

ent groups from higher status backgrounds.

This is a very carefully designed and conducted survey, made all the more valuable because the existence of the data from two well-spaced earlier studies enables trends in the makeup of the socio-economic status of entering law students to be pinpointed. Assuming that these students jump all the intervening hurdles in their path and graduate, because of their numbers they will emerge as a significant proportion of tomorrow's legal profession. Understanding the future composition of the profession and its implications for the delivery of legal services are matters of critical importance to the law societies, government and the community at large. Large-scale empirical studies such as this one aid that process of understanding. Moreover, it is apparent that the methodology is readily adapted to the needs of researchers in other jurisdictions with the need to explore similar issues.

Editor

SKILLS

REVIEW ARTICLE

Teaching lawyers' skills

J Webb & C Maughan (eds)

Butterworths, 1996

(foreword by Prof A Sherr)

439pp. (+ introduction pp. i-xxviii)

This book is a considerable *tour de force* — an invaluable addition to the scant literature on legal skills training and its educational underpinnings. It is a timely collection of fourteen important essays contributed by a stable of leading theoreticians and practitioners of legal skills training who, with one exception, come from the U.K. The editors have taken the papers and woven them together into three salient themes: 1. educational

theory and the research into student learning; 2. various models for skills education and how they have been used to design and deliver skills-based courses for both academic and professional programs; and 3. issues of assessment and evaluation in skills courses.

As they point out in their introduction, some seven years after the publication of the landmark book, *Learning lawyers' skills* by Gold, Mackie and Twining (1989), the editors considered that the developments in the skills movement over the intervening period justified the appearance of another book. Interestingly, they have chosen to look at skills from the other side of the teaching / learning dynamic and this change of emphasis is reflected in the book's title, *Teaching lawyers' skills*. Their aims in producing the book, which they contend have been fourfold, are worth repeating: 1. to illustrate how the skills debate has developed since the late 1980s, particularly at the initial stage, with an emphasis away from the relatively behavioural, outcomes-led models of the legal practice courses to increasingly holistic and reflective approaches; 2. to provide practical guidance on the development of skills in a variety of legal education contexts; 3. given the broader base of experience of skills teaching in the UK, to reflect on issues of delivering applied skills courses at both the initial and vocational stages of legal education; and 4. to reflect on a variety of course design, assessment and evaluation issues.

The two papers in Part 1 examine the role of learning theory in legal education generally, not specifically with application to the teaching of legal skills. Tribe stresses the importance of learning theory as a means to a greater understanding of the processes involved in student learning with a

view to enhancing teaching quality. In what is necessarily a short essay her coverage of this very wide field in educational psychology must be somewhat superficial but she has some important points to make about maximising active student participation, learning objectives and the curriculum implications of different student learning styles. She also discusses the importance of building on existing knowledge through experiential learning techniques, as well as the consequences of the learning models for the assessment and evaluation of students. Webb, on the other hand, focuses more on the epistemological failings of what he calls the traditional 'hit and miss' approach to legal education which lacks a basis in educational theory. The three preferred alternatives he offers are the outcomes / competence, capability and holistic approaches, upon the last of which he expounds in detail. The SWOT analysis with which he concludes his essay is a very potent argument for developing a sound theoretical grounding for legal skills-based learning.

Part 2 of the book contains eight papers presenting a variety of the learning models and teaching methods used in skills training, which seek to bridge the academic / vocational education divide. The nexus is the critical importance of experiential learning, as opposed to the inculcation of propositional knowledge, and the role both of holistic approaches and of reflection. Maughan endeavours to change the focus from directive teaching to self-directed student learning by offering a guide to assist skills teachers to make use of experiential learning techniques. Boon's paper concentrates on what he calls the transformative functions of skills teaching in the initial stage, manifested in two ways: the move away from a curriculum based on the trans-

mission of knowledge toward one based on activity and performance and the learning transformation in the affective areas of perceptions, attitudes and values.

Grimes' subject is clinical legal education, a relative latecomer to the UK. He describes what it is and its underlying rationale, as well as its contribution to the education of lawyers. He supports the widespread adoption of the clinical method, which he asserts 'enables students to retain or take a degree of control over their own learning experience and become actively engaged in all aspects of the process, including the application of their knowledge, and in reflection on the learning process.' Brayne describes the development of the undergraduate clinical program at Northumbria University, which he uses as a case study to illustrate the processes involved and the lessons to be borne in mind by other law schools contemplating this innovation. Both contributors conceptualise the live casework model, not specifically as a medium for skills building, but as a vehicle to foster a deep learning approach to legal study by enabling students to gain first hand experience of the lawyering process in action alongside the academic learning.

Drawing upon his Canadian experience, especially with respect to instructional design for practical legal training courses, Cruickshank explores the deployment of problem-based learning methods, whether in full or partial curriculum settings, for use in law schools, professional training courses and continuing education programs as a means of meeting criticisms commonly raised of current academic and vocational training.

Moving on to the vocational stage, Kilpin reports on a small scale research project he conducted into skills

teaching in the UK Legal Practice Course, collecting data from LPC teachers and past students. Of particular significance was the finding that the students tended to perceive the skills elements of their courses as less important than the propositional knowledge. He advocates an integrative approach to ensure that skills are not misconstrued as in some way isolated from the practice of being a lawyer and offers some hints as to how the curriculum can be so designed to minimise the risk.

For about 15 years the thinking about the formation of professional knowledge and skills by scholars of professional education, indeed the whole idea of professional artistry, has been strongly influenced by Donald Schön's notion of the reflective practitioner. Two chapters are devoted to the pursuit of this model. The editors discuss their own experiences in utilising Schön's construct in the design and delivery of their own Legal Process Course. They highlight the problems they encountered contriving 'reflective' exercises and explain why they found it necessary to instruct their students in experiential learning theory. However, it is Philip Jones' concluding chapter to part 2 that contains the most powerful intellectual input to the book. He embarks upon a penetrative analysis of the issue of reflection in professional education, as propounded by Schön and developed by others, and is critical of fundamental aspects of these theories on epistemological grounds and in terms of their practical application. Coming down to the more specific concerns of professional legal education, he does observe that the UK ACLEC Report, although clearly informed by some of the notions associated with reflective practice, tends to use the reflective practitioner more as a rhe-

torical symbol and less as a conceptual device.

The last four chapters, being the concluding part of the book, address three closely associated facets of legal education: competence, assessment and education. Winter outlines a general theory of professional competence but fails to break any new ground. Mike Maughan is critical of the functionalist nature of summative assessment, traditionally used to test for the attainment of competence, when teachers can scarcely be confident of the student's ability 'to deal effectively with the complexity, open-endedness and uniqueness of the work that she will meet in professional practice.' He advocates a capability approach to assessment under which the emphasis is laid on using assessment processes to give confidence in future performance, to be developmental and individualised and to encourage the student to assume an increasing responsibility for learning. Hence, capability, unlike competence, homes in on the student's need to continue burgeoning beyond the threshold of competence and presumably under this conceptualisation assessment represents an early step in the developmental process of the whole career in practice.

Tribe's chapter is concerned with flagging the shortcomings of traditional assessment methods, while championing self and peer assessment as a means of enhancing learning quality. She presents both an educational rationale and a strategy for incorporating the two forms of assessment into the curriculum, while demonstrating by practical example the efficacy of these approaches in a university skills-based program. Finally, Shapland, with the experience of having conducted a large-scale study of the UK's Bar Vocation Course behind her, reflects on an assortment of meth-

odological, resource and political issues that concern student evaluation. While she acknowledges that UK educators have historically shied away from student evaluation, she envisages it as a powerful tool for curriculum development, provided sound research design practices are assiduously followed.

Within the common law world it would be reasonable to say that ten years ago it would have been to Australia and Canada that one would have looked to unearth the most advanced thinking about the teaching of legal skills and to seek out models for the development of skills training programs. The expertise tended to reside in practical legal training institutions and skills training was mostly seen as no part of the real business of the law schools. However, the 1990s has seen a recognition amongst law academics of skills as also inhabiting the province of the initial stage of legal education, although the motivation for teaching skills at law school may sometimes be as much to encourage deeper learning as part of the understanding of the legal process at work than to teach skills for skills' sake.

It has been apparent to this reviewer from the reading of the published literature on skills that the intellectual powerhouse for the skills movement shifted several years ago to the United Kingdom. It is there that the most significant research and writing is being done, especially related to the ongoing quest to develop a sound theoretical educational framework for the teaching of skills to guide and mold the practice. This excellent book confirms that judgment.

Editor

The Wytiga negotiation — native title and skills training

M Weir

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The debate as to the appropriate use of skills training in law school has matured to the extent that arguably the question is not whether skills should be taught but how and where they should be taught. The Wytiga Negotiation is a part of the integrated skills program in the LLB at Bond University School of Law, Australia.

The materials for the Wytiga Negotiation focus on negotiations pursuant to the provisions of the Federal Native Titles Act (NTA). The framework for the exercise is the NTA provisions for negotiation between parties to an application for native title. The Wytiga Negotiation creates a fictional tribe of Aborigines centred around Longreach, Queensland who have made an application for native title over a specified area of land. The thrust of the exercise is the resolution of issues between four parties: the Aborigines, the State Government, pastoralists and a mining company.

The educational objectives of the negotiation exercise are: to develop the skill of identifying in a multi-party negotiation one's own BATNA, other individuals' interests, to generate options and then to negotiate solutions; to comprehend and apply the provisions of the NTA; to demonstrate the skill of preparing, researching, delivering and negotiating in a team; and for students to practise argument and speech in a group setting. Native Title was chosen as the focus for the negotiation because the topic is current, it raises a number of substantive law issues and it has the potential for students to appreciate the social, political and cultural concerns of the various parties to native title negotiations.

The exercise is held in the fourth week of semester. Individual tutorial groups are divided into four sub groups. The responsibility of each subgroup is to prepare a response and to negotiate as one of the four designated parties. There is a pre-negotiation stage when materials are distributed. At each negotiation session, the four parties negotiate the issues which they consider to be relevant. Students are advised that the focus of the exercise is the process of negotiation. Students are not obliged to reach a final resolution or achieve a final agreement. This negotiation exercise includes an important period for students to receive feedback as to how it is perceived that the negotiation proceeded.

So as to assist in assessing the success of the exercise in achieving the educational objectives, immediately after completion of the exercise students were asked to complete an anonymous survey form. The questions were designed to provide a response to the success of the educational objectives. The results were as follows: virtually without exception, the students were of the view that the exercise, at least to some extent, contributed to their understanding of the substantive law concepts at the basis of the exercise; most students considered the skills learnt in the exercise were relevant to the practice of law; the exercise reinforced and enhanced knowledge and skills in regard to negotiation; most students considered they were provided with the opportunity to appreciate the concerns of the parties, which has the potential of providing context within which the substantive law is taught; the exercise allowed recognition of types of behaviours and tactics that hinder and enhance successful negotiation; the exercise provided the opportunity to practise effective cooperation between members of a group, which was