

## LEGAL ETHICS

### Rules and roles: casting off legal education's moral blinders for an approach that encourages moral development

D E Buckingham

11 *Canadian Journal of Law and Jurisprudence* 1, 1996, pp 111-125

The legal profession will continue to enjoy a self-regulating monopoly only as long as the public trusts that the profession is acting in society's best interests. Legal educators have a unique opportunity and responsibility to teach law students about the ethical conduct of lawyers. A new strategy is needed that encourages students to view legal ethics as both a required element of their professional responsibility and a contribution to their own personal moral development. We need a new approach to teaching legal ethics which goes beyond the mere learning of ethical roles of the profession and acceptable roles required by the adversarial system.

Legal ethics instruction can affect the professional behaviour of lawyers. First, formal teaching can counter some of the negative value messages about law and lawyering which may circulate in a law school. Secondly, there is new and convincing theoretical and empirical research that suggests ethics are teachable in professional schools.

There are three methods for teaching legal ethics in law school: as a system of rules; as a function of the adversarial role; and by osmosis from the behaviour of law professors and legal institutions. Informal sources such as the last may be more powerful than formal courses on legal ethics and have the potential to direct the moral development of students. These sources include the atmosphere of the institution itself — its curriculum, method of teaching and general climate, which may foster competitive manipulation or verbal aggression at

the expense of collaborative problem solving and humane concern for people. Role models among the staff are important, as is peer pressure. If a class models itself on the teachers and institutions that de-emphasise moral development, then peer pressure to conform to this standard will adversely affect the individual moral development of students.

Students also shape their ethical world by trying to accommodate themselves to the practical life they perceive will be waiting for them when they graduate from law school. Competition, employment pressures and the image generated by the media of powerful, aggressive lawyers all play a part in the attitudes students develop towards legal ethics in law school.

A more proactive approach to teaching legal ethics — one less devoted to rules and roles — seems necessary. As currently taught, legal ethics do not encourage the moral development of students. Moral development is more than just learning about ethical rules or emulating a particular ethical role. Rather, it is about progressing to greater understanding about how one lives in this world and the kind of behaviour one should adopt.

Rest and Narvaez argue that there are four components of moral behaviour (moral sensitivity, moral judgment, moral motivation and moral character) that must be identified in order to understand how people make and carry out moral decisions. The development of these four components in law students can be inhibited by an exclusive focus on rules of professional conduct, by cementing legal ethics in the legal paradigm and by aloof and unreachable teachers. If solid role models and a healthy atmosphere of integrity exist in a law school, moral sensitivity and judgment can be greatly enhanced. Moral motivation highlights the moral crossroads that

the student and lawyer must face between the business aspects of the practice of law and appropriate moral behaviour. The potential issues are more easy in theory than in practice, but law schools currently are doing little to assist students to deal with them. If moral character can be developed, it is important to build self-confidence and self-esteem so that students and lawyers have the courage to stand up to pressures that might dissuade them from moral action. Intense competition, the ranking of students and intimidation by reckless use of the Socratic method should be discouraged as these practices destroy character, rather than build it up.

A transformed approach to legal ethics must recognise two branches: the moral wholeness of students and the need to facilitate their moral development; and the responsibility of the law faculty and law school to create an environment that facilitates students' moral development. Teaching legal ethics must include more of the following elements: instruction in moral philosophy and legal ethics theory; simulation exercises, role-playing and problem-solving; role-modelling from faculty and administration so that students can see their faculty valuing the goal of moral development; the encouragement and reward of integrity and virtue in the classroom; and the design and implementation of integrated legal ethics programs that specifically target each component of moral development.

#### Obtain a printout of all digested articles in your area of interest

We can only provide printouts under the Subject Area headings listed in bold on the last page of this issue. The cost is \$Aus5 per A4 page, which includes postage.