

PURPOSE

Skills, 'quality' and the ideologies of managerialism

S Toddington

28 *Law Teacher* 3, 1994, pp 243-257

In the literature on legal education and legal skills there is a tendency which might be referred to as 'managerialism'. In speaking of educational policy, issues of quality, organisational rationality, and economic efficiency cannot be avoided. Managerialism, however, tends to frustrate and constrain the development of an imaginative and critical approach to the current problems of legal education. Managerialism, with its foundations in commerce, will tend to seek to resolve the problem of conceptualising quality by recourse to market principles, that is consumer satisfaction. Management theory assumes the existence of a body of substantive skills that are prevalent in private practice. As a result, our conceptions of legal skills have been narrowly professional and insufficiently distinguished from the communicative, clerical and commercial skills which form the central concerns of solicitors and other legal professionals.

Academically, management doctrines are creating a crisis of identity within educational institutions, which are now uncertain as to whether they should espouse the values of impartial and rigorous scholarship as ends in themselves or whether they should justify their *raison d'être* in terms of market forces, which are the antithesis of these values.

The legal academy, through its closeness to the legal profession, is particularly prone to this destructive ambivalence. A balancing act between the two is not the answer; an understanding of the two is the better solution. The legal academy has to attend to the question of what it regards as its essential purpose and then seek methods of solving the issues of organising, managing and funding. At present the theory designed to deal with the organisational problem is also expected to serve as a philosophy of legal education.

RESEARCH

Using structures to teach legal reasoning

D Bentley

5 *Legal Educ Rev* 2, 1994, pp 129-152

Legal reasoning is a fundamental element in the teaching and understanding of law. Substantive law courses teach legal reasoning through a study of case law and the use of standard undergraduate problems involving fact patterns designed to raise issues within a specific area of law. Bond University in Queensland, Australia, uses specific structures to teach legal reasoning.

A variation of the problem-solving acronym, MIRAT, standing for Material/missing facts, Issues, Rule (p r i n c i p l e) of law; Application/argument and Tentative conclusion is employed. Because of the confusion involved in identifying material/missing facts at the beginning, rather than throughout the reasoning process, the Bond variation imports a spiral concept under the acronym,

IRAFT: restate the Issues; define the Rules; apply the Rules; to the Facts; reach a Tentative conclusion.

The article describes research into the usefulness of such legal reasoning structures. The research investigated whether students use the structures; if so, how well and how consistently; whether their use of structures improved over time; and whether their marks improved. The research was conducted during a second year subject, so students would have overcome any culture shock that might distort the results of the research.

Students in the sample group were required to complete three standard undergraduate problems as part of the ordinary teaching in weeks 7, 11 and 14. All three problems were of the same level of difficulty. Scripts for the first two were returned to the students with sample answers using the structure. The lecturer in week 7 reviewed the use of IRAFT, which was demonstrated using examples throughout the course.

Scripts were then marked to determine, inter alia, if the structure had been used by the student. Use of the structure was graded good, satisfactory or poor. The result showed that 78% of students used a discernible structure in the week 7 problem, 92% in the week 11 problem and 96% in the week 14 exam problem. The percentage of students whose use of the structure was 'good' was 64% in the week 7 problem, 56% in the week 11 problem and 67% in the week 14 exam problem.

Clearly students find the structure simple to understand and use. The use of IRAFT or any other structure to help in the analysis of