

CURRICULUM

Teaching the unthinkable: approaches to effective/ protected learning in the area of sexual offences

W Ball & J Mackinnon

8 *Legal Educ Rev* 1, 1997, pp 99–111

Teaching ‘sensitive’ topics at tertiary level can be described as a ‘minefield’ of potential problems; for example, teachers and students may experience feelings of exposure, vulnerability, hurt or offence. The likelihood of encountering these problems grows with the size of the group. Teachers of sensitive topics need to anticipate such problems and adopt approaches to teaching which minimise them, so that learners are protected from problems that may block effective learning. Such topics include cultural legal dynamics, domestic violence law and the law of sexual violation.

At a New Zealand law school the principal lecturer decided to introduce the law of sexual violation as an additional topic in the Crimes course, which is compulsory and its natural ‘home’. Law students, as members of society, benefit from and can benefit others if they have a knowledge of the law in this area and if the myths and prejudices in society are exposed and challenged. Society benefits from having lawyers who can give high quality professional advice on this topic with sensitivity and understanding.

However, barriers exist to the teaching of the law of sexual violation, such as budgetary constraints on small group teaching which is the ideal format and the lack of experienced and skilled staff. Male teachers may feel more exposed and students threatened when the topic being taught requires the use of sexually explicit language and graphic case law. This may block effective learning. Moreover, it is not difficult to see this topic as a ‘women’s issue’ and to regard it as one for inclusion

within an optional rather than a resource heavy compulsory course.

The challenges for teachers are to make the classroom a safety zone for effective learning, ensure that teaching staff have appropriate skills and experience and put in place ‘safety nets’ for teachers and students. The authors describe the methods adopted to meet these challenges in teaching sexual violation law at their law school.

An appraisal was conducted at the conclusion of the topic, covering both course content and teaching methods. Nearly all students thought that the topic should continue to be part of Crimes and the overwhelming majority thought that the means adopted to create a safety zone were effective, such that at no time did they feel unsafe. Students also reported changing views to the law of sexual violation, including an increased understanding of the law, being better informed about the wider context (including the relationship between the victims and the legal system) and becoming more objective and less emotive about the topic.

The approaches to teaching described in this paper do not guarantee that every student will be protected from the potential problems raised by the topic, so effective learning is not a guaranteed outcome. In these circumstances, sexual violation should be a compulsory component of the LLB, but attendance by students should be optional.

Legal categories, women’s lives and the law curriculum, or: making gender examinable

R Graycar & J Morgan

18 *Sydney L Rev* 4, 1996, pp 431–450

This project, called “Including Gender Issues in the Law Curriculum”, arose from an unease about the law’s gender bias and government concern about the relationship of these attitudes and legal education. Two key decisions were made about the project at the outset:

that the central focus of attention must be the core curriculum, rather than its elective components; and that the structure of the project should be based around themes or issues, rather than traditional subject categories.

Many law schools now have specialist courses on feminist jurisprudence. These courses are optional. While this is an improvement from the time when gender issues were totally absent from law curricula, there are some limits to this approach. First, as optional courses they teach only those students whose interest in these perspectives makes them choose to do the course. They therefore have no impact on those students who do not already have an interest in those issues. There is also an argument that the students doing such courses can be marginalised and may experience disadvantage, not least from future employers who have been known to burst out laughing when they see the names of the courses on the students’ CVs.

What may be more problematic is that the very existence of such courses on the curriculum of a particular law school may lead that school to claim that it has ‘dealt with’ gender. Students who raise gender issues in other courses might be told that they are not relevant there; that they are matters for the optional course. This is not to suggest such optional courses should not exist but rather that gender issues are central to the whole of the law curriculum and to all law students. The project was not about transforming the whole of legal education as we know it for all time, but building some overarching themes that could connect otherwise separate legal doctrines and were responsive to women’s lives and would give it some coherence.

The overall goal was, of course, to incorporate materials about gender within the core law curriculum, using a thematic approach. Two basic aims were kept in mind: to assist law students to

think more laterally about legal problems; and, even more basically, to make women and the multiplicity of women's concerns more visible to law students and to those teaching them. It was never intended (nor was it feasible) to use this exercise as a means of redesigning the whole of the core law curriculum. Rather, the aim was to emphasise selected aspects of legal doctrine and link them to issues of gender in cases where work or violence are raised.

Where might women's unpaid work feature in the core law curriculum? In addition to being central to the assessment of personal injury damages, it may also be an issue in family property proceedings. In equity, a woman can make a claim for a share in her partner's property if it would be unconscionable, upon the breakdown of a relationship, to disregard her work as a homemaker. Similar issues of the undervaluing of women's caring work are also raised when looking at family provision or testator's family maintenance which might be dealt with in a variety of law courses. Other areas that involve women's work include contract law, where work might be examined through employment contracts and surrogacy contracts; company law, in the area of women's work in family companies; and torts, in the area of sexual harassment.

Although there is no course in any Australian law school called 'Violence against Women', it does appear in the law curriculum, but is often hard to identify. This issue is relevant to criminal law courses, family law and, in those schools that have them, feminist legal theory of law and gender courses.

There are a number of other ways in which it could form a prominent part of other courses if appropriate material highlighting the issues and meeting the pedagogical objective of those courses were available. For example, violence can form a part of a Succession course. It features in our Torts materials, focus-

ing on intentional torts where the issues raised are how tort law might respond to domestic violence, sexual harassment or child sexual abuse. Cases involving the failure of public authorities, such as the police, to protect women from violence (including sexual assault) are included in the materials used to teach negligence law. Violence is also the theme underpinning our treatments of evidence law and civil procedure and aspects of contract and property.

One difference between these materials and a traditional text is the frequency with which we have included first instance decisions. To explore gender issues it is often important to look at the stories in these cases and this may sometimes be more readily done from trial judgments. Traditional materials tend to teach only the landmark decisions, and do not examine the ways that such judgments may later be applied by lower courts. There is an over representation of wealthy parties and business interests at higher levels of litigation. It follows that female parties and issues of concern to women appear less frequently in appeal judgments.

One way in which the project tried to respond to the tension between themes and traditional doctrine categories was to ensure that the materials were cross referenced to relevant related issues. The decision to present the material with labels like Criminal or Property might indicate a failure of nerve. However, the choice was to persist with these traditional categories, driven by pragmatism and based on the fact that almost all law schools have courses called contract, tort, criminal law, property etc. After all, there does not exist any course called work, or violence, or citizenship, or, more specifically, three courses on work, violence and citizenship that purport to teach the core legal knowledge widely accepted as the essential part of an undergraduate law curriculum.

The project should not be seen as some definitive statement on *the* approach to including gender issues in the law curriculum. Hopefully, it will serve as a guide to future developments and will assist those interested in continuing to work on these issues to do so. The fact that it is freely available on the Internet means that it can be used in a flexible and dynamic way that best suits any individual law teacher's pedagogical objectives.

Materials that treat women as central participants in the legal system, and make their participation 'normal' and routine rather than 'add-ons' are essential to making law schools a tolerable environment for women, as well as making the men who will become lawyers realise that women are legal subjects, legal objects, clients, judges and lawyers. This process will help them to become central participants, rather than the 'women' judges and 'female' plaintiffs they have always been.

REVIEW ARTICLE

Developing a cross-cultural law curriculum

A O'Donnell & R Johnstone
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136pp.

In an era of increasing cultural diversity, it is timely to reflect on what impact these changes in the ethnic composition and cultural makeup of the populations of most common law countries should desirably have on the traditionally conceived law school curriculum, which is still largely embedded in its Anglo-Saxon heritage. For some years commentators have pointed to the need to rethink what is taught and how it is taught to take account of such perspectives. However, to the best of this editor's knowledge, this is the first systematic and sustained attempt to translate this ideal into action in the form of practical advice on how the curriculum should be restructured,