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, focusing 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
Cavendish Publishing, 1997
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,

focusing by way of illustration on the core subject areas of equity and trusts, property and torts.

The fact that this book is written primarily for Australian law teachers against the backdrop of a society which over the past quarter century had become significantly 'multicultural' should not deter readers from other countries. Indeed, although sited in Australia, the book contains valuable lessons for those from other jurisdictions faced with similar challenges to traditional law curricula which fail to reflect the cultural mix both of society in general and the student body in particular.

The authors claim that law schools should shoulder part of the blame for the ongoing failure of the legal system to respond to issues of cultural diversity. Law schools, in their contention, have remained impervious to trends evident elsewhere in the academy, with a basic core curriculum that is astonishingly unchanged and unexamined by comparison.

What is required is an integration of cross-cultural perspectives throughout the curriculum to avoid any perception of mere lipservice or being accused of marginalising these issues from the mainstream of students' studies. This contrasts with the limitations of the long-standing approach of developing cross-cultural awareness through ethnographic thumbnail sketches or case studies of migrant communities. Furthermore, the authors advocate an interdisciplinary strategy by drawing materials from other sources, such as the social sciences, historical studies and the narrative and resources of community activism.

The authors suggest that there are three broad themes which will help law teachers to rethink current approaches to culture in the legal curriculum: (1) the interrogation and unpackaging of majority cultural privilege; (2) an anti-essentialist approach to culture and ethnicity; and (3) an examination of law's representation of culture.

The impetus for attempts to integrate cross-cultural perspectives into the law curriculum can come only from the realisation that those students who go into legal practice will find themselves working with a diverse clientele, but also from the fact that ...teachers are encountering a much more diverse body of students in their classroom. Thinking of education as not just a product to be delivered or exported but as a social process,...we do not feel it possible to separate the question of the distribution of education from the question of content. If law schools set themselves the democratic task of increasing access to education, then they have to ask themselves what kind of education is being provided. (p.21)

With respect to specific strategies for legal education, they suggest the development of a model of flexible teaching in law calling for well-structured or directed teaching. The first step in this model will be a fresh consideration of the syllabus from a critical perspective, which will be an essential foundation to the successful introduction of cross-cultural issues into core subject areas. It is also vital to know the composition of the student body, including their interests, demographic background, motivation for taking the subject, level of knowledge and previous learning experiences. Another step is to arrange guest speakers to give students exposure to and share experiences with people and clients from diverse backgrounds. Among the other practical suggestions offered are to draw case studies, readings etc from a variety of social contexts, to avoid tokenism, to structure learning experiences to address cross-cultural communication problems, to organise clinical placements with cross-cultural groups and, finally, to teach open-mindedness and tolerance for ambiguity. Nonetheless, the authors do recognise that this ideal world strategy must be tempered by the pragmatic recognition that the best that might be achievable is developing supplementary materials to work within the existing syllabus.

The final three chapters deal with how all this might be realised in three core subject areas, which are also critically important as foundations for later subjects in the curriculum. In each of them suggestions are offered about writing course objectives and identifying student outcomes. For the purpose of this brief review, it is unnecessary to delve into the contents of these chapters at length.

With respect to equity and trusts, by way of example, there are worked up cases, with curriculum suggestions and learning activities provided, of the legal problems encountered by migrants with poor English giving third party guarantees, including such issues as the social context and the application of equitable doctrines of unconscionability and the construction of special disadvantage and of undue influence.

There are also sections on such topics as 'Keeping secrets: breach of confidence and intercultural encounters and vulnerability' and 'Power and agency: the role of fiduciary doctrine', which are designed to stimulate the reader to reflect on how cross-cultural elements can be employed to illustrate the workings of equitable doctrines. The authors observe that many commentators see the exploration of these doctrines as residing specifically within the context of business and commerce, whereas in fact there are also futures for them in a culturally diverse society.

A similar approach is adopted to giving teachers the tools needed to inject a cross-cultural perspective into the equally important subjects of property and torts. Teachers of these subject will also be challenged by the opportunities presented to broaden the scope of their courses to make them more reflective of the legal problems encountered by

the community at large , rather than the limited fare that has hitherto frequently been served up.

Anthony O'Donnell and Richard Johnstone should be congratulated on having written a lucid book which so ably addresses a serious shortcoming in the law school curriculum, which has thereby become more and more out of step with the social and cultural makeup of modern Australian society. They have succeeded in their stated objective: *to examine some of the stories law tells about culture and so give teachers some of the tools for new ways of seeing law's culture.* (p.130)

Editor

ENROLMENT POLICIES

The threat to diversity in legal education: in empirical analysis of the consequences of abandoning race as a factor in law school admission decisions

L F Wightman

72 *NYU L Rev* 1, 1997, pp 1–53

This study[1] focuses on empirical data related to the role of race as a factor in the law school admission process. This study examines, first, statistical evidence that law school admission practices provide preference to applicants of colour and, secondly, the potential effect on the ethnic makeup of legal education today if those practices are abandoned.

The debate over the role of affirmative action in the law school admission process is closely linked to the difference in opinions about the role of the two most commonly used quantitative predictors of future academic performance — undergraduate grade-point averages (UGPAs) and scores on the LSAT, a standardised multiple-choice test of acquired reading and reasoning skills. On the one hand, there is support for achieving diversity in student enrolment through consideration of the race of applicants as one of the numerous factors evaluated; on the other, there is support for limiting consideration strictly to competitive indicia of an applicant's individual academic achievement by relying heavily on quantifiable factors such as LSAT score and UGPA.

In order for this study to test the several assertions about affirmative action practices and outcomes, a model was built of an admission process that relies exclusively on LSAT scores and/or UGPAs. The next step was to determine whether applicants with the same LSAT score and UGPA who were members of a different ethnic group had the same probability of admission as did the white applicants upon whom the model was built. The final step was to determine whether each individual applicant would have been admitted to the schools to which they applied if only LSAT score and/or UGPA were used to make the admission decision.

The 1990–91 law school application and admission data suggest widespread use of affirmative action admission practices in legal education. When LSAT and UGPA are modeled as the only factors used to make decisions, not only do they predict actual decisions far more accurately for white applicants than for applicants of colour, but the number of applicants of colour predicted to be admitted under the model is statistically significantly lower than the number actually admitted.

The next step in the analyses was to determine the effect of abandoning the consideration of race on the number of individual applicants who might be admitted to law school. The analyses reported show that, if admission decision-makers had used a process modeled by the LSAT/UGPA models, the consequence would have been a substantial reduction in the overall number of applicants of colour who were offered admission to ABA-approved law schools. The impact would be devastating among the 3,435 black applicants who were accepted to at least one law school because only 687 would have been accepted if the LSAT/UGPA model had been used as the sole means of making admission decisions.

The data do not support an assumption that every white student with higher quantitative predictors who was denied admission would necessarily have been admitted but for affirmative action. Lower-scoring applicants of colour are not the only ones who are given special admission consideration. The number of white applicants who were not admitted but would have been if decisions were based entirely on numerical indicators is not so large as the number of white students who were admitted but would not have been based on the LSAT/UGPA alone. Although this model fits the data very well, there is still a substantial amount of unexplained variance in its use. Information obtained from sources, such as misconduct files, letters of recommendation and personal statements, is also identified by most law schools as important for consideration in admission decisions.

The tension between commitment to the principles of racial and ethnic diversity and of competitive evaluation based on quantifiable indicators of individual achievement frequently results in questions about the appropriateness of the use of numerical indicators. One does not need to argue that the test is invalid or a biased predictor against the members of certain groups in order to substantiate the negative consequences of misuses or overuse of the test in the admission process. A test that does a very good job of measuring a narrow, albeit important, range of acquired academic skills cannot serve as a sole de-

[1] Two reports by the author on the full gamut of the research project upon which this article is based were reviewed in 5 *Leg Ed Digest* 1 (July, 1996) pp 15-17.