

mative version that it is in the dock. The high roads (legal idealist or liberal) perhaps imply a more pervasive concern with ethics than the low road interpretations of contextualism and intersectionism; but in legal education, as in legal decision-making itself, the pathways that take us to ethics look more like a maze than a motorway.

### **Developing ethical lawyers: can legal education enhance access to justice?**

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33 *Law Teacher* 3, 1999, pp 284-297

The ethical challenges presently facing the legal profession can seldom have been greater than they are today. Not only are academics and practitioners functioning in the shadow of a new political economy of lawyering, in which legal services are simultaneously both more regulated and more dispersed and fragmented across increasingly globalised markets. We are also currently confronted by an almost unprecedented flood of laws that will transform the arenas of legal disputing and create significant challenges for legal education.

Many of these developments raise issues which go well beyond the conduct matters which academics can tidy away to the hinterland of vocational and continuing education; rather they beg quite fundamental questions about the role of law and lawyering in the 21<sup>st</sup> century. The link between ethics, education and access to justice needs to be made explicit. That link is grounded in the assumption that just legal systems need ethical lawyers. Citizens' access to justice must in part be predicated on the ability of lawyers and judges themselves to show an understanding of and commitment to justice. The development of that commitment must be a function of the universities. Legal education needs to be seen as a process of educating for justice.

It must be acknowledged that the acquisition of knowledge and skills also involves the acquisition of values about that knowledge and those skills. Generations of realist and post-realist scholars have shown that the technical 'black letter' domain is not value-free. By offering silence or even denial at those points of the curriculum that cry out for an ethical response, we contribute, at best, to the cynical and pragmatic response to law that seems so prevalent among students and, at worst, alienate those who had hoped for more.

Ethics must be built into the curriculum in a manner that is sufficiently pervasive to be effective. The danger with ethics teaching that relies substantially on stand-alone courses is that they offer too little, and usually, too late. Ethics has to pervade the curriculum because it is fundamentally pervasive. The approach to teaching and learning should be holistic rather than narrowly technocratic. Legal education is holistic when it encompasses the development of theoretical knowledge, values and skills in the context of individual experience.

Studies of moral development suggest that we all have the potential to improve the quality of our ethical decision-making and that such capacity can be enhanced by taught interventions. Ethical decision-making depends on four elements: recognition, judgment, motivation and character. Moral reasoning is a particular species of contextual as opposed to abstract problem solving.

In an ideal world we should design educational programs to facilitate each stage of the model of moral development. Pervasiveness must mean pervasive across substantive legal subjects and not just the 'soft law' areas. This does not mean that ethics has to take over but it is relatively easy to integrate an element of ethics into the foundation subjects. The danger of pervasive-

ness is that giving the pieces of legal ethics a home everywhere deprives its core concepts of a home anywhere. There clearly needs to be a 'core' course. Further, there is some evidence that intensive teaching programs can produce better developmental outcomes than teaching which is delivered over a longer time span.

Ethics cannot for the most part be taught by traditional, didactic methods. Developmental approaches to ethics require a strong emphasis on active learning methods. This will inevitably require an emphasis on small group, participative learning, involving hypotheticals and ethical dilemmas, role play exercises and the encouragement of groupwork in which students can share and contrast their experiences and opinions.

A criticism of much moral development theory is that it does not always sufficiently recognise the collective, cultural dimensions of moral identity formation and moral action. One of the key challenges facing the law school is to re-conceptualise itself as a moral community. First, law schools need to look at the images they convey. Second, law teachers cannot be wholly neutral in what and how they teach. Third, law teachers need to think more positively about how they might transfer ethical responsibilities to students.

If lawyers are to turn the spotlight on the ethics of the profession, as they seem to be doing in increasing numbers, then they need to keep in mind the old adage about glass houses and stones. Justice, like charity, begins at home; the law schools must share with the profession the responsibility for developing lawyers capable of delivering access to justice.