

What do they learn when they learn legal ethics?

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Even when law teachers think they are teaching law, they cannot avoid teaching legal ethics as well. What, then, do we teach when we do explicitly set out to teach legal ethics? Should we merely expect students to learn some rules and laws that apply to the conduct of legal practice? Can we really expect students to learn to be more ethical in a university course? Should we expect them to learn moral judgment? Perhaps we should be teaching them the skills of legal practice?

The depressing conclusion in much of the scholarly literature is that, even as we try to teach our students ethics, they often learn only to become even more cynical about the possibility of ethical practice. They are doubtful that learning ethical rules will accomplish anything; they are disengaged from ethical theory and turned off by courses that seem to focus only on critique of the profession's failures and problems that appear to be without solutions. Some of the most thoughtful commentators on legal ethics and the skill of teaching legal ethics argue that the key to understanding and learning legal ethics involves a process of judgment. It is argued that the deepest source of dissatisfaction in legal ethics courses arises from the absence in the classroom of the human capacity of judgment.

This paper uses student evaluations and reflective journals to assess what the students learned from our approach to the compulsory legal ethics subject taught at the University of New South Wales — Law, Lawyers and Society — and to raise for discussion what it might be reasonable for us to expect students to learn. The learning outcomes for the course were designed to cover a range of knowledge and skills that would be necessary for aspiring lawyers to

exercise ethical judgment in legal practice.

The aims were that students would: (1) learn to identify the rules and norms that lawyers would apply in practice; (2) judge what roles lawyers do play in society and the justice system, and what roles lawyers ought to play; and (3) develop the skills necessary for ethical practice, including skills for deliberating and negotiating with colleagues about ethical and social issues, effective client communication and other client care skills, and negotiation skills.

There is both a hopeful and a disappointing story to be told: there are students who are cynical about learning ethical rules, and those who feel they can improve their ability to act ethically; those who learn how to critique the practice of lawyers within a broader context, and those who see only rules; those who connect skills and everyday practice with ethical issues, and those who still see them as disjointed. Based on the evidence, it is reasonable to hope that students might learn something about moral judgment and ethical behaviour in the practice of law from the course. However, we might be able to improve their learning outcomes by more explicitly teaching them a reasoning or judgment process that connects the application of rules about ethics and a critical standpoint on rules and regulatory institutions, with personal values in the context of the skills required for the everyday practice of law. We should focus some more attention on making explicit to our students the underlying assumptions, tools, and processes of thinking that we use, both in practice and in scholarship, to put life, theory, and rules together to make moral judgments about both specific individual practices and the practices of the whole profession.

The first learning outcome for the Law, Lawyers and Society course was for students to: learn to identify and use the rules and norms that lawyers should

apply in practice. The intention was that students would gain a broader understanding of how formal law interacts with less formal norms including person ethics, 'grey law' and co-regulation. The aim was not that students would merely learn by rote various rules that apply to lawyers but develop a sense of the complexity and fragility of the institutions that attempt legally and ethically to regulate legal practice. This should prepare them better to critique and propose reforms to those institutions.

There are a number of dangers with a rule-based approach to legal ethics, however. The evidence strongly suggests that, in general, legal education (and probably other forms of professional education also) breaks down student idealism and value commitments and that this is particularly linked to the learning of rules and how to manipulate them. Studies of law students (mainly in the US) regularly show that many students entering law school have strong commitments to using law to achieve goals of justice, social change, and public interest but that their commitment to pursue these goals actively is dissipated by law school socialisation and the allure of corporate practice. A focus on the law of lawyering in the legal ethics course does not address overwhelming student cynicism about the possibility of ethical practice in law. It may even exacerbate it.

The evidence certainly suggests that it is safe to assume that most students come into the legal ethics course cynical about whether it can teach them anything about ethics or can connect with their personal values or behaviour. Many law students come to the legal ethics course already believing that all law subjects are about learning the rules and how to cleverly manipulate them. A significant minority of the students apparently completely 'turned off' from classes right from the beginning. Seventeen (ie. approximately 10% of the total enrolment in the course) were prepared

to write completely cynical responses in the anonymous student evaluations to the question, 'What have you gained from this course?' Learning rules is unlikely to address this level of cynicism and may even exacerbate it. Nevertheless, it seems that many more students did learn something from our teaching of the rules and law of lawyering. Many students felt that the rules taught them something about the types of dilemmas lawyers could face in practice, including things that they had not thought of before.

The remaining two learning outcomes for Law, Lawyers and Society attempted to give students a practical context for ethical rules and also a broader connection to values and social policy. Unfortunately, even when teachers do their best to try to teach the rules within this broader context, many students seem to believe that if the course includes legal rules, then that is all the course is about. This suggests that legal ethics teachers need to learn how to be much more explicit about teaching the processes of analysis and reasoning that use rules and law as a resource but then go beyond them.

We introduced students to ethical theories of lawyering by pointing out that underlying different ethical and social norms and legal rules are different values about the role that lawyers ought to play in society. In particular, the ethical theory of lawyering was approached through four values that were introduced in the first couple of classes and recapped in the revision class.

The third learning outcome for Law, Lawyers, and Society was to develop the skills necessary for ethical practice, including skills for deliberating and negotiating with colleagues about ethical and social issues, effective client communication and other client care skills, and negotiation skills. The intention here was to give the students some concrete idea of the routine skills and practices that are fundamental to ethical practice. In the classroom we drew attention to the significance of various

practice skills in preventing problems and some of the skills that lawyers often fail to practise well. Subsequent experience at a law clinic demonstrated that a small amount of skills/practical input can make a significant difference in boosting enthusiasm and idealism. Scratch the surface of these cynical, world-weary law students with one client interview sessions, and we find that most of them regain some enthusiasm and idealism.

It seems that law students generally like to have a process of analysis, a tool that they can use to apply to answering examination questions. At the same time, ordinary legal analysis tools seem insufficient for any practical process of ethical reasoning. The students tend to believe that, ultimately, ethics depends on private values, beliefs and behaviours that the students already bring with them. Students are not sure that anything we teach them in the classroom can really connect with this. A substantial group of students did not like our study of the professional conduct rules for this reason. At the same time, they found more 'ethical' discussion of case studies and policy questions too fuzzy and inconclusive to prepare them for the examination. They liked the 'skills' aspect of the course but do not necessarily see it as a complement to what is learnt in the classroom, nor as relevant to the assessment of the subject by examination and class presentation.

Students who are not already attuned to the fact that there is a process of ethical judgment to be learnt are unlikely to learn it unless we explicitly give them some instruction on what they are supposed to do. We need to bring to the surface the tools required to connect rules, theories, values, policy and everyday skills, practices and beliefs in analysing and deciding how to act in particular situations. When we fail to address this question, we are in danger of unintentionally teaching many of our legal ethics class students nothing except greater cynicism — cynicism about the

possibility that ethics could ever make a difference to the way most real lawyers think and practise, and cynicism about whether there could ever be a connection between the profession's practice of law and the social ideals of the practice of justice.

TEACHERS

The cobbler wears no shoes: a lesson for research instruction

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For teachers, the shoeless-cobbler phenomenon can mean disaster in the classroom. That is because good teaching depends, first and foremost, on the teacher's caring deeply enough about what he does to get his students to care about it too. Studies attempting to quantify the qualities that make great teachers have found that a teacher's passion and enthusiasm for the subject matter are among the most important characteristics. Yet many people who teach legal research for a living do not care about it very much themselves.

Although many articles lament the poor research skills of students or suggest new pedagogical techniques, few discuss ways to make the subject more interesting to students. Given the direct link between a teacher's passion for the subject matter and the students' ability to learn it, our collective apathy may reveal much about our effectiveness as teachers of legal research. Unlike the cobbler who can succeed at his job whether he really cares about making shoes or not, those of us who teach legal research for a living have to love what we do before we can have any success teaching it to others.

Researchers who have attempted to quantify the characteristics that make great teachers have found that they come in all shapes and sizes. Some teachers are effective because they are taskmasters who set high standards for their students. These are the demanding teachers who