Legal Education for Law Reform

—Archana Parashar*

This article analyses the role of the Law Commission of India (hereinafter referred to as 'LCI') and its effectiveness as an institution. The central question being explored is whether or not the rectification of flaws in how the LCI reaches its conclusions and recommendations itself make it a successful institution. The article answers this question in the negative by criticizing the replication of the instrumental understanding of law and regarding it as responsible for perpetuating myths of pre-constituted laws. This critique is not of the LCI as much as it is of the conception of knowledge that is used widely at this juncture. The article recognizes the necessity of creation of a space that would allow us to question how law is constituted in discourse. Herein, the article suggests that there is potential for changing the discourse revolving around legal education through re-conceptualization of knowledge as a process of construction of meaning rather than following a strictly positivist approach. The article also recognizes the need for a shift in focus from the capabilities of institutions to achieving a fundamentally wider conception of law and reform at the level of legal education by adopting an interdisciplinary and theoretical approach to education that enables self-reflexive responsibility in the construction of legal knowledge.

I. Introduction

The LCI is a significant legal institution and for that reason, it merits a close scrutiny of its functions. It is therefore somewhat surprising that so little has been written about the LCI. Professor Sarkar's study of the functioning and reports of the LCI is one of the two main studies conducted on the institution.[1] The other is by Upendra Baxi, in the form of a chapter in his review of the Indian legal system.[2] Both authors lament the structural flaws in how the institution is constituted and thus fails to deliver effective proposals for law reform. In this article, I will argue that it may be possible that the identified

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1 Lotika Sarkar, *National Specialised Agencies and Women's Equality: Law Commission of India* (Centre for Women's Development, New Delhi, 1988).

2 Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas, New Delhi, 1982).

shortcomings of the LCI can be fixed at a structural or institutional level but at an ideational level, a lot remains to be done. A broader understanding of law is required to initiate a serious discussion of how law may be 'reformed'. Otherwise, law reform will remain an instrumental enterprise invoking the modernist assumptions about the nature of law. In view of the post-structural ideas about the constituted nature of knowledge, it is incumbent on legal thinkers to engage with issues of how legal discourse is formed. However, such an enquiry about legal knowledge can only be possible if legal education is reconceptualised to engage with issues of knowledge formation. I will use aspects of the 184th Report of the LCI[3] on Legal Education to illustrate my argument.

The article is divided into three broad parts. In Part I, a short overview of the institution of Law Reform Commissions (hereinafter referred to as 'LRCs') in a few common law countries is provided. This overview will serve as a background to situate the discussion about the functioning of the LCI in Part II. In this part, a brief survey of the kinds of projects undertaken by the LCI is used to argue that the LCI primarily uses a positivist concept of law and thus, of law reform. In Part III, an argument will be developed that there is a need to reconceptualise the project of law reform. However, this requires a change in the discourse about and of law. There may be many sites for such reconstruction of legal discourse and thus, legal knowledge, but one of the primary sites is that of legal education. Therefore, the design of legal education is crucial in recasting the debate about law reform. Post-structural arguments including feminist scholarship can offer a way forward. In this part, a close analysis of the LCI Report on legal education will illustrate these arguments.

II. The Concept of Law Reform Commissions

LRCs are a part of the common law landscape and in part, a reflection of the need to systemise law that develops through judicial precedents. This is in contrast to the civil law systems that rely on codification in a more systematic manner. Alternative explanations for the existence of LRCs include the modern faith in the possibility of systematizing law in a scientific manner and the aspiration to make law serve the cause of social justice. All of these ideas are present in the literature and are discussed briefly below.

Historically, it is accepted that the LRCs in England commenced in their modern form as a result of the enactment of the Law Commissions Act, 1965.[4] However, institutions concerned with the specific task of law reform

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[3] 184th Law Commission of India Report, The Legal Education & Professional Training and professional training and proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956, (2002).

[4] William H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (Edmonton: Juriliber, 1986).

existed prior to this legislation as well. For example, Hurlburt mentions the Law Revision Committee of 1934 as one of the earliest institutions.[5] A permanent and firm institutional base was only provided by the Law Commissions Act of 1965[6] that set up the English and the Scottish Commissions respectively. It is worth noting that the colonial administrators from the 19th century onwards robustly tried the concept of law reform in India.[7] Similarly the presence of law reform bodies in the erstwhile colonies of Australia is a reflection of the contemporary attitudes in England. One of the earliest bodies in this respect was the New South Wales Law Reform Commission of 1870 that was followed in 1920 by the appointment of a Law Commissioner and in time replaced by the appointment of a judge to report on law reform issues in 1932. In most other colonies/states, similar bodies were set up in step with the model of the Law Revision Committee 1934.

Another plausible explanation for the LRCs is that they represent the modernist aspiration to make law as scientific as possible. As a result of relying on this view, the imperfections of law can be eliminated by a systematic analysis of and improvement of law.[8] One recurrent theme in this way of thinking is that law can be made more responsive to the needs of the marginalised sections of society and, in that sense, serve the function of achieving social justice. In brief, this can be seen as the common thread running through the institution of more recent specialised bodies of law reform. The 1965 Act[9] in Britain serves as the archetype. For example, in Australia, a commonwealth initiative saw the establishment of the Law Reform Commission in 1973.[10] As a statutory body, the Australian Law Reform Commission (hereinafter referred to as 'ALRC') enjoys independence from the government of the day but it remains an agency in the Attorney General's Department. Moreover, within the provisions of the Act, it undertakes references or enquiries at the request of the Attorney General rather than having the option to choose to pursue any matter of interest.

Within Australian legal scholarship, there are many examples of the optimism about the possibility to reform law through such specialized bodies.[11]

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5 Law Commission of Ontario, *The LCO's Approach to Law Reform*, available at http://ozdev-1.osgoode.yorku.ca/fr/node/1671, Law Commission of Ontario (last visited on September 16, 2001).

6 Law Commission Act, 1965, c. 22 (Eng).

7 Discussed in the following section of this article.

8 For a general introduction *see* Joel F. Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (New York: Academic Press, 1979).

9 *Supra,* note 7.

10 This was done under the Law Reform Commission Act, 1973 (Cth). It was subsequently reconstituted under another statute, the Australian Law Reform Commission Act, 1996 (Cth).

11 Michael Kirby, *Reform the Law: Essays on the Renewal of the Australian Legal System* (Melbourne: Oxford University Press, 1983); M. Kirby, *The Law Reform Commission and the Essence of Australia*, 70 Reform 60-61 (2000); Ronald Sackville, *The Role of Law Reform Agencies in Australia*, 59 Aust. L.J. 151 (1985).

The success and high visibility of the commonwealth's ALRC is sometimes attributed in part to its high profile first Commissioner, Justice Michael Kirby. In his own words the ALRC was concerned with:

> *"…first Aboriginal Australians and Torres Strait Islanders, too often the victims of the inequality of the law as it works in practice; women; the young and the aged; the humble citizen overborne by big and powerful government; the insolvent and those who cannot cope with the credit economy; consumers; victims of domestic violence; people dislocated by marriage breakdowns and property disputes; an accused criminal suspect facing the mighty power of the state; a brave citizen who makes a complaint against police; prisoners; members of our multicultural society not fluent in English - in short, the people who otherwise often lose out in the law. They were all a major focus of the ALRC's early endeavours. Justice for them was an important motivation of the Commission."*[12]

He goes on to say that equal justice under law is an aspiration yet to be realised in Australia. This fact notwithstanding, the optimistic view about law reform and LRCs, however, has undergone a revision in many of the countries and there prevails now an atmosphere of questioning the necessity or utility of LRCs. It may be explainable as an effect of the ascendance of the neoliberal discourse that calls for the state to retreat from many of its social welfare functions. For example, in an article titled 'The Changing Fortunes of Law Reform Commissions', Tilbury traces these developments.[13] He, in another context, says that as a consequence of the dominance of this discourse, in 1990s, in many jurisdictions, LRCs as permanent bodies have been abolished or reduced in size.[14]

The issue therefore is whether this is a desirable or undesirable development and whether any justification can be found for the continued relevance of LRCs. This is particularly so as many other governmental agencies engage in the process of law reform, e.g., the Parliamentary legislative committees. Tilbury seeks to answer this question by saying that there are two ways of approaching this issue: either we can ignore the models of various LRCs

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[12] Kirby, *The Law Reform Commission*, *id*., 61; *See also*, The House of Representatives Standing Committee on Legal and Constitutional Affairs Report, *Law Reform – The Challenge Continues: A Report of the Inquiry into the role and Function of the Law Reform Commission of Australia*, (Canberra 1994).

[13] Michael Tilbury, *The Changing Fortunes of Law Reform Commissions*, 19 Alternative L J. 202(1994); However, the main message in this article is that LRCs have weathered the worst and are again in favour. I will return to this issue later. *See also*, Roderick Macdonald, *Recommissioning Law Reform*, 35 Alberta L. Rev. 831, 839-40 (1997) (For another set of explanations for the declining and regaining fortunes of LRCs in Canada).

[14] Michael Tilbury, *Why Law Reform Commissions? : A Deconstruction and Stakeholder Analysis From an Australian Perspective*, 23 Windsor Yearbook Access Just. 313 (2005).

and compare their functions; or we can compare the models themselves.[15] He accepts the first option as the only viable option to find justifications for the LRCs but then admits that it is not really possible to articulate these functions with precision and cohesion. Moreover, the two approaches have to be pursued simultaneously and even then the justifications for the existence of LRCs have to be a combination of the stated functions (often in the founding statutes) and the interpretation of such functions in their structures and practices. After reviewing the examples from Australia and Canada, he argues that the function of LRCs can only be to provide policy advice, because unlike the legislatures, they do not make laws and unlike the courts, they do not decide disputes.[16] He goes on to say that it is not feasible to compare LRCs in many Asian and African countries as the political, economic, and social conditions that they deal with are very different than those prevailing in the Western countries like Australia and Canada.[17]

This observation brings me to the next part of this article that deals with the LCI. In assessing the function of this institution in India, one of the pertinent questions is whether the LCI is a replica of its counterparts in other common law countries, or is it tailored and adapted for its particular context.

III. Law Commission of India

The LCI has not been a major focus of analysis by legal scholars with two notable exceptions mentioned above.[18] The history of Law Commissions in India may be divided into two distinct phases, viz. during colonial time, and after India became an independent country. Of necessity, the aims of these institutions must have been different as well.[19] In this article, I will focus primarily on the institution since the independent state was constituted.

It is commonly mentioned that the colonial administrators realised early on that the laws in operation in different parts of India were many and varied. The first Law Commission was constituted in 1834 to codify the substantive and procedural laws and it used the then prevailing British laws as its source of ideas.[20] Three more Law Commissions were appointed during the colonial rule and it is generally accepted that the British utilitarian ideas that could not be adopted in England were put into practice in colonial India.[21] One legacy

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15 *Id*., 324.

16 *Id*., 324

17 *Id*., 329; (Tilbury also talks about the relevance of the intellectual roots of Law reform in any jurisdiction and I will return to his analysis in part III of this article).

18 Sarkar, *supra* note 1; Baxi, *supra* note 2.

19 Also stated in the 14th Report of the LCI. For a more detailed explanation *see* 14th Law Commission of India Report, *Reform of the Judicial Administration*, (1958) at 16.

20 Mahendra Pal Singh, Outlines of Indian Legal and Constitutional History, 106, (Universal Law Publishing, 8th ed., 2006).

21 Eric Stokes, The English Utilitarians and India (Oxford University Press, London, 1959).

of these colonial measures has been that we continue to be governed by laws and legal system closely modelled on the then British laws.

However, after gaining independence, there was some reluctance on the part of the decision makers to create a permanent body for law reform[22] and it was only in 1955 that the first Law Commission was formed. Lotika Sarkar explains that at the same time, the Government of India had created several specialised agencies to meet the needs of development in particular sectors and most of them were established through Acts of Parliament.[23] However, the LCI was not given a statutory base and even now is constituted by the Cabinet. It is a part of the Law Ministry in the Central government.

Sarkar has identified major structural issues with the constitution and functioning of the LCI. Since there is no statutory provision, a Commission is constituted every three years. The terms of reference, composition, and the proposed methods of functioning are rarely, if at all, made public. As a consequence, the functioning of the LCI fails to be transparent. For example, since the terms of reference are not made known either by the Ministry or by the LCI, any assessment of how the issues are selected remains unscrutinised. Moreover, the LCI can and does sometimes decide to take up an issue *suo motu* but does not have to explain the basis for its decision. As a result, most of the reports are in mainstream areas rather than dealing with issues of social justice concerning the marginalized sections of society. Similarly, the membership of the Commission has varied over time. Initially part-time members were appointed but over the years a convention has developed that the Chairman of the Commission is a retired judge. There is very little effort to include as members either legal scholars or academics from other social sciences.

The methods of functioning of LCI are equally inscrutable. There is no evident effort made to choose and justify a particular method of research in any topic. It is evident that often, not always, questionnaires are sent to concerned persons and the responses considered before a report is finalized. However, there is no justification provided as to why this particular method of collecting information is chosen as the exclusive method. Moreover, how the information is interpreted and whether it is impressionistic understanding or statistical methods of analysis that are used remains unarticulated. It is not surprising therefore, that the recommendations for changing the relevant laws are often not supported with substantive arguments. Many a time, the recommendations verge on being the personal preferred position of the relevant commissioner. Baxi has described this as a culture of dogmatism and arbitrariness prevailing in the LCI. He asserts that the commissioners often fail to give reasons for their recommendations and do not cite or consult relevant

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[22] Singh, *supra* note 20, at 113-114.

[23] Sarkar, *supra* note 1, at xx.

scholarship.[24] Sarkar suggests that it would be useful if the working paper drafted by the Member Secretary with the assistance of research staff could be circulated widely. In this way, persons working in an area could make their expertise and views known to the commission.[25]

The question I wish to pose however is that even if it were possible that the identified flaws in how the LCI reaches its conclusions and makes recommendations for reform could be rectified, would that make the LCI a more effective or more successful institution? It is obvious that how effectiveness or success is measured is itself a contentious issue but more fundamentally, we need to ask what concept of law is deployed in talking about law reform. This is necessary so that a space can be created for asking how law is constituted in discourse. Otherwise we will keep replicating the instrumental understanding of law and participate in perpetuating the myth of a pre-constituted law.

A brief survey of all the Reports prepared by the LCI since Indian independence illustrates that the task of law reform is mainly conceptualised as either reforming specific areas of substantive law or institutional, including judicial restructuring.[26] For example, information gathered only from the titles of various reports of the Law Commission show that reports directed at recommending specific amendments to various statutes are the majority of reports.[27] Approximately 130 reports have a reference to a legislative Act or a specific area of law requiring the enactment of legislation.[28] Another 35 reports can be described as dealing with aspects of rules required as procedural rules or in the areas of law governed by general rules of common law. About 62 reports can be identified as addressing issues of institutional change, mostly dealing with aspects of the judiciary, the legal profession, and conceptualizing new institutions.[29] It is also the case that the subject matter of reports often reflects the interests of the Commissioners.[30] The volume of work produced can also vary immensely.[31]

Legal education, as a main topic of a report, is identified in only one report while the subject is addressed in a few other reports. For example, the

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[24] Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas, New Delhi, 1982); Baxi, *supra* note 2, at 264-266.

[25] Sarkar, *supra* note 1, at 22.

[26] This information is taken from the official website of the Law Commission and there is some overlap in counting a report as in one category or another. For further information), *see http://www.lawcommissionofindia.nic.in/main.htm#a7* (Law Commission of India), available at http://www.lawcommissionofindia.nic.in/main.htm#a7; *See also*, Baxi, *supra* note 2, at 258 (For a tabulation of the available reports as dealing with various broad areas).

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* For instance, the Eleventh Law Commission's emphasis on institutional reform is evident in that 17 of its reports deal with this area.

[31] *Id;* For example, the Eighteenth Law Commission produced 32 reports in a period of approximately three years.

reports addressing judicial institutions could be included as invoking a particular conception of legal education. The 117th Report[32] deals with the issues of setting up a judicial academy, the syllabus, and the faculty for such an institution. However, it does not refer to the level of education available in the law schools or faculties that train the lawyers in the first place. The disconnect between teaching and training can only exacerbate the issue of how legal knowledge is conceptualized.

In another example, in the 14th Report,[33] a review of the then existing state of affairs is deplored and, among other things, it is stated that the antithesis between academic legal education and training for the law profession needs to be abandoned. The report suggests that our needs will be served by first subjecting "our young men who have received a liberal education to University courses in law which will teach them the science of law and the principles underlying..." and that the law graduate should have a mastery of legal theory and legal principles.[34] The emphasis on science of law may be read as an exhortation to include theoretical analyses of law, as the report goes on to differentiate between the needs of a law student who wishes to pursue a professional career and one who wants to become an academician. The relevant point for this paper, however, is that this is an eclectic view of the particular Law Commissioner. The report does not explain how the author comes to these conclusions, what are the research methods or results that enable these conclusions, or what is the philosophy of education being promoted. How the various Law Commissioners write their reports has not resulted in an institutional ethos of legal research necessary to make various recommendations.

It is no doubt true that the Law Commission has from time to time, addressed issues related to legal education,[35] but its ideas about education are also informed by the overarching view of law in positivist terms. That is, law is a tangible or easily identifiable body of knowledge and it is for us to decide how to impart this knowledge to the students of law. I will illustrate this in detail in the next part but I wish to emphasize here that this critique is not of the institution as much as of the conception of knowledge that is used widely. In contrast, I wish to suggest that there is real potential for changing the legal profession, scholarship, and institutions if we could conceptualize knowledge as a process of construction of meaning and one in which all of us participate continually. This is the topic for the following part.

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[32] 114th Law Commission Report, *Report on the Training of Judicial Officers*, (1986).

[33] *Supra*, note 23, at 520-555.

[34] *Id*., 525.

[35] There are many reports of different government bodies that discuss aspects of legal education but that is not the main topic here and for that reason I will not review the extensive literature. Although I am troubled by the emphasis on legal education as clinical education and the curricula of the stand alone national law schools are similarly unable or unwilling to integrate a broader conception of knowledge as informing their programs.

IV. Discourse of Law and Reform

In this part, I explain how the discourse of law reform assumes a positivist understanding of law. This is amply illustrated in the proposals that generally come out of the law reform inquiries and are also present in the scholarship related to these agencies.[36] In the following discussion, I use the arguments by two authors about the continued relevance of LRCs. In the context of their suggestions, I argue that rather than focussing on what these institutions can or should do, a wider conception of law should be adopted at the level of legal education. This is important as it is in legal education that habits of thinking about law are formed. Moreover, the conception of legal knowledge that is relied upon prevents one from understanding how legal discourse is constituted. In the last section, the LCI's report on Legal Education is critiqued for its narrow conception of law and legal education. It is not a particular shortcoming of the Chairperson or members of the LCI, but more an illustration of how their understanding of law is constituted by their context and education. Feminist insights into the situated nature of all knowledge can help us rethink our conceptions of law.

The literature assessing the functions and fortunes of LRCs in Australia and Canada shares optimism about the continued relevance of the institution. For the following discussion, I will use two different viewpoints as examples and will not survey the literature broadly. Tilbury,[37] as mentioned above, takes the position that the explanation for the success of the ALRC lies in its wide consultation in its work. Briefly, he argues that it is the methodology of institutional law reform that explains the success of the institution in Australia. The method of engaging with the community, including consulting with interest groups widely, was adopted by Justice Kirby as the Chairman of ALRC.[38] In another context, Tilbury argues that the success of Australian law reform institutions has to be understood in the intellectual foundations of law reform in various institutions. He says that these foundations are firmly rooted in sociological jurisprudence that sees law as situated in society. This is closely aligned to the sociology of law movement or the scientific study of law as a means of social control. Among other things, this has meant that the LRCs in Australia have not focussed only on lawyers' law and engaged with issues of policy, social policy or political questions.[39] He compares this with the focus in England where similar institutions have adopted a more positivist understanding of law and a corollary to that is very little influence of social sciences

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[36] *See* for example, a collection of essays *in* The Promise of Law Reform (Brian Opeskin & David Weisbrot eds., Federation Press, 2005).

[37] Tilbury, *supra* note 13.

[38] Tilbury, *supra* note 13; (For a discussion of how the methods of public consultation can vary widely); =*See also* Brian Opeskin, *Engaging the public - community participation in the genetic information inquiry*, 80 Aus. L. Reform Com. Reform J. 53 (2002).

[39] Tilbury, *supra* note 13, at 330, 332; (He goes on to argue that the distinctive function of LRCs must be to provide independent and informed advice).

is accepted in legal literature and practice. I take this observation to mean that the English institutions of law reform have been relatively less successful because they have confined their attention to technical aspects of law and not incorporated in their work the wider policy issues and this is because of the narrow positivist understanding of law as an autonomous and closed system. Thus, the reform proposals can suggest changes without having to engage with the social aspects of any issue. Typically, the changes in legislation are suggested in view of the identified shortcomings but there is no effort made at understanding the wider social context that may have contributed to the laws not working well. The legal thinkers have the option of saying that 'non-legal' issues are not their concern.

Macdonald picks up a similar theme when he addresses the continued relevance of the LRCs in Canada.[40] He argues that a broader conception of the law is required than that adopted in instrumental law reform programs.[41] In a nuanced argument he develops the idea that law is more than what is found in the texts of legislation. He says that the contemporary challenge is to situate the law reform activity in a wider context than the office of the institution or the textuality of law.[42] This further necessitates a recasting of our understanding of law and accordingly would require that we refocus our ambitions of law reform. Moreover, it is necessary to adopt a more heterogeneous view of where ownership of legal knowledge resides. Thus, law is not only state law and LRCs can and should conceive of law in pluralistic terms. It follows that law reform in this understanding will not be about statutes but would involve asking 'better' questions.[43]

In both cases, the authors are asking for a broader understanding of what constitutes law. In slightly different ways both of them are saying that the understanding of law used by the LRCs has to be broader than the positivist understanding and it should also move beyond a fixation with a statist view of law. In the discussion below, I address the two separate though interrelated issues, i.e., this need to argue for a broader conception of law and the sites of such contestations. My aim is to demonstrate that a change in the discourse of law is necessary. If it is accepted that the discourse of law needs to change, then it has to happen at multiple sites. However, the primary site for such a reflexive change must be the ideas about what constitutes adequate legal education. Therefore, for any change to happen in the legal discourse, it is necessary to examine and modify the way legal education is conceptualised.

The first issue concerns the fact that the positivist and the modernist ways of thinking and talking about law continue to be the dominant discourse

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[40] Roderick Macdonald, *Recommissioning Law Reform*, 35(4) Alberta L. Rev. 831(1997).
[41] *Id*.
[42] *Id*.
[43] *Id*., at 872-3.

in legal writing. This is something that should be a cause for concern because while the postmodern and post-structural genres of thinking are present in all disciplines, they have a rather marginal existence in the legal universe. This is notwithstanding that a vast body of literature loosely described as critical legal scholarship that uses these genres is in existence but despite its proliferation, is not able to displace the dominant positivist discourse of law. It is important to ask how this state of affairs is achieved and for the purposes of this essay, it partly explains the way the law reform project is understood.

The post-structural view of legal knowledge as constructed rather than pre-given is marginalised primarily at two sites — firstly, in the mainstream legal literature that analyses the role of courts as engaging in a special way or reasoning, often described as legal reasoning and secondly, in legal education conceptualised as an industry or a training school for the profession. In both instances, a conception of legal knowledge as objective knowledge is invoked. There are two broad strands of thought in legal writing, viz., treating legal doctrine as the primary source of law and treating legal theory as abstract and a contextual idea about law. Both of these come together to create the possibility of claiming that objective knowledge of law is available. It is this confidence in being able to find the truth of law that allows a discrediting of critical views as biased, partial, or simply wrong. Conventional legal scholarship and the design of legal education bolster this confidence as no space remains for questioning what legal knowledge is. The discourse of law is formed in the practices of lawyers, judges, and legislators but to a very great extent it is the scholarly analyses of these practices and views that legitimise ideas about what is true legal knowledge. It is this role of academic writing about law and the design of legal curricula that is not emphasized enough. As explained below, this is partly achieved through the insistence of common law courts that the primary or real source of ideas about law come from precedents and not through people writing about those precedents.

The distinctive feature of legal literature is that it manages to make a distinction between law and scholarship about law. This distinction maps on to the division between primary and secondary sources of law, where the rules and precedents fall in the first and writings about them constitute the second category of legal literature. In legal scholarship, primary sources like legislations and judgments of courts are also described as the doctrine that is the core of legal knowledge. As the name indicates, the secondary sources are the discussions about legal rules, whether in academic journals or in other literature.[44] The mainstream view in common law countries sees law as an accumulation of legal principles through the pronouncements of judges. The hierarchy of courts, in turn, ensures that the lower courts are bound by the views of the

[44] The privileged position of legal rules as legal knowledge is to a large extent explainable as a result of the history of development of common law in England. For a general discussion, *see* Gerald Postema, Bentham and the Common Law Tradition (Clarendon Press, 1999)

higher courts and, in technical terms, this is the famed doctrine of precedents in common law. This is such a pervasive view of the substantive content of law that very often it does not merit any attention and certainly does not need any justification. Twin consequences of this view are that judges become the most powerful interpreters of law but with the fiction that they simply apply the pre-existing law and uphold the doctrine of separation of powers. The objectivity of the judges is supposed to be based on them relying on legal reasoning (rather than ordinary reasoning) and their task is simply to apply already existing rules.

This orthodoxy is maintained by the conventional legal scholarship that concerns itself primarily with analysing what the courts have to say on any particular topic and critiquing the particular interpretations of rules. Thus, typically, legal treatises on any subject are a collection of judicial decisions and their analysis. Legal education, in turn, dutifully teaches the next generation of lawyers the skills of reading and analysing court judgements and designates these as special legal skills. The famous case method of teaching law and its offshoot, the problem method, are designed to give students the primary sources of legal principles, whether as interpretations of precedents or of statutes.[45] Thus, legal education helps constrain views about legal knowledge by focussing primarily on what the judges say and, by implication, making it irrelevant to ask why the judges say what they say. In its most prevalent form this pans out as the design of legal education that concerns itself only with law and not with the social, political, or economic contexts that may shape these laws. This is in turn supported by theoretical perspectives that see law as an autonomous system.

Although most of these ideas are well debated, the significance of discussing them here is that they illustrate how legal education manages to obscure that the truth of law is constructed through maintaining rather than questioning the primary focus on the workings of the courts. Similarly, legal knowledge is portrayed as beyond scrutiny by various other conventions of legal education relying on the theory versus practice, doctrine versus interdisciplinary knowledge, historical versus a historical study of law, et al. For instance, in common law countries there are perennial debates about the content of legal education and most schools tend to lean more heavily towards teaching legal technical rules than theory.[46]

That said, it is, however, also true that most legal curricula now include some form of theoretical study, commonly described as a study of jurisprudence. In legal literature, the question 'what is law' is the staple question for

[45] For an overview of this topic, *see*, Russell Weaver, *Langdell's Legacy: Living with the Case Method*, 36 Villanova L. Rev. 517 (1991).

[46] There is vast literature on legal education but it is not my aim to survey that literature here. For an introduction, *see* Legal Theory and Common Law (William Twining ed., Basil Blackwell, 1986).

legal theorists and is answered variously by different schools of jurisprudence. However, this is a very limited conception of theory that manages to claim objectivity by relying on conceptual claims. Thus, the contours of legal education do not necessarily change by including any theory. As explained by Cotterrell,[47] most legal theory may be described as conventional jurisprudence or lawyers theorizing about law. They are also classified as normative theories and aim to explain the nature of law solely in terms of the conceptual structure of legal doctrine. Such theory also strives to explicate the relationship between rules or principles, concepts, and values. Two features of normative theory that should be noted are that it is a conceptual inquiry and it claims to be objective and thus, tells the truth about law.

Any conceptual theory defines terms by necessary and sufficient conditions. Therefore, empirical evidence cannot verify or rebut it.[48] For example, by definition, custom is not law. Secondly, the truth claims made by such theories invoke a conception of objective knowledge, that is, it is possible to reach the truth through a conceptual theory. Both of these outcomes are critiqued by others, and furthermore it is necessary to remember that a conceptual claim can only be assessed by reference to its stated or assumed purpose. For example, in Hart's definition of law, a legal system must have centralised legislative and adjudicative bodies.[49] It is claimed to be a universal definition but there are certain assumptions being made, e.g., law is about maintaining social order in any community. Could one fault or critique this definition for being blind to the economic disparities in a society? The conventions of theorising prevent us from doing that and this is the point about being aware of the assumptions on which any theory is operating. Thus, the contours of legal education are drawn not only by privileging black letter law but also by dabbling in theory of a particular kind and that also eclectically.[50]

The above examples can explain how the discourse of legal knowledge as objective or neutral is maintained, but it does not shed any light on why it is the case. It also leads to another related question - who would be interested in

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[47] Roger Cotterrell, The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy 1-9 (University of Pennsylvania Press, 1992) (1989).

[48] It is also important to mention here the other broad category of legal theory–empirical theory. Empirical legal theory is any theory that seeks to explain the character of Law in terms of its historical and social conditions. It considers the doctrinal and institutional characteristics of Law that are emphasized in normative legal theory as explainable in terms of their social origins and effects. Still other authors make a further distinction between socio-legal enquiry and sociology of law kind of analyses. *See* Roger Cotterrell, *Pandora's Box: Jurisprudence in Legal Education*, 7(3) Int'l. J. Legal Profession, 179 (2000).

[49] Werner F. Menski, Comparative Law in a Global Context: The Legal Systems of Asia and Africa, 34, (Cambridge University Press, 2006).

[50] For an interesting report on how law schools in Australia 'dabble' in legal theory, *see* Richard Johnstone & Sumitra Vignaendra, *Learning Outcomes And Curriculum Development In Law: A report commissioned by the Australian Universities Teaching Committee*, AUTC, (2003), *available at* http://www.cald.asn.au/docs/autc_2003_johnstone-vignaendra.pdf (last visited 16 Sept, 2017).

answering this and with what kind of information could it be answered? The lawyers and judges are too enmeshed institutionally to be able to examine their role in the construction of the dominant discourse of law. The legal scholars, however, have the necessary autonomy from the legal system to be able to attempt an answer. Therefore, legal scholars have an important responsibility in maintaining or challenging the dominant legal discourse. It is, therefore, also the responsibility of these scholars to conceptualise legal education that equips the future law persons to appreciate their role in maintaining or changing the dominant discourses of law.[51]

As a preliminary explanation, it is useful to explain how I understand and use the concept of discourse developed by Foucault. In so far as Foucault is concerned, he was interested in examining how various 'truths' emerged about discreet or new subjects like madness or sexuality.[52] His arguments are of direct relevance to my claims here.[53] The issue for the present essay is how the 'truths' of law are constructed and what may be the content of those truths. In keeping with Foucault's understanding, it is also accepted that discourse is not simply the language or concept or even an internally consistent set of ideas. "Rather, discourse determines what can be said and thought within a discipline and who can speak and who can be considered to have the authority to speak."[54] Thus, the importance of what the judges have to say about law and the concepts of legal reasoning and separation of powers intermesh to produce the dominant conception of legal knowledge. Therefore, when legal scholars do not question the claims of objective truths of law and repeat these ideas to the next generation of law students, they participate in consolidating a particular conception of legal knowledge.

The dominant conception of legal knowledge within the discipline sees it as pre-constituted even though post-structural critics challenge this vision. Most of the critical theory scholarship is arguing, even if in different ways, that law is made in its languages rather than something already existing which the language merely describes.[55] It must follow that if in view of this critique of legal knowledge we keep ignoring it then we are complicit in maintaining the dominant views about law. Another way of saying this is that law is not separate from its discourse and therefore, it is relevant to examine how this discourse is formed and what roles different institutions or individuals might

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[51] (For a contrary argument), *see* John Schlegel, *Searching For Archimedes-Legal Education, Legal Scholarship, and Liberal Ideology*, 34 J. Legal Edu. 103 (1984).

[52] Michel Foucault, The Order of Things: An Archaeology of the Human Sciences (Routledge, 2002).

[53] *Id.*

[54] Archana Parashar, Francesca Dominello, The Family In Law 28 (Cambridge, 2017); Stephen Ball, Foucault and education: disciplines and knowledge 2 (Routledge, 1990).

[55] *See* for example, Dean Bell & Penelope Pether, *Re/writing Skills Training in Law Schools: Legal Literacy Revisited*, (1998) 9 Legal Edu. Rev. 113.

play in its construction. It is commonly accepted that discourse formation is not intentional and the knowing subject does not simply produce a discourse.[56] It must, nevertheless, be the case that all of us are involved in maintaining or constructing the discourse of law every time an idea is repeated and endorsed or challenged.[57] While everyone of us is constituted by our contexts and cannot step out of our cultural conditioning, it is nevertheless the case that we have the capacity to be self-reflective about our practices and ways of thinking.

Returning then to the issue of why it is that the dominant discourse of law as objective and pre-constituted is maintained in the face of trenchant critiques, the answer once again comes from Foucault's insight that power and knowledge are enmeshed.[58] Among other things, this insight means that what is accepted as valid knowledge is a function of power. The combinations of factors that have validated the modern conceptions of knowledge because of their objective, scientific, or rational basis prevent us from challenging their claims.[59] It is a function of their assumptions that any questioning is depicted as biased. Thus, the brief of legal education is to teach about law rather than about how something gets the label of valid knowledge. However, the conventions of theorising are as important as what is said, since they point to the assumptions on which any theory is built. At the very least, identification of these assumptions can be one way of showing that things could have been different. The fact that we do not consider this an essential part of education points to our complicity in maintaining the hegemony of modernist conventions of theorising.[60] Therefore, as researchers and teachers in the discipline, it is incumbent upon us to take our responsibilities seriously as institutionally endorsed speakers and be self-reflexive about what ideas about law we endorse or critique.

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[56] Gavin Kendall & Gary Wickham, Using Foucault's Methods 42 (Sage, 1999).

[57] In a related sense this is the concept of performativity used by Butler; *See* Judith Butler, Gender Trouble (Routledge, 1990).

[58] Michel Foucault, Power/Knowledge: Selected Interviews and Other Writings 1972-197(Colin Gordon ed., Colin Gordon, Leo Marshall, John Mepham & Kate Soper trans., Pantheon Books, New York, 1980).

[59] I do not have the space to develop this argument in detail here but the idea of knowledge as objective or as something that comes into existence as part of discursive practices bears reiteration. Post-structural insight that the claims of objective knowledge can only ever be claims, points to the mechanisms of theorising. That is, how theory is constructed itself needs to be scrutinised. Thus, the mainstream theorists of law, all base their theories on certain assumptions whether they are positivists or natural lawyers. Moreover, theory is supposed to be abstract and a-contextual. It therefore applies universally and is not affected by who is doing the theorising. Post-structural analyses on the contrary point out that it is not possible for us to step out of our cultural, ideological, or social contexts. *See* for an introduction Margaret Davies, Asking the Law Question (3d. ed., Law Book Co., 2008).

[60] Admittedly this statement is an over-generalisation but it is not meant to criticise individual institutions or teachers. The argument is directed at the hold of the dominant paradigm of legal education as teaching for the profession. The advent of national law schools in India and the introduction of five year LL.B. programs is changing the contours of legal education but the assessment of their conceptions of legal knowledge is as yet incomplete. It would be a topic for a different article.

Coming back to the issue of law reform, it should be evident that if legal knowledge is understood as constructed in discourse, it also follows that the concept of reform would have to be understood differently. As discussed above, the two authors, Tilbury and Macdonald, who ask for LRCs to conceptualise law more broadly, would succeed if the change happened at a more fundamental level. That is, rather than expecting the LRCs and their personnel to think of law differently, it is more relevant and may I suggest, necessary, that the future legal thinkers are educated differently. Otherwise assertions like the following statement made by an author reviewing law reform agencies are inevitable: "[D]espite the undeniable importance of this 'soft law' approach, it is important to remember that law reform mechanisms must be realistic in their goals—they risk becoming irrelevant if too theoretical and impractical in their recommendations."[61]

This is what Cotterrell describes as the limitations of empirical legal theory, sometimes described as the limitations of socio-legal research.[62] The questions posed are not all that different from those asked in normative theory scholarship. For example, socio-legal research largely focuses on the activities of the legal profession, the administration of criminal justice, court procedures, provision of legal services etc., and seeks to determine how far the legal norms, as articulated in legislative or judicial pronouncements, are actually operative. The underlying assumption, of course, is that the law ought to be reflected in reality. It follows that when research discovers a disjuncture between the two, the logical next step is to argue for either law reform of the substantive rules or of court procedures. This is the genre that is most often adopted by law researchers whether at LRCs or universities' postgraduate research programs. The remedies proposed are, more often than not, in terms of specific policy or law reform. The LCI is no exception to this, as is indicated by a cursory survey of the titles of its reports mentioned above.

There are a few implications of adopting this theoretical stance that should be evident. It necessarily involves a particular understanding of the law; that it can and should deliver justice, fairness, non-discrimination etc. to the previously disenfranchised or marginalized groups in society. This understanding of the law is also described as a liberal view of the law as the means used

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[61] Laura Barnett, *The Process of Law Reform: Conditions for Success*, 39 Fed. L. Rev. 161,190 (2011).

[62] The context of this statement becomes clearer if it is mentioned here that Cotterrell is engaged in distinguishing between legal philosophy and legal theory. He says legal philosophy may be described as any conceptual enquiry about law. Legal theory has a narrower focus on systematic theoretical analysis of the nature of law, laws or legal institutions but excludes moral justifications of law. He further designates two kinds of theoretical enquiry as normative legal theory and empirical legal theory. According to him Empirical legal theory is any theory that seeks to explain the character of Law in terms of its historical and social conditions. It considers the doctrinal and institutional characteristics of Law that are emphasized in normative legal theory as explainable in terms of their social origins and effects; Cotterrell, *supra* note 48, at 181.

by the state to create and promote a fair society. In contrast are the critical theorists who see legal knowledge as more than doctrine and jurisprudence. In fact, primarily, they critique the dominant conceptions of legal knowledge rather than formulate alternative theories of law. This literature, *inter alia* uses the post-structural genre to challenge the concept of objective legal knowledge as well as to show the constructed nature of this knowledge.[63]

In contemporary mainstream legal scholarship, the dominant ways of thinking about law continue to treat it as authoritative knowledge conceived as either doctrine, or doctrine with unsystematic sprinklings of legal theory. This is problematic because it does not allow the students to examine the 'nature of knowledge' claims assumed in the legal literature. Even when the students are acquainted with the multiple schools of jurisprudence, contemporary critical theories and their critique, they are nevertheless dealing with given and authoritative knowledge. They are not enabled to learn about the formation of knowledge. If, for example, the same students were equipped to see that ideas are floated, accepted, endorsed, or rejected by individual agents like them, they would grasp how knowledge is produced. This understanding is a prerequisite for them to be informed participants in the production of legal knowledge.

Law students who are enabled to question every dogma and theory and who can grasp their own role in the construction of authoritative knowledge will also understand that they need to make their own ethical choices. Such an understanding would aid in the making of a fair and efficient legal system. It is, therefore, imperative that the design of legal education facilitates students to understand and take their role in maintaining or modifying the legal system seriously. Thus, the understanding of critical thinkers proposed here combines the 'construction of knowledge' insight with the attendant responsibility of the thinker to be reflective of their own actions in legitimizing or delegitimizing certain views about law. In this manner, the views and theories of law can contribute towards creating a fairer society as the option of distancing oneself from the consequences of so called objective laws will no longer exist.[64] Therefore, an interdisciplinary and theoretical education is required as adequate legal education because it enables self-reflexive responsibility in the construction of legal knowledge. In the context of this article, such an education would enable law researchers to engage in the processes of reforming law at a much more fundamental level than is possible now.

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[63] *See* for an introduction Margaret Davies, Asking the Law Question (3d. ed., Law Book Co., 2008).

[64] This is a very contentious topic and I can only mention it here. Any number of post-structural or postmodern writers challenge the idea that postmodernism can be a means for introducing normative ideas about fairness, justice or some other value. For an example of this kind of stand *see* Tim Murphy, *Postmodernism: Legal theory, legal education and the future*, 7(3) Int'l. J. Legal Profession 357-379(2000).

I will now briefly analyse the 184th Report of the LCI on Legal Education[65] to substantiate my claim that the institutional design of legal education needs to be reviewed for law reform to become meaningful. At present, the law schools play a significant part in maintaining the schism between the black letter and critical theoretical views about law. This is because the Bar Councils, Judges, and other powerful legal professionals determine what is taught to the law students. The following discussion is in no way meant as personal criticism of its authors. The point I wish to make is that it is necessary to analyse the particular conception of legal knowledge and of law reform that the Report assumes.

The LCI initiated this inquiry *suo motu* and issued a working paper in 1999.[66] After wide consultations, it finalized the 184th Report in 2002.[67] Among its salient features is the recommendation that the two main institutional bodies, the Bar Council of India (hereinafter referred to as 'BCI') and the University Grants Commission (hereinafter referred to as 'UGC') charged with responsibility for legal education should consult more effectively in setting the standards for legal education.[68] It is for this purpose the LCI recommended that the Legal Education Committee of the BCI should consult the Legal Education Committee of the UGC in a meaningful manner so as to fulfil the requirements of specified consultation process. The other major recommendations are for introducing procedures for quality assessment and accreditation of Law schools, for introducing compulsory training in alternative dispute resolution procedures for lawyers, judges, and students, appointing part time adjunct law teachers from the pool of lawyers and retired judges in law schools and professional training of law teachers.

At a glance, most of these recommendations deal with the procedural aspects and not with the issue of the substance of legal education. However, in the details of the report, there is an effort to engage in an analysis of the existing literature on legal education within India and in some other legal systems in North America and the United Kingdom.[69] The most striking aspect of this discussion is its eclectic nature. In Chapter Five of the Report,[70] the LCI discusses the standards of legal education and proceeds to talk about 'professional skills and professional values' with the help of a report prepared by the American Bar Association,[71] and reports by a few other professional bodies

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[65] 184th Law Commission Report, *The Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956*, (2002).

[66] *Id*, at 2.

[67] *Id*, at 125-135.

[68] *Id.* at 99-115.

[69] *Id.*

[70] *Id*, at 53-61.

[71] ABA Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development–An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap)*, (1992), *available at* https://www.americanbar.org/content/dam/

including those in the United States of America and the United Kingdom.[72] Among other things, the LCI quotes from MacCrate Report[73] and says that, "Law schools should be encouraged to develop or expand instruction in such areas as 'problem solving', 'fact investigation', 'communication', 'counselling', 'negotiation', and 'litigation'."[74] It goes on to exhort the relevant members of BCI and UGC to study this report and literature related to it.[75] However, it is a little surprising that the authors of the report do not situate the MacCrate report in its context. There is no discussion of the philosophy of education adopted in the report or an acknowledgement that alternative views exist. Nor is there any reference to the critiques of the report in the literature. Moreover, in recognition of the new economy that entails globalisation, privatisation, and regulation, the LCI recommends introduction of new interdisciplinary courses in the curricula of first and second years of the five years LLB. programmes.

Missing from the Report is any discussion or even a nod to the issue of understanding law in a non-positivist sense. This is a missed opportunity for a significant institution to participate in changing the discourse of law. Instead, it repeats, without any self-reflexivity, the received wisdom of legal education as about training professionals.[76] The LCI could have been the catalyst for genuine law reform if it had engaged in an inquiry about the construction of knowledge. It is probably a rhetorical question to ask why it did not do so. However, the effects of its decision are very tangible in that they endorse the view of legal knowledge as already available rather than as a product of discursive practices. It follows that adequate legal knowledge is then conceived of as professional training.

This is a rather impoverished view of legal knowledge and in view of the extensive literature on the constructed nature of law, it seems like a somewhat incomplete view as well. It is possible to imagine that the LCI Chairman and members may have approached the subject differently if they, in turn, had been part of a legal universe that went beyond the professional bodies like Bar Councils and the higher judiciary. In other words, the legal professionals construct a universe of law where practicing lawyers are the 'real' lawyers. For example, the recommendation that universities should employ retired judges and lawyers as part time teachers is a manifestation of this view and

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aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf, (last visited Sept. 17, 2017).

72 *Supra* note 75.

73 *Id,* at 54.

74 *Supra* note 72, at 58.

75 *See* for example, Carrie Menkel, Meadow, *Narrowing the Gap by Narrowing the Field: What 's Missing From the MacCrate Report - Of Skills, Legal Science and Being A Human Being*, 69 Washington L. Rev. 593 (1994); Russell Pearce, *MacCrate's Missed Opportunity: the MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. Rev. 575 (2003).

76 The report does list all the significant reports on legal education in India by various bodies and publications by universities. However, it does not analyse their substantive content about the aims or goals of legal education.

in another sense, undermines the intellectual rigor required of any university discipline.[77] The history of how common law developed seemingly holds our imaginations much more than any arguments about us being the agents of discourse formation. The repeated endorsements of the 'case method' and 'problem solving method' of teaching do not admit of the existence of an extensive scholarly debate about the shortcomings of this form of education.[78] It follows that the focus of the Report does not extend to discussing the form and substance issues of legal education separately.

Similarly, there is no indication that the authors of this Report consider it important to ask what should be the wider goals that legal education should pursue. They define their brief narrowly to ensure that the two government bodies charged with the task of regulating standards of legal education can work together in an efficient manner. However, having done that, the LCI goes on to elaborate how the BCI should ensure that certain standards are maintained. It is somewhat surprising that similar instructions are not issued to the UGC except for asking it to constitute a legal education committee. An optimistic interpretation of this stance could be that the LCI is mindful of the high value placed on academic autonomy and does not wish to be prescriptive about how the universities liaise with UGC in designing legal education. However, various other recommendations in the Report go against this interpretation of the LCI's actions. For example, the recommendation that law teachers should be imparted professional training could only be seen as an illustration of its main argument that legal education should produce competent practitioners. This argument for professional training is acceptable as far as it goes but it does not go far enough. Competent professionals should not only be able to deal with the technicalities of law but also be able to critique it in order to strive for a fairer system of law.

This brings me back to a point made above by both Tilbury and Macdonald that the LRCs can conceptualise law reform in a wider sense than in an instrumental sense.[79] However, for that to happen, I suggest that we have to change the content of legal education rather than hope that the researchers at a later time will be able to reconceptualise law. It is imperative to make a connection between the kind of undergraduate legal education available and the expectations of research that will inform law reform bodies and personnel. It cannot be a realistic expectation that anyone will start appreciating the wider theoretical issues about legal knowledge once they commence research in law. Therefore, if we want truly interdisciplinary research, the foundations for it need to be laid down at the level of undergraduate programs. Thus, the

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[77] *See* David Sugarman, *Legal Theory, the Common Law Mind, and the Making of the Textbook Tradition in* Legal Theory and the Common Law 29 (W. Twining ed., Basil Blackwell, 1986) for an analysis of how initially when legal education moved to the universities, the legal academy had to justify its expertise to the profession.

[78] Weaver, *supra* note 45, at 517.

[79] *See* Tilbury, *supra* note 13; *See* also Macdonald, *supra* note 13, at 863.

arguments about the appropriate kinds of legal research are inextricably linked with debates about the design of legal education. In his article, Macdonald does make a similar observation that law reform in Canada has changed during 1930s to 1970s and has replaced the colonial shackles of UK common law with the influence of US law due to the disproportionate influence of the Harvard LL.M.[80] In other words, the more contemporary law reformers' ideas were formed during their studies at the Harvard University.

One of the aims of this issue of the Journal is to further Lotika Sarkar's legacy of making legal education more sensitive to gender imbalances. This is in the context of her analysis of the shortcomings of the LCI Reports where they deal with issues of relevance to women. I believe that honouring that legacy requires a serious engagement with the construction of legal discourse in the education system. I take support for this from Finley[81] when she argues that it is imperative for feminist legal scholars to ask how neutral or inclusive is the structure of legal reasoning. If we keep using the existing terms of law without questioning them, we will be unable to see how the language of law constrains and undermines our goals of gender equality. Moreover, just by grabbing at the existing language we are unlikely to tap the positive social reform potential of law. Therefore, the main task of legal feminist analyses must be to show how the so called abstract, universal, and neutral norms of law come from the experiences and perspectives of only one group of humanity. Undeniably, the existing meanings in law are powerful but there is reason for reconstituting legal language. Thinking about legal language enables us to be self-aware and self-conscious about our decisions. It makes us aware of the implications of arguing in a certain way, for example, if thinking about equality as sameness or as difference has negative consequences, maybe we need to think outside the dichotomy.

I will conclude with a quote from Davies when she says, "It is possible to think of legal change as transformational of the values and ideology of law and of the very understanding of what law is: critical theorists have often regarded this form of change as being of equal importance to legislative change."[82] For this kind of change and reform to happen, we need to focus our attention on the substance of legal education.

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[80] Macdonald, *supra* note 13, at 863.

[81] Lucinda Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 Notre Dame L. Rev. 886(1989).

[82] Margaret Davies, *Legal Theory and Law Reform: Some Mainstream and Critical Approaches*, 28(4) Alternative L. J.168, 171 (2003).