to the publication of articles (academic or professional) versus the publication of books (casebooks, treatises, or university press)? And what was its record of productivity, both individually and institutionally, in the various modes of scholarly expression? The following conclusions emerge from the data.

First, while most senior professors published in academic journals, on the whole they did so in minimal fashion. An overwhelming majority (86%) published in an academic journal during the surveyed period, but only 39% of that group averaged 23 or more pages per year in such journals. Almost one-fourth of the senior professoriate wrote a book for the academy. The vast majority (73%) of those senior professors wrote more pages per year in university press books than in academic articles.

Second, almost half of the group (47%) published an educational book, and 85 percent averaged more pages for educational purposes than pages (including book pages) for the academy. Of the productive scholars, 50 percent produced on average more for students and the general public than for either of the other two constituencies.

Third, more than half (56%) of the group published for the profession, but less than 10 percent published a professional book. Of the productive scholars, 8 percent produced on average more for the profession than for either of the other two constituencies.

Fourth, a majority of the senior professoriate (60%) published a book during the surveyed decade. If overall non- or minimal participants are eliminated, then almost 80 percent published a book. Almost 50 percent of the elite senior professoriate wrote an educational book, almost 25 percent wrote a university press book, and almost 10 percent wrote a professional work.

A healthy percentage of the academy, given their prodigious production of written words, appears to be totally unaffected by the guarantee of lifetime em-

ployment without regard to productivity. While the top tier of the elite senior professoriate certainly would have produced similarly without tenure, the issue is more difficult when one attempts to assess the impact of tenure on productivity of other senior professors. But the data suggests that the receipt of tenure, and the protection afforded by it, profoundly influenced professional behaviour, at least with regard to the quantity of legal scholarship.

Once tenure has been received, it is irrefutable that the admonition to publish or perish is inapplicable to the senior professoriate. Nevertheless, the most productive group must fear the causal connection, if any, between extensive publishing and perishing. If it exists, the professor's epitaph might read: 'Perished Because He Published and Published'.

**Tax (and lots of other) scholars need not apply: the changing venue for scholarship**

W J Turnier

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In recent years considerable scholarly attention has incestuously been paid to the very topic of academic scholarship. The matters covered have included storytelling as scholarship, the ranking of law faculties and individual faculty members based on their frequency of publication in major reviews, the ranking of law review articles based on frequency of citation, and the growing disjunction between much academic legal scholarship and the profession. It will come as no surprise to readers familiar with contemporary academic legal journals that little of this discussion has dealt with tax scholarship.

In an attempt to document what most tax scholars intuitively know - that over the years the major reviews have become less and less receptive to tax scholarship - the contents of 17 major law reviews were examined over the last 55 years. Although anyone who has been following tax scholarship for some time will hardly be surprised to learn that it has been appearing in major law reviews with decreas-

ing frequency, the marked rate of decline is probably greater than most would have guessed.

There are a number of reasons put forward to explain this. Much of the fault for the isolation of tax lawyers within the profession and of tax teachers within legal education can be attributed to their failing to open up tax law to the light of non-tax insights.

A further reason is that student editors, even at the best law schools, do not appreciate the social and economic importance of tax policy issues. They perceive any issue with a constitutional or human rights component as infinitely more important than some issue which they see as merely involving who pays for the cost of operating government. During a period of relative inactivism by the Supreme Court, the subject of constitutional law has become a virtual obsession of the major law reviews, accounting for 18.15 percent of published scholarship, with the closely allied subject of criminal law and procedure accounting for an additional 9.26 percent.

The major reviews' concentration of interest on only a handful of topics is illustrated by the fact that the top five topics account for 42.47 percent of all entries. This strongly suggests that studies purporting to rank law schools on the basis of faculty publication in major law reviews are primarily devices for ranking the productivity of faculty in a few favoured areas. The disproportionate presence of constitutional and criminal law in the major law reviews cannot be explained as the result of extraordinary scholarly production by faculty in these areas and extreme laziness on the part of their colleagues.

The data indicate that the student editors of the major law reviews are doing only a fair to poor job of providing a balanced insight into the full panoply of broad legal issues which concern society, and they appear to make no attempt to provide scholarship of benefit to the legal profession and to the teaching profession in fulfilling its educational obligations across the curriculum.

How is it that, in times of relative constitutional inactivity and a lack of urgency on constitutional issues, there is such a preoccupation with constitutional issues? How is it that the topic of professional responsibility, which is of broad interest to the entire profession, accounts for about one percent of the articles? When international political and economic issues have commanded more and more attention in the media, why do these issues command less and less attention in major law reviews? Why is it that, as our economy is increasingly based on electronic information and commerce, intellectual property issues are of scant interest?

The scant attention paid to taxation by the major law reviews and their virtually all-consuming attention to constitutional and human rights issues in no way reflects contemporary concerns of the public.

The data indicate that as matters become more important to the practising bar, they become less important to student editors, the overwhelming majority of whom will, ironically enough, soon be pursuing with diligence those matters on which they display the least interest in exercising editorial judgment.

A traditional justification for academic scholarship is that it contributes to the learning process by providing students with deeper insights into materials and by providing teachers and authors of teaching materials with a strong understanding of the substantive subject matter covered by books used in the instructional process. Tax speciality journals have long provided the bulk of the tax scholarship that has been of assistance to the traditional legal education process, focusing as it does on substantive law. That is no surprise, given the fundamental technical focus of a fair segment of what is published in most tax speciality journals and the orientation of much classroom instruction. It is worth noting, however, that there has been a marked decline in the level of contribution by major law reviews and an increase in the

level of contribution by other law reviews and especially by tax specialty journals.

Legal scholarship plays a major role in advancing the frontiers of thinking on major policy issues. The advancement of thinking on tax policy occurs in two distinctly different arenas: the academy and the power centre where tax policy is actually made. Although in the past the major law reviews quite clearly provided the principal venue for significant tax policy scholarship within the academy, in more recent years tax specialty journals have, in a rather commanding fashion, displaced the major law reviews.

If the subject areas of individual academics play an inordinate role in determining whether their scholarship will appear in a major review, then it is inappropriate for schools making decisions on tenure, promotion and compensation to insist on placement of some set number or percentage of articles in major reviews. Schools that employ such requirements for tenure will eventually find that constitutional law, criminal law and human rights scholars make up an inordinate percentage of their professoriate.

To elevate the opinions of third-year law students and make them arbiters of the faculty marketplace is to stand the academic institution on its head. Faculty cannot abrogate their responsibility for reading their peers' scholarship by substituting the opinion of a law student for that of an experienced scholar.

Over the last thirty years there has been a great profusion in the number of law journals published. Nowhere has this been more true, probably, than in the field of tax scholarship. The specialty journals have provided a hospitable refuge for tax scholars whose work is no longer welcome at the major reviews. They may also have contributed to the shift in venue for tax scholarship with their ability to respond to current major issues. Although this study has focused on the field of taxation, it is undeniable that similar developments have occurred in other areas of law where specialty journals are becoming the primary venues for scholarship.

## TEACHERS

### Leadership for teaching

R Johnstone

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At the cusp of the twenty-first century, law schools face significant challenges in responding to a rapidly changing environment. The challenges encompass all dimensions of the academy, including teaching and research. Strong academic leadership is required to meet these challenges.

Those who have been working in law schools since the mid-1980s are well aware of the way in which academic work has changed. Since those times, universities have been subjected to significant external pressures for change. Most of the changes have had an impact upon university teaching. The number of universities and the size of the student body has increased dramatically in the past fifty years. A greater proportion of school leavers go on to tertiary education than was the case even a decade ago. Consequently, universities are no longer the domain of the brightest and most committed students, and we now find ourselves teaching students with varying abilities.

Students increasingly are paying for their education, and consequently are demanding value for money. Universities now find themselves in a global tertiary education sector stretching beyond national boundaries, with universities and law schools increasingly competing for students from their own states, interstate and from overseas. They are now subjected to increasing stakeholder pressure, in that our students are more demanding, and government departments and others scrutinise the quantity and quality of our work.

At the same time there has been an explosion in the amount of knowledge, and a significant expansion of new specialist fields of knowledge. The expansion in the university system has also resulted in a different type of curriculum, much of it geared vocation-