

Merit is not fixed and neutral but is an open-ended and rhetorical construct that elites manipulate to maintain their power. Yet in the frenzied pursuit of relativism we forget that no society has ever survived without a core of unifying cultural beliefs. This value-less "revolution" has caused higher education to deviate greatly from the ideals of the society it purports to serve.

Legal education has also fallen prey to the social science ideological value-less "revolution". The majority of law faculty members believe that traditional standards are inadequate, although the choice of particular alternative decision making processes is unclear. There has been little discussion and certainly no resolution of first principles, such as what are the objectives of legal education, why those objectives should be chosen and how best they can be accomplished. The ideology of social science is challenging the moral authority of the law and it may be true to say that interdisciplinary teaching is impelling lawyers to deny the very possibility of any moral authority in the law. Social science ideology has become so pervasive in the legal, political and ethical discourse that it is now a major contributing factor to them in its own right.

However, a knowledge of social science makes for a better lawyer. It improves a lawyer's understanding of human behaviour in legal settings, giving a fuller appreciation of the goals, motivations and strategies of clients, judges and adversaries. Social science helps lawyers to understand the difference between good and bad law, in particular, good law being that which strives to promote core societal values, whereas bad law neglects such values. Ultimately, lessons should be learnt

from social science, while resisting social science's pull towards nihilism.

Professionalism: the deep theory
(The ideological impact of legal education upon the profession - a series of essays)

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The legal profession is in crisis because we have lost sight of the "deep theory" of professionalism in the classroom, the office, and the courtroom. Deep theory focuses on the ultimate motivation for obeying rules. There are three common categories of deep theory: goal-based, rights-based and duty-based.

Recent developments in legal education, such as legal realism and critical legal theory, are examples of goal-based deep theory. The older ideals of a neutral rule of law have been rejected as a pious myth and a deliberate effort to exploit the weak under the illusion of fairness. Students become convinced that professionalism means being willing to pursue the ends of others, especially clients, irrespective of the means. Moral relativism and goal-based deep theory therefore go hand in hand.

Most democracies are founded on rights-based deep theories where the focus is on human freedom. In a Dworkinian sense the ground rules of rights-based deep theory are that every person should be accorded the largest political liberty compatible with a like liberty for all and that inequalities in power, wealth, income and other resources must not exist except insofar as they work to the absolute benefit of the worse-off members of society. These principles become the touchstones with which to test the validity of all positive

laws. However, rights-based deep theories do not help people make critical choices within their own area of freedom. Whilst they may determine the freedoms of the client, for instance, they do not answer the question of what we must do to be a good person and a good lawyer.

Duty-based deep theory is founded on the great classical and religious tradition that good acts do not necessarily lead to good results, at least not in this life. The professional traditions of the Inns of Court are duty-based. Law was initially taught as a humanistic study. The ideal of a barrister was strengthened by identification of individual lawyers with the system of justice. Maintenance of this identity was a professional duty.

The task therefore is to refocus legal education towards its humanistic, duty-based deep theory roots. This involves a recognition within the profession that lawyers are not just a means to someone else's ends and that losing a client is not as bad as losing self-respect. The lawyer's job is to protect the rule of law as an ideal, to serve the system of justice and to promote and study humanism.

CONTINUING EDUCATION

[no material in this edition]

CURRICULUM

Reshaping first year legal doctrine: the experience in the law schools

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20 Fla St U L Rev, 1993, pp 599-629

A previous article written by the author suggested that first year courses, such as contracts, torts and property could be taught within a single topic, civil obligations. This