

attempt the kind of progress that has been made in corporate America. Many faculty are immediately offended by the very suggestion of a corporate analogy. Some are hostile to the corporate world as they see it. Nevertheless, there are many of us within colleges and universities who believe that we in higher education are paying a heavy price for our failure to persuade leaders in business and in government that we are effectively managing our resources. We need to do a better job and we need to persuade people that we are doing a better job.

This is not to say that higher education has made no response to the crises in confidence or to the increased scarcity of resources. The first line of response has been an attempt to increase revenue. The second has been retrenchment, but retrenchment without the sort of restructuring that has taken place in American business. There is a widespread consensus among outsiders that the academy should employ some of the techniques that were used to reinvent corporations in the 1980s: defining missions, focusing on quality, flattening hierarchies and giving employees more authority, examining bureaucratic fat and contracting for noncritical services.

Law schools need to define their core mission and concentrate on what they do best; to examine their internal bureaucracy; to form alliances with other institutions; to involve faculty and other stakeholders in the process; to move fast and stay the course; to establish meaningful minimum expectations for faculty presence on campus; to establish performance standards for faculty to interact with the legal profession; and, finally to maintain a sense of gratitude for the position of law professor - surely one of the greatest jobs in the world but fail-

ing that, to maintain a sense of humour.

LEGAL ETHICS

Heroes or technicians? The moral capacities of tomorrow's lawyers

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Basic technical competence aside, we expect lawyers to behave ethically in their relationships with clients, the courts, fellow professionals, and the wider community. Society seeks not only capable but also responsible lawyers. A morally adequate conception of legal competence requires more than the acquisition of abstract principle or a purely technical proficiency at particular legal or generic skills.

How we conceptualise legal professional responsibility is a question vital to professional legal education and one going to the heart of the moral authority of lawyers. To defend this authority, a merely technical conception of skills and competence is not enough. The exercise of that responsibility requires recognition of a variety of constraints and possibilities within professional practice. Law students need to recognise that professional responsibility implies a sense of when to conform with current professional opinion and practice and when to exhibit professional courage to cross the grain.

In Australia, Canada, the United Kingdom and the USA, recent talk about skills, values and competence in legal education leaves unanswered the question of what conception of legal knowledge is being used. Despite growing unanimity about the need to improve the level of lawyers' performance, there is still surprisingly little developed sense of how to proceed in this direction. There has been an inadequate degree of theorising

about types of legal knowledge and their relationship to legal practice. This reflects the continued resistance by many legal academics and practitioners to law students being taught critically and contextually, except in rather superficial ways. Law schools and professional training programs threaten to perpetuate a narrow, largely abstract and socially insensitive form of professional reproduction.

There are ways of conceptualising the professional responsibility of lawyers which are responsive to the broader social involvements and commitments and which address the professed professional goals of public service and justice. In contrast to a replicative model of professional formation, a transformative model is a way of developing the necessary scope of legal knowledge. There needs to be functional integration of deep critique with professional reproduction through the development of what constitutes legal knowledge.

The moral responsibilities of lawyers in the next century will depend even more than previously upon a solid, personal foundation of values and dispositions. Increasing heterogeneity among lawyers will generate an expanded range of explicit choices of professional values and commitments, which the individual lawyer will have to sort out. Responsible lawyering requires more than simply the capacity to act in a technically proficient or competent manner. The capacity to understand, as well as to analyse, situations and apply certain legal strategies is vital to the ethical character of legal practice. While promising new levels of mass competence, an excessive concentration on technical skills to the exclusion of issues of meaning and context threatens the loss of a broader appreciation of the nature of lawyers' work. A

sense of integration and balance between technical proficiency and an ethically grounded sensitivity or application is needed. How this is achieved in legal education and training programs is vitally important.

Conceptions of professional responsibility need to be developed in ways that exceed, even disrupt, mainstream approaches to ethical instruction. Formal and conventional understanding of professional obligations around service delivery needs to be placed in a wider context, so as to enable close examination and criticism. Ethical development cannot take place except in an environment of discussion and questioning.

The limits of current conceptions of professional knowledge and the inescapable choices facing current and future generations of practising lawyers suggest the need, as well as the desirability, to move away from an essentially replicative model of professional preparation to one inherently more pluralistic and dialogical in nature — a transformative model. Inevitably, in a profession which reproduces uncritically, its notion of competence is essentially instrumental or operational in nature. Professional education purely or predominantly founded upon traditional notions of education and skills no longer fits contemporary circumstances and is therefore objectionable. The term 'transformative' is not used to suggest the virtue of ceaseless transformation for its own sake; rather, it points to the unavoidably imbricated nature of professional practice, rendering it vulnerable and responsible to a variety of social pressures.

Deep learning should be encouraged. If students are to actively consider the personal significance of acting ethically in legal practice, forms of instruction and assessment are required

that do not simply rely upon the regurgitation of information taken from lectures. Because ethical problems can often emerge from complex fact situations, be coloured by divergent, even incommensurable values, as well as by affective differences, a surface approach is ill-suited to fostering a deep appreciation of legal ethics.

Focal concerns suggest an activist, experientially oriented method of professional inquiry as the basis for ethically competent and responsible lawyering. There are some general structures for learning that might take particular forms at different stages of legal education and training. The first of these is a basic three-element framework for the analysis and interpretation of different legal strategies and tactics. It is designed to complement and contextualise both the doctrinal knowledge acquired in the classroom, and the technical skills of practice acquired in different settings. It is: social interests — legal action — social consequences. The second structure for learning is perspectival dialogue; it encourages perspectivalism with respect to legal practice, and allows different perspectives to form the basis of active dialogues among law students. The perspectivalism consists of two fundamental categories, with a number of different members in each. The bifurcation is between *insider* and *outsider* perspectives.

The establishment of these categories of insider and outsider allows the problematisation of differences and the recognition that differences of perspective go to the heart of many ethical dilemmas and shortcomings. The specification of such a range of legal practice interests suggests considerable shortcomings in many conceptions of professional responsibility.

A broader commitment by the legal profession to the substance of legal ethics in their daily practices is required if professional education courses and students are going to take these questions seriously. In arguing for an improved appreciation of the ethical dimensions of legal practice, it is not necessary that law students or practitioners should become legal philosophers. Instead, it is important that students have access to the different vantage points and perspectives on the law. As change in professional life is inevitable, professional educators need to be responsive to the altering environment.

PURPOSE

Globalisation and challenges for legal education

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There is a need to change our thinking about legal education at the university level in terms of how it understands and teaches about national law. There is a need for a global lawyer in at least two senses: first, there is a need for a lawyer who is suitably equipped for dealing with legal material from different jurisdictions; and second, that, because being a good lawyer requires not merely being able to absorb and possess purely technical knowledge, global processes affecting the nature of national law must be addressed as an integral part of legal education.

Lawyers are coming to play a pivotal role in Australian society. They are not only involved in returning the balance between 'is' and 'ought', but, as a professional group, the legal profession is responsible, to a degree much higher than is usually accepted, for the creation of social and political reality. It is our hypothesis that lawyers