and one which is not readily adapted to dealing with the diversity of women's experiences of life.

The concept of the legal person can be used to demonstrate to the student some of the instances of overt gender-bias in the law through the medium of the apparently neutral legal doctrines of statutory interpretation. In the way most course contents are presented, the concept of the legal person is one often simply overlooked or taken for granted, but it is one issue on which feminist jurisprudence, in particular, has shed light. No law school introduced this important theme in its teaching of this topic.

Issues connected with the adversarial dispute resolution process also commonly find a place in introductory courses. These include an examination of the adversarial trial and discussions of the development of the jury system and the role of lawyers, the jury and the judiciary in trial outcomes. There have been many feminist critiques of the adversarial, confrontational trial as an inadequate and, at times, inappropriate method of dispute resolution. Any discussion of the trial as a means of dispute resolution is, arguably, seriously lacking without a consideration also of these feminist analyses.

Legal aid, and the dearth of government funding made available for legal aid, is an important, related issue in this area because women, being relatively poorer, are less likely than men to be able to afford private legal services. Without some exposure to these issues, the provision of legal aid can appear to students to be neutral, in its availability and effect, in relation to men and women, and also among women. The introductory course at only four law schools discussed funding and access to justice and the experiences of the legal system had by women.

Several of the introductory courses taught the typical core topics of the subject within a critical or contextual framework. A student of these courses would arguably have a better grounding in the skills necessary to think critically in the remainder of their law studies than students who have been taught the introductory law subject in a largely conventional, uncritical manner, and this is indeed the stated objective of several of the introductory law courses.

There is some validity in the feminist argument that legal education is gender-biased in favour of men. Feminist scholars have argued that legal education is gender-biased because it portrays men as the human norm whereas women are depicted as different and inferior to men. Since the Pearce Report, most law schools have attached considerable importance to students developing a critical perspective of the law in a social context. This study indicates that the majority of the introductory courses have been taught with a critical approach to the subject topics and there is a considerable diversity of approach taken, consistent with the freedom teachers of this subject have to design their courses.

However, although there was some feminist discussion in most law schools, feminist critiques relevant to the introductory topics were not incorporated in the curriculum as frequently, or to the same extent, as other critiques. In many introductory courses, there was no feminist content, nor any content concerning women's distinct, yet diverse, legal needs or experiences.

Legal educators, as university teachers, should be reflective and inclusive. It follows that they should not present any point of view as a universal, objective truth about the whole world and all those who live on it.

INDIVIDUAL SUBJECTS/ AREAS OF LAW

Teaching evidence: inference, proof and diversity

K Mack

11 *Legal Educ Rev* 1, 2000, pp 57-79

When issues of diversity are raised in a law topic, they often appear - or will be regarded by the students - as not central to the substantive legal or doctrinal aspects of the topic. Thus, a preliminary teaching question which arises is the specialisation/ mainstream debate: should such material be presented in a separate segment of the topic (a specialisation) in order to give it some overt visibility, or should it be 'mainstreamed' by including references to it throughout the topic? Either approach can lead to marginalisation.

The approach to take in teaching evidence is to show how such issues of diversity are not marginal, but central, by considering diversity from the very beginning, as embedded in the fundamental evidentiary questions of relevance and the logic of proof, by referring to race and gender issues in a range of evidentiary contexts, by having at least one specialist section which focuses intensively on diversity and by including consideration of race and gender in assessment.

Evidence is the law of facts. The objectives in the author's subject topic guide reflect this emphasis on facts, rather than a rule-sensitive approach. Evidence rules about what cannot be done with facts and inferences make no sense to students unless they first know how to use facts and to draw inferences from them. This approach to evidence law requires teacher and student to investigate how we think and why we think a certain way and to expose unacknowledged assumptions, beliefs and ideas. Analysing the intuitiveness of reasoning about facts orients us towards understanding people, ourselves and others, and it is an infinitely generalisable ability.

The course beings by asking what it means to call the reasoning process behind the law of evidence 'natural'. In its deployment of these so-called 'natural' processes of fact discovery, the law of evidence makes a number of explicit and implicit assumptions about human behaviour and reasoning processes. Evidence law assumes that fact finding is and should be entirely 'rational' in the sense that it is governed by principles of logic. An implication of this rationalist approach is the correspondence theory of truth: events occur and exist independent of human observations, and true statements correspond with these facts. A further assumption of the law of evidence is 'uni-

versal cognitive competence': the assumption that normal, ordinary and unbiased people are able to assess information presented and come to much the same conclusion.

Modern commentators have shown that these assumptions about objectivity, rationality and universal cognitive competence are profoundly flawed. First, there is the recognition that each of us carries along our own set of beliefs, values, standards, sense of acceptable behaviours and customs. However, much of our cultural perspective is not obvious to us. We may become aware that others have a set of cultural practices, when those practices or beliefs differ from our own. However, we may continue to regard our own perspective as normal or neutral or better, and that other perspective as different or even wrong. Recognising the importance of pre-existing narrative structures challenges the rationalist assumption of objective knowledge and 'normal' inferences based on a 'universally' available stock of knowledge about the common course of events.

Part of the project for the author's evidence class is one of self-analysis: getting the students to look inside themselves and to see that they are equipped with a whole set of personal and cultural beliefs they many not be aware of, but which profoundly influence the way they think about the world around them and the people in it, and to see that others have beliefs which may be very different, but seem just as completely 'natural' and self evident to them.

The requirement that evidence at trial be given orally by a witness who is physically present rests, in part, on the belief that observation of demeanour is essential to assessing the credibility of the witness. Misperceptions of demeanour and erroneous judgments of credibility are not mere misunderstanding, nor are they simply random errors which any system will inevitably have. These differences reflect and reinforce systematic social disadvantage and distinctions imposed by our society upon men and women.

Thus in this way an attempt is made throughout the course to imbed issues of difference into the basic concepts of the course and the fundamental nature of reasoning about facts. There is also a lecture and a workshop specifically on gender and race, which also considers some aspects of sexuality and class.

The final step in the treatment of issues of race and gender in the evidence class is to ensure that these ideas are assessed, so they will drive student learning. The assessment problems are drafted with care, to avoid raising personal emotional difficulties for students.

Student evaluations of the course were generally favourable. There was very strong agreement that the subject was challenging and difficult, with a fairly heavy workload, and was presented at a fast pace. At the same time, there was substantial agreement that the assessment was fair, that they understood the subject matter and that they had a positive attitude to the subject. There was a strong view that the aims of the topic were implemented, which suggests that the basic focus on facts and reasoning from facts were accepted. Taking these finding together suggests that the students were willing to accept and even be enthusiastic about a subject which is both doctrinally difficult and which deals in a serious way with issues of diversity.

Because issues of race, gender and diversity are considered to be central to the fundamental evidentiary concepts of relevance and proof, they are raised from the very beginning of the evidence course and are re-emphasised in different ways throughout the semester. In this way, the issues are not marginalised and do not take time away from aspects of doctrine which we must cover.

Teaching family law as feminist critique of law

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23 *U NSW L J* 2, 2000, pp 58-86

Feminist ideas are not adequately addressed in the majority of legal education. While the research journals and books about feminist thought have become a common feature of legal literature, it is not yet the practice to convey these ideas to law students in a systematic manner. In legal education in Australia, feminist critiques are at best considered the special interests of some academics (usually women) and it is left up to them to teach about feminist theories of law. For the most part, law courses include an eclectic choice of feminist literature with no, or very little effort at explaining the significance of feminist critiques in the context of other (mainstream) legal literature. A systematic engagement with feminist critiques in legal education can enable law students to question the very foundation of mainstream knowledge.

Legal education has long suffered the tension between the claims of what is proper for training for a profession and the education or training of scholars in the academy. In keeping with the professional connection of legal education, a persistent stream of thought is that effective learning in the profession amounts to good lawyering skills. In this view, the students ought to learn the technical aspects of law, and the scope of legal education should focus primarily on teaching legal doctrine.

Historically, legal education, even in the universities, has focused on legal doctrine available by the study of casebooks. Systematic attempts at presenting law programs with specifically interdisciplinary bases have not proliferated.

The distinction between professional training versus liberal education is misleading, meaningless and a red herring. Legal education understood as a compromise between theory and vocational practice is based on a misconceived idea that one cannot simultaneously learn the theory of law and learn to practise law, or that attempting to do so is counterproductive. There are at least two counter arguments against restricting the focus of legal education to merely professional training: that not every one will become a solicitor, and that even practising lawyers need a wider education.