

it seems likely that the potential demand for legal education will increase, the legal academic profession needs to adjust what it has to offer to consumer demands.

- The discourse of legal education tends to focus on issues and trends that are internal to the law and downplay or ignore the context of higher education as a whole, which may be at least as important.
- Almost all attempts to limit artificially the supply of lawyers and law graduates in the common law world have failed, at least in the medium term.

In modern industrial societies, two main conceptions of the role of the law school have competed for dominance: the law school as a service institution for the profession and the law school as an academic institution devoted to the advancement of learning about law. The professional school model has several variants. First, and most prestigious, is an institution which purports to be the practising legal profession's House of Intellect, providing basic training and education, specialist training, continuing education, basic and applied research, information services and high level consultancy. An intermediate form is the graduate professional school. Its main function is to provide basic vocational education for intending practitioners, who have obtained at least a first degree in some other subject. The graduate business school is the prototype. A third variant, which has developed in some civil law jurisdictions, is the staff college, which provides in-service and advanced training, typically for a specialised cadre, such as prosecutors, the judiciary, or senior law enforcement officials. A fourth variant is the independent professional school run for the practising profession of which the Inns of Court School of Law in England is one example.

The professional school model can be contrasted with the academic model. Again, there are variants, mainly in respect to ambition and prestige. The most ambitious version is the International Legal Centre (ILC) version which focuses on the law school as the Legal System's House of Intellect, dealing with all aspects of the advancement and dissemination of knowledge about law in the modern world and serving many constituencies, including the legal profession in both private and public spheres. It differs from the professional model in three key respects: it is independent of the legal profession; it has a much wider clientele; and its mission is more in tune with the academic ethic. A second version of the academic model is the Law Faculty as a full part of the university, pursuing original research and offering a general education in law at an undergraduate level and a range of post-graduate courses. A third variant is the law school which is essentially an undergraduate teaching institution.

It might be objected that all of these 'models' are essentially 'top-down' design models reflecting the stated objectives of those with power over general policy, rather than the viewpoints of those that the institutions are meant to serve, the customers or consumers. The nub of the matter, however, is that if everyone in society needs some formal legal education then, in most societies, universities can only meet a small part of the need. In some contexts, at least, this provides law schools themselves with some leeway of choice, and it is in most people's interests that they should concentrate on those sectors which they are best equipped to serve.

Law schools in England have three main strategic possibilities: (1) they can continue to conform largely to the academic version of the primary school model, mostly confining themselves to introductory legal

education at undergraduate level; (2) they can move in the direction of becoming service institutions for the profession, as in the United States; or (3) they can move clearly in the direction of the ILC model, diversifying outwards as well as upwards, extending both their clientele and the levels of study with some division of function between institutions. This third model is the one to be embraced so that law schools will become the hub of a healthy and diverse system of legal studies. Law schools need to be given the space to develop into broad-ranging grown-up institutions concentrating on what they are meant to be good at, the intellectual advancement, stimulation and dissemination of learning about law, not just those aspects that relate to the knowledge and skills of private legal practitioners.

## RESEARCH

### Competence revisited: a summary of research on lawyer competence

M F Fitzgerald

13 *J Prof L Ed* 2 1995 pp 227-280

Increasing public criticism of the legal profession and corresponding pressure on self-regulatory bodies in recent years has led many law societies and law faculties to question lawyers' competence. Although a few studies were conducted on legal competence prior to 1980, most of the research on lawyers' competence was conducted in the 1980s.

A number of valuable studies on this subject have been conducted in the United States, England, Australia, Canada and Hong Kong. This article summarises the main research from each of these countries. The studies indicate how difficult it is to research and describe the competent lawyer. There is no generally accepted method of researching competence and none of the resulting descriptions

of competence is identical. Common themes do, however, emerge.

With regard to methodology, the most frequently used method for research is the mailed survey. Most of the mailed surveys were almost identical to the original Zemans and Rosenblum survey from 1975 in which about 550 Chicago lawyers completed a 23 page questionnaire with a list of 21 skills and areas of knowledge. The respondent were asked to rate the importance of skills and knowledge, the contribution of law school, the contribution of experience and the contribution of other lawyers in their office.

Recently, however, researchers have begun to adopt other methods of looking at what lawyers do. Researchers are now moving away from the survey approach towards methods such as interviewing, observation and small group discussions. The Legal Skills Research Group in England and the American Bar Association (Martin and Garth) research, for instance, involved the use of telephone and individualised interviews.

Almost all the research conducted found that legal skills, as opposed to black letter law or substantive law, were most important to a lawyer's competency. This is perhaps because formal legal education has tended to focus on substantive law. Those in practice may be more attuned to their needs in areas in which they have less training or education. The most recent research conducted by the American Bar Association over 1989-92 which produced the MacCrate Report resulted in a list of ten fundamental lawyer's skills, with which every lawyer should be familiar before assuming the full legal responsibilities of a member of the legal profession, and four fundamental values.

Although the research indicates that very similar skills and knowledge are required of practising lawyers, the

ways in which these skills and knowledge are described and categorised are very different. Many of the differences in the definitions of competence are attributable to semantics or categorisation. The majority of researchers seems to agree on a comprehensive description but disagree as to how this description should be divided and categorised. The original 'trinity' of knowledge, skills and attitudes as a description of competence has been abandoned for a more functional model which tends to emphasise tasks and abilities with special emphasis on problem solving, legal analysis and management skills. At the end of the day, it seems that the model selected depends upon the anticipated use of the model. If used for teaching, for instance, it takes into consideration teaching theory and focuses on distinct skills and knowledge. If used for regulatory purposes, however, it takes into consideration the actual practice of a lawyer and focuses on functions and tasks.

## SKILLS

### **The teaching of skills: rebuilding — not just tinkering around the edges**

R Hyams

13 *J Prof Legal Ed* 1, 1995, pp 63-80

Law schools are failing in their duties by not teaching students enough about the practice of law. Whether law schools are educating students for professional life outside of law or for a career within the profession, most current law teaching is deficient.

The current data suggest that less than 50 percent of law graduates enter into and remain in private practice. Therefore, any skills integrated at undergraduate level need to acknowledge these facts about our graduates' intended use of the degree. Our responsibility should be to ensure that students gain a wide range of

interpersonal skills of general benefit, rather than just for the practice of law.

Many law students enter law school with an expectation that they will learn to think and act like lawyers. Currently, their education does not prepare them particularly well for practice or for work in other office environments. Our goal should be to provide our students with a basic grounding in both technical legal skills and interpersonal skills at undergraduate level.

Modern educational theory examines how we learn. Kolb described learning as an active process of constructing meaning from the material presented to us. This is known as the cognitive perspective of learning and involves two separate matrices. The first is experiential and describes learning as involving four cyclic stages, namely concrete experience, reflective observation, abstract conceptualisation and active experimentation. The second deals with the problems inherent in the lecturing model. Adult learning is described as a psychological contract of reciprocity which requires that adult learners give of their present knowledge. This helps them integrate and apply new perspectives and at the same time they learn from other students and thus incorporate new ideas.

A better law course should include a combination of teaching methodologies, such as legal rules by way of lecture/tutorial/seminar system, skills training via simulation, role-playing and problem-based learning method, and learning by doing in the clinical environment. Students must have a solid foundation in black-letter law and lectures and seminars should be retained as one of the methods of providing that knowledge. However, it is also essential that students learn the principles of law, understand and analyse cases, use libraries, interpret statutes and have an understanding of