INDIVIDUAL SUBJECTS/ AREAS OF LAW

Giving theory 'a life': first year student conceptions of legal theory
M Keyes & G Orr
7 *Legal Educ Rev* 1, 1996, pp 31-67

The article presents findings of interviews with first year law students to gauge their conceptions of legal theory. The rationale for the study is the long-standing debate about the nature and purpose of legal theory taught in undergraduate law courses. A United Kingdom study by Barnett, which examined Australian, Canadian and British law school curricula, found that 89% of British courses do not have a first year theory component, whereas 35% of Australian courses contain a compulsory legal theory course and 11% an optional one. On the other hand, McCormack & Twining are of the view that jurisprudential courses work best around the middle of the course program. This article, by reviewing and understanding student conceptions of legal theory, considers the value of an early integration of theoretical perspectives into substantive law study.

At Griffith Law School in Australia students are introduced to a wide range of theoretical and jurisprudential perspectives in a single foundational first year program, titled Law and Legal Obligations. This course attempts to integrate substantive law and higher level notions, such as formalism, liberalism, feminism, law and economics and critical legal studies.

A group of 12 first year law students was selected as a demographic cross-section of the cohort group for interview after they had completed approximately 20 weeks of the program. Each interview lasted approximately one hour and the key questions concerned the students' perceptions of the purpose of the course and legal theory in general. They were also questioned on what they thought was the relationship between legal theory and law and what they understood by the term legal theory.

In relation to the first question students commented that legal theory forms the basis from which black letter law or other law could be understood. In addition, legal theory enables the construction of critical frameworks, allows advancements in the law and introduces new perspectives and tolerance. It assists in the categorisation of judges and law makers, allowing practitioners to predict trends in the law and judicial decisions.

As to the relationship between legal theory and the law, many students commented that they thought theory and law were inseparable. Theory follows and anticipates the law and also precedes and brings about changes in the law. Law is rules and theory is explanation. Legal theory is the underlying concept behind the law. Many students commented that it was not possible to be a good practitioner without a knowledge of legal theory.

When asked what legal theory is, it was said that it is a framework through which an understanding of the law could be gained, an attempt to find unifying concepts and give coherence to the law. Legal theory is that which asks why and how. Theory is transformative, as ideologies become theories and create agendas which may affect or generate law in the future. Theory is the opposite to practice and encompasses musing, reflection and observations — an academic past-time.

The student responses mirror the semantic nuances of the definition of theory contained in the Macquarie Dictionary. On the whole students, despite being in the infancy of their legal studies, were found to have a fairly complex understanding of what legal theory is and why it should be learned, thus supporting the conclusion that it should and can be taught at an early stage of undergraduate study.

Teaching tax law: developing analytical skills
M A Oberst
46 *J Legal Educ* 1, March 1996, pp 79–93

Most law school courses are based on an analysing and synthesising of appellate court decisions. However, basic tax law courses lend themselves to developing an ability to analyse statutes and regulations. The tax attorney's success will depend not on the recollection of the teacher's substantive pronouncements, but upon the ability to start from scratch and do a meticulous analysis of the ever-changing bodies of statutory and regulatory law.

In teaching tax law, teachers should not gloss over the complexity of the statutes and regulations by providing a volume of tax information (passive approach). They should allow students to develop first-hand knowledge of the tax code and regulations and how they interact with each other (active approach). The passive approach shields students from the complexities of tax law. Tax textbooks and tax law teachers often aim to help students to understand

tax provisions but not how to gain an appreciation of how to interpret the provisions. The passive teacher avoids the time consuming exercise of close analysis.

An active approach requires the student to examine and apply the code and regulations. Requiring students to be accountable in class by indicating that they may be called on to analyse a provision of the code ensures focused preparation for the class.

While passive approach textbooks are still used, replete with comprehensive explanations of the Code and regulations, students are warned that their responses to class questions must be based on the language of the assigned provisions. Classroom analysis of provisions begins by asking students for a general explanation of the main rule and underlying legislative policy behind the provision, as well as a typical situation where the rule applies. The answers must be in plain English without any jargon. Beyond the overview of the provision, an assigned problem or a hypothetical is used to flesh out the analysis of the provision. Students are encouraged to work through examples of tax calculations in the regulations and create flow charts. This analysis is quite time-consuming and it is impossible to cover as many topics as a passive-approach teacher.

A take home exam is used to grade students. They are given a month to complete it and can ask questions about the provision, but not about its application. Students are also allowed to collaborate with other students in the course.

The active approach advocated has its opponents and attracts criticisms. The first is that it does not cover enough tax law to equip the graduate to practise in tax. However, this objection falsely assumes that the student will retain a clear recollection of the relevant provisions and of the content of the course. An attorney with a perfect long-term memory of outdated provisions will be lost without the analytical skills to learn about the ever-changing body of statutes and regulations. Student resistance to the active approach is also cited against it. However, law teachers have a duty to develop students' skills in interpreting statutes and regulations and the only effective way of doing so is to provide a structure in which the students are required to perform their own analyses of these sources.

LEGAL ETHICS

On teaching legal ethics in the law office
T L Shaffer
71 *Notre Dame L Rev* 4, pp 605–618

Since 1993 Notre Dame University has mounted 12 clinical ethics seminars in its law office as part of a three year experiment in clinical legal ethics. This essay is a reflection on what a practice-centred approach to morals in the law office looks like to a law teacher who has been in university legal education for 33 years, many of which have been spent teaching and writing about legal ethics.

The Notre Dame law faculty approved the clinical ethics seminars and decided that students could substitute one of them for the required upper-class course in legal ethics. The clinical seminar sessions would be like meetings in law firms with morals as the agenda. The cases and dilemmas used are current moral problems which student lawyers in the clinic and their supervising attorneys *have* to solve or ignore, because they involve real people in real situations - students acting as lawyers under Indiana's student practice rule; clinical faculty young and old; a supportive local bar and bench; and clients who retain the law office to represent them in a wide range of civil cases.

Americans in the late 20th century evade moral discussion of what they are about, as do law students in 'professional responsibility' courses and law faculties and lawyers in practice. The methods of evasion include resolutions of problems that dig no deeper than rules of practice imposed by courts, rules which virtually everyone identifies as ethically inadequate or labels as a superficial moral minimum.

The most dramatic effect from seminar discussions of live, current moral questions within the practice of a single law office is that it pushes past some of the modern barriers to moral discourse. The author has found that when a teacher and a seminar of student lawyers gets past inhibitions which seem to relate to a common feeling that discussion of morals involves religion and, as such, is a private thing, moral conversation is able to flourish.

The clinical ethics seminars are often fun to teach and sometimes open a window on the tragic character of professional life. Outside and around the seminar lessons the law office becomes a place of moral discourse. Cases involving battered women or illegal aliens, for example, are talked about for weeks. Bodies of opinion gather around these moral conversations. The cases and the clients clarify our personal convictions and take some