THE Ph.D. - AN EXAMINER'S PERSPECTIVE

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INTRODUCTION

In some disciplines it is standard for aspiring academics to do a Ph.D. but in law it is less common. Many people in India, as in the UK, who do Ph.D.s are quite mature, perhaps after a number of years in the teaching profession. Many people - including the present author - begin doctoral degrees but never finish them. And a significant number find the experience a frustrating one, while some actually fail to obtain the degree or are required to resubmit their thesis or dissertation[1] although they have worked hard. On the other hand, readers of many theses also feel a sense of dissatisfaction and frustration. This author - despite never having finished her own dissertation - has been a supervisor of half a dozen doctoral students, and an examiner for about 10, of which around half have been from Indian universities. And in around half the cases the author has recommended that the candidate should be required to resubmit the thesis. She has reflected on this experience, and feels that it may be worth exploring, for the benefit perhaps of future supervisors and candidates, why candidates fail, why even successful Ph.D. theses are often so disappointing, and what can be done to improve the situation.[2]

Honorary Associate Professor, University of Hong Kong, Hong Kong. [1] In the UK and many Commonwealth countries the major written work for a doctoral degree is known as a thesis, but for degrees at a lower level (for example a master's degree by research) the written product is often called a dissertation. The standard US practice seems to be to use the word dissertation generally.

This paper has been written when rather remote from the normal sorts of material one might use for a paper like this (other than those on the internet and access to lexis in electronic format). My raw material has been largely my own reports on theses, and teaching materials I have written and have available in electronic form. I should also say that I have tried to draw examples from Indian

2. WHY DO STUDENTS FAIL OR FAIL TO DO WELL?

This question itself has at least two levels, of course. *First*, what is it about a thesis that may lead to failure? *Secondly*, what is it about the student, the topic, the approach that has led to a failing thesis? One might label these two levels respectively the problem with the product and the problem with the process. In fact there is a clear interrelationship between the two: the product is imperfect because of the process.

2.1 The problems with the product

The examiner sees the product - indeed may never see the student at all. I have never been present at a viva for an Indian student whose thesis I have examined, though I am asked to supply suitable questions to be asked. It is on the product that the student almost entirely stands or falls. The student and supervisor therefore need to think carefully about how the thesis will appear to, that rather remote, examiner. It is certainly not good enough to say - as one of my own students has said to me 'I can complete it after the viva'! That may be too late.

2.1.1 Absence of a thesis

In the sciences and empirical social sciences a researcher is expected to have a hypothesis - in the natural sciences a possible relationship that is to be tested by the research. Not all research in law has a hypothesis, but it is sometimes said that every thesis should have a thesis. Some topics lend themselves very readily to be expressed in terms of a thesis: 'That Public Interest Litigation at the High Court level is less principled than at the Supreme Court level' for example, while others are perhaps better expressed in terms of the question to be asked. It is easier to express a topic with an empirical element as a thesis, but all should be able to express in terms of a question or issue (or at the most in terms of two or three ciosely related questions or issues). Many theses

theses - since the editors wanted the relevance to India to be clear;, this should ndt be taken as implying that the problems to which I advert are peculiar to India!

reveal how lacking in such a focus they are as early as the abstract or the opening lines of an introduction. A thesis that says 'This thesis explores—' or 'The writer will discuss—' almost certainly will turn out to be unfocussed and descriptive. Unfortunately, something has gone wrong in such a case at an early stage, perhaps several years before. I now try - not always with success I have to say - to get students at a fairly early stage of the process to articulate what they are doing in no more than two sentences. I ask 'What question are you asking?' If they find it difficult to articulate this, I will try 'What is the point of your thesis/dissertation?'

2.1.2 Inadequate digestion

This is an extract from a report I wrote as an external examiner for a thesis:

> A problem, which recurs in several chapters, is what in my experience is the most common problem with postgraduate theses: the fact that what has been read is inadequately 'digested'. From a combination of lack of confidence in their own judgment and use of language, a desire to show how much they have read, and a lack of a clear focus or thesis, it is very common to find that much of a thesis consists of a series of summaries, with or without excessive use of quotation. This author manifests something of this problem. — [T]here are various quotations and summaries from authors in the footnotes. If this material is worth using it should really be in the text, and in what I have called the digested form - using the points made as part of the structure of the author's own thesis. By digested I do NOT mean summarised: I mean fully worked through, understood and used to support the author's analysis and argument. Such digestion has not occurred when the author deals with the points made by one author, and then another, or with one case and then another, or one country and then another.

As this paragraph suggests, this sort of unsatisfactory approe (which one may term that of serial summaries or as inadequ digestion) may <be used with articles, or with cases. In anotl report I wrote:

> Like many thesis writers, I regret to say, the author handles cases very poorly. It is simply not good enough to summarise the facts and the holding of case after case. A thesis is not a digest of cases. The cases should be serving the argument of the author. They should be mentioned for a purpose. — The author obviously feels s/he has found a lot of cases on the topic, and though they do not say anything very useful, does not want to waste them! But one must be tough and only use material that adds to your argument. If you want to use all the 'trivial' cases you somehow have to tabulate them and analyse them in a different way: e.g. that a certain percentage turn on a certain approach, or that a majority of the judges take a particular attitude. There are different ways of using cases that do not simply involve reporting what judges say. Indeed - that is the least interesting and least scholarly use of cases, one might say.

And I added in another report:

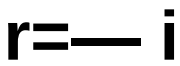
> This means that differences from different writers are not identified, brought out and discussed, that there is sometimes repetition, and, most seriously, that the author is not making her own argument and making use of the material found in other writers, but subordinating his/her writing to that of others; most of the thesis becomes a literature review.

2.1.3 Case handling

As I indicated earlier, I find that many thesis authors use ca very badly. The particular report from which I quoted on this p< identified a tendency to summarise the facts of case after *a*

Oddly enough, a candidate very often did not say what the holding in the case was. One had the feeling that the cases were being paraded to demonstrate the magnitude of the social issue rather than in order to analyse the way the courts dealt with them. Any attempt to analyse them from the perspective of doctrine was impaired by the fact that the cases were presented in no particular order. A case from the 1970s might be juxtaposed to one from the 1990s.

A related fault is to quote judge after judge with the result that a page of the thesis viewed from a distance would look rather like this:



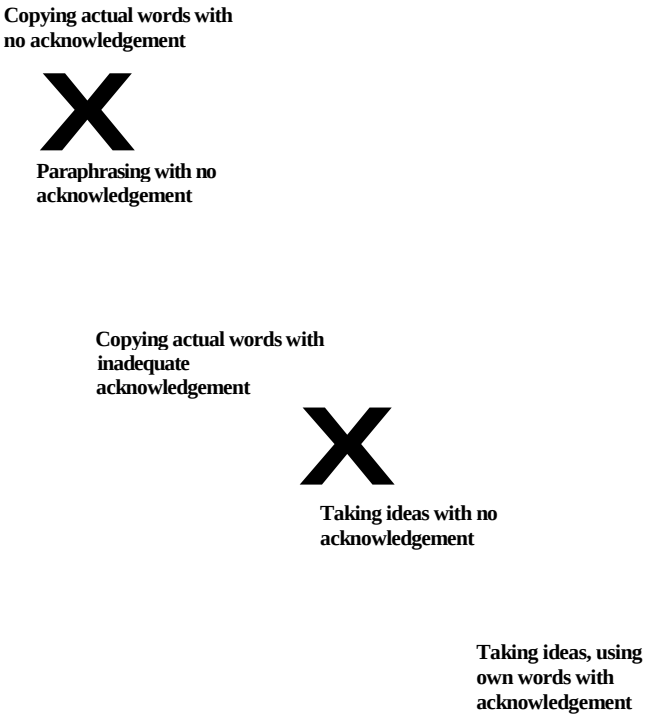
In other words, there was more quotation than text! There would be no harm if this happened once, but if it happens again and again there is a clear indication of a problem. That is the absence of any real analysis of the cases or the judicial (or other) statements. I have in mind specific theses where I have pencilled in repeatedly remarks such as: 'So?' 'Comment' 'What is the point?' - because the author has not made it clear why the cases are summarised or the judge quoted. I usually tell students that they should not quote unless the passage they want to use is either (i) particularly authoritative or perhaps a classic, (ii) especially witty or elegant or (iii) they absolutely can find no other way of saying what the authdr said, because it is so neat and appropriate.

Essentially, what I am saying is that students all too often fail in what might be considered the core intellectual skills of the common law system: the analysis of cases, and statutes. One looks to a discussion of cases for an inquiry into the reasoning of the courts, into the relationship between one holding and another, for the identification of trends of reasoning, for a critique. Even if a thesis shows that courts have reached apparently inconsistent decisions, the intellectual task is incomplete unless the nub of the differences is identified, and views expressed and supported by example and argument as to what the correct approach should be, and perhaps why there have been disagreements. Without such analytical element the thesis will be dismissed as 'descriptive'.

2.1.4 Plagiarism

Plagiarism is more common than one might think. In a recent session the author organized for her students at which the editors of the two main Hong Kong academic law journals exchanged experiences, each said that he had had to reject articles submitted for publication because they were plagiarised in whole or in part. In one instance a staff member of a Hong Kong university had been dismissed as a consequence of being caught plagiarizing. It is not always weak students who plagiarise: I have encountered plagiarized passages in otherwise quite good theses. This suggests perhaps that sometimes students do not fully understand what is involved in plagiarism. The Internet - notwithstanding the comments I make elsewhere in this paper about the valuable resources that it may offer - does present enormously tempting opportunities to students. Reports suggest that it has resulted in tremendous increases in plagiarism.

In fact there is a very close relationship between plagiarism and the inadequate digestion problem. There is a sort of continuum:



All these practices in varying degrees are ways of using other people's work without fully making use of it. Although different degrees of honesty or dishonesty are involved, they all tend to show excessive dependence on other writers, and inadequate focus or thesis in the author's own work. They are all to some extent lazy ways of working. But at the root is most likely to be some fundamental problem about the nature of the project. Of course the writer of a thesis must be reading the work of others - that is part of the intellectual task involved in writing a thesis, and in no other way will the discipline progress. But the full-scale plagiariser (one end of the scale), and the serial summariser (other end of the scale) have a similar problem: they do not have something they want to say, but are using the work of others as a prop, not as a tool. The discipline does not progress this way either. In fact although we naturally think of the top left box as reflecting the most serious offence ('do not copy' was after all something we were taught in primary school) certain sorts of copying can be more intellectually

demanding than summarising: I have for example seen an undergraduate essay that consisted almost entirely of sentences copied from published authors. But successive sentences did not come from the same author. The whole was a skilful stitching together of material from others that showed that the student did understand, and was really making something almost new! We still failed the student.

Students sometimes fail to realise that all the first four stages on the continuum are plagiarism. And the last stage often is plagiarism when an author writes a paragraph and ends with a citation to the source - but not making it clear that the whole of the paragraph is actually derived from the source. To the reader it may be unclear whether just the last paragraph is derived from the source. This sort of behaviour is often lacking in the *mens rea* of plagiarism; there is no intention to deceive, and the author simply has not learned how to cite in such a way that the relationship between the text and the sources is made clear. I recognise that with some students excessive copying is probably the result of lack of confidence in the student's own linguistic abilities. But copying - whatever the reason - does make it very difficult to say anything new, which is what a Ph.D. is supposed to do.

2.1.5 History and background

Students who embark on the writing of a thesis of perhaps 1,00,000 words conteriiplate with nothing less than alarm in most cases what seems a vast number of notional blank pages to fill. Sometimes it seems easier to begin by writing about the known and then proceedings to the unknown. The known is likely to be the background of the country on which they are writing -something that is an especial refuge of overseas students who find that their supervisors perhaps know little of their country. Another page filling technique is the history of the topic. Most of us will have read theses where nothing new is said until about page 250 of the 500 pages of which the thesis consists - the first 249 pages consisting of derived history or background, derived in the sense that it does not represent original research but is taken from existing and familiar literature. Many students are probably

surprised to find how much they have filled up by this technique! And if they belong to the school that thinks that if you write 1,00,000 words you must surely pass, or that class of students who are unable to cross out any word of their immortal prose, that rather turgid stuff is likely to remain there unless the supervisor is ruthless.

2.1.6 Comparative law

Comparative material is another area in which students often resort to serial summarisation. The impression is often of something of a hotchpotch of material from several jurisdictions, with little actual comparison. In country A they do that; in country B they do this; in country C they do the other; end of chapter. Often the material from different countries does not relate to similar issues, so comparison is actually impossible. But even when comparison would be possible, the reader is left to do the intellectual work of making the comparison and drawing the conclusions, while the students have done the rather underlining task of summarising the material. The examiner occasionally feels that she should be getting the Ph.D. rather than the student!

Just as with cases, authors often fail to say what the point is of the material they are using. What does it really tell us to see that in country A they deal with consumer credit in a particular way and in country B they,do it differently, unless we understand the nature of consumer debt in the two countries, the political system and something of the history? Yet, all too often the comparative material is presented in a way that is totally abstracted from context: historical, political or social.

2.1.7 Sloppy referencing

To quote again from one of my own reports:

> Complete publication details are not given for some items. I suspect this is because they were not given in the works from which the author derived the citations; this is no excuse - one should make efforts

> to find the full citation even if another author has been sloppy. It has become much easier with the advent of the Internet, when one can look up the Library of Congress or the British Library on line - these will contain almost every book published in English. Another possibility is the combined catalogue of UK universities, COP AC (www.copac.ac.uk), which is a good source for Indian purposes since it includes libraries like SOAS, Oxford and Cambridge, which have good Indian collections.[3]

The reader will note that this paragraph contains two criticisms. First, the student has not given full details for many of the items included in the footnotes/bibliography. The second criticism is actually not so much a question of sloppy referencing as lazy researching. The implication is that the author has not actually read the material that is being cited, but has derived the citation from an existing secondary source. It is simply not good enough in most instances for a person engaged in advanced research at a doctorate level to rely on others for accounts of the primary material of the thesis. This is so partly because the author deprives him or herself of the opportunity of actually finding something new to say, but also because other people make mistakes, and not just mistakes about the form of citation. Insistence on correct citation practice should bring out the reality - and act as an incentive to the author to go to the original source. The author who has not seen the original should say 'as cited by—' or 'as quoted by—' the author where the information was found.

2.1.8 Poor presentation

Sloppy referencing slides over into sloppy presentation. Even authors who give full citations do not always make sure that these

[3] COPAC's website explains: 'COPAC is a union catalogue; giving *FREE* access to the merged online catalogues of members of the Consortium of University Research Libraries (CURL). There are 27 members of CURL, of which 26 members are currently contributing records to COPAC, including **the** British Library & National Library of Scotland'.

all appear in the bibliography. It is very common to find items in footnotes that are not in the bibliography (or table of cases), and *vice versa.*

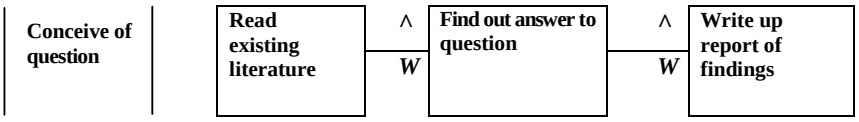
Proofreading seems to be a dying art! Perhaps people assume that the spell check facility eliminates the necessity for this. Unfortunately, even when one does one's own typing this is not so. The spell checker will not detect if one types 'wood' instead of 'word', and while Word will detect 'wold' if you meant 'would', WordPerfect will not - 'wold' being a perfectly good English word which for some reason the Word dictionary is not familiar with! Another complication comes with US and UK spelling - not that I would feel strongly about this, but one would look for consistency. All too many students seem unaware that the default setting of these standard word processors is US spelling, but that it is possible to change them to use UK spelling as standard. Indeed, Word purports to recognise Indian spelling as well (though I find it gags at that very Indian-English law-word 'undertrial'). Students should take the trouble to master the relevant possibilities of their word processor.[4] Students who do not do their own typing should be aware of the almost endless possibilities for non-lawyers to misread legal terms, among other things, not to mention obscure names, or for tired typists to type total nonsense.

2.2 Problems with the process

The process of writing a thesis in law is often very different from that involved in the physical or natural sciences. In the latter a student may well be part of a team, and the individual research project will form part of a greater project, while other students will be working on related projects - so biology students might be working on different aspects of the physiology of the same species, or on the same aspects of different species. There may well be a clearly established set of procedures being used and the whole process is less lonely and less open ended. Both the research process and the writing up process are more structured. From many

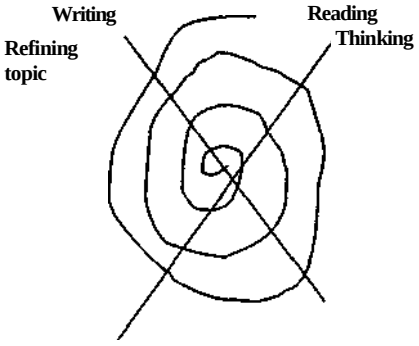
[4] Other under-utilised possibilities include automatically updating cross-references to footnotes or sections - certainly possible in both Word and WordPerfect.

books on 'how to research' one gets the impression that the research process is linear:



This might be the way in which some pieces of research are conducted - for example a biologist might want to know how a particular animal reacts to a particular stimulus. She might read the existing literature and find that there is some information about the question but there is room for a new piece of equipment to be used. So she will devise a new experiment using the new equipment. She will carry out the tests, record the results, compare these results with those obtained by other writers, and write a report of her results and a conclusion.

Even with scientific research the linear model is something of an over-simplification. In the case of law it is a caricature. It has been suggested that in many areas of intellectual endeavour, research looks less like a line and more like a spiral[5]:



In other words, research is a reiterative process: you keep going through the same processes, though in slightly different contexts. You think - read - think again - find something out - think again - read some more.... and so on.

In the case of legal research this is even truer. There is very often no real distinction between reading and finding out. The text is the raw material.

[5]1 am afraid this is plagiarised! It comes from a book the citation to which is **not** currently available to me.

For the same reason if we are talking about the structure of a thesis or dissertation, the structure that is assumed in many scientific or social scientific theses does not fit law. A piece of writing in the sciences might be structured like this:

- Introduction - asking the question, posing a hypothesis
- Literature review
- Method - how the research was carried out
- Results
- Discussion
- Conclusion.

It is not possible to have a template approach to writing a thesis in or about Law! The organisation must fit the topic, and it is shaped and reshaped as the work proceeds. And the writing is part of the process, not a separate product.

But far too many students begin their research work with a very fixed and concrete notion of what the structure of the final product is to look like. There is not a sufficiently sophisticated notion of the relationship between the structure of the research process and the structure of the ultimate written product. Here are two examples based on real theses, but with the topic changed:

One student wrote about 'human rights and the live performing arts'. The chapters were:

1. Human rights and the arts
2. The importance of human rights
3. Human rights and theatre
4. Human rights and dance
5. Human rights and the circus
6. Conclusion and recommendations.

This is a bit of a caricature of the original topic - but I hope it conveys my own problems with it. Maybe one might collect material under these headings, but it makes little sense to write about them under the same headings, because the same issues crop

up again and again. The material needed to be 'cut' another way - as though it were sliced horizontally rather than vertically.

Another example of the same phenomenon was this topic: 'women, the law and the workplace'. The thesis was structured:

1. Women's problems in the workplace
2. The role of women's organisations in protecting women in the workplace
3. Women, law and the nursing profession
4. Women, law and the teaching profession
5. Women, law and the secretarial profession
6. Empirical attitudes to women and law in the workplace
7. Possible legislative changes
8. Conclusions and Recommendation

Again - far too many similarities arise in these different contexts for it to make any sense to discuss the issues in these pigeonholes. Still less did it make sense to separate out empirical material from the discussion of the legal position. Another example was that of one of my own students who determinedly resisted all my efforts to persuade him or her to 'cut' the topic of environmental impact assessment differently. S/he conceived of it as involving issues such as: Criminal law and EIA, Administrative law and EIA, Civil law and EIA, and that is the way it appeared in the final product, despite my own urging that the interesting points were issues not raised by this approach at all.

Some of these problems could be avoided by a more analytical and thoughtful approach to conceiving of the project in the first place. If a student was able to say why he or she wanted to explore the question of human rights and the performing arts or women in the workplace the issues ought to dominate rather than the situations: whether women in the teaching profession know more about their rights than those in the secretarial is more interesting than simply looking at each separately, for example. So the student might conceive of the research project as asking 'whether there are factors in the structure and educational qualifications in particular professions that lead to different legal structures and enforcement

of law?' This would have a built in comparative question and though the student might collect information about women teachers separately from women secretaries or nurses this would not lead to the writing up being compartmentalised in the same way.

The graven-in-stone problem can arise in connection with the language used as well as the structural issues. Many supervisors will have had the experience of trying to persuade a student that a whole paragraph needs to be fundamentally rewritten - and being greeted with the response: 'which words should I change'?

3. PREPARATION - WHAT HAS STUDENT DONE BEFORE?

At the risk of being thought provocative, let me venture to suggest that most graduate students cannot read and cannot write. My assertion is not, of course, related to simple literacy. We are talking about law students, and the dismal fact is that after a first law degree most students are not skilled at reading statutes ands reading cases. Whatever we try to do to them, we all know that most students (and quite a lot of practising lawyers as well) shy I away from careful reading of statutes or cases. And while legal practice may hone the skills of a small number of practitioners, most of them make their way by relying on a small number of statutes, which provide their daily bread. So mature students may be good at a small number of statutes, but this is not necessarily generalised. Many students have not written much as undergraduate students, although these days more is expected by way of continuous assessment. On the other hand, increased pressures on teaching resources also mean that students are more likely to have written a number of short pieces, or even to have been partially examined by multiple choice tests, rather than have much experience of writing extended pieces of legal analysis or argumentation.

Many students will have read little by the way of scholarly literature. They may have read a few articles, and probably no book other than a textbook. They have few skills of analysing this type of literature - whether in the field of law or any other. They

may have done literature as a first degree or perhaps history, and this may have taught them something of textual analysis, evaluation of (non-forensic) evidence and so on. But many others will not have done either.

3.1 Comparative law

Students often feel compelled to include comparative material, but seem to have little idea why. One fears that the choice of material is dictated by the following factors: the country where one is studying obviously offers the most accessible material; in the case of students studying away from home they naturally want to make their own country's situation the or a main focus. Then they come across articles, which touch on the law of other countries as well. Everything goes into the pot. There is a considerable literature on comparative law as a sub-discipline.[6] There the author would find discussion of types of comparison: comparing foreign systems **with** one's own to detect similarities and differences; taking a problem and looking at how different systems approach it in a systematic way; investigating the causes of differences; comparing different stages of legal systems; searching for a general pattern of evolution to take a few examples. Then there are questions one should **ask** before embarking on comparison: Why would you compare? **What**[5] would you compare? How would you compare? Who can **compare** (do you know enough about the other system, do you have **the** language skills etc)? And even: What is comparison? For **the** whys, you would find suggestions such as: To understand **one's** own system; to learn some perspective, or even humility **about** one's own legal system (is the common law necessarily as superior to other systems as we have been brought up to believe, **for** example) to help to construe or interpret one's own rules; to **help** improve the law; to move towards unified or at least harmonised laws. There is discussion of different types of comparison: **one**

[6] E.g. Bogdan, M, *Comparative. Law* (Kluwer, 1994), De Cruz, **Peter,** *Comparative Law in a Changing World (2nd.* ed., Cavendish, 1999), Grossftld, B., *The Strength and Weakness of Comparative Law* (English translation by Tony Weir, Oxford, 1990), Zweigert, K & KOtz, H, *Introduction to Comparative*

might carry out studies of legislative style, decision making techniques, role of judges and lawyers in different systems, legal philosophies, the institutions of the law or the substantive rules. Most student authors do the last. But then questions of what jurisdictions to compare, and what one can useful learn from the comparisons become very important. Two distinguished authors have suggested that one should study the functional equivalents in different systems; this would mean: one can only compare things that serve same function; one must eradicate preconceptions from one's own system; one must accept wide range of sources and be prepared to look at "non-law" institutions.[7]

3.2 Note taking and retrieving

There is an intimate connection between the reading, the note taking, the retrieval and the writing. What is not properly recorded will not be retrieved. What is not properly placed in an intellectual scheme of things will very probably not be recorded. No researcher should read something without having some sense of why the reading process is taking place. There is now some very expensive bibliographic software that helps people to store all the information they need on their computers - it will prompt the reader to fill m all publication details, provide a space for notes and keywords. Of course this is just as useful as the researcher is punctilious in completing it. And it needs access to a computer while reading if everything is not to be done twice - once in hand and once by computer. The software will help prepare the footnotes - so sloppy referencing ought to be a thing of the past for such privileged users.

3.3 Knowledge of the Internet

India is at the forefront of the IT revolution in many ways. We all know that Bangalore is the Silicon Valley of Asia, and that many of the world's programmers are trained in India. I have not been to India (to my regret) for some years, but my experience in other developing countries suggests that Internet cafe facilities must be

[7] Zweigert & K6tz, *Introduction to Comparative Law.*

available in most towns at very reasonable cost. Yet recent theses I have examined show little knowledge of Internet resources. Indian students are able to get access to cases and other material from any jurisdictions. Though this is very often not edited material - so cases will not have headnotes, for example - and may neither be complete nor up to date, there is far less excuse than there used to be for half hearted efforts to deal with foreign law. Normally, one would expect students to be more *aufait* with these techniques, if not the material they contain, than their supervisors. But perhaps students use the Internet for e-mails (and may be even less salubrious forms of entertainment) rather than for intellectual purposes. So supervisors should make the effort to acquaint themselves with the wealth of material the Internet offers, as well as the shortcomings and drawbacks of the medium. As a beginning they might try using the Australasian Legal Information Institute website (http://www.austlii.edu.au), and other sources mentioned in the footnote below.[8] And for useful cautions about what one may find on the Internet, there are various websites belonging to US universities that help with evaluating web-based material, and to compare Internet material with more traditional resources,[9] while the Internet Detective is a UK resource which helps the reader to evaluate internet resources.[10]

3.4 The writing process

The 'serial summary' problem to which I referred earlier may well be a result of poor reading and writing practices as well as lack of confidence and so on. In earlier days students sat in libraries and

[8] Other useful sites are the UK Social Science Information Gateway SOSIG which includes law - see http://www.sosig.ac.uk/law/ and many university and other sites that have lists of links to legal materials. Good examples include the University of Warwick http://www2.warwick.ac.uk/services/library/subjects/' lawofficialpublications/law/gateway/- particularly tailored to the Warwick Law School's interests and approaches.

[9] E.g. University of California at Berkeley http://www.lib.berkeley.edu/ TeachingLib/Guides/Internet/Evaluate.html; Cornell University: http:// www.library.cornell.edu/okuref/research/webcrit.html; Widener University http://www2.widener.edu/Wolfgram-MemoriaI- Library/webevaluation/examples.htm

[10] http://www.sosig.ac.uk/desire/internet-detective.html

read and took notes. Now they very often take photocopies rather than notes![11] Research in law should be a reiterative process: the researcher reads as he or she writes. So each item read contributes to the thought process as well as to the writing process. Unlike a statistic or an experimental result in the sciences or empirical social sciences, an article, a case or a provision of a statute is not just a piece of data to be slotted into the final written product, but should itself be thought about and may well lead to refinements of the research focus, or to fresh ideas for material. But it will only work like this if the material is read almost as soon as it is collected.

However, it is all too clear from many theses that the student does not really think about the place of each item in the intellectual scheme of things, but as something to be filed away and then brought out as the writing process takes place. One imagines the student sitting with a pile of photocopies and writing a summary of each article and then putting the article away in a box sighing 'ten down, 20 to go'! Alternatively, some authors may produce a summary of an item read, and file that away, producing the summary when the writing up is being done. This of course was perfectly possible in the pre-photocopier days - but less likely because the slow process of writing by hand tended to lead one to think before noting and to producing shorter summaries. Now many a student will go to the library with his or her laptop and type summaries straight into the computer. This is less likely in India perhaps - and until recently even the mass photocopying was less likely in most developing countries.

Although one can identify these styles of material collecting, keeping and retrieving as contributing to the problem, at bottom it is ah intellectual issue: the author is simply not confronting the nature of the research process. Indeed, the impression is that the exercise is viewed as far too mechanical, and a question of showing that the author has read enough cases or articles, rather

[1'] At this point I cannot refrain from repeating a story told me many years ago by a colleague in the UK: of a student who said 'Professor X - that article you told us to read is very difficult. I have photocopied it three times and I still don't' understand it!'.

than either knowing or caring very much how the material ought to be used.

3.5 Tackling plagiarism

Plagiarism too is something that needs to be planned against from the beginning. Some plagiarism seems genuinely to stem from bad note-taking practices. I have tended to be incredulous when students have argued that they did not know whether a passage in their notes was their own or someone else's. But failure to keep reference writing abreast of the whole writing process can produce such a result. I remain sceptical in many instances - is it credible that a student who is writing in English as a second language fails to realise that a passage is not his or her own? But then maybe the student fails to realise the difference between accurate and inaccurate English. Indian research students will generally write better English than those from some other countries, so the mistake would be more credible. This type of problem arises from the failure to keep proper notes of sources.

But there are instances when students genuinely do not understand what is wrong with certain sorts of improper academic practice. The University of Teesside in the UK has been running courses for law students who, it is reported, have said things like 'I didn't think that was plagiarism'. The message seems to be that simply telling students that they must not plagiarise is relatively ineffectual; they need to be presented with concrete examples, and to be taught how to avoid the trap.

3.6 Attitude problems

Sometimes the problem may be the attitude of the supervisor of course! But very often problems in completing a research degree, or in completing it well, lie in the motivation and approach of the individual student. I have suggested the following reasons to students under the heading 'how not to complete':

[12] 'Plagiarism: The Teesside Experience' on http://www.ukcle.ac.uk/resources/ teesside.html-ihe website of the UK Centre for Legal Education.

Overestimating what is required

Any research degree is a big undertaking but some students may, especially when it comes to the 'writing up stage' be almost paralysed with apprehension at the looming task. For this reason it may be best to require students to write little and often rather than saving up everything until a 'writing stage'.

Underestimating what is required

A student who has enjoyed writing an extended essay at undergraduate level or a dissertation for an LL.M. may not realise how much more substantial an undertaking a doctorate is. Into this category of student also fall those who think that all that matters is writing enough words.

Inadequate support

By this I mean not having the support of friends and family for what is a lonely experience. Some institutions are better than others at providing a supportive environment among the graduate student community.

Taking a job before you have finished

Success may be obtaining a job - but that success may spell the end of the research degree process. For this reason a more structured type of research degree programme may help students to finish before they run out of money and have to seek employment. This type of factor lies behind many changes in research degree structures - where funding agencies have been asking for results, and no longer tolerate situations in which students can take five or years to finish degrees.

Trying to make the research encapsulate your life's philosophy

A student who is very enthusiastic may run into problems that the more hard-nosed candidate who knows that he or she wants the degree in order to get a job may not face: the topic may be so important to the candidate that it takes over his or her life, and gets completely out of hand

Reluctance to let go

There may be students whom the research and writing process suck in so firmly that they are reluctant to leave the intellectual womb. For some a research degree is a sort of refuge from other less palatable possibilities.

Not wanting it enough

For some the research degree may be something they have rather drifted into without a clear idea of why they want to do it. Maybe they have had difficulties in finding employment. Sometimes it is a requirement of a university that teachers do doctorates, though the individual may not yet be ready for this degree of commitment to one large project. Sometimes the student may be motivated by the chance to travel overseas, or this may be the only chance the individual will ever have to research in a good library and unencumbered by reaching responsibilities.

4. RESTRUCTURING THE **Ph.D.?**

What is the Ph.D. for? Perhaps what universities think the degree is for and what students think it is for are different things! Perhaps what universities think and what the rest of the community thinks are different too. The Carnegie Foundation has what might be described as the most idealistic and purist view:

> Taken broadly, we believe the answer is to educate and prepare those to whom we can entrust the vigor, quality, and integrity of the field. This person is a scholar first and foremost, in the fullest sense of the term. Such a leader has developed the habits of mind and ability to do three things well: creatively generate new knowledge, critically conserve valuable and useful ideas, and responsibly transform those understandings through writing, teaching, and application. We call such a person a 'steward of the discipline'.[13]

Most supervisors, operating as they do in a university environment, would probably empathise with this conception of the Ph.D. Yet how often does the reality meet this ideal? Far too many Ph.D.s in law, even those which are successful in the sense that the degree is awarded without too much in the way of rewriting, contain depressingly large quantities of rehashed secondary material, and far too little in the way of new insights, fresh ideas. A particular weakness of much legal scholarship seems to be a failure to engage with the existing secondary literature. Student writing especially may use secondary writing as a source of facts and too often as a short cut to primary material, as mentioned earlier. But far too often it does not tackle the ideas of other writers - engaging in the sort of dialogue, which is the way, a discipline progresses.

It will have become clear in the previous part of this paper that I am contemplating some introduction of formal teaching to the Ph.D. or other research degree programme. In fact this is not a new idea. Many readers will be familiar with the US system under which students do not do a Ph.D. but an SJD or a JSD (depending on the University[14]): this involves a year of course work (perhaps the same as might be taken for an LL.M. programme) followed by the writing of a thesis. Even in Ph.D. programmes in other

[13]From web page on the Carnegie Initiative on the Doctorate http://www.carnegiefoundation.org/CID/stewards.htm visited December 10, 2003.

[14] Both mean the same: *scientiae juris doctor* or doctor of the science of law (Latin not being rigid in its word order).

disciplines in the USA students are required to take courses in th discipline and to pass examination before being allowed to emb on their thesis.[15] The SJD idea has been picked up by seve Australian universities and also by the University of Hong Koi Interestingly the last university is now applying the principles research degrees generally: all research degree students will required to take certain courses in research methodology, and ai in the general area of their research. This is not always welcome the students. They tend to think that they are there just to writf thesis, and to resist taking substantive courses that are not direc related to 'their' topic - and it is not always possible to ident; courses that are directly relevant. Perhaps we need to do more inculcate into students the notion of their role as stewards of t discipline, in the Carnegie Foundation phrase.

Even if the step is not taken to restructure the degree, the who process of research needs to be seriously considered. There a books on 'legal research' but many of them seem to assume th this is something done by practitioners and that research means ju finding cases and statutes. [6] The whole process needs to be thoug about with care by student and supervisor - from the initi formulation of a field of research, to the last comma in tl bibliography. There are now a number of courses taught f< research postgraduates in law. Some are rather brief such as th for taught postgraduate programmes at Warwick where a sho thesis is part of the course. Others are more elaborate. My ow

[15] Ironically there has been some discussion in the US about whether th doctorate in non-law areas should be reformed to be more like the Jl (essentially a taught degree open to graduates only). The older members of th legal fraternity like myself will recall that in the late 1960s the LL.B. wa renamed the JD (Juris Doctor) because students felt at a disadvantage a compared with their contemporaries in other fields who went on from a fin degree to postgraduate research and obtained a doctorate and entere employment at an advantage.

This point is made from my own experience of this genre of literature but i also commented on by Manderson, Desmond and Mohr, Richard, Fron Oxymoron to Intersection: An Epidemiology of Legal Research, (2002) 6 *Lav Text Culture* 159 (from Australian experience). '
http://www2.warwick.ac.uk/fac/soc/Iaw/pg/lawdev/prereg/writing/

course at the University of Hong Kong has contained the following elements:

- Classes on topics such as:
  - > identifying a topic
  - > different types of legal research
  - > how to read - thoughtfully
  - > being comparative
  - > empirical research
  - > a sharing session - when students who have recently completed or are working on research degrees share their experiences
  - > citing sources
  - > how not to plagiarise
- Demonstrations on the use of:
  - > the internet
  - > lexis and westlaw
  - > other databases for legal research
- Exercises - a range of possible exercises such as:
  - > tracing the history of a case (for non-common law graduates)
  - > using the computer database for Hong Kong statutes (for non-Hong Kong graduates)
  - > researching a topic on lexis or westlaw - or both and comparing the two databases
  - > researching a topic on the internet (free websites - using mainly Austlii)
  - > finding journal articles on a particular topic
  - > analysing a journal article - unpacking the argument and the writing techniques used
  - > a book review

[18] The growing rend towards secretiveness and possessiveness on the Internet means that some courses the teaching materials of which used to be readily available have now become password protected and available only to students. However, some US courses may be identifiable via the jurist site:

- A final exercise for assessment purposes: a pathfinder - an annotated bibliographical guide to researching a particular topic.

5. CONCLUSION

There is much that can be done to improve the quality of the research degree product, and also the nature of the experience, to the benefit of the individual students and the discipline. Various universities have approached the problems in different ways. Columbia University Law School, in New York, for example, requires that doctoral work be published either before it is submitted or after it has been accepted but the degree will not be awarded until the work has been published. This means taking seriously the notion that doctoral work should be publishable, something, which is not achieved by many law theses. It has been observed that 'Alas, postgraduate research programs in law rarely offer students the kind of guided program able to provide them with the knowledge and skills which contemporary legal scholarship demands.'[19] This article has raised just some of the problems, and suggested a modest beginning to facing some of them.