be at least one 'foundation' course which is capable of setting out in general terms some major ethical assumptions underlying the due process model and the provision of legal services and possibly also introducing the core principles of professional legal ethics. Lastly, we need to reconsider the role of the 'legal humanities'; in the hands of law teachers these have often been both subverted to and diminished by the Anglo-American positivist tradition, leading to marginalisation in the average curriculum.

A much more informed debate needs to take place about the institutional values of the profession, the nature and role of codified professional ethics, the need for continuing professional education in ethics, and about the nature of the workplace and the kinds of training and mentoring necessary to sustain ethical development in practice.

PURPOSE

Thinking about law schools: Rutland reviewed
W Twining
25 *J L & Soc* 1, 1988, pp 1–13

The steady bureaucratisation of universities is bringing to the surface disjunctures in such concepts as 'law students' and 'law teachers'. This is symptomatic of wider uncertainties about the actual and potential nature and functions of law schools in rapidly changing situations. The time is ripe for a *rethinking* of law schools.

This represents a significant step away from the tradition of talking about legal education mainly in terms of process rather than institutions. A process perspective, however liberal, almost inevitably focuses discussion of legal education onto the early stages of professional formation. Institutional analysis of law schools is no cure-all. First, an institution can be analysed from a variety of standpoints. Secondly, no institution is an island, although it is often tempting to present it as a 'total institution'. Thirdly, the relationship of individual students and academics to particular institutions is changing. However, individual law schools are significant units in respect of finance, prestige, culture, student choice and forward planning.

Rethinking law schools as institutions requires some tools of analysis. The goals and priorities of a law school need to be set in the context of its overall mission, the national system of legal education, and specific conditions and trends at local, regional, and international levels.

The United States is almost unique in the world in not subscribing to the idea that law is inherently a cheap discipline; in England law is officially treated along with politics as having the lowest unit costs. American discourse about legal education seems to be particularly susceptible to the football league model: the primary school image; the private practitioner image; and the professional snob syndrome.

English law schools are in the process of moving away from the primary school model, although practice still outruns discourse, for example in respect of who count as 'students'. The proclaimed ideology of nearly all undergraduate law degrees is that they are providing a general, even a liberal, education at the academic stage, which is a good preparation for many different kinds of career. This suggests a distancing from the private practitioner image. However, student culture has tended to be more vocationally oriented than either the official line or the job market warrants.

'Failed sociologists' in the market place: law schools in Australia
C Parker & A Goldsmith
25 *J L & Soc* 1, 1988, pp 33–50

In the late 1990s Australian law schools occupy a precarious position between profession, state, and market. Law schools, already in an ideological and professional bind over their allegiances between academy and profession, seem fixed in reactive mode, rather than engaged in trying to renegotiate the terms on which legal education is offered. Australian law schools must explore a different model of legal education, based upon a transformative notion of legal knowledge and legal practice, if they are to overcome their current malaise.

From their beginnings Australian law schools readily submitted to professional control and influence. They competed with apprenticeship to become the major mode of entry to the profession and were viewed as adjuncts to the legal profession, rather than truly academic institutions dedicated to liberal educational aims. The recent history of Australian law schools can be partially understood as a story of separation from the practising profession, escape from the trade school mentality, and concomitant entanglement with the state, the market, and the university.

The opportunity for academic lawyers to differentiate themselves from the practising profession was provided by the state's expansive higher education policies of the 1960s and, even more so, the 1980s. The burgeoning growth of legal education from the 1960s onwards created the critical mass necessary for law school lawyers to differentiate themselves from the profession and begin to develop their own agenda. University legal education has become at least partially independent of the profession and captive to the higher demands of an

education policy which has made the expansion of law very attractive to the universities.

Academic lawyers in the late 1980s had begun to value teaching as an activity in its own right. This provided further momentum to those law teachers in the newer law faculties who had reacted against the trade school orientation of older faculties and had begun to see the study of law as based on liberal, scholarly values traditionally associated with university education generally. Almost all students now do their law degree as a joint degree or as a second degree rather than purely as a professional training course.

In the short to medium term, the state of public funding for law schools is likely only to get worse. Those law schools with relative prestige and a pragmatic approach to worries about access equity will be inclined to move in the direction of full-fee paying positions for local students. For the most part, this will merely allow some of the sandstone universities (plus a few second generation schools) to entrench further their relative resources advantages.

When the reasons for the current popularity of law degrees are acknowledged (in particular, the relative employability of law graduates) and the advantage that students assume more of the costs of legal education, one can easily predict the likely growth of student preference for highly skills-oriented, minimalist forms of legal education. The fact that a growing proportion of students will be unable or elect not to enter legal practice is likely to prove of little consequence, as anecdotal as well as survey evidence suggests that students want the capacity to be able to practise, even if it is never exercised. Without a clear commitment by law schools, backed by resources, to the aims of the liberal law degree, its significance seems likely to fade further.

Australian law schools now exist between the demands and opportunities of the profession, state, and market. While it is tempting to place much of the blame at the feet of the economic rationalists, we must also recognise our own contribution. We link the recurrent despondency to our law school's fundamental ambivalence about the function of the university law degree and tension between vocationalism and the responsibilities of scholarship and higher learning. This ambiguity is encouraged by the current market in which it benefits us to appear to be all things to all people.

Australian law schools should maintain a distinctive vision in the face of difficult circumstances by embracing the contradictory position they inhabit and the tensions within the knowledge they are asked to pass on. Prescriptions include de-emphasising formal approaches to legal reasoning and the obsessive focus upon black-letter law, as well as taking legal practice seriously. However, it is also necessary to see as part of practice the values and techniques of self-examination and critique, to see practice as grounded in social responsibilities beyond the immediate paying client and to look beyond the traditions of private professionalism in the practice of law-school graduates. The liberal law degree should not abandon but should not be bounded by legal practice concerns; its future must lie in the pursuit of a transformative rather than replicative view of legal education.

SKILLS

Counselling skills for the lawyer: can lawyers learn anything from counsellors?
H Brayne
32 *Law Teacher* 2, pp 137-156

Few law schools could nowadays claim that building lawyering skills is irrelevant to their students. The legal professions demand a basic level of interviewing or conference competence at the vocational stage of training. Even at undergraduate level participation in the client interviewing competition or a clinical program requires students of law and their teachers to consider the question of how to relate to the client.

There has been a great deal of debate about whether this is a proper activity for the law school. It is a fact that a lot of law teachers are engaged in the teaching of interviewing skills. By and large this teaching is informed by the practitioner experience of the teacher, supplemented by reading in the legal skills literature.

There are signs that the professions are recognising lawyer-client relationships as important. However, the minimum standards in client interviewing laid down by the Law Society for trainee solicitors, although self-evidently worthy and clearly going deeper than simply preaching good manners, could fairly be described as bland. Could different observers reliably measure a student's achievements of the precribed outcomes?

The legal interview seems to be content and action driven; whereas the counselling approach seems to be relationship driven. Nevertheless, the quality of the relationship is itself a means to the end of solving a