

utes to the preservation, not the erosion, of the values upon which society depends.

LEGAL ETHICS

'Simple truths' about moral education

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45 *Am U L Rev*, 1996, pp 823–858

At the same time that law schools have been called on to intensify their focus on ethics education, there is growing appreciation that it is workplace experiences that have the greatest impact on shaping professional behaviour. Ethical education may be eclipsed if law students encounter workplaces that are unsympathetic. Complicating the problem is a widespread perception that commercial pressures have transformed workplaces formerly congenial to training in values, however modest, into soulless businesses, indifferent or actively hostile to ethical practice. The declining emphasis on professional values in the workplace makes ethical legal education both more difficult and more important.

It is ironic that the outcry about declining professional values comes when law schools have been paying increased attention to teaching professionalism and ethics. The increase in law review articles and other research about values education is one such indication. Another indicator is a 1991–2 American Bar Foundation survey. In that survey, lawyers ranked their perceptions of the relative contributions of law school and practice to the development of skills and values. The results showed that young lawyers ranked law school, along with advice from other lawyers, as their most important sources for learning 'sensitivity to professional ethical concerns'. Inasmuch as in-

creased attention to teaching professional responsibility in law schools apparently has not alleviated concerns about declining professionalism, perhaps we need to shift our focus. While there is a role for education in influencing moral behaviour, that role should be properly understood. Even the finest moral education is likely to be undermined if the workplaces in which our students practise systematically undercut expressions of personal values or constrain the exercise of judgment.

The ABA has acknowledged the importance of workplace experiences in shaping professional behaviour but has nevertheless continued to emphasise law school education as the primary remedy for problems regarding professional values. One reason workplace experiences importantly affect behaviour is that, within the framework of professional rules and mores, lawyers have substantial discretion in determining how to act. Another is that experiential learning in general is critically important to moral development. It is not until students experience the reality of practice that they begin to internalise and make their own moral and ethical judgments that are at the core of practice.

The organised bar's emphasis on promoting the idea of a unitary professional experience undermines the effort to instil a spirit of aspiration in students. Such a notion reinforces students' tendencies to see ethics as a code of obedience rather than a system requiring discretion and judgment.

It is important for law teachers to convey to students the diversity of practice and the accompanying modes of professionalism. There are several ways to do this. One method is to highlight the nature of the work of

lawyers who practise the law. In a Corporations course, we can contrast the roles of in-house and outside counsel, particularly in the area of corporate compliance, and examine the role of the lawyer as planner. In Family Law, we can expose the degree to which non-client interests (e.g. children) are taken into account by lawyers representing parents. A second method is to bring practitioners into each of our substantive classes to discuss the nature and culture of their practice. A third method is to build on the students' own experiences, helping them to appreciate that they have already begun to face the issues which will define them as practitioners. The goal is to give students an appreciation of the profession's diversity so that they seek out opportunities to develop as professionals in ways that comport with their self-conceptions, by finding a practice that conforms to their own character and style.

As we realise the importance of workplace experiences in influencing ethical behaviour, we must take account of that reality in our teaching. Our goal should be to assist our students in developing tools and skills, such as moral courage, to navigate the pressures of the workplace.

RESEARCH

A survey of law schools in the United Kingdom, 1996

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31 *Law Teacher* 1, 1997, pp 38–126

Given the need to update information about law schools, and to ensure that common questions were asked of all university law schools, both old and new, the present survey was undertaken in 1995 as part of a collaborative project with the CTI Law Technology Centre at Warwick Univer-

sity. The research team felt that the survey was particularly timely given the changes announced by the Law Society to affect all law degrees from 1995 onwards and the deliberations of the Lord Chancellor's Advisory Committee on Legal Education and Conduct, whose first Report on Legal Education and Training (the ACLEC Report) was published in 1996.

The aims of the survey were to inform the debate on legal education and to respond to the need for hard information about law schools and their work, including differences in the provision of legal education between university and college of higher education (CHE) law schools, the expansion of student numbers, the nature, extent and diversity of law courses and the impact of semesterisation and modularisation.

The total target university/CHE population was 86 institutions in the United Kingdom that currently offer undergraduate and/or postgraduate provision in law.

Heads of law schools were asked to indicate which undergraduate courses were offered at their law school. The results revealed considerable diversity in terms of both named awards offered and modes of delivery and learning. Law schools were asked whether the vocational skills of drafting, interviewing, advocacy and negotiation were incorporated into their undergraduate law curriculum. Of the 76 responding law schools, a total of 43 (56.6%) reported that these skills were incorporated into their undergraduate law degrees, though the tendency to do so was considerably more marked within new university law schools (79% as opposed to 34% of old university law schools). It is clear from the data that the vast majority of law schools offer a reasonably

wide range of optional units. At almost two-thirds of UK law schools, language tuition is available to all law students, whether enrolled upon a specialised or a 'standard' law degree.

Undergraduate student numbers were studied and compared. Undergraduate law school applications and the method of student selection were examined. Total law student numbers in the UK, full-time and part-time, were estimated.

The questions relating to postgraduate provision divided courses into academic and vocational categories. Postgraduate student numbers, application methods and qualifications of entrants were studied. Resources devoted to postgraduate study were noted; the number of teaching staff, amount of teaching hours and provision of library and computer resources were calculated.

The survey compiled student profiles, considering factors such as students' examination performance, gender, career intentions, ethnic backgrounds and noting the categories of mature-aged, special-needs and overseas students.

The overall picture of legal education in UK university law schools in the mid-1990s is one of substantial complexity. Although nationally, the traditional, three-year full-time LLB still predominates at undergraduate level, this mode of study has been supplemented in many law schools by one or more mixed or joint honours degrees, and in some cases a considerable array of such courses is on offer. Academic postgraduate study is still largely concentrated in the old universities and, although new university law schools continue to dominate in terms of providing for postgraduate vocational study, a number of old uni-

versities have become substantial providers in this area.

There is substantial diversity as to the incorporation of vocational legal skills within the undergraduate curriculum. This applies not only in terms of whether such skills are incorporated at all but also, in those cases where they are incorporated, in terms of how these skills are imparted. A range of law options is normally available within the undergraduate curriculum, although the data suggest that law options relating to professional legal practice are offered more frequently than options relating to purely *academic* legal subjects.

Numbers of applications for places on undergraduate law degree courses vary considerably between law schools. It seems that there has, nationally, been a slight fall in the numbers applying for places in law degrees.

The data imply that resource difficulties, especially with regard to teaching staff, are acute in many law schools, with an estimated 50% increase in students over the last three years, accompanied by only an estimated 3% increase in numbers of teaching staff. Data on overall class-contact hours suggest that individual teaching loads are heavier in new university law schools than in old university law schools.

The student profile data reveal that the preponderance of female over male students on all types of course continues, with the exception of postgraduate academic courses on which the majority of students are male. Although from a fairly small database, the data regarding students' ethnic backgrounds disclose that around 80% of all students are white, while the remaining 20% of students are

from highly diverse ethnic backgrounds, the largest group being Indian who account for around 7% of all students. Between 16 and 20% of all full-time undergraduate students are mature (aged over 21 in their first year of study), though mature students account for 75% of students on part-time degree courses. Law schools appear to have relatively few students with special needs. Data pertaining to students' career intentions suggest that the proportion of students intending to enter the solicitors' branch of the profession remains fairly constant, though there appears to have been a fall in the numbers stating their intention to become barristers.

SKILLS

Teaching alternative dispute resolution in Australian law schools: a study

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2 *Commercial Dispute Resolution J* 3, 1996, pp 209–231

Despite the growth in professional interest in the use of ADR processes, the extent to which ADR is taught in Australian law schools does not appear to have been the subject of study. Whilst there has been considerable anecdotal evidence that ADR teaching is widespread, there had been no known attempt to measure its extent. This study was undertaken with the aim of standing as a foundation for research in this area. It shows that a large number of courses are now offered by Australian law schools which contain some aspect of the teaching of ADR but it cannot be viewed as part of 'mainstream' education.

One of the main objectives of the study was to provide information about the level of integration of ADR

teaching in the curricula of Australian law schools. The intention was to ascertain the extent to which the courses are offered where students might develop a different perspective on process other than one centred wholly on the functioning of courts, without making any related value judgment.

There are a number of ways in which the teaching of ADR may be integrated within a law school curriculum. There is a fundamental dilemma associated with the teaching of methods which are essentially process based: should they be taught as part of existing substantive law subjects or should they be taught on a 'stand alone' basis? The study attempted to ascertain which option Australian law schools had taken as well as to identify the related issue of the level of integration of ADR within the curriculum of each law school.

The level of integration was determined by applying the model devised by David, who proposes four options. Those options in descending order of preference are: first, the complete integration of ADR in each undergraduate subject; second, teaching ADR in the introductory law course with it being taught again within some later, preferably compulsory, final year subject or subjects; third, for ADR to be taught outside the normal undergraduate subjects and for each student to be compelled to do one or two days per year of a skills course which is taught alongside and parallel to the core subjects'; and, fourth and least desirable, for non-mandatory ADR courses to be offered at a basic level or at an advanced level.

It was ascertained that at least 108 subjects are taught in the 22 law schools surveyed which contain some aspect of ADR, which encompasses a large range of dispute resolution

processes. The most common form of dispute resolution taught is mediation, taught in just over 82% of the subjects, followed by negotiation at just over 78% of subjects. While the David model favours the compulsory teaching of ADR, 59% of the survey respondents stated that the particular ADR subject was not compulsory. Option 2 of the David model states that ADR should be taught at the first year level and again be compulsory in final year. The survey showed that this is not the way in which ADR is commonly taught in law schools. David is a strong advocate of the view that assessment is vital in order that ADR may be seen as a legitimate subject area; in 41 of the subjects, ADR was assessable with an indication in respect of nine of the subjects that it was not assessable. Written assessment was the most frequent form of assessment but in only two of the cases did it comprise 100 percent of the assessment.

The methods which are used to teach ADR should be associated as much as possible with the skills and techniques for teaching those skills which the objectives of the course identify. Question 10 of the survey asked respondents to set out the teaching methods linked with the teaching of each form of ADR in the particular subject. In each case, traditional lectures were the teaching method most frequently used. Question 12 sought to determine whether the study of ADR in the particular subject encompassed an attempt to understand its application in practice. The question asked whether or not students were required to observe or to become involved in a practical situation outside the classroom and, if so, whether or not that element was compulsory; in 29% of the courses, a component involved students participating in ADR