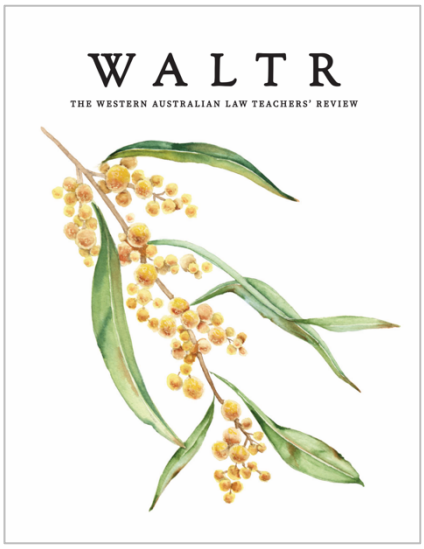

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Why Do We Need Legal Academics? The PPSA Test

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WHY DO WE NEED LEGAL ACADEMICS?

THE PPSA TEST

HARRISON CLARKE & SAGI PEARI *

Legal academics serve an important and crucial function in the role of teaching and engaging in research within the legal field. Despite this it has been argued that this role is redundant and simply unnecessary – legal academics are a dinosaur that refuse to become extinct. This article presents and criticises this assertion of academics as useless, with reference to the Personal Property Securities Act 2009 (Cth) ('PPSA') as a litmus test to determine if there is some truth to the unimportance of legal academics. This article references the fundamental role of key academics in leading the process of reform regarding personal property securities in Australia. It provides a comparison between PPSA publications of academics against legal practitioners demonstrating the narrow scope of practitioners in comparison. Finally, discussing the centrality of academics in the teaching of the PPSA in higher education institutions. The article rejects the 'useless theory' of academics and reasserts the importance of legal academics as both irreplaceable agents of change and educators.

I INTRODUCTION

This article examines a provocative thesis about the possible redundancy of legal academics. First, it introduces the thesis which challenges the role of legal academics as those best equipped with the required skills and knowledge to teach and research law. Secondly, the article focuses on the *Personal Property Securities Act 2009* (Cth) ('PPSA') as an excellent candidate to serve as a litmus test to the 'uselessness' thesis. After introducing the PPSA and explaining its critical role in Australia, the article argues that the assessment of the PPSA's practice after the introduction of the Act in 2009 opposes the 'uselessness' thesis – legal academics are not yet replaceable.

II THE APPARENT APPEAL OF THE 'USELESSNESS' THESIS

It has been provocatively argued that nothing negative would occur in an imaginary world which has no legal academics.[1] The 'uselessness' thesis has historical, practical and

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[1] Mathias M Siems, 'A World Without Law Professors' in Mark Van Hoecke (ed), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline* (Hart Publishing, 2013) 71.

conceptual dimensions. Thus, the undeniable *historical* fact is that once upon a time, there were legal practitioners who led the academic discipline of law.[2] At the time the first university was founded in Bologna in the 11th century, legal practitioners dominated the legal academia by teaching and researching law.[3] The role of practitioners remains central today as they continue leading clinical/practical aspects of legal education and are significantly involved in teaching the content across universities.[4] Emancipating the field from the hands of academics and giving it to lawyers would mean returning the field to its historical origins.

Next, *practically*, legal practitioners appear to be the best equipped with the skills and knowledge to tackle the complex content intricacies and the multifaced twisting of legal doctrine. If one indeed takes seriously the argument that the doctrinal inquiry sits at the very heart of law as a discipline,[5] lawyers have a clear advantage over academics to lead this discipline. They are the ones who spend their days in courts, arbitration tribunals and dispute resolution negotiations. By facing the current legal reality, practitioners experience the law in practice, acquiring first-hand understanding of it. They are positioned on the front lines – using and applying the law. Put simply, lawyers are the best contingent to teach and research law in a way that would not detach the field from social reality. Their first-hand experience empowers them to communicate reliable, accurate and comprehensive legal knowledge and skills to their students.

Academics often point to the advantage of scholarly inquiry when it comes to researching and teaching theory.[6] So, *conceptually*, the counterargument says that academics are superior to practitioners in tracing the underlying rationale of the legal doctrine, and explaining the normative underpinnings of apparently unrelated legal concepts, principles and rules. The significance of theoretical inquiry should not be underestimated. Theory informs practice.[7] By revealing the underlying nature of legal rules, the theory shapes future legal settings. It provides an invaluable basis for qualification and adaptation of the traditional legal doctrine in light of such acute contemporary challenges as globalisation, technological progress, cross-border commerce and sustainability.[8] This indeed explains why – in contrast to a popular call to increase the 'practical' aspects of teaching law[9] – some academics have made a diametrically opposite suggestion, characterising legal education as requiring 'further theorising'.[10] In other words, we need legal academics because of theory.

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[2] Ibid 73.
[3] Ibid 74.
[4] Ibid 74–5.
[5] See, eg, Richard Posner, *Divergent Paths: The Academy and the Judiciary* (Harvard University Press, 2016) 3–4; Andrew Burrows, 'Judges and Academics, and the Endless Road to Unattainable Perfection' (2021) *The Lionel Cohen Lecture* 1, 5.
[6] Siems (n 1) 81. See also Geoffrey Samuel, 'What is the Role of a Legal Academic? A Response to Lord Burrows (2022) 3(2) *Amicus Curiae* 305, 305.
[7] See, eg, Ernest Weinrib, *The Idea of Private Law* (Harvard University Press 1995) 8.
[8] See, eg, Sagi Peari, *The Foundation of Choice of Law: Choice & Equality* (Oxford University Press) ch 6.
[9] Harry T Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession* (1992) 91(1) *Michigan Law Review* 34.
[10] Ernest J Weinrib, 'Can Law Survive Legal Education' (2007) 60(2) *Vanderbilt Law Review* 401, 405. See also, Oliver Wendell Holmes, 'The Path of the Law' (1987) 10 *Harvard Law Review* 457 in David Kennedy and William

However, even the 'theory' counterargument can easily be rebutted by the 'uselessness' thesis. The supporters of this thesis do not challenge the irreplaceability of the theory. They do argue, however, that a close look at the theoretical teaching and scholarly writings of law frequently involve references to various 'law & x' fields, challenging the conceptual distinctiveness of law as an independent discipline.[11] By analysing legal doctrine through the conceptual lens of such fields as history, sociology, anthropology, economics and political science, legal theory inherently collapses into foreign disciplines. This suggests that the theoretical inquiry of law could be taken from the hands of legal academics, delegating the task to academics of other fields. Tackling the interdisciplinary angles of legal doctrine could be shifted to 'other schools or faculties of the university',[12] who could perform the task of researching and teaching 'law & x' areas better compared to *legal* academics.[13] In other words, even the conceptual counterargument apparently leaves the 'uselessness' thesis intact.

III PPSA: THE NATURE, SIGNIFICANCE AND CENTRALITY OF LEGAL PRACTITIONERS

Coming into force in 2012, the PPSA represents one of the cornerstones of commercial practice in Australia. The familiar example of a 'mortgage' would perhaps be the easiest way to explain nature of the PPSA in a single sentence. A 'mortgage' under the PPSA applies to all types of tangible and intangible property which is not immovable property (eg, land, houses, and apartments are examples of immovable property). Indeed, there is a limited number of times that an individual can 'mortgage' their immovable property as a security for loan repayment. Financial institutions are often reluctant to take 'second in line' mortgages due to the associated risks. So, the PPSA allows us to extend the 'mortgage' rationale to all other types of present and future proprietary assets, called 'personal property'. These include such items as goods (eg, equipment, livestock and business inventory), bank accounts, intellectual property (such as patents and trademarks), licenses, financial property (such as stock, bonds and other types of securities) and even future income.[14]

A simple loan agreement involving a debtor and a creditor epitomises the operational force of the PPSA. A creditor, usually a financial institution, requires a debtor to provide some type of asset such as inventory, office equipment or future income to serve as a 'security' of their obligation towards the creditor – the loan repayment. That security is the 'peace of mind' of the creditor which serves as an important precondition to the loan being approved. The advances of technology with respect to a wide variety of proprietary assets that a business

W Fisher (eds), *The Canon of American Legal Thought* (Princeton University Press, 2018) 19; Mary Keyes and Graeme Orr, 'Giving Theory "a Life": First Year Student Conceptions of Legal Theory' (1996) 7(1) *Legal Education Review* 31.

[11] See eg Brian H Bix, 'Law as an Autonomous Discipline' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005) 975.

[12] Siems (n 1) 77.

[13] Ibid 83.

[14] *Personal Property Securities Act 2009* (Cth) s 10 ('PPSA').

could potentially use as a security facilitates commercial activity. By supporting a business's ability to raise capital, the PPSA constitutes an important aspect of the modern economy.

Furthermore, the PPSA extends far beyond the paradigmatic example of loans and debts. The most central provision of the PPSA – section 12 – says that the PPSA applies to any transaction and commercial dealing which in 'substance' follows the underlying 'mortgage' structure for personal property. The idea is to assess the very nature of each commercial dealing and consider whether it in 'substance' or effectively represents a situation when a debtor provides a creditor with a piece (or pieces) of personal property to secure their obligation towards a creditor.[15] While the commercial actors can title a given transaction in different ways, section 12 denies formal labeling by requiring a careful 'substantive' assessment of the underlying agreement between the parties and their interaction.

The broad scope of the 'substance' test set out in section 12 explains why the PPSA applies to a wide range of commercial and consumer transactions which go beyond the classical example of a loan agreement. These include:[16]

- Loans;
- A purchase of goods when the agreement between parties says that the buyer will keep ownership of the goods until the full repayment of the purchase price – these are 'reservation of title' agreements;
- Many leases of personal property, especially leases that last for more than 2 years;
- Consignments – such as the typical contractual arrangement between a retail store and a distributor/importer according to which the former operates as an agent of the latter;
- Hire purchase arrangements – such as a typical agreements under which a person has the option to purchase a vehicle at the end of a lease period; and
- Even ordinary consumer transactions made outside of retail stores (such as transactions made through the 'Gumtree' online platform) that involve a value of more than $5,000.

The wide range of relevant transactions explains the central role of the PPSA's online federal registration platform – the Personal Property Securities Register ('PPSR').[17] If a piece of personal property in 'substance' serves as a security of an obligation, the transaction must be properly registered on the PPSR website. The buyers and renters must check the status of the personal property items they are considering purchasing or hiring. Failure to follow the PPSA's provisions may lead to significant losses of property and money.[18] Not surprisingly, the PPSA has received much attention in commercial practice. The statistics indicates that millions of Australian businesses used the PPSA in the first quarter of 2024,[19] demonstrating its paradigmatic centrality for the Australian legal and economic landscapes.

[15] Ibid s 12.
[16] Ibid ss 10, 12(2) and 47. For further discussion of these issues, see Richard Winter and Sagi Peari, 'PPSA and You: A Short Guide to the Personal Property Securities Act 2009 for the Perplexed' (2022) 49(2) *Brief* 28.
[17] See <https://www.ppsr.gov.au/>.
[18] See, eg, *Gold Valley Iron v Ops Screening and Crushing Equipment* [2002] WASCA 134; *Power Rental v Forge Group Power* [2017] NSWCA 8.
[19] See <https://www.afsa.gov.au/about-us/statistics/ppsr-quarterly-statistics>.

At first glance, a review of the practice of the PPSA supports the 'uselessness' thesis. The Act contains 400 pages of more than 300 provisions, representing a highly sophisticated and technical piece of legislation. The provisions cover such issues as registration requirements on the PPSR database for various types of personal property,[20] a complex enforcement mechanism[21] and provisions concerning the interaction between the PPSA and insolvency/bankruptcy situations.[22] This high level of technicality and detail has provided fertile ground for doctrinal publications authored by legal practitioners, elaborating on the operation of the legal doctrine and commenting on the case law developments.[23] Lawyers write textbooks on the PPSA, publish articles and teach it in law schools.

Furthermore, practitioners also seem to be instrumental to the PPSA reform. In 2015, after a 5-year statutory review of the PPSA, Bruce Whittaker released the 'Whittaker Report' offering more than 100 suggested amendments to the existing legislative framework.[24] Whittaker is one of Australia's leading experts in finance law, working as a partner in the banking and finance departments at the law firm Ashurst.[25] The dramatic significance of the PPSA in daily commercial practice and its technicalities explains the inherent interest of practicing lawyers in the exploration of the PPSA's doctrine.

Yet, the ensuing section challenges the application of the 'uselessness' thesis to the PPSA context. It considers the following three main points: (1) the dramatic role that legal academics played in the successful reformistic efforts leading to the introduction of the PPSA in Australia in 2009; (2) an examination of the PPSA's theory, demonstrating that it does not necessarily trigger an interdisciplinary inquiry, and (3) consideration of the post-2009 PPSA experience, suggesting that legal academics play a dominant role in the PPSA's teaching, writing and reformistic efforts to improve the law.

IV CHALLENGING THE USELESSNESS THESIS

A Academics Stood Behind the 2009 PPSA Reform

Intriguingly, the Australian version of the PPSA was modelled on the related legislative acts in the following Canadian provinces: Saskatchewan, Alberta and British Columbia.[26] Often referred to as one of the principal figures in leading PPSA legislative projects in Canada,

[20] PPSA (n 14) ch 5.
[21] Ibid ch 4.
[22] Ibid ch 8.
[23] See, eg, Linda Widdup, 'Function, Form, Fixed, Floating and Forge: Filtering Out Pre-PPSA Concepts in a Post-PPSA World (2019) 47(6) *Australian Business Law Review* 405; Matthew Broderick, 'PPSA and Construction Law' (2013) 29(4) *Building and Construction Law Journal* 298.
[24] Bruce Whittaker, *Review of the Personal Property Securities Act 2009* (Final Report, February 2015). See also Law Council of Australia, *Review of the Personal Property Securities Act 2009* (Report, December 2023).
[25] University of Melbourne Law School, *Bruce Whittaker* (Web Page) <https://law.unimelb.edu.au/about/staff/bruce-whittaker>.
[26] Anthony Duggan, 'The Australian PPSA from a Canadian Perspective: Some Comparative Reflections' (2014) 40(1) *Monash University Law Review* 59.

Professor Ron Cuming of the University of Saskatchewan had played the key role in drafting the legislative acts in those Canadian provinces.[27]

While the process of law reform in Australia leading to the introduction of the PPSA in 2009 was a gradual one,[28] it was Professor Cuming's model of the PPSA which ultimately prevailed and was adopted in Australia. Led by Professor David Allan of Bond University, the reformistic efforts led to the creation of a PPSA draft bill, known as the *Bond Bill 2002* (Cth).[29] Professor Allan was further instrumental in promoting the PPSA reform, his efforts are attributed to have inspired the release of an options paper in 2006 by the Standing Committee of Attorney's-General to review the law on personal property securities in Australia.[30] This was followed by the eventual formation of the *Personal Property Securities Bill 2008* (Cth), and the PPSA in 2009.[31] Inspired by Professor Cuming's vision and Professor Allan's instrumental efforts, the Australian PPSA in many ways epitomises a product of academic creation.

The dramatic role played by academics in the origination and facilitation of the PPSA in Australia aligns with the broader notion about the role of legal academics as agents of social change in society. Indeed, legal academics do not just produce scholarly outputs and teach students, but also lead societal change by standing at the very forefront of the reformistic efforts across jurisdictions. The academics perceive their role as the best equipped to flesh out the conceptual underpinnings of the legal doctrine, facilitate an internal coherency in law and address the above-mentioned acute challenges of globalisation, technological innovation, sustainability, and cross-border commerce. Indeed, the lessons of the recent decades demonstrate the profound impact of legal scholars on the development of such areas as criminal law,[32] administrative law,[33] and the law of unjust enrichment.[34] Academics lead reforms in both common law and civil law jurisdictions.[35] From this perspective, the academically led reforms of the PPSA is not an exception, but rather follows the broader vision about the critical public role of legal academia in improving the law to meet the ever-evolving needs of society.

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[27] Roderick J Wood and Ron C C Cuming, *Handbook on the Saskatchewan Personal Property Security Act* (Law of Commission of Saskatchewan, August 1987); University of Saskatchewan, *Ron C C Cuming* (Web Page) <https://law.usask.ca/people/emeriti/ron-cc-cuming.php>.
[28] See, eg, Law Council of Australia, *Report on Fair Consumer Credit Laws* (1972).
[29] David E Allan, 'Uniform Personal Property Security Legislation for Australia - Introduction to the Workshop on Personal Property Security Law Reform' (2002) 14(1) *Bond Law Review* 25. For background of Bond Bill, see *Bond Law Review's* special issue on 'Proceedings of a Workshop on Personal Property Security' (2002) 14(1).
[30] Craig Wappett et al, *Review of the Law on Personal Property Securities: An International Comparison of Personal Property Securities Legislation* (July 2006).
[31] See, eg, Anthony J Duggan and Jacob S Ziegal, *Secured Transactions in Personal Property: Cases, Text and Materials* (Emond Publishing, 5th ed, 2018).
[32] William Twining et al, 'The Role of Academics in the Legal System' in Mark Tushnet and Peter Cane (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press, 2005) 927.
[33] Warren Swain, 'Unjust Enrichment and the Role of Legal History in England and Australia' (2013) 36 *University of New South Wales Law Journal* 1030, 1039.
[34] See, eg, Sagi Peari, 'Academics and Legal Change: Birks, Savigny, and the Law of Unjust Enrichment' in Warren Swain and Sagi Peari (eds), *Rethinking Unjust Enrichment: History, Sociology, Doctrine and Theory* (Oxford University Press, 2023).
[35] Thus, for example, Twining et al (n 32) 936 commented on the role of legal academics in civil countries as exerting 'enormous influence on the law-making process, be it statutory or judicial'.

B The PPSA Theory is Still a Legal Theory

Lawyers and academics both have an interest in the law; however, their approaches differ immensely. On the one hand, lawyers are concerned with practice and using the law as it stands, whereas legal academics are more concerned with understanding the law, why it is the way it is and how can it be modified or improved considering the underlying normative underpinnings. It is their position as academics which gives them valuable insight and deep understanding as to the theory behind the law. Academics look at society as a whole, twisting and analysing the multifaced dimensions of the legal doctrine,[36] which strongly supports the point about their irreplaceable nature in researching and teaching law.

As we have seen, the supporters of the 'uselessness' thesis have referred to the centrality of the interdisciplinary perspectives as something that undermines the internal intelligibility of the law as an autonomous discipline. Legal theory does not need to be 'legal'. However, a close look at the PPSA's conceptual writings reveal the centrality of legal perspective. Without trying to discard the significance of an interdisciplinary outlook, the dominant theoretical framework of the PPSA (and related personal property security legislative provisions across jurisdictions) remains *legal*.[37]

Thus, fundamentally, the structure and operational mechanics of the PPSA are based on an agreement between a creditor and a debtor. It is, for example, a loan agreement which sets out the parties' rights and duties according to which the parties contractually agree that in the case of a debtor's failure to repay the loan, a certain piece of the debtor's personal property can be repossessed through a legal procedure initiated by the creditor. Similarly, the contractual analysis dominates other types of the above-mentioned PPSA arrangements: hire-purchase, consignments and reservation of title agreements.

The contractual structure of the theory of the PPSA informs the nature of the legal analysis in light of the specific context of the PPSA doctrine. This context raises difficult questions about the limits (if any) of the creditor-debtor autonomy to determine the scope of their contractual obligations. The PPSA's contractual theoretical framework remains mindful to the policy-based considerations underpinning consumer transactions, inequality of powers within the bilateral nexus of the parties, a fair risk allocation and – more generally – legal considerations concerning legal certainty and internal coherency of the legal doctrine.

The proprietary dimensions of the PPSA theory are important as well. One of the central aspects of this theory is the possible impact that a given creditor-debtor contract may have on third parties, such as other creditors of the debtor or insolvency/bankruptcy proceedings. The analysis closely follows the observations of classical property law scholars about the inherent difficulty that a separation between ownership and possession may create for third

[36] Bryan Horrigan, 'Australian Legal Principles in Practice: Taking Reasoning and Research Seriously' (1993) 9 *Queensland University of Technology Law Journal* 159.

[37] The ensuing three paragraphs are based on the following sources: Grant Gilmore, *Security Interests in Personal Property* (Little Brown, 1965); Clayton Bangsund, 'PPSL Values' (2015) 57(2) *Canadian Business Law Journal* 184; Ron Cuming et al, *The Ontario Personal Property Security Act: Commentary and Analysis* (3rd ed, LexisNexis Canada, 2020); Alan Schwartz, 'Security Interests and Bankruptcy Priorities: A Review of Current Theories' (1981) 10(1) *Journal of Legal Studies* 1.

parties.[38] The fact that a person has possession of a given piece of property may communicate an unclear message to the external world indicating that a person also has ownership of that piece of property. However, possession does not always mean ownership. This indeed explains the PPSA's operational dynamics insisting on the registration of the creditor-debtor contract and the personal property item serving as a security. The very act of registration underscores a central insight of property law theory about the significance of the external manifestation of rights towards the external world. Stated in these terms, the conceptual analysis of the PPSA does not inherently embrace an interdisciplinary outlook but remains faithful to the normative underpinnings of classical contract and property law doctrine – with proper modifications. This suggests that *legal* academics are also indispensable as a matter of the PPSA's theory.

C The Post-2009 PPSA Experience

The 'uselessness' thesis could be further challenged through an examination of the reality of the PPSA in Australia after the introduction of the Act in 2009. As we will see below, a close assessment of the post-2009 PPSA experience demonstrates the critical role of *legal* academics in the PPSA's scholarly writings, reform considerations and teaching.

1 PPSA Publications

Indeed, as we have seen, legal practitioners publish widely on the PPSA and related topics. That said, the leading PPSA textbook in Australia was authored by two legal academics.[39] A comparison between this textbook and an alternative PPSA textbook authored by practicing lawyers,[40] reveals a significant difference between two approaches to scholarly publishing. Thus, the textbook authored by the practitioners provides a comprehensive guide and commentary to the PPSA's specific provisions. It constitutes a handy practitioner's manual and guide, often adopting a problem-solving approach to a wide range of issues expected to be confronted by a practicing lawyer in daily legal practice.[41]

In contrast, the academically led textbook frequently examines the PPSA's provisions in light of the underlying goals, principles and policy considerations and provides an illuminative comparative outlook of the related legislative personal security acts in other jurisdictions.[42] This comparative approach is not surprising in light of the abovementioned modelling of the Australian PPSA on the PPSAs of several Canadian provinces. The academics are far more concerned with the conceptual analysis of the underlying values of the PPSA and the internal coherency of the Act. The academic rigour of the textbook often sheds light on the

[38] Friedrich Carl von Savigny, *Von Savigny's Treatise on Possession* (1848) (E Perry trans, 2017).
[39] Anthony Duggan and David Brown, *Australian Personal Property Securities Law* (LexisNexis Butterworths, 2nd ed, 2016).
[40] Nicholas Mirzai and Christopher Anthanassios, *PPS in Practice A Practitioner's Guide to the Personal Property Securities Act 2009 (Cth)* (Thomson Reuters, 2018).
[41] Ibid xi–xii.
[42] See generally Duggan and Brown (n 39).

deficiencies of the existing law, twisting and sophisticating the legal doctrine through a consideration of a wide range of hypothetical scenarios.[43]

A similar trajectory could be witnessed through an examination of the contemporary heated debate about the nature and scope of the abovementioned 'substance' test set out in section 12 of the PPSA. Due to the fact that section 12 serves as a 'gateway' for the application of the PPSA, the debate bears tremendous practical significance.[44] A review of the publications on this point suggests that the debate largely follows the contours of classical contract and property law ideas. This 'section 12' debate tackles such themes as the limits of the parties' contractual autonomy, legal certainty, manifestation of proprietary rights, internal coherency of legislative acts, their relation to other pieces of legislation and consumer protection considerations.[45] The publications on this point demonstrate a plausible cooperation and partnership between academics and practitioners as several of the pieces with respect to the nature and scope of section 12 have been jointly co-authored by academics and practitioners. [46]

The last point is important. Teaching and researching law necessitate the writings of legal academics. While a partnership between academics and lawyers could benefit both worlds, a sole reliance on practitioners is clearly undesirable – what is indeed evidenced in the examination of the post-2009 PPSA record of publications.

2 The Current PPSA Reform Consideration

The centrality of legal academics is also evidenced through an examination of the current PPSA Law Reform Consultation process initiated by the Australian Government.[47] The above-mentioned Whittaker Report has not been implemented, what led to the current call for submissions to make concrete proposals on the way to improve the current 2009 PPSA legislative framework.[48] Both academics and lawyers alike made submissions expressing their opinions and perspectives with respect to that call for submissions.

A review of the submissions once again illustrates a significant gap between the two approaches. Submissions made by practicing lawyers tend to focus on technical details, aiming to clarify the language of the existing law.[49] Based on the post-2009 case law, these submissions generally follow a client-based perspective,[50] aiming to provide clear-cut

[43] See, eg, ibid 1–3 [1.2]–[1.6].
[44] See, eg, Craig Wappett and Anthony Duggan, 'Rights in Collateral Under the PPSA: Rebutting the Minimalist Approach (2019) 30(3) *Journal of Banking & Finance Law & Practice* 169; Diccon Loxton, Sheelagh McCracken and Andrew Boxall, 'PPSA Models: a Minimalist Approach' (2018) 32(1) *Commercial Law Quarterly* 3.
[45] See, eg, Wappett and Duggan (n 44).
[46] See, eg, Loxton, McCracken and Boxall (n 44).
[47] Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (Web Page, 2023) <https://consultations.ag.gov.au/legal-system/government-response-to-pps-review/consultation/published_select_respondent>.
[48] Ibid.
[49] See, eg, Nicholas Mirzai, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (16 November 2023) [16].
[50] Ibid [2], [9].

solutions to the pressing issues and problems that have emerged in practice since the 2009 legislation.[51]

In contrast, the submissions made by academics provide a broader outlook of the suggested amendments in light of the underlying rationales of the Act, considerations of legal coherency and public policy.[52] Frequently, academics have expressed concerns related to the shortcomings of the existing PPSA legislation in light of the comparative lessons and scholarly debates in other jurisdictions.[53] The significant difference between the two types of law reform submissions underscores once again the critical role of legal academics as agents of social change. While practitioners without a doubt bring an important practical perspective to law reform considerations, the post-2009 lessons show that legal academia continues to lead the reformistic efforts.

3 PPSA in Law Schools

Finally, there is a question of a fact about the identity of the individuals who have been teaching PPSA in Australian Law Schools. If the 'uselessness' thesis is correct, one would expect witnessing a prevailing role of legal practitioners in teaching this highly complex, technical and yet practically important subject. However, an examination of the PPSA lessons in the leading the Group of Eight (Go8) Australian universities below indicates otherwise.

PPSA is taught by an *Academic* at the following institutions:

- University of Sydney, *Jason Harris;*[54]
- University of Melbourne, *Anthony Duggan;*[55]
- University of Queensland, *Dr Darryn Jensen;*[56]
- University of Western Australia, *Dr Sagi Peari;*[57]
- University of Adelaide, *David Brown.*[58]

[51] See, eg, John Bennett, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (2023) [8].
[52] See, eg, Sheelagh McCracken, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (8 December 2023) 7–9.
[53] See, eg, Anthony Duggan, Submission to the Attorney-General's Department, *Public Consultation on the Government's Response to the Statutory Review of the Personal Property Securities Act 2009* (2023) [10].
[54] The University of Sydney, *LAWS6956: Personal Property Securities* (Web Page, 17 Feb 2024) <https://www.sydney.edu.au/units/LAWS6956/2024-S1CRB-BM-CC>.
[55] The University of Melbourne, *Personal Property Securities Law (LAWS90101)* (Web Page) <https://handbook.unimelb.edu.au/2017/subjects/laws90101>.
[56] The University of Queensland, *Foundations of Property Law (LAWS2706)* (Web Page) <https://course-profiles.uq.edu.au/course-profiles/LAWS2706-20234-7520#course-overview>.
[57] The University of Western Australia, *Commercial Law [LAWS2207]* (Web Page) <https://handbooks.uwa.edu.au/unitdetails?code=LAWS2207>.
[58] The University of Adelaide, *LAW7153 – Personal Property Security Law* (Web Page) <https://www.adelaide.edu.au/course-outlines/106018/1/winter/2019/>.

PPSA is taught by a *Practicing Lawyer* at the following institutions:

- Monash University, *David Turner*[59]
- Australian National University, *Darren FitzGerald*[60]
- UNSW Sydney, *Ram Pandley*[61]

The findings reveal the centrality of academics in teaching the PPSA. Indeed, lawyers are ordinarily more concerned with their practice and clients, which may explain some shortsightedness towards the considerations of policy and theory in teaching the PPSA. In contrast, legal academics are versed in theory, comparative outlook and the broad vision about the critical role of law in our societal fabric. Alongside the practical aspects of the legal doctrine, as future leaders of the legal community law students must gain a deep appreciation of the law, understand why it is shaped the way it is and distil its problematic aspects within the broader public context. This suggests that legal academics could not be easily discarded from the teaching of the PPSA in Australia.

V CONCLUSION

The PPSA is a fascinating subject. Intellectually intricating, impossibly and practically complex, it bears tremendous significance for the daily lives of Australians. It has also served as an excellent litmus test for the provocative 'uselessness' thesis. Despite the initial appeal of this thesis, the findings of this article say otherwise. As it has been argued, these were legal academics who initiated and carried through the 2009 reform, embracing their role in society as agents of change. Furthermore, as we have seen, the conceptual nature of the PPSA seems to be grounded in legal underpinnings which rebut a central claim of the 'uselessness' thesis supporters. Finally, it has been argued that the post-2009 reform PPSA experience further evidences the centrality of legal academics in this area law – they dominate the PPSA teachings, lead reformistic efforts and enrich the community with PPSA writings. As far as the examination of the PPSA goes, legal academics are irreplaceable and should stay around. The 'uselessness' thesis should seek its support elsewhere.

[59] Monash University, *LAW5399 - Personal Property Securities* (Web Page, 2020) <https://handbook.monash.edu/2020/units/LAW5399>.
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[61] UNSW Sydney, *LAWS3018 Commercial Law – 2024* (Web Page, 11 September 2024) <https://www.unsw.edu.au/course-outlines/course-outline#year=2024&term=Term%203&deliveryMode=In%20Person&deliveryFormat=Standard&teachingPeriod=T3&deliveryLocation=Kensington&courseCode=LAWS3018&activityGroupId=1>.