law schools illuminating hidden oppressive agendas against minority groups and women, both within the law itself and within the law school. This period has also seen the emergence of clinical legal education and a concomitant willingness of law teachers and scholars to connect theory and practice, challenging not only how we study but also how we practise. The entry of these new perspectives still leaves the problem of constructing an effective law school curriculum.

The MacCrate Report offers some direction in determining curriculum content, particularly with its Statement on Skills and Values. There is however a suspicion that the practising bar will support the statement to promote a standards-centred framework for legal education which will have the effect of discouraging intellectual diversity and removing the critical edge of the academy. Law schools have responded by reasserting their institutional autonomy to define the direction of legal education.

However, this focus on institutional autonomy can cause us to miss a critical opportunity to engage in serious reflection on how legal education can better contribute to the profession's conception of its public responsibility. Despite the diversification of legal services over the last sixty years the inequality of service and access to justice has increased. The MacCrate Report's vision of skills and values is built on the assumption that the client will pay for services. Whilst pro bono services to indigent clients have arisen in the past, there was little to suggest that the profession itself was affected in a way to induce a reconstruction or reformulation of its responsibility for the future.

We rarely teach our students to view the law as capable of influencing the distribution of societal power and resources nor do we encourage them to view the lawyer's role as reformist. Yet the notion of professional responsibility means that every person in society should have access to the independent professional services of a lawyer of integrity and competence.

Whilst the MacCrate Report recognises that the professional values that the profession need to survive into the 21st century include justice, fairness and morality, the author is concerned that neither the profession as presently conceived nor legal education as presently designed will equip the next century's lawyer to promote these values in the most effective or meaningful way.

A national institute, similar to the one envisioned in the MacCrate Report, would be a useful vehicle for addressing this problem. The constitution of the institute would not be limited to the legal academy and the members of the practising bar and would draw upon research and the practices of others who have thought about related professional concerns. Such an institute would provide a place for the cultivation of thinking about the legal profession's capacity to respond to issues of social justice and to clarify the values important to the practice of law in contemplation of a more "pro-active" role.

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RESEARCH

Today's law teachers: lawyers or academics?
P Leighton, T Mortimer & N Whatley
Cavendish Publishing Limited, London, 1995
[See Teachers]

Career intentions of Australian law students
C Roper
Department of Employment, Education and Training
Australian Government Printing Service, 1995
[See Career Paths]

Career intentions of New South Wales law students, 1994
S Vignaendra
Centre for Legal Education, 1995
[See Career Paths]

RESOURCES

[no material in this edition]

SKILLS

Law as rhetoric, rhetoric as argument
K M Saunders
44 *J Legal Educ* 4, December 1994, pp 566-578

Many lawyers lack a basic understanding of the structure and process of legal argumentation. This stems from legal education's failure to make these explicit and systematic. The intrinsic relationship between law and rhetoric offers a conceptual framework for understanding and learning legal argumentation.

Legal argument is a form of practical argument. Unlike logical argument, it does not seek the absolute truth but the relative truth, namely it seeks to establish one side's claim as more probable than the other's. Legal argument is resolved when a judge or jury accepts one claim as being more reasonable than the competing claim. Consequently, the persuasive power of the argument and hence the rhetoric is all important in legal argument.

Toulmin divides argumentation into analytical and substantial arguments. The former do not extend beyond the information contained in the premises. The latter involve inferences from the evidence. Legal argument, an example of substantial argument, is further divided into the claim, the grounds and the warrant. The claim is the conclusion to be proven, the grounds represent the facts on which the argument is based and the warrant is the part of the argument that authorises the movement from the grounds to the claim. First, this model helps to identify the component parts of the pretrial case, the determination of the desired relief, the collection of facts and the generation of a supporting legal theory. Second, the model helps us to understand that this process is a reverse engineering process.

Perelman's theory of legal argumentation begins with two starting points, the real and the preferable. The real is the facts, truth and presumptions. The preferable includes values, hierarchies and lines of argument. The real and the preferable can be used by the lawyer to identify the claim or issues of fact or law that are in dispute. Once the starting points have been established, then through the use of the techniques of association or dissociation attempts are made to drive a wedge between them.

Toulmin and Perelman's heuristics are field-invariant in that they can be used in any area of doctrinal law. Their focus on case building, fact analysis and construction and use of proof would be particularly useful in trial and appellate advocacy and clinical courses.

On teaching professional judgment
P Brest & L Krieger
69 *Wash L Rev* 3, Summer 1994, pp 527-560

The gap between legal education and the legal profession has widened in recent years, largely because the world in which lawyers practise has changed so much whilst legal education has changed relatively little. One significant change is that today's law graduates are entering a society that views them with hostility and suspicion and regards their impact on our national culture and economy as often negative. Within the bar there is a sense that law as a profession is declining and devolving into a business. Unhappy lawyers are changing jobs at an increasing rate.

The ABA is urging law schools to provide more clinical instruction and skills training in an attempt to close the legal education/legal profession gap. However, this makes little sense when the gap has not yet been understood. The goal today should be to give law students the skills and values to reclaim the profession's ideals so as to gain the trust of clients and the larger public.

At best lawyers are society's general problem solvers, skilled in the avoidance of disputes as well as in resolving them. Although legal education cannot create good judgment or a commitment to the public good, it can reinforce those traits and attitudes and teach the counselling, deliberative, and communicative skills and attendant values that are part of the exercise of judgment. The authors have responded by developing a new course, entitled "Problem Solving, Decision Making and Professional Judgment".

For this course the relevant domains of skills and knowledge have been divided into three general categories: the lawyer's communications with clients, professionals and others; the decision making process; and the world in which decision making takes place.

The lawyer must work with the client to solve the client's problem. A client-centred approach is called for as this is premised on the client's autonomy, intelligence, dignity and basic morality. Lawyers should work collaboratively with clients. Almost all collaboration involves negotiation and so students must be aware of the various roles that lawyers play in negotiation. Lawyers will inevitably encounter ethical issues and the client's directions may conflict with the lawyer's conception of what is ethical in the circumstances. Students should be prepared for the complex issues/ethical dilemmas that await them in practice. The non-professional style of law school writing must be redressed so as to prepare the student for lawyering activities, in particular the drafting of contracts and other documents peculiar to legal practice.

The second step, the process of decision making and problem solving, requires law students to be