The author lists six ways to use money for scholarship: shift to expense accounts; retain the power to add research assistants to heavy publishers; allow students to get course credit for research assistant work and writing; pay salary increases for production; pay summer grants for recent production; summer pay should be 25 percent of total pay.

He suggests eleven ways to use hiring and retention to promote scholarship: hire and grow; hire laterals; give great weight to publications rather than recommendations in entry-level hiring; hire on the basis of intellectual needs; be a major player in at least one intellectual discipline; hire a dean openly committed to scholarship; have a small faculty hiring committee made up of scholars; do not put political restrictions on faculty hiring; persuade unproductive or counterproductive people to work; make tenure standards real and avoid tenure fights.

Finally, he proposes five ways to use teaching to promote scholarship: expand teaching awards; distribute summary statistics from student course evaluations; hold meetings on teaching for both teachers and students; teach seminars that are built around scholarship interests; and add theory courses to the curriculum.

Over two-thirds of these 50 suggestions cost essentially nothing in terms of money. Even adopting 48 of the 50 suggestions should cost only about $A200,000 to $A300,000 a year for most schools. While acknowledging that a broad faculty commitment to improving the law school's scholarship is most important because all the rest flows from it, the author nonetheless identifies the ten most crucial specific proposals from his list of 50. He concludes that the above reform proposals are designed to fill a need for schools that want to improve their intellectual environment and scholarly production but may not have noticed what steps others are taking or what seems to work at other universities.

LEGAL ETHICS

Ethics in legal education: high roads and low roads, mazes and motorways
R Brownsword
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A consensus is emerging that law schools should take ethics seriously. It is not a consensus arrived at by academics who have all travelled the same road. Four different positions that contribute to the consensus are legal idealism, intersectionism, contextualism and liberalism.

According to legal idealism, law is essentially a moral enterprise. Any discussion of legal validity, legal rights and duties, is to be understood as a discussion of legal-moral validity, legal-moral rights and duties and so on. It follows that legal education is a species of moral education. The ruling legal positivist view holds that a distinction is to be drawn between discourse directed at determining what the law is and discourse directed at assessing what the law (morally) ought to be. On this view, legal argumentation is not necessarily a species of moral argumentation.

If combined, the law would be taught at a certain distance; students would be instructed in the rules and principles that are treated as law within a particular group; but the moral questionmark would be ever-present. The conceptual framework of legal idealism would make a difference to the law school curriculum and practice but learning would not ground to a halt.

According to intersectionism, although we should conceive of law in legal positivist terms as a morally neutral enterprise, there are occasions when legal and moral concerns intersect. Intersectionists might find their path to ethics in several ways. They might take their lead from moral cues given in legal doctrine, explicit or implicit, or from what they see as the conspicuously moral nature of certain kinds of issues arising for legal determination. The more that one becomes aware of it, the more pervasive it seems; or, the more that ethics enters by implicit legal invitation, the less exceptional it becomes. Nevertheless, even at its broadest, intersectionism treats the connection between law and morals as contingent.

One of the changes apparent in the culture of modern legal education is that technical black-letterism has yielded ground to the view that the law is there to be understood in its context. Legal education must at least make students aware of the moral context for law. One version of contextualism is concerned with mapping the broader cultural landscape beyond the law and raising the consciousness of young lawyers. In another version, contextualism has more pronounced normative intents. The purpose of painting in the cultural backcloth is not simply to record that certain values are accepted or disputed, noting that legal doctrine reflects or does not reflect community values. If contextualists work inside out, they might start with legal doctrine that seems problematic, develop the puzzle in a larger ethical context and work towards a defensible critical position.

Student scepticism about the materiality of morality might be expressed in more than one way. From the idealist standpoint, the response is fairly straightforward. If legal reasoning is a species of moral reason, the nature of moral judgments will inevitably affect the nature of legal judgments. For liberals, the justification lies in a particulars conception of what it is be a university. Keeping the channels of inquiry open is of the essence of such an institution. As for contextualism, it depends whether it is the mapping or the nor-

mative version that it in the dock. The high roads (legal idealist or liberal) perhaps imply a more pervasive concern with ethics than the low road interpretations of contextualism and intersectionism; but in legal education, as in legal decision-making itself, the pathways that take us to ethics look more like a maze than a motorway.

Developing ethical lawyers: can legal education enhance access to justice?

J Webb

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The ethical challenges presently facing the legal profession can seldom have been greater than they are today. Not only are academics and practitioners functioning in the shadow of a new political economy of lawyering, in which legal services are simultaneously both more regulated and more dispersed and fragmented across increasingly globalised markets. We are also currently confronted by an almost unprecedented flood of laws that will transform the arenas of legal disputing and create significant challenges for legal education.

Many of these developments raise issues which go well beyond the conduct matters which academics can tidy away to the hinterland of vocational and continuing education; rather they beg quite fundamental questions about the role of law and lawyering in the 21st century. The link between ethics, education and access to justice needs to be made explicit. That link is grounded in the assumption that just legal systems need ethical lawyers. Citizens' access to justice must in part be predicated on the ability of lawyers and judges themselves to show an understanding of and commitment to justice. The development of that commitment must be a function of the universities. Legal education needs to be seen as a process of educating for justice.

It must be acknowledged that the acquisition of knowledge and skills also involves the acquisition of values about that knowledge and those skills. Generations of realist and post-realist scholars have shown that the technical 'black letter' domain is not value-free. By offering silence or even denial at those points of the curriculum that cry out for an ethical response, we contribute, at best, to the cynical and pragmatic response to law that seems so prevalent among students and, at worst, alienate those who had hoped for more.

Ethics must be built into the curriculum in a manner that is sufficiently pervasive to be effective. The danger with ethics teaching that relies substantially on stand-alone courses is that they offer too little, and usually, too late. Ethics has to pervade the curriculum because it is fundamentally pervasive. The approach to teaching and learning should be holistic rather than narrowly technocratic. Legal education is holistic when it encompasses the development of theoretical knowledge, values and skills in the context of individual experience.

Studies of moral development suggest that we all have the potential to improve the quality of our ethical decision-making and that such capacity can be enhanced by taught interventions. Ethical decision-making depends on four elements: recognition, judgment, motivation and character. Moral reasoning is a particular species of contextual as opposed to abstract problem solving.

In an ideal world we should design educational programs to facilitate each stage of the model of moral development. Pervasiveness must mean pervasive across substantive legal subjects and not just the 'soft law' areas. This does not mean that ethics has to take over but it is relatively easy to integrate an element of ethics into the foundation subjects. The danger of pervasiveness is that giving the pieces of legal ethics a home everywhere deprives its core concepts of a home anywhere. There clearly needs to be a 'core' course. Further, there is some evidence that intensive teaching programs can produce better developmental outcomes than teaching which is delivered over a longer time span.

Ethics cannot for the most part be taught by traditional, didactic methods. Developmental approaches to ethics require a strong emphasis on active learning methods. This will inevitably require an emphasis on small group, participative learning, involving hypotheticals and ethical dilemmas, role play exercises and the encouragement of groupwork in which students can share and contrast their experiences and opinions.

A criticism of much moral development theory is that it does not always sufficiently recognise the collective, cultural dimensions of moral identity formation and moral action. One of the key challenges facing the law school is to re-conceptualise itself as a moral community. First, law schools need to look at the images they convey. Second, law teachers cannot be wholly neutral in what and how they teach. Third, law teachers need to think more positively about how they might transfer ethical responsibilities to students.

If lawyers are to turn the spotlight on the ethics of the profession, as they seem to be doing in increasing numbers, then they need to keep in mind the old adage about glass houses and stones. Justice, like charity, beings at home; the law schools must share with the profession the responsibility for developing lawyers capable of delivering access to justice.