LEGAL ETHICS

Ethics for lawyers or ethics for citizens? New directions for legal education
J Webb
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The attack by academics, clients, consumer groups and state authorities antagonistic to the monopoly power of the professions has resulted in the initiation of a substantial renegotiation of the relationship between profession, state, and civil society. In such an age of doubt and deregulation there is a certain inevitability in the growing calls for legal education to develop a more distinctively moral voice. In England and Wales emphasis on the ethical dimension has emerged only relatively recently. The creation in 1991 of the Lord Chancellor's Advisory Committee on Legal Education and Conduct (ACLEC) has been an important catalyst.

ACLEC calls for a greater emphasis throughout legal education, not just on the standards and codes of professional conduct, but on developing commitment to fundamental legal values of justice, fairness and high ethical standards. Potentially, this would seem to signal a number of emphases, particularly at the undergraduate or initial stage of legal education. First, it indicates some acceptance of a broad definition of legal ethics which is capable of incorporating both a macro and micro perspective. Secondly, it endorses in part the liberal ideal of university education. Thirdly, however, ACLEC's first report also suggests a rejection of the classical liberal approach which treats professional training and formation as only an indirect and, perhaps, unintended outcome of the educational process.

Enough has already been said over the years about the limitations of doctrinalism. First, it encourages a pedagogy in which students are merely 'theoretical spectators'; the teaching is often didactic and the ideas 'challenging' in only the most abstract, intellectual sense of that term. Secondly, emphasis on the rules generates 'legalism', an ethical attitude which encourages individuals to treat moral conduct as rule-following and to use rules manipulatively through forms of creative compliance. The shift towards more skills-based legal education has enabled the law schools to make a critical contribution to thinking about the legal process. However, much of that potential has yet to be fulfilled.

The adoption of a rule-centred paradigm in legal education also sends out powerful signals about the nature and relative unimportance of individual roles and relationships in legal problem-solving. The criticisms are well known: the education process commonly replicates the competitiveness and individualism associated with the adversarial paradigm; classroom legal problems treat facts, and often preferred outcomes, as given and non-negotiable, in particular there will often be an artificial closure of the problem domain so that the 'non-legal' or 'human' considerations are excluded; 'clients' are two-dimensional and frequently made absurd in name and/or behaviour; opponents are non-existent; and third party or wider 'social' interests are likely to be ignored, unless they raise some particular technical issue.

If an education is to be liberal, it needs to be liberating. It needs to create in us the ability and confidence to make judgment calls and to act upon them in the social world. In terms of ethics education, there is the need to balance a knowing of what is right and the capacity for motivating right conduct. It is not enough to treat 'ethics' as a knowledge attribute.

Thus the challenge is to transform a system of legal education that too often conceives of the law in technical-rational, individualistic terms, that underplays the ethical significance of legal institutions and that separates personal moral development from intellectual and professional formation. In order to do this, we need to do more than just ensure that students have argued about law and morality in jurisprudence classes. It calls for some significant reshaping of the undergraduate curriculum.

Underlying the author's model is a single key assumption: that the traditional separation of moral theory from moral practice is self-limiting. The aims of the model are: to develop a sense of community; to consider the importance of role; to enhance integrity; to value 'connection' and responsibility; and to develop the capacity for judgment. Many of these ideals can be made concrete and introduced into the curriculum at the initial stage through a combination of techniques that are already in use within the legal academy. In stepping from theory to practice we need to consider both the 'knowledge' that is to be created and how the learning environment might operate to enhance ethical understanding.

How should we build this understanding into our teaching? First, macro ethical contexts might be introduced into substantive modules, to address, for example, the assumptions of personal responsibility underlying an area of law, the ethical basis of compensation or other legal rights, or perhaps to focus on problems associated with the adversarial process, or the delivery of legal services. Secondly, some element of professional legal ethics can also be relatively easily assimilated into the substantive courses, often by way of discussion or role-play. Thirdly, there needs to

be at least one 'foundation' course which is capable of setting out in general terms some major ethical assumptions underlying the due process model and the provision of legal services and possibly also introducing the core principles of professional legal ethics. Lastly, we need to reconsider the role of the 'legal humanities'; in the hands of law teachers these have often been both subverted to and diminished by the Anglo-American positivist tradition, leading to marginalisation in the average curriculum.

A much more informed debate needs to take place about the institutional values of the profession, the nature and role of codified professional ethics, the need for continuing professional education in ethics, and about the nature of the workplace and the kinds of training and mentoring necessary to sustain ethical development in practice.

PURPOSE

Thinking about law schools: Rutland reviewed
W Twining
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The steady bureaucratisation of universities is bringing to the surface disjunctures in such concepts as 'law students' and 'law teachers'. This is symptomatic of wider uncertainties about the actual and potential nature and functions of law schools in rapidly changing situations. The time is ripe for a *rethinking* of law schools.

This represents a significant step away from the tradition of talking about legal education mainly in terms of process rather than institutions. A process perspective, however liberal, almost inevitably focuses discussion of legal education onto the early stages of professional formation. Institutional analysis of law schools is no cure-all. First, an institution can be analysed from a variety of standpoints. Secondly, no institution is an island, although it is often tempting to present it as a 'total institution'. Thirdly, the relationship of individual students and academics to particular institutions is changing. However, individual law schools are significant units in respect of finance, prestige, culture, student choice and forward planning.

Rethinking law schools as institutions requires some tools of analysis. The goals and priorities of a law school need to be set in the context of its overall mission, the national system of legal education, and specific conditions and trends at local, regional, and international levels.

The United States is almost unique in the world in not subscribing to the idea that law is inherently a cheap discipline; in England law is officially treated along with politics as having the lowest unit costs. American discourse about legal education seems to be particularly susceptible to the football league model: the primary school image; the private practitioner image; and the professional snob syndrome.

English law schools are in the process of moving away from the primary school model, although practice still outruns discourse, for example in respect of who count as 'students'. The proclaimed ideology of nearly all undergraduate law degrees is that they are providing a general, even a liberal, education at the academic stage, which is a good preparation for many different kinds of career. This suggests a distancing from the private practitioner image. However, student culture has tended to be more vocationally oriented than either the official line or the job market warrants.

'Failed sociologists' in the market place: law schools in Australia
C Parker & A Goldsmith
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In the late 1990s Australian law schools occupy a precarious position between profession, state, and market. Law schools, already in an ideological and professional bind over their allegiances between academy and profession, seem fixed in reactive mode, rather than engaged in trying to renegotiate the terms on which legal education is offered. Australian law schools must explore a different model of legal education, based upon a transformative notion of legal knowledge and legal practice, if they are to overcome their current malaise.

From their beginnings Australian law schools readily submitted to professional control and influence. They competed with apprenticeship to become the major mode of entry to the profession and were viewed as adjuncts to the legal profession, rather than truly academic institutions dedicated to liberal educational aims. The recent history of Australian law schools can be partially understood as a story of separation from the practising profession, escape from the trade school mentality, and concomitant entanglement with the state, the market, and the university.

The opportunity for academic lawyers to differentiate themselves from the practising profession was provided by the state's expansive higher education policies of the 1960s and, even more so, the 1980s. The burgeoning growth of legal education from the 1960s onwards created the critical mass necessary for law school lawyers to differentiate themselves from the profession and begin to develop their own agenda. University legal education has become at least partially independent of the profession and captive to the higher demands of an