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‘HOW DARE YOU TELL ME HOW TO TEACH!’: RESISTANCE TO EDUCATIONALISM WITHIN AUSTRALIAN LAW SCHOOLS

NICK JAMES*

I INTRODUCTION

*It’s just teaching-Nazi bull****.*
– University academic¹

I think [academic freedom] is a shield for the lazy and the uncooperative.
– Director of teaching²

In the ongoing debates within higher education about the role of universities, the characteristics of ‘good teaching’ and the tensions between teaching and research, a new discourse has in the past few decades emerged and risen to prominence – one which emphasises the central importance of student learning and advocates teaching in a manner consistent with principles derived from orthodox education scholarship. According to this discourse, it is not enough for university academics to be experts and specialists within the context of their own discipline – they must also know how to teach effectively. In this article, this higher education discourse is referred to as ‘educationalism’.³

Regulatory schemes such as the Australian Qualifications Framework⁴ and the Higher Education Standards Framework⁵ are typically informed by educationalism, as are the numerous teaching and learning policies introduced

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1 Response to a question about the meaning of ‘criterion referenced assessment’ quoted in Julie Duck and Susan Hamilton, ‘Assessment Policy: A Time to Re-assess?’ (Paper presented at Assessment Policy: A Time to Re-assess?, University of Queensland, 4 November 2010) 72.

2 Response to a question about the causes of academic resistance by a director of teaching interviewed for this paper.

3 The author defends the identification of educationalism (referred to as ‘pedagogicalism’) as a discrete discourse that exists alongside more widely acknowledged legal education discourses such as doctrinalism, vocationalism and liberalism in Nickolas John James, ‘The Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education’ (2004) 27 *University of New South Wales Law Journal* 147.

4 Australian Qualifications Framework Council, *Australian Qualifications Framework* (2nd ed, 2013).

5 *Higher Education Standards Framework (Threshold Standards) 2011* (Cth).

within Australian universities. Efforts to monitor, develop, manage and otherwise regulate the teaching practices of academics are frequently justified as necessary to modify existing (and by implication, deficient)⁶ teaching practices and to better achieve educationalist objectives such as improved student engagement, more appropriate learning outcomes, more authentic assessment and better feedback, and so on. However, these teaching regulations and policies – and educationalism generally – are frequently opposed by the academics upon whose engagement the achievement of these objectives necessarily depends. There are of course instances of academics welcoming opportunities to reflect upon and improve their teaching practices, and other instances of academics accepting that regulation of their teaching (for whatever reason) is an unavoidable feature of academic life. But there are also many instances of academics resisting educationalism by refusing to participate in or cooperate with teaching policies and other forms of regulation. They insist upon deciding for themselves what and how they should teach.

This article is part of an investigation into the nature of academic resistance to educationalism. The focus of this particular article is upon resistance to educationalism within Australian law schools. It seeks to answer three questions:

1. How is educationalism propagated within the law school?
2. In what ways is educationalism resisted by legal academics?
3. Why does such resistance by legal academics occur?

The answers offered in this article are informed by data collected by way of personal interviews with Associate Deans from six Australian law schools. This methodology is described and justified in Part II of the article. Part II also describes how educationalism emerged as an academic discourse but was later adopted by administrators and managers as a corporatist mechanism for the governance of academic teaching practices. The data collected from the Associate Deans is analysed and the various forms of and justifications for academic resistance are conceptualised within a Foucauldian theoretical framework and this framework is described in Part III of the article. Part IV describes the various ways in which educationalism is now propagated within Australian law schools, including both explicit regulation and more subtle strategies such as surveillance and normalisation. Finally, Part V identifies the various forms of resistance to educationalism, including both active and passive

6 Winslett describes how pressure upon academics by university management to innovate is often driven by a perceived need to respond to a variety of apparent deficiencies in higher education: Gregory Michael Winslett, *Resistance: Re-imagining Innovation in Higher Education Teaching and Learning* (PhD Thesis, Queensland University of Technology, 2010). For example, the 1987 Commonwealth Tertiary Education Commission report about Australian legal education, *Australian Law Schools: A Discipline Assessment* (typically referred to as 'the Pearce Report'), justified its extensive set of suggestions about reforming legal education in Australia by referring to a lack of commitment by law schools to teaching, student dissatisfaction with the intellectual calibre of their studies, and 'dreary' programs: Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Committee* (Australian Government Publishing Service, 1987).

resistance, and describes the various justifications for this resistance as expressed by academics and reported by the Associate Deans.

II METHODOLOGY

The objectives of the research project described in this article were to (1) identify the various ways in which ‘educationalism’ propagates within Australian law schools, the various forms taken by academic resistance to educationalism, and the various justifications for this resistance; and (2) locate these ways of propagation, forms of resistance and justifications for resistance within an appropriately explanatory theoretical framework. That theoretical framework is one informed by the work of Michel Foucault, particularly his ideas about the nature of discourse, power and resistance and is described in detail in Part III of this article.

The emphasis is upon the propagation of and resistance to educationalism within law schools because it was considered appropriate, given resourcing constraints, to limit the study to a single discipline, and because the author is a law school academic with direct experience of efforts to propagate educationalism within legal education. As will be explained in Part V of the article, there are those who believe that law school academics are more likely than other academics to resist regulation of their teaching. Nevertheless it is hoped that the findings and insights presented in this article will resonate with and be of relevance to readers from a variety of disciplines.

The information concerning the propagation of and resistance to educationalism was extracted primarily from a series of personal interviews conducted by the author with Associate Deans (Teaching and Learning) (‘ADTLs’) from six Australian law schools.⁷ The role of ADTL was chosen because an academic who occupies this role is likely to have direct personal experience with both a wide range of school, faculty, university and government teaching policies and the various forms of resistance by individual academics to those policies. And as described below, they are called upon to both manage resistance when implementing teaching policies and engage in resistance when representing their law school or faculty.

The six law schools were selected to ensure that the views canvassed were representative of both older and newer schools, larger and smaller schools, and city and remote schools. The specific identities of the ADTLs and their law schools will not be explicitly disclosed in this article for reasons of confidentiality, and the specific founding years and locations of the institutions will not be provided (to avoid inadvertent disclosure). However, the information in Table 1 does offer an indication of the types of law schools included in this research.

7 Not all of the interviewees use this title: equivalent titles include ‘Associate Dean (Academic)’ and ‘Director of Teaching’.

Table 1: The six interviewees and their schools

	Gender	Founding year of school	Total no of students	Grouping ⁸	Location
ADTL1	Male	1970 – 1990	Approx 3000	Group of Eight	City central
ADTL2	Female	1970 – 1990	Approx 2500	Australian Technology Network	City central
ADTL3	Male	1950 – 1970	Approx 3500	Group of Eight	City suburban
ADTL4	Female	1970 – 1990	Approx 1800	Independent	City suburban
ADTL5	Male	1990 – 2010	Approx 400	Regional Universities Network	Remote
ADTL6	Male	Pre-1950	Approx 2000	Group of Eight	City suburban

The sample size of six (from a total of 32 law schools in Australia at the time) was too small to draw any conclusions about the existence of correlations between forms and levels of academic resistance and the characteristics of particular law schools – for example, whether or not older law schools are more likely than newer law schools to experience higher levels of academic resistance to educationalism. The range of different law schools included in the sample did, however, provide access to a variety of perspectives on the propagation of and resistance to educationalism.

Data was collected from the ADTLs by way of lengthy personal interviews conducted by the author.⁹ The specific questions asked during the interviews are set out in Appendix A of this article. Five of the interviews were conducted in person and the sixth (ADTL4) was conducted by telephone. The interviews were recorded electronically and transcribed using a professional transcription service. The transcriptions were then subjected to a simple form of discourse analysis by identifying the passages of direct relevance to educationalism's propagation and resistance and allocating each to one of the following categories using a system of colour coding:

1. Descriptions of educationalism in the law school context
2. Descriptions of educationalist propagative strategies
3. Descriptions of attitudes – positive or negative – towards educationalism in the law school context
4. Descriptions of the various forms of resistance to educationalism in the law school context

8 Australian Education Network, *Groupings of Australian Universities*, The Australian Education Network University and College Guide <<http://www.australianuniversities.com.au/directory/australian-university-groupings/>>.

9 Ethical approval to conduct the interviews was granted by the Behavioural and Social Sciences Ethical Review Committee of the University of Queensland in September 2010: Project number 2010001112.

5. Discursive justifications for this resistance
6. Ways in which ADTLs seek to minimise or avoid the conflicts between educationalism and resistance

The relevant passages were compiled to create a detailed portrait of the ADTLs' perceptions regarding the propagation of and resistance to educationalism within the six Australian law schools, and these perceptions were then contextualised and conceptualised within a Foucauldian theoretical framework.

III THEORETICAL FRAMEWORK

A Legal Education Discourses

The theoretical framework within which the data collected from the ADTLs is analysed is one based upon the ideas and concepts of Michel Foucault. Within this framework legal education is seen not as a stable and consistent body of knowledge and practices, but as a dynamic nexus of competing and cooperating 'discourses'. A 'discourse' is a body of claims, statements and arguments (located in, for example, legal education scholarship, law school policies, law subject curricula, and law school conversations) united by a common theme. The discourse with which this article is primarily concerned is *educationalism*, a higher education discourse characterised by an emphasis upon student learning and upon teaching by academics in a manner informed by orthodox educational scholarship. Other legal education discourses include:

- *doctrinalism*, characterised by an emphasis upon knowing 'the law' and upon the teaching of correct legal doctrine;¹⁰
- *vocationalism*, characterised by an emphasis upon preparation for professional practice and upon the teaching of practical legal skills;¹¹
- *liberalism*, characterised by an emphasis upon the value of a broad liberal education and upon the inclusion within the law curriculum of legal history, philosophy, and contextual and interdisciplinary approaches to law;¹²
- *radicalism*, characterised by an emphasis upon law reform and social change, and the notion that law students should be taught to identify and

10 Nickolas John James, 'Expertise as Privilege: Australian Legal Education and the Persistent Emphasis upon Doctrine' (2004) 8 *University of Western Sydney Law Review* 1.

11 Nickolas John James, 'Why Has Vocationalism Propagated So Successfully within Australian Law Schools?' (2004) 6 *University of Notre Dame Australia Law Review* 41.

12 Nickolas John James, 'Liberal Legal Education: The Gap between Rhetoric and Reality' (2004) 1 *University of New England Law Journal* 163.

question undisclosed political positions, gender biases, cultural biases and power relations within legal education and within law;¹³ and

- *corporatism*, characterised by an emphasis upon the accountability of academics and the efficiency, marketability and growth of the law school as a corporate institution.¹⁴

These discourses co-exist within the discursive field of contemporary Australian legal education. Sometimes the discourses align – for example, liberalism and radicalism both favour the introduction of political theory into the law curriculum. At other times the discourses are inconsistent – for example, doctrinalism favours a narrow, specialised approach to the study of law while liberalism favours a broader, interdisciplinary approach. Sometimes the discourses explicitly refer to each other, such as when radical legal education scholarship explicitly criticises the dominance of vocationalism within legal education. At other times the discourses ignore each other, such as when doctrinal curricula disregard the existence of competing discourses.¹⁵ The regulation of teaching in Australian law schools is frequently driven by a conjunction of two of the discourses, educationalism and corporatism. It is upon the nature of educationalism, its ‘appropriation’ by corporatism, and the consequent resistance by legal academics that this article focuses.

Each of the legal education discourses is simultaneously a form of knowledge and an expression of disciplinary power within the law school.¹⁶ As a form of knowledge, each discourse is a set of statements about the nature and purpose of legal education. As an expression of disciplinary power, each discourse influences the identities, beliefs and practices of law school participants – academics, students, administrators and the like – by normalising a particular approach to the teaching of law and establishing a ‘regime of truth’.¹⁷ Educationalism, in emphasising the importance of student learning and teaching by academics in a manner informed by orthodox educational scholarship, is a set of statements about how law can and should be taught. It is also an exercise of

13 Nickolas John James, ‘The Marginalisation of Radical Discourses in Australian Legal Education’ (2006) 16 *Legal Education Review* 55.

14 Nickolas James, ‘Power-Knowledge in Australian Legal Education: Corporatism’s Reign’ (2004) 26 *Sydney Law Review* 587.

15 Foucault insists that knowledge within a discipline is always discontinuous, and discourses ‘must be treated as discontinuous practices, which cross each other, are sometimes juxtaposed with one another, but can just as well exclude or be aware of each other’: Michel Foucault, ‘The Order of the Discourse’ in Robert Young (ed), *Untying the Text: A Post-Structuralist Reader* (Routledge & Kegan Paul, 1981) 48, 67.

16 According to Foucault, discourses designate the conjunction of power and knowledge. Rather than being mutually exclusive, the two are intimately related – the production and dissemination of knowledge is always an exercise of power, and the exercise of power always involves the production and dissemination of knowledge: *ibid* 101. Foucault is probably best known for his work investigating the close relationship between knowledge and power, although contrary to popular belief, he does not claim that power and knowledge are the same thing: Gavin Kendall and Gary Wickham, *Using Foucault’s Methods* (Sage Publications, 1999) 51.

17 Jennifer Gore, *The Struggle for Pedagogies: Critical and Feminist Discourses as Regimes of Truth* (Routledge, 1993).

power that influences the teaching practices of legal academics and shapes their beliefs about what it means to teach well and what the process of teaching law is supposed to achieve.

The conceptualisation of educationalism and other legal education discourses as exercises of *power* should not be seen as a criticism of those discourses. The word 'power' often has a negative connotation, but within a Foucauldian framework, power is seen as both productive and repressive.¹⁸ Discourses in the form of teaching policies, administrative decisions, and even works of scholarship are all seen as expressions of power, but although these discourses have the potential to dominate and repress, they also have the potential to create and produce. Educationalism, for example, governs what academics believe to be the right way to teach, but at the same time it creates possibilities for new approaches to teaching.

This ideological neutrality is one of the reasons why the Foucauldian theoretical framework is considered to be the most appropriate for this article, in which a descriptive rather than a normative approach is adopted. It favours neither the propagation of educationalism nor the resistance that educationalism provokes, but instead seeks to achieve a better understanding of both and to describe the relationship between the two. The other principal reason is the centrality within the Foucauldian framework of the notions of discourse, power and resistance, as explained in more detail below.¹⁹

B Educationalism

Educationalism is a higher education discourse that is characterised by an emphasis upon teaching in a manner consistent with principles derived from orthodox education scholarship. These principles include, for example, the notion that a student-centred approach to teaching is more appropriate than a teacher-centred or content-centred approach;²⁰ that reflective, evidenced-based approaches to teaching are preferable to approaches based on tradition or common practice or the demands of employers;²¹ that teaching should be defined as the facilitation of learning rather than the transmission of knowledge;²² that

18 According to Foucault, power 'induces pleasure, forms knowledge, produces discourse' and 'needs to be considered as a productive network which runs through the whole social body, much more than as a negative instance whose function is repression': Michel Foucault, 'Truth and Power' in James D Faubion (ed), *Essential Works of Foucault 1954–1984: Power* (New Press, 2002) vol 3, 120.

19 Knights and Vurdubakis describe how numerous theorists have applied Foucauldian notions to the analysis of regulation and resistance within the workplace: David Knights and Theo Vurdubakis, 'Foucault, Power, Resistance and All That' in John M Jermier, David Knights and Walter R Nord (eds), *Resistance & Power in Organizations* (Routledge, 1994) 167, 174–5.

20 See, eg, Donna Brandes and Paul Ginnis, *A Guide to Student Centred Learning* (Basil Blackwell, 1986). In the context of legal education, see, eg, Jos C Moust and Herman J Nuy, 'Preparing Teachers for a Problem-Based, Student-Centred Law Course' (1987) 5 *Journal of Professional Legal Education* 16.

21 See, eg, Stephen D Brookfield, *Becoming a Critically Reflective Teacher* (Jossey-Bass, 1995).

22 See, eg, Anne Brockbank and Ian McGill, *Facilitating Reflective Learning in Higher Education* (Open University Press, 2nd ed, 2007); Stephen D Brookfield, *Understanding and Facilitating Adult Learning: A Comprehensive Analysis of Principles and Effective Practices* (Jossey-Bass, 1986).

student engagement,²³ formative feedback,²⁴ authentic assessment,²⁵ transparency in learning objectives,²⁶ and the alignment of objectives, teaching and assessment²⁷ are of fundamental importance; and that student wellbeing²⁸ and the transitions into and out of higher education²⁹ are at least partly the responsibility of academics rather than solely the responsibility of students. Orthodox education scholarship is certainly not monolithic, and the literature is characterised by vigorous debates about, for example, the nature of student learning,³⁰ the merits of various forms of assessment,³¹ and transferrable versus specific skills.³² However, the texts of which educationalism as a discourse is comprised are broadly consistent in their implicit insistence that all university academics should familiarise themselves with at least some education literature and focus their efforts upon facilitating student learning by teaching ‘effectively’ rather than assuming that extensive discipline knowledge automatically makes one a good teacher.

The emergence of educationalism within Australian law schools was initially a consequence of the efforts by some legal academics to encourage an approach to the teaching of law that was more liberal than the doctrinal and vocational approaches that had traditionally dominated Australian legal education. Their willingness to consider insights and perspectives from other academic disciplines led to an awareness of the existence of a large body of scholarship produced within the discipline of education concerned with the theory and practice of teaching.³³ These legal academics began to write about, and to encourage their

23 See, eg, Kerri-Lee Krause and Hamish Coates, ‘Students’ Engagement in First-Year University’ (2008) 33 *Assessment & Evaluation in Higher Education* 493.

24 See, eg, Neil J Cooper, ‘Facilitating Learning from Formative Feedback in Level 3 Assessment’ (2000) 25 *Assessment & Evaluation in Higher Education* 279.

25 See, eg, Grant P Wiggins, *Assessing Student Performance: Exploring the Purpose and Limits of Testing* (Jossey-Bass, 1999).

26 See, eg, D Royce Sadler, ‘Specifying and Promulgating Achievement Standards’ (1987) 13 *Oxford Review of Education* 191.

27 See, eg, John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (Open University Press, 4th ed, 2011).

28 See, eg, Council of Australian Law Deans, *Promoting Law Student Well-Being: Good Practice Guidelines for Law Schools* (2013) <<http://www.cald.asn.au/assets/lists/Resources/Promoting%20Law%20Student%20Well-Being%20Good%20Practice%20Guidelines%20for%20Law%20Schools.pdf>>.

29 See, eg, Susan Armstrong and Judith McNamara, ‘Transition Pedagogy in First and Final Year Law Programs’ in Sally Kift et al (eds), *Excellence and Innovation in Legal Education* (LexisNexis Butterworths, 2011) 207.

30 See, eg, David C Leonard, *Learning Theories, A to Z* (Greenwood Press, 2002).

31 See, eg, David Boud and Nancy Falchikov (eds), *Rethinking Assessment in Higher Education: Learning for the Longer Term* (Routledge, 2007).

32 See, eg, Alison Assiter, *Transferable Skills in Higher Education* (Kogan Page, 1995).

33 Law was not the only discipline within the university to be influenced by orthodox education scholarship. Paul Ramsden describes how ‘[t]he ideas of a previously little-known group of academics from Britain and Sweden have become accepted into the discourse of quality in higher education. Powerful people and statutory bodies now use phrases from what used to be a comfortably private area of educational research as part of their lingua franca’: Paul Ramsden, ‘Improving the Quality of Higher Education: Lessons from Research on Student Learning and Educational Leadership’ (1995) 6 *Legal Education Review* 3, 4.

colleagues to consider, the ways in which educationalist concepts and practices might be incorporated into law school teaching and how the quality of law teaching might generally be improved.³⁴ Today there are numerous legal academics who continue to encourage their colleagues to embrace educationalism. Some write about and reflect upon their own experiences in teaching or designing particular courses,³⁵ some examine alternative approaches to teaching such as experiential learning or problem-based learning,³⁶ and some explore the ways in which a particular skill or subject matter – such as ethics,³⁷ dispute resolution,³⁸ legal research,³⁹ legal reasoning,⁴⁰ or legal writing⁴¹ – can be

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- 34 See, eg, Andrea Rhodes-Little, 'Life and Death and Law and Art: Why Teaching Is More Important than Knowledge' (2000) 25 *Alternative Law Journal* 282; Gordon Joughin and David Gardiner, *A Framework for Teaching and Learning Law* (Centre for Legal Education, 1996); Carol Bond and Marlene Le Brun, 'Promoting Learning in Law' (1996) 7 *Legal Education Review* 1; Marlene Le Brun and Carol Bond, 'Law Teaching Reconceptualised' (1995) 6 *Legal Education Review* 23; M Le Brun and R Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (Law Book Company, 1994).
- 35 See, eg, Michael Head, 'Deep Learning and "Topical Issues" in Teaching Administrative Law' (2007) 17 *Legal Education Review* 159; Kelley Burton and Natalie Cuffe, 'The Design and Implementation of Criterion-Referenced Assessment in a First Year Undergraduate Core Law Unit' (2005) 15 *Legal Education Review* 159; Diana Henriss-Anderssen, 'Using Interactive Teaching Strategies in Large Lectures: Some Personal Reflections' (2004) 14(2) *Legal Education Review* 181; Penny Jones, 'Taming the Teaching and Learning Hydra: Does it Have to Be a Labour of Hercules? Teaching Legal Research Skills within the Context of University Teaching and Learning Goals, National Trends and Professional Requirements' (2002) 9(3) *eLaw Journal: Murdoch University Electronic Journal of Law* <<http://www.murdoch.edu.au/elaw/issues/v9n3/jones93.html>>; Judy Allen and Paula Baron, 'Of Caterpillars and Butterflies: The Introduction of Metamorphosis at the UWA Law School' (2001) 35 *The Law Teacher* 346; B Dick et al, 'A Case Study of the "Offices" Project (Teacher-Less, Cooperative Learning Groups) at Griffith University: Implementing Educational Theory' (1993) 4 *Legal Education Review* 273.
- 36 See, eg, Andrew Mitchell et al, 'Education in the Field: A Case Study of Experiential Learning in International Law' (2011) 21 *Legal Education Review* 69; Vijaya Nagarajan, 'Designing Learning Strategies for Competition Law – Finding a Place for Context and Problem Based Learning' (2002) 13 *Legal Education Review* 1; Julie Macfarlane and John Manwaring, 'Using Problem-Based Learning to Teach First Year Contracts' (1998) 16 *Journal of Professional Legal Education* 271; Herman J P Nuy and Jos H C Moust, 'Students and Problem-Based Learning: How Well Do They Fit In?' (1990) 8 *Journal of Professional Legal Education* 97; Keith Winsor, 'Toe in the Bathwater: Testing the Temperature with Problem-Based Learning' (1989) 7 *Journal of Professional Legal Education* 1.
- 37 See, eg, Michael Robertson, 'Embedding "Ethics" in Law Degrees' in Kift et al (eds), above n 29, 99.
- 38 See, eg, Kathy Mack, 'Integrating Procedure, ADR and Skills: New Teaching and Learning for New Dispute Resolution Processes' (1998) 9 *Legal Education Review* 83; Margot Taylor, 'Teaching Negotiation: Changing the Focus from Strategy to Substance' (1998) 16 *Journal of Professional Legal Education* 23; Beth Campbell, 'Professional Legal Education, Deep Learning and Dispute Resolution' (1997) 15 *Journal of Professional Legal Education* 1.
- 39 See, eg, Clare Cappa, 'A Model for the Integration of Legal Research into Australian Undergraduate Law Curricula' (2004) 14(2) *Legal Education Review* 43; Terry Hutchinson and Fiona Martin, 'Multi-Modal Delivery Approaches in Teaching Postgraduate Legal Research Courses' (1997) 15 *Journal of Professional Legal Education* 137; Terry Hutchinson, 'Taking up the Discourse: Theory or Practice' (1995) 11 *Queensland University of Technology Law Journal* 33.
- 40 See, eg, Nick James, 'Embedding Graduate Attributes Within Subjects: Critical Thinking' in Kift et al (eds), above n 29, 69; Duncan Bentley, 'Using Structures to Teach Legal Reasoning' (1994) 5 *Legal Education Review* 129; John H Wade, 'Meet MIRAT: Legal Reasoning Fragmented into Learnable Chunks' (1991) 2 *Legal Education Review* 283.

taught. Others focus upon the analysis of a particular aspect of the learning process, such as student motivation,⁴² the use of technology,⁴³ or feedback and assessment.⁴⁴ Description and analysis of distance learning, online learning and flexible delivery are also common topics.⁴⁵

Initially, the propagation of educationalism within the law school depended largely upon the *voluntary* adoption by legal academics of educationalist concepts and practices. Some law school academics chose to familiarise themselves with orthodox education scholarship (either directly or via legal education scholarship), to incorporate insights from this scholarship into their own teaching of law, and to even acquire educational qualifications. Many, however, did not, and for many years educationalism was largely ignored by the majority of legal academics who continued to prefer the traditional, content-

- 41 See, eg, Lyndal Taylor et al, 'Reading Is Critical' (2001) 3 *University of Technology Sydney Law Review* 126; Dean Bell and Penelope Pether, 'Re/writing Skills Training in Law Schools – Legal Literacy Revisited' (1998) 9 *Legal Education Review* 113; Barbara Kamler and Rod Maclean, "'You Can't Just Go to Court and Move Your Body": First-Year Students Learn to Write and Speak the Law' (1996) 3 *Law Text Culture* 176; Annette Hasche, 'Teaching Writing in Law: A Model to Improve Student Learning' (1992) 3 *Legal Education Review* 267.
- 42 See, eg, Lillian Corbin, Kylie Burns and April Chrzanowski, 'If You Teach It, Will They Come? Law Students, Class Attendance and Student Engagement' (2010) 20 *Legal Education Review* 13; Paula D Baron, 'Demand and Desire: A Psychoanalytic Contribution to Understanding the Problems of Student Motivation' (2002) 11 *Griffith Law Review* 332; Helen Brown, 'The Cult of Individualism in Law School' (2000) 25 *Alternative Law Journal* 279.
- 43 See, eg, Des Butler, 'Entry Into Valhalla: Contextualising the Learning of Legal Ethics Through Use of Second Life Machinima' (2010) 20 *Legal Education Review* 85; Deborah Richards and Joanne Stagg-Taylor, *Preparing Advocates for the Courtroom of the Future* (February 2003) Commonwealth Legal Education Association, 23–7 <<http://www.clea-web.com/wp-content/uploads/2012/12/vol-92-Feb-2003.pdf>>; Marlene LeBrun, 'Gaming Contract Law: Creating Pleasurable Ways to Learn the Law of Contract' (2003) 10(1) *eLaw Journal: Murdoch University Electronic Journal of Law* <<http://www.murdoch.edu.au/elaw/issues/v10n1/lebrun101.html>>; Maree Chetwin and Cally Edgar, 'Legal Education in the Technology Revolution: The Evolutionary Nature of Computer-Assisted Learning' (1999) 10 *Legal Education Review* 163; Lee Godden, Debbie Lamb and Marlene J Le Brun, 'The "Offices" Project at Griffith University Law School and the Use of Video as a Tool for Evaluation' (1994) 12 *Journal of Professional Legal Education* 149.
- 44 See, eg, Pauline Collins, Toni Brackin and Caroline Hart, 'Rocky Rhetoric and Hard Reality: The Academic's Dilemma Surrounding Assessment' (2010) 20 *Legal Education Review* 157; Clair Hughes, 'The Modification of Assessment Task Dimensions in Support of Student Progression in Legal Skills Development' (2009) 19 *Legal Education Review* 133; John Goldring, 'Student Assessment and "Quality" in Legal Education' (1997) 1 *Macarthur Law Review* 41; Richard Johnstone, Jenny Patterson and Kim Rubenstein, 'Improving Criteria and Feedback in Student Assessment in Law' (1996) 7 *Legal Education Review* 267; Nicolette Rogers, 'Improving the Quality of Learning in Law Schools by Improving Student Assessment' (1993) 4 *Legal Education Review* 113; Jeffrey W Barnes, 'The Functions of Assessment: A Re-examination' (1991) 2 *Legal Education Review* 177.
- 45 See, eg, Marina Nehme, 'E-learning and Student s' Motivation' (2010) 20 *Legal Education Review* 223; Bill Childs and Lyndal Taylor, "'You Can Lead a Horse to Water ...": Introducing Online Education' (2001) 3 *University of Technology Sydney Law Review* 141; Dan Hunter, 'Legal Teaching and Learning over the Web' (2000) *University of Technology Sydney Law Review* 124; Richard Johnstone and Gordon Joughin, *Designing Print Materials for Flexible Teaching and Learning in Law* (Taylor & Francis, 1997); John Goldring, 'Coping with the Virtual Campus: Some Hints and Opportunities for Legal Education?' (1995) 6 *Legal Education Review* 91.

focused (rather than student-focused) approaches to the teaching of law.⁴⁶ It is still the case that many legal academics refuse to engage with educationalist scholarship, either directly or via the legal education literature – a point explored in more detail below.

In recent years, the propagation of educationalism within Australian law schools has been much more widespread and much more deliberate. School, faculty, university and government policies and guidelines now encourage – and frequently insist upon – the design, delivery and evaluation of law teaching in a manner consistent with educationalist principles. Legal academics are regularly and repeatedly encouraged to accept the notion that teaching law is about facilitating student learning rather than transmitting knowledge;⁴⁷ to abandon the traditional emphasis upon lectures, tutorials, and 100 per cent final examinations; and to embrace self-directed learning, blended learning, flexible delivery and formative assessment. Most Australian law schools have comprehensive teaching and learning policies, teaching and learning committees or curriculum committees responsible for supporting,⁴⁸ and ADTLs with similar responsibilities.⁴⁹

The recent proliferation of educationalism appears to have been largely contingent upon the consistency of educationalist concepts and practices with corporatist objectives. As explained earlier, corporatism is a higher education discourse that is characterised by an emphasis upon the accountability of academics, the efficiency of the teaching process and the marketability of the university. According to corporatism, education is a process that can and should be managed and controlled in such a way that costs are minimised and quality, profitability and customer satisfaction are maximised, and the success of a university, faculty or school is determined by the extent to which these objectives are achieved. As Thornton explains:

[U]niversity governance practices have changed so as to comport more closely with those of corporatisation. Just as we see little in the way of consultation and collegiality within the typical company, these characteristics, long distinguishing features of the academy, have been significantly eroded. The collegiate model has been largely replaced with a new style of top-down

46 Fiona Cownie, 'Searching for Theory in Teaching Law' in Fiona Cownie (ed), *The Law School – Global Issues, Local Questions* (Dartmouth, 1999) 44.

47 As Paul Ramsden told Australian law teachers in 1995, "teaching" means more than instructing and performing and extends more broadly to providing a context in which students engage productively with subject matter. There is now a widespread view in academic development circles, derived directly from the student learning research, that we should concentrate on learning, on what the learner does and why the learner thinks he or she is doing it, rather than what the teacher does': Paul Ramsden, 'Improving the Quality of Higher Education: Lessons from Research on Student Learning and Educational Leadership' (1995) 6 *Legal Education Review* 3, 3.

48 Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law: A Report Commissioned by the Australian Universities Teaching Committee* (Department of Education, Science and Training, 2003) 217.

49 The increasing recognition of the importance of this role within Australian law schools is reflected in the establishment in 2010 of the first 'Associate Deans Network' comprising the various Associate Deans from each Australian law school: Law Associate Deans' Network <<http://www.lawteachnetwork.org/>>.

managerialism, which allows little space for the voices of academics to be heard. Academics, like general staff, are now treated in the same way as workers within private corporations and subject to ever-increasing controls, surveillance and mechanisms of accountability.⁵⁰

Corporatism within the academy is oriented towards the achievement of certain objectives. When teaching policies seek to regulate the teaching practices of academics, they have explicit objectives such as the gathering of information about teaching for quality assurance purposes, or improvements in the provision of course information and feedback to students, or the adoption of more reliable or authentic assessment methods.⁵¹ But there are implicit objectives that underlie these explicit goals: accountability, efficiency, marketability and growth. The goal of *accountability* stems from the direct relationship between knowledge and power. By knowing what academics are doing – through the mechanisms of observation described below – school, faculty, university and government managers, administrators and policy makers are better able to regulate academic teaching practices. *Efficiency* is the use of academic resources in such a way that costs are minimised and returns are maximised. The third objective is *marketability*: courses, teachers, knowledge, texts, teaching spaces, and reputations are categorised as either appealing or unattractive to students and stakeholders. Enhanced accountability, efficiency, and marketability lead to achievement of the fourth objective, *growth*. Success for Heads, Deans, Vice-Chancellors and other administrators is often measured in terms of increases over time in profitability, staff and student numbers, grants and funding, courses offered and degrees awarded.

In the last two decades, corporatism has propagated extensively, not only in legal education but in higher education generally.⁵² And for university policies enacted to manage and monitor academic teaching practices,

50 Margaret Thornton, 'Governing the Corporatised Academy' (2004) 1 *Journal for the Public University* 1.

51 See earlier comments about the implicit deficiencies in higher education teaching practices in above n 6.

52 Paul Ramsden, *Learning to Lead in Higher Education* (Routledge, 1998) 32–5. See also Bill Readings, *The University in Ruins* (Harvard University Press, 1996); Erica McWilliam, Caroline Hatcher and Daphne Meadmore, 'Developing Professional Identities: Remaking the Academic for Corporate Times' (1999) 7 *Pedagogy, Culture & Society* 55; Richard Winter, Tony Taylor and James Sarros, 'Trouble at Mill: Quality of Academic Worklife Issues within a Comprehensive Australian University' (2000) 25 *Studies in Higher Education* 279; Bronwyn Davies, 'The (Im)possibility of Intellectual Work in Neoliberal Regimes' (2005) 26 *Discourse: Studies in the Cultural Politics of Education* 1; Bronwyn Davies and Eva Bendix Petersen, 'Neo-liberal Discourse in the Academy: The Forestalling of (Collective) Resistance' (2005) 2(2) *Learning and Teaching in the Social Sciences* 77; Eva Bendix Petersen, 'Resistance and Enrolment in the Enterprise University: An Ethno-Drama in Three Acts, with Appended Reading' (2009) 24 *Journal of Education Policy* 409.

educationalism offers a relatively consistent definition of ‘effective teaching’⁵³, a detailed set of criteria by which teaching practices might be judged and compared, and a relatively clear and consistent set of benchmarks with which academics can be compelled to comply.

Some educationalist concepts and practices appeal to the corporatist desire to minimise cost and maximise efficiency. ‘Flexible delivery’, for example, is an approach to curriculum design and course delivery that offers students a range of different ways to engage with the course content, including both traditional classroom attendance, print materials and online resources. It is an approach that allegedly results in improved access to learning and democratisation of the learning process but according to McNamara its adoption by many universities is often driven by the need to reduce the cost of running programs and to capture a greater share of the education market.⁵⁴ Similarly, an ability to engage in ‘self-directed learning’ is frequently lauded as a desirable student attribute, but Hunter-Taylor argues that it is used by those with a corporatist agenda to justify reductions in staff-student ratios.⁵⁵

The recent propagative success of educationalism has also been facilitated by the increasing recognition by university marketing teams that ‘good teaching’ is a way to attract students to the university.⁵⁶ The websites of many law schools emphasise the quality of the teaching and learning that takes place within the school, for example:

Studying law at Charles Darwin University means studying at a university with a proud reputation for the quality of its teaching and innovative programs.⁵⁷

53 An effective teacher, according to the educationalist literature summarised by Johnstone and Vignaendra, is enthusiastic about sharing a love of the subject with others; motivates students to feel the need to learn the subject material; makes the material of the subject genuinely interesting; shows concern and respect for students, recognising the diversity within the student body; is available to students; makes it clear to students what they are expected to be able to do; uses clear explanations, using a variety of appropriate techniques; focuses on key concepts and students’ misunderstanding of them, rather than on trying to cover a lot of ground; uses a variety of valid methods for assessment that focus on the key areas that students need to master; encourages students to engage deeply with the task, avoids forcing students to rote learn or merely reproduce detail, and avoids unnecessary anxiety; enables students to work collaboratively; engages in a dialogue with the learner and seeks evidence of student understanding and misunderstanding; gives timely and high quality feedback on student work; engages with students at their level of understanding; ensures that student workload is appropriate to allow students to explore the main ideas in the law subject; encourages student independence; uses methods that demand student activity, problem solving and cooperative learning; is aware that good learning and teaching are dependent on the context within which learning is to take place; constantly monitors what students are experiencing in their learning situations; and tries to find out about the effects of teaching on student learning and then modifies their approach to teaching in the light of the evidence collected. Johnstone and Vignaendra, above n 48, 277–81.

54 Lawrence McNamara, ‘Lecturing (and Not Lecturing) Using the Web: Developing a Teaching Strategy for Web-Based Lectures (Flexible Delivery in a First Year Law Subject, Part I)’ (2000) 11 *Legal Education Review* 149, 150.

55 Sharon Hunter-Taylor, ‘Professional Legal Education: Pedagogical and Strategic Issues’ (2001) 3 *University of Technology Sydney Law Review* 59.

56 Johnstone and Vignaendra, above n 48, 291.

57 Charles Darwin University School of Law, *School of Law* <<http://www.cdu.edu.au/law>>.

The Law School prides itself on its friendly, relaxed atmosphere and commitment [sic] to high quality teaching scholarship.⁵⁸

At Murdoch, you can expect to receive an excellent legal education. Murdoch is the natural choice for law students in Western Australia because of its progressive outlook and total commitment to quality outcomes in teaching. Independent surveys have consistently rated Murdoch very highly for excellent teaching.⁵⁹

Educationalism is a way for a university to regulate, improve and market the 'product' sold to its customers, the students.

It is not the case that educationalism is *necessarily* corporatist: the general education and legal education literature propagates educationalism by way of rational and methodical reasoning and evidence-based research, with the objective of improving the quality of student learning for its own sake. Nor are educationalism and corporatism always aligned: there will be situations in which the two discourses advocate different outcomes. It is nevertheless the case that many educationalist concepts and practices have been appropriated by corporatism and turned to the achievement of corporatist objectives. Educationalism is now much more than a body of scholarship or merely one of a range of possible ways of thinking about the process of legal education. It has become an important source of standards against which teaching in law can be evaluated for corporatist ends, and is used as a justification for the increasingly extensive regulation of law school teaching.

IV EDUCATIONALISM AS REGULATION

Law school academics are not free to teach whatever they want and in any manner they choose. The teaching practices of law school academics are *regulated* in the sense that they are subjected to constraints and compelled to comply with certain requirements and expectations. The extent of this regulation of teaching is substantial. National bodies such as the former Australian Universities Quality Agency ('AUQA') and the new Tertiary Education Quality and Standards Agency ('TEQSA') evaluate the overall performance of institutions, including the extent to which their teaching practices meet 'Threshold Standards'.⁶⁰ The Uniform Admission Rules regulate the specific content of the subjects that law students must complete in order to demonstrate that they have mastered the eleven areas of knowledge required for admission to the legal profession (known as the 'Priestley 11').⁶¹ University-level teaching policies regulate a wide range of teaching practices including subject and program design, the setting of graduate attributes, the content of subject outlines,

58 Flinders Law School, About Us (13 August 2013).

59 Murdoch University School of Law, *Message from the Dean* <<http://www.murdoch.edu.au/School-of-Law/About-the-School/Message-from-the-Dean/>>.

60 Tertiary Education Quality and Standards Agency, *About TEQSA* <<http://www.teqsa.gov.au/about>>.

61 Consultative Committee of State and Territorial Law Admitting Authorities, *Uniform Admission Requirements: Discussion Paper and Recommendations* (1992).

the weighting of assessment and number of assessment items, the collection of feedback from students and many other aspects of the teaching process. And policies and guidelines at the faculty and school level regulate the setting of learning objectives, the allocation of teaching responsibilities, the development of new subjects, the frequency with which subjects are offered, class duration and frequency, acceptable forms of assessment and their administration, the setting of marking criteria and standards, the provision of feedback to students, the distribution of grades within subjects, the drafting and checking of examination papers, and the responsibilities of subject coordinators.

Many of these regulations explicitly promote educationalist approaches to teaching but are implicitly oriented towards achievement of the corporatist objectives of accountability, efficiency, marketability and growth. For example, teaching policies that mandate a minimum number of assessment items in a subject, or which prohibit the setting of 100 per cent examinations, are consistent with the educationalist insistence that assessment be ‘multiple, varied and fair’,⁶² but they are also at least partly a response to student demand for less stressful assessment regimes.⁶³ Teaching policies that oblige academics to publish clear learning objectives and marking criteria to students at the commencement of a subject are consistent with the educationalist insistence upon transparency in teaching,⁶⁴ but they also facilitate the monitoring of academic teaching practices by school, faculty and university managers. The ‘constructive alignment’ of learning objectives, learning activities and assessment activities is advocated by education scholars,⁶⁵ but it also makes subject design and delivery more efficient.

The ADTLs interviewed as part of this research were all able to describe a variety of strategies deployed to propagate educationalism as regulation. In the following sections of the paper, these strategies are organised into three Foucauldian categories: the normalisation and standardisation of educationalist concepts and practices, the surveillance of teaching, and the imposition of rewards and penalties.⁶⁶ These strategies seek not only to ensure that academic teaching practices are consistent with educationalist principles and corporatist objectives, but also to shape academic beliefs about the nature and goals of teaching law.

62 Gerald F Hess and Steven Friedland, *Techniques for Teaching Law* (Carolina Academic Press, 1999) 289.

63 Australian law schools began to move away from 100% final examinations in the late 1980s: McInnis and Marginson, above n 46, 167. Some did so voluntarily as a result of a more thoughtful approach to teaching generally, but many did so as a result of changes in school and university assessment policies: Johnstone and Vignaendra, above n 48, 1.

64 See, eg, Sadler, above n 26.

65 Biggs and Tang, above n 27.

66 See generally Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin, 1991)..

A Normalisation and Standardisation

Normalisation is the practice of ensuring that particular and subjective truths are accepted as universal and incontestable. People come to accept these truths not because they are compelled to do so but because it is normal to do so.⁶⁷

Teaching policies seek to normalise educationalist notions of good teaching. When teaching policies repeatedly call upon academics to make marking criteria explicit, provide detailed feedback, provide formative as well as summative assessment, publish explicit learning objectives, conduct student evaluations and so on, it becomes increasingly likely that the educationalist principles upon which these policies are based will become normal and less likely to be challenged. Any discussion of good teaching must accept that in order to be 'good', teaching must be consistent with these educationalist principles. Of course, conceptions of good teaching that differ from educationalist notions do exist. The traditional idea of the 'good' law teacher was one who was an expert in their particular doctrinal field and able to demonstrate that expertise in lectures.⁶⁸ From a vocational perspective, a 'good' teacher is one whose students are easily able to gain employment. Critical pedagogy scholarship describes and advocates a socio-political approach to teaching and focuses on pedagogy as a power relation.⁶⁹ However, any approach to teaching that is inconsistent with educationalist concepts and practices risks being inconsistent with teaching policies, and being classified as outdated, ineffective, abnormal or wrong.

An important step in the normalisation of educationalist notions of 'good teaching' is the *standardisation* of practices consistent with those notions – that is, the insistence that certain things be done in the same particular way everywhere within the organisation. In this way, those practices eventually become accepted as normal and alternative practices become seen as abnormal. Teaching policies frequently seek to standardise educationalist approaches to subject design, subject delivery and the assessment of students.

Many of the ADTLs interviewed for this article described efforts to standardise the documentation provided to law students. One interviewee described the standardisation of subject outlines:

[T]he University has been implementing a process of putting all subject outlines up online. And to do that they have come up with a template and so that meant that everyone within the Law Faculty had to amend what they had been doing ... for the subject outline to be in accordance with the University requirements.
[ADTL2]

Another described efforts to standardise the ways in which students are assessed by compelling all academics to adopt a particular approach:

[T]he University has mandated a change from normal scaling ... to criterion referenced and standards based assessment across the whole University ...
[ADTL4]

67 See generally Foucault, above n 15.

68 See Nickolas John James, 'The Good Law Teacher: The Propagation of Pedagogicalism in Australian Legal Education' (2004) 27 *University of New South Wales Law Journal* 147.

69 Gore, above n 17, 3.

They also described efforts to standardise study guides:

[The Faculty] had a grant to develop a thing called a UGO, unit guide online, which had a mandated template and you had to put your unit study guide into that template online and it's supposed to alert you if there are non-compliances. If your assessment is non-compliant with the policy it's supposed to alert you. It has things in it like you have to show how your assessment aligns with your learning outcomes and how they align with the university's graduate capabilities. [ADTL4]

A third interviewee described their own efforts to standardise assessment practices within their law school:

I've established something which I call the assessment project ... I am trying to lift across the School each staff member's adherence to the best possible standards in criterion-referenced assessment. That means that, for example, we're in the process of establishing a number of templates, or exemplars I think is a better word, which are examples of good assessments in a variety of formats whether it's research or exams or mootings or whatever the case may be, with very detailed criteria. [ADTL5]

Another way in which educationalist concepts and practices are normalised is by establishing an expectation, or even a requirement, that academics complete a postgraduate qualification in education. One interviewee explained how new academics in their law school are obliged to complete the Graduate Certificate in Higher Education, and that this requirement is explicitly hoped to eventually propagate educationalism throughout the law school:

[O]ver the last couple of years, the people who've gone through the Graduate Certificate in Higher Education are going to be the ones who are taking students into learning ideas through to the *n*th degree, and they'll be the ones applying for teaching grants and teaching awards and be able to assist other members of the Faculty as well. [ADTL2]

Traditionally it was not necessary for legal academics to possess teaching qualifications before being permitted to teach law. While it is still possible for a person to be appointed as a legal academic without teaching qualifications, many law schools now oblige or at least encourage new academics to undertake training courses at which they are introduced to and encouraged to embrace educationalist concepts and practices.⁷⁰

B Surveillance of Teaching

The second type of strategy employed in the implicit propagation of educationalism within the law school is *surveillance* – that is, the continual monitoring and review of academic behaviour.⁷¹ The nature of the academic task is such that academics typically teach (and conduct research) away from the gaze of direct supervision. The teaching practices of academics are nevertheless monitored in a number of ways.

The teaching practices of academics are periodically evaluated as a part of the annual review process as well as during applications for tenure and

70 Johnstone and Vignaendra, above n 48, 286–7.

71 See Vivienne Brand, 'Decline in the Reform of Law Teaching? The Impact of Policy Reforms in Tertiary Education' (1999) 10 *Legal Education Review* 109, 124.

promotion. While such evaluations are usually justified as directed towards improving the quality of teaching, Heads and Deans often use them as a way to monitor and assess the performance of academics.⁷² These evaluations often involve the application of educationalist standards to an academic's teaching. One interviewee described how they use the annual reviews to promote educationalism:

I use the annual performance review or performance appraisal process to keep track of what individual staff are doing in the learning and teaching arena. Here's an example: in the last round of reviews I took the view, and I had taken the view before the review, that insufficient numbers of staff were paying proper attention to the challenge of quality assessment. So in the performance review process I made it an objective for everyone ... over the next twelve-month period to engage in reading and reflection on current assessment practices. I wanted them to read the latest material, and I'm talking about literature in learning and teaching theory and particularly around criterion-referenced assessment. I wanted them to read it, reflect on it, and I wanted them to be able to demonstrate in a year's time that they'd taken this seriously and that they were beginning to allow that information and theory to inform their practice in the teaching of courses. [ADTL5]

One of the more obvious ways in which surveillance of teaching occurs within the law school is through the insistence that certain teaching initiatives not proceed unless and until permission is received from an administrative body. One interviewee, for example, described how changes to the assessment requirements within a subject could not be made until the requisite permission had been granted:

We've instituted a system whereby anybody who wants to make any amendments to, for example, the assessment requirements in their subjects must get that approved by the Quality Committee. [ADTL2]

Another interviewee stated that all subject outlines within the law school 'have to get approved by the relevant committee', and that all examination papers within the law school must be checked and approved:

Every exam in this place has to be scrutinised by another person who has to sign off on the exam ... [I]t's mandatory, they won't publish exams unless we have a declaration signed by the person who reviewed it that they've gone through that process. [ADTL3]

A third interviewee [ADTL4] referred to how all examination papers within the school are checked, and a fourth described their own role in checking examination papers:

I review every single exam paper before it goes through for finalisation. And sometimes I ask people to make amendments to their exam papers. [ADTL5]

Surveillance also occurs in the form of periodic evaluation by students of law subjects and the academics teaching them.⁷³ Many academics are obliged to procure written feedback from their students every semester and in every subject. Teaching evaluation processes are more than a means by which individual academics access feedback about their teaching for the purpose of personal

72 See Richard Johnstone, 'Evaluating Law Teaching: Towards the Improvement of Teaching or Performance Assessment?' (1990) 2 *Legal Education Review* 101, 102–3.

73 Johnstone and Vignaendra, above n 48, 439.

reflection; they are a surveillance technology used by school, faculty and university managers.⁷⁴ One interviewee explained how evaluation results are reviewed and acted upon:

[A]t the end of the process I get a summary of all the subject feedback surveys. For the last two years the students have completed them all online. So at the end of the semester after the results are all in that's when the academics get the results of the [surveys] and I go through all those summaries and check to see what the results are. And ... it's all done on means, and if an item has a poor mean then I go and have a look at the comments from the students and then I do the follow-up with the academic involved. [ADTL2]

Another explained that:

we have unit evaluations that are compulsory within the University and ... [p]eople who haven't done well in the unit evaluations, we ask them to develop ... unit improvement plans. [ADTL3]

Other examples of surveillance of teaching include the practice of requiring academics to seek peer assessment, the scrutiny to which academics are subjected during the process of applying for teaching awards, the practice of placing teaching materials online and accessible to all, and the recording of lectures. All of this surveillance leads to the propagation of educationalism because it is educationalism that offers the standards against which the teaching of academics can be judged, and it is educationalism that offers the solutions to any teaching problems uncovered by the surveillance.

C Rewards and Penalties

The third type of strategy employed in the regulation of teaching and the propagation of educationalism is the imposition and enforcement of *rewards and penalties*. The academic who obediently complies with teaching policy is rewarded with the praise of their supervisors and the cooperation of administrative staff.⁷⁵ The academic who dutifully arranges for their teaching to be regularly reviewed and evaluated by students is rewarded with the possibility of positive student feedback and, more importantly, with the enhanced likelihood of success in their application for a pay increment, tenure or promotion.⁷⁶ The academic who successfully incorporates educationalist concepts and teaching strategies into their teaching practice and who can describe and justify what they have done with appropriate references to the educationalist literature is rewarded with teaching awards and teaching grants. Corresponding examples of the penalties imposed upon academics for refusing to comply with administrative requirements or to adopt educationalist teaching strategies include criticism by supervisors, uncooperative administrative staff, negative student feedback, being passed over for pay rises and promotion, failing to receive awards, funding and grants, and, in extreme cases, failing to be reappointed.

74 Ibid 335.

75 Thornton writes that '[t]he corporatised university is one that favours and rewards those who are docile, that is, the head-nodders and the forelock-tuggers': Thornton, above n 50, 3.

76 Johnstone and Vignaendra, above n 48, 445.

One interviewee described in terms of rewards and penalties the ways in which the outcomes of compulsory student evaluations of teaching are acted upon:

And we have awards for, for instance, the high performing units. We also at the same time have low performing units. We are working with the people who haven't done well in those units ... and we look at what might be changed in the unit ... I forget what the score is but once they get below that particular score the university has 'traffic lights' for how people go. And once they're on one of the 'bad traffic lights', at the end of the day they basically will fill out a unit improvement plan and we'll monitor that. [ADTL3]

Another described a 'reward' granted to academics who enrol in the Graduate Certificate in Higher Education: a reduction in their teaching load [ADTL2]. A third interviewee described a 'penalty' imposed as a consequence of failure to comply with administrative requirements: confrontation by the Dean.

If there is persistent resistance or refusal to comply with deadlines, the academic would be spoken to by the Dean and it won't happen again. [ADTL1]

V RESISTANCE TO EDUCATIONALISM

The strategies described in the previous section – the explicit regulation of teaching, the normalisation and standardisation of educationalist concepts and practices, the surveillance of teaching, and the imposition of rewards and penalties – all seek to propagate educationalism and achieve the corporatist objectives described earlier: accountability, efficiency, marketability and growth. However, these strategies, like all strategies of power, are never completely successful, because they are inevitably resisted by many of the academics against whom they are enacted.

A Academic Resistance

Many advocates of educationalism appear to genuinely believe that it is an approach that results in benefits for all concerned. Teaching informed by educationalism is seen as leading to improved learning outcomes for students. By making academics more accountable about their teaching practices, educationalist teaching policies seek to ensure both the consistency and the quality of the teaching process. By making the teaching process more efficient, and by emphasising the impact of teaching practices upon the marketability of the law school, teaching policies are seen as enhancing the likelihood that the law school will continue to exist and that school staff will remain employed.

On the other hand, the rising level of regulation within the academy is not always welcomed by academics. A number of scholars have in recent years noted the impact of corporatism upon academics, describing how academics are increasingly feeling stressed, frustrated and demoralised as a consequence of

closer regulation of their behaviour and beliefs.⁷⁷ Resentment towards escalating regulation often becomes resistance, and resistance to regulation is particularly likely within the academy given the typical character of academics and the nature of academic work:

Trained in analytical thinking and inured to critique, academics are unlikely to passively accept changes they regard as detrimental. Academics are also intrinsically motivated by the *nature* of academic work. They identify – often passionately – with the tasks and goals that comprise the academic endeavour, and are therefore likely to resist erosion of valued aspects of their work.⁷⁸

Academics are employed by their institutions but they are far from typical ‘employees’. As professionals, they are expected – in fact, encouraged – to think independently, to work autonomously and to question what others may accept unthinkingly or take for granted. Taylor describes how the intellectual skills of academics make them less open to change strategies that rely on instruction, and how their intellectual skills and attitudes make them sceptical of ‘emotional exhortation to excellence or warnings of grim consequences if the status quo is retained’.⁷⁹ According to Anderson, ‘[a]cademics’ capacity – indeed, their perceived *responsibility* – to assess, analyse and criticize commonly [forms] the basis of their resistance to managerialist practices.’⁸⁰

According to four of the ADTLs, *legal* academics are even more likely to resist regulation than other academics:

I think law academics have a reputation for being more difficult to deal with. [ADTL2]

You’d think that we’d probably be more likely to complain because we probably hate procedures more than anyone given that that’s what we do day in, day out. [ADTL3]

[T]o some extent, law training is directed towards autonomous kinds of thinking and a sort of a fierce independence in the way that one carries out one’s work. [ADTL5]

I think that as lawyers, legal academics are more likely to be confrontational and adversarial. [ADTL6]

Each of the interviewees described negative attitudes by legal academics towards the educationalist regulation of their teaching. When asked if their colleagues ever saw regulation of their teaching as overly intrusive or

77 See, eg. Bronwyn Davies and Peter Bansel, ‘The Time of Their Lives? Academic Workers in Neoliberal Time(s)’ (2005) 14 *Health Sociology Review* 47; Pat Sikes, ‘Working in a “New” University: In the Shadow of the Research Assessment Exercise?’ (2006) 31 *Studies in Higher Education* 555.

78 Gina Anderson, ‘Mapping Academic Resistance in the Managerial University’ (2008) 15 *Organization* 251, 252 (emphasis in original).

79 Peter G Taylor, *Making Sense of Academic Life: Academics, Universities and Change* (The Society for Research into Higher Education and Open University Press, 1999) 79, quoting Paul R Trowler, *Academics Responding to Change: New Higher Education Frameworks and Academic Cultures* (The Society for Research into Higher Education and Open University Press, 1998) and Elaine Martin, *Changing Academic Work: Developing the Learning University* (The Society for Research into Higher Education and Open University Press, 1999).

80 Anderson, above n 78, 256 (emphasis in original).

inappropriate, the interviewee from the medium sized independent university responded as follows:

All of the time with some people, some of the time with most people. [ADTL4]

This interviewee explained the range of possible responses by academics to educationalist initiatives:

[T]here's a small proportion of people that are always early adopters and they care about innovation and care about students. In this particular context that's the kind of caring. But there's another kind of middle group that will go along but are not particularly keen, but they are compliant. And then there's always the other bottom third or something, or maybe less, maybe twenty per cent of really disaffected that are always going to be a problem to you with any kind of change strategy. [ADTL4]

The interviewee from the small regional university saw the attitude of their colleagues as much more accepting of educationalism and the regulation of their teaching. However, they also acknowledged that this positive attitude was not the case at every law school:

[T]here are members of staff in my experience who believe quite passionately that once they are employed as a law teacher, even if it's at level A, but certainly if they are employed at level C, D or E, that nobody should be questioning anything that they do or don't do within their own courses. That it's like a private domain and 'How dare you tell me what I should teach or how I should teach or how I should assess. And by the way don't ask me to teach all those skills because there's so much other stuff going on in this curriculum or in this course, and they're all so terribly important that I can't possibly do anything else.' [ADTL5]

In the following section, the specific types of resistance by legal academics are identified.

B Specific Forms of Resistance

In this section, the various forms of academic resistance identified by the ADTLs are categorised according to the work of Gina Anderson. According to Anderson, resistant practices engaged in by academics include both active and passive forms of resistance.⁸¹

Active forms of resistance include public resistance, direct resistance and refusal. *Public resistance* is resistance that takes place in a public or semi-public forum, such as the making of a public contribution to a government inquiry into higher education, or a verbal protest about university policy changes to senior university administrators in a large meeting.⁸² *Direct resistance* is resistance in the form of direct protests by academics to administrators about specific instances of regulation or in response to particular incidents, such as responding to an administrative request for information by asking challenging questions about the reasons for the request, responding to a survey request with a letter explaining why the survey will not be completed, or explicitly refusing to participate in a management interview about workloads.⁸³ *Refusal* is resistance to

81 Ibid, 257-66.

82 Ibid 257-8.

83 Ibid 259-60.

regulation in the form of a direct refusal by the academic to comply or cooperate with administrative directives, such as a refusal to comply with an administrative request to provide electronic versions of teaching materials, or a refusal to conduct student evaluations of teaching.⁸⁴

Some of the interviewees were able to offer examples of active resistance by their colleagues:

I can't think of a single staff meeting where at least one academic has not stood up and complained loudly about the escalating levels of regulation of their teaching. [ADTL6]

The Vice Chancellor, at the beginning of this curriculum renewal process ... was holding what he called 'town hall meetings'. And people were just constantly complaining ... [ADTL4]

[P]eople are not afraid to express their opinions in staff meetings or in the corridors. They will say if they think it is a waste of time or serves no obvious purpose. [ADTL1]

ADTL6 provided the following extract from an email they had received from a colleague in response to an administrative request:

I really struggle to see how 'curtailing' [sic] to bleeding hearts and administrators assists in the delivery of courses to students ... Having ECP deadlines in the middle of exam marking and exam submissions in the middle of mid-semester marking is ridiculous. Administration has a job to do but in a TEAM, consideration needs to be for all members.

'Passive' forms of resistance include avoidance and qualified compliance. *Avoidance* is resistance in the form of a failure to comply with administrative directives without directly refusing to do so. Examples include simply ignoring administrative requests, claiming to be too busy or to have forgotten about the request, and 'feigned ignorance', that is, pretending not to understand the request or how to comply with it.⁸⁵ *Qualified compliance* is resistance in the form of compliance with administrative directives in minimal, pragmatic, or strategic ways.⁸⁶

Most of the interviewees found it easy to identify examples of passive forms of resistance within their law schools:

[T]here are other delays as well as the usual grumbling. Sometimes people don't comply with deadlines or they complain that something isn't necessary. For example, some academics question the need to provide descriptions of the work required for particular grades; they say that everyone knows what needs to be done for a certain grade. [ADTL1]

[W]e've been through a very long process of embedding graduate attributes in particular subjects and making sure certain subjects target certain graduate attributes and that the assessment in the subject outline shows the link between that graduate attribute. And lots of people would say that 'yes, we have done that' but when you actually drill down through their subject outline you find it's not quite as explicit as you would have liked ... [ADTL2]

84 Ibid 260–1.

85 Ibid 262–4.

86 Ibid 264–6.

There are some academics in the school who every semester miss deadlines for completing electronic course profiles or setting up course websites, or who claim not to understand how to do it, or who don't respond to email requests for weeks at a time, or who ignore email requests completely. [ADTL6]

When asked about examples of passive resistance in their law school, one interviewee offered the following:

[W]hat I did is I, with the backing of the Dean, had a school meeting, formed the whole school into teams and I said 'We've got nine university graduate capabilities so I want nine teams and each team is going to come up with standards and ... sample rubrics for their capability.' ... People were allowed to choose where they went and who they worked with and what graduate capability they worked on. But out of those nine teams, within three months two teams had reported back to me with their work done and the other seven never, ever did, despite numerous and public reminders in meetings. [ADTL4]

Interestingly, some of the interviewees described engaging in acts of resistance themselves in relation to university-level regulation of teaching. Sometimes this resistance took the form of collective public resistance:

If there is a view that University requirements go too far I'm not afraid to communicate that to the University. The Associate Deans from all of the Faculties meet regularly and at that meeting we are not afraid to collectively let the University know that it is asking too much. [ADTL1]

More often it took the form of more passive forms of resistance such as avoidance:

I wouldn't refuse to comply or actually fail to comply ... but there are occasions where it is obvious that the University directive is not due to external pressure but is just an information gathering exercise and there would be no serious consequences if the information was received late. For example, at the moment we have been asked to provide certain information about teaching to the University but there is no deadline – just 'ASAP' – and since we have other pressing matters at the moment it will just have to wait. [ADTL1]

This suggests the possible existence of 'hierarchies of resistance': each administrator is also an administrated person, and at each level of management, the administrator given responsibility for administration and implementation resists regulation. In the case of many 'top-down' government initiated directives, the possibility that each university, faculty and school level delegate resists the directive to a greater or lesser degree may explain why, by the time it reaches the level of the individual subject or the individual teacher, it may have dissolved entirely.

C Causes of and Reasons for Resistance

Resistance to power is an inevitable, ever present aspect of the exercise of power. According to Foucault, whenever power is exercised, resistance is formed:

Where there is power there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power ... These points of resistance are present everywhere in the power network.⁸⁷

Every attempt at regulation provokes resistance. This resistance is sometimes large-scale, explicit and organised, but more often it is small-scale, implicit and spontaneous. This is apparently the case within most institutions and organisations. According to Prasad and Prasad, there is 'a multitude of less visible and often unplanned oppositional practices in the everyday world of organisations'.⁸⁸ According to Thomas and Davies, there are 'routinized, informal and often inconspicuous forms of resistance in everyday practice'.⁸⁹ Knights and Vurdubakis insist that everyday forms of resistance in the workplace have a significant impact on organisational and labour relations.⁹⁰ And according to Scott, everyday forms of resistance are more widespread, and often more effective, than direct, confrontational forms of resistance,⁹¹ and that 'frontal assaults are [often] precluded by the realities of power'.⁹² Scott refers to these small-scale forms of resistance as the 'weapons of the weak', the 'ordinary weapons of relatively powerless groups'.⁹³

In the words of Foucault:

[T]here is no single locus of great Refusal, no soul of revolt, source of all rebellions, or pure law of the revolutionary. Instead there is a plurality of resistances, each of them a special case: resistances that are possible, necessary, improbable; others that are spontaneous, savage, solitary, concerted, rampant or violent; still others that are quick to compromise, interested, or sacrificial ...⁹⁴

The multiple acts of small-scale resistance to educationalism that take place within the law school are not discrete and isolated from each other. They often share certain discursive foundations. A complaint made in the corridor about over-regulation, a refusal to conduct a teaching evaluation and the late submission of an examination question paper may be related by a common justification for the particular acts of small-scale resistance. It is not the case, however, that there is a single discourse of resistance uniting all of the acts of resistance to educationalism. A discursive field rarely consists of a simple

87 Foucault, above n 15, 96. See also Michel Foucault, 'Power and Strategies' in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings 1972–1977* (Colin Gordon et al trans, Pantheon Books, 1980) 134, 142.

88 Anshuman Prasad and Pushkala Prasad, 'Everyday Struggles at the Workplace: The Nature and Implications of Routine Resistance in Contemporary Organizations' in Peter A Bamberger and William J Sonnenstuhl (eds), *Research in the Sociology of Organizations: Deviance in and of Organizations* (JAI Press, 1998) 225, 227.

89 Robyn Thomas and Annette Davies, 'Theorizing the Micro-Politics of Resistance: New Public Management and Managerial Identities in the UK Public Services' (2005) 26 *Organization Studies* 683, 686.

90 Knights and Vurdubakis, above n 19.

91 James Scott, 'Everyday Forms of Peasant Resistance' in James C Scott and Benedict J Tria Kerkvliet (eds), *Everyday Forms of Peasant Resistance in South-East Asia* (Frank Cass, 1986) 5, 8.

92 James Scott, *Domination and the Arts of Resistance* (Yale University Press, 1990) 192.

93 Scott, above n 91, 6, 22.

94 Foucault, above n 15, 95–6.

competition between a single dominant discourse and a single resistant discourse. A discursive field is typically a dynamic and unstable confusion of contesting and cooperating discourses and resistances. As Foucault insists,

we must not imagine a world of discourse divided between accepted discourse and excluded discourse, or between the dominant discourse and the dominated one; but as a multiplicity of discursive elements that can come into play in various strategies.⁹⁵

Hence the point made at the beginning of this article that Australian legal education is characterised by the tension between numerous legal education discourses. The focus of this article is upon educationalism, but educationalism is not a single dominant discourse provoking a single discourse of resistance. Rather, it is part of a complex and fluid network of competing discourses.

What, then, are the ‘discourses of resistance’ provoked into existence by the propagation of educationalism and which unite the various acts of small-scale resistance? Many of the ADTLs interviewed for this article described similar justifications for the various forms of resistance to educationalism encountered within the law school.

All of the interviewees referred to *academic freedom*: resistant academics see educationalism as an unwelcome and inappropriate intrusion upon their individual liberty. With its emphasis upon individual rights and individual freedom, this is a discourse that shares many of its characteristics with liberalism. It is characterised by an insistence by many academics that they can and should be trusted to do the right thing instead of being told precisely what to do.

I think ... lots of academics don't like being told what to do. They'd much prefer just to be able to do what they want to do. They believe and they probably do have the students' best interests at heart. I don't have any worries [that] any of the academics aren't concerned about students' wellbeing and making sure they get a good subject delivered. But I just think they'd prefer to do it on their own terms, how and when they want to do it. [ADTL2]

I think there is a sense that there is no reason for the university to regulate teaching that closely, that 'I'm a professional and I should be free to teach in the way that I see fit'. [ADTL1]

The ideal of academic freedom is one that has been associated with academic life for a very long time,⁹⁶ and it is one that still carries considerable weight within the contemporary law school.⁹⁷ One ADTL, however, was extremely critical of this discourse of academic freedom:

I think the biggest problem is 'academic freedom'. I think it is a shield for the lazy and the uncooperative and ... it's not used in a way that it ought to be used, I think. I think it is like the corporate veil, it allows so much to go on behind it that shouldn't be going on. [ADTL4]

A second discourse of resistance relates to *academic identity*: many resistant academics see themselves as researchers rather than teachers and many of the

⁹⁵ Ibid 100.

⁹⁶ Conrad Russell, *Academic Freedom* (Routledge, 1993).

⁹⁷ Robert R Kuehn and Peter A Joy, 'Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility' (2009) 59 *Journal of Legal Education* 97.

regulatory requirements imposed upon their teaching practices oblige them to engage in activities and acquire knowledge that is inconsistent with this identity.⁹⁸ As one interviewee explained, much of the resistance by academics to educationalism is a result of

defining oneself as a lawyer, an engineer, a historian rather than an educator, or rather than having a co-definition. [ADTL4]

This discourse is frequently characterised by complaints about workload and lack of time: maintaining an identity as a researcher is so time-consuming that it is unfair and inappropriate for academics to also be expected to be teachers.

People are very conscious that there is this division of their time between teaching and learning and research, and then community contribution. So there is this tension, 'If I have to spend more time on my subject and in my teaching preparation and preparing new exams every semester, then that's less time that I have to be finishing an article or doing some further research.' [ADTL2]

Finally, some of the interviewees referred to a discourse of *anti-educationalism*: a discourse that is explicitly critical of educationalism and which questions its relevance to the teaching of law, preferring to continue with traditional, doctrinal approaches. Feinman and Feldman claim that many legal academics are 'anti-intellectual' about the process of legal education, and explain that this anti-intellectualism

is characterized by an unwillingness to reflect on the goals of legal education, the content of the curriculum, the methods of teaching, and the ability of law school graduates to practice law competently. At most law schools, the purposes and methods of teaching are regarded as unfruitful, if not unfit, topics for conversation.⁹⁹

Anti-educationalism is often fuelled by an ignorance of educationalist scholarship and objectives. Academics justify their resistance to educationalist initiatives by insisting that they should not – and will not – comply with a regulation that they do not perceive as having a legitimate, rational purpose. Observations by the ADTLs included the following:

They often do not understand the reasons behind the regulation. [ADTL1]

They haven't received any formal training in terms of pedagogy ... They've sort of learnt on the job, so they don't have any theoretical basis for trying to understand why you might do something this way rather than some other particular way. [ADTL2]

[V]ery often in legal academia we have colleagues who really have no idea about quality practice in learning and teaching and yet they believe that they know it all ... 'What can an educationalist tell me for heaven's sake? I'm a lawyer. I know my work. I know how to teach students. I'll stand in the class and give them stories and anecdotes and that's good teaching.' They just seem to be trapped into a mindset which precludes them from recognising that their own teaching practice is often severely limited. [ADTL5]

98 Cownie, above n 46, 44.

99 Jay Feinman and Marc Feldman, 'Pedagogy and Politics' (1985) 73 *Georgetown Law Journal* 875, 875. Feinman and Feldman were writing about US legal education, but their comments are of direct relevance to Australian legal academics.

The traditional reluctance by legal academics to engage with educationalist scholarship – or to even discuss their teaching – has long been noted. As Karl Llewellyn put it in his 1935 article, ‘On What Is Wrong with So-Called Legal Education’:

But as to *method* of teaching – there we balk at communication, we balk at analysis. This is idiocy, plain and drooling.¹⁰⁰

A familiarity with educationalist scholarship does not, however, preclude an anti-educationalist position. As one ADTL observed:

I think that in law in particular, and it may well be this applies in other disciplines, there is a sort of a traditional aversion to learning and teaching scholarship. So much so actually that from time to time I’ve actually seen law people almost trivialising the literature on learning and teaching as if it’s something for beginners that doesn’t apply to ‘we the experts’. [ADTL5]

Two of the ADTLs (both from large Group of Eight universities) even favoured such an anti-educationalist discourse themselves:

I think that a lot of that literature is generalist and doesn’t really apply to the law school context. There is a need to translate the scholarship into a legal context and it doesn’t always fit. [ADTL1]

I’m a [winner of a prestigious teaching award] and I have no education training or anything like that. And I don’t necessarily think teaching pedagogy necessarily drives how we should be teaching law students ... I’ve practiced for many years and I think that makes me a good teacher. It’s actually got nothing to do with teaching. It’s got to do with understanding the law in my field. [ADTL3]

These last few comments, demonstrating a degree of anti-educationalism on the part of the ADTLs themselves, reinforces the notion posited earlier in the article about the existence of ‘hierarchies of resistance’, where managers and administrators responsible for regulating teaching in a particular way are themselves resisting the directives issued by more senior managers and administrators. When the implementation of university-level or national-level teaching initiatives is left to school-level and subject-level academics who are ignorant of or even opposed to educationalism itself, it should perhaps come as no surprise that those initiatives are so frequently delayed, diluted or ignored entirely.

VI CONCLUSION

This article has examined resistance by legal academics to educationalism, a discourse that advocates the adoption of teaching concepts and practices from the discipline of education. Educationalism has become increasingly prominent within Australian legal education in the last two decades, largely as a result of the appropriation of educationalist principles by university, faculty and school policy-makers and managers.

100 K N Llewellyn, ‘On What Is Wrong with So-Called Legal Education’ (1935) 35 *Columbia Law Review* 651, 677 (emphasis in original).

The interviews with ADTLs conducted for this article confirmed many of the key points about discourse and resistance made in the literature. Decision-makers at various levels are increasingly reliant upon corporatist strategies – normalisation and standardisation, the surveillance of teaching, and the imposition of rewards and penalties – to promote and propagate educationalism within law schools. These strategies are resisted by many legal academics, who engage in resistant practices ranging from active resistance to passive resistance. The extent of these resistant practices varies from school to school: in some law schools they are relatively rare and it appears that most of the academics are willing to cooperate with educationalist initiatives, while in other schools they are far more widespread. The resistant discourses that inform these resistant practices include discourses of academic freedom, by which legal academics insist upon being left alone to decide for themselves how best to teach their subjects; academic identity, by which academics insist upon identifying as researchers and disciplinary experts rather than teachers and educators; and anti-educationalism, by which resistant academics explicitly oppose educationalism and question its relevance to the teaching of law.

The reader may be disappointed that this article does not include any description of ways to overcome resistance to educationalism within the legal academy. While the various interviewees did offer suggestions about overcoming or at least minimising resistance, they will not be explored in this article because to do so would be to contradict the ideological neutrality described earlier. This article is not supportive of or opposed to educationalism, nor is it supportive of or opposed to resistance to educationalism. It seeks simply to describe and explain the tension that exists between these two positions.

Resistance to educationalism can never be abolished within a law school, nor should it: it seems appropriate, if not unavoidable, that any discourse within the academy – even one with apparent pedagogical merits – be questioned, challenged and even opposed by alternative discourses and points of view. However, any such conflict between educationalism and other discourses should be characterised by an informed debate. Both the policy makers and the academics themselves have an obligation to ensure that debates about the regulation of teaching are informed by at least some familiarity with the educationalist literature, even if the principles espoused by that literature are not accepted as decisive. Anti-educationalism that is an unthinking reaction to efforts to regulate teaching or is a result of ignorance of educationalist scholarship and principles has no place within the legal academy.

APPENDIX A – INTERVIEW QUESTIONS

1. What is your role in facilitating good teaching within your School or Faculty?
2. In what ways do you regulate the teaching within your School or Faculty, that is, directly influence the teaching practices of your colleagues?
3. How are you seen by your colleagues?
4. Are there occasions when regulation is seen by your colleagues as overly or inappropriately intrusive? Please provide details.
5. Have you ever, as Associate Dean, made an individual objection about over regulation?
6. Have you ever engaged in avoidance or delay?
7. Have your colleagues ever:
 - a. openly objected to regulation in a public forum?
 - b. privately objected to regulation in direct communication with you?
 - c. explicitly refused to comply with regulation?
 - d. avoided complying with regulation in some way?
 - e. simply ignored regulation?
8. What do you believe were the reasons for your colleagues engaging in such resistance?
9. Do you think there is a connection between academic resistance and an unfamiliarity with educational scholarship and pedagogical notions such as student centred teaching?
10. What about ‘academic freedom’?
11. Were there any consequences of such resistance? What were they?
12. Have you successfully introduced a teaching related reform in your School or Faculty? What was it? Why do you think it was successful? How were you able to deal with the resistance of your colleagues?
13. Is there anything about the discipline of law that makes legal academics more likely or less likely to engage in resistance?