

## LEGAL ETHICS

### Teaching the ethics of criminal law and practice

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The importance of the criminal law and the interest of students in issues related to criminal justice makes a substantive criminal law subject a very useful site for legal ethics teaching. Various models exist for the teaching of legal ethics, from clinical programs to the pervasive method, the infusion method, the transformative model and the use of stand-alone ethics subjects. There is, of course, scope for using a combination of teaching approaches.

While many articles have been written on the importance of teaching legal ethics, the literature documenting the teaching practices of legal ethics teachers is less substantial. This article outlines the results of an ongoing teaching project first developed by the author in the Law School at Griffith University, Brisbane, Australia in 1999. Concerns with reliance on a stand-alone subject on legal ethics and professional responsibility led to development of a sustained ethics component in the criminal law subject, with integration of weekly discussions of ethical issues. The ethical responsibilities of defence lawyers, prosecutors and police are all considered in the context of both real and hypothetical scenarios. The emphasis is on the critical study of the relevant ethical principles rather than the rote learning of ethical codes.

Criminal law is a substantive area particularly well suited to discussion of legal ethics and professional responsibility. When investigating criminal law issues students tend to raise ethical questions and dilemmas. 'How could I defend guilty people?', 'what would I do if I knew my client was lying?', 'what if I knew that the police had obtained evidence illegally?', 'what if I was told about other crimes the client had committed or was going to commit?' are the sorts of issues raised.

Australian law schools are increasing their focus on the teaching of legal ethics and professional responsibility in addition to the teaching of traditional legal doctrine and skills. Most legal educators agree on

the desirability of pursuing ethical considerations in legal education and developing the ability of students to identify, reflect upon and resolve ethical issues in their future work as professionals. Some ethics component exists in all law curricula, yet the underlying purpose of such teaching can be obscured by classroom-based presentation of concepts without reference to their practical context. If these far-reaching concepts, which rely largely on normative decision-making, are only considered in isolation from relevant substantive legal contexts, students are likely to face difficulties in developing the conceptual framework needed for resolving ethical dilemmas.

Achieving such purposes in ethics teaching has been a challenging task for many law schools. While study of legal ethics and professional conduct issues is required for legal profession admission in Australia, the nature of such study varies from law school to law school. The majority of Australian law schools offer some stand-alone legal ethics or professional responsibility subjects. Some universities offer clinical legal education programs in which the ethical dimensions of legal practice are explored in a practical context.

The consensus of academic writing declares that a stand-alone subject in legal ethics and/or professional responsibility, whether compulsory or elective, is simply not enough. Without a broad-based pervasive approach, teaching legal ethics may amount to little more than teaching legal rules of conduct, in which debate about morality in the practice or development of law is forsaken for the purpose of examinations and admission requirements.

One obstacle noted by various academics is the shortage of materials and resources designed with the object of applying pervasive methods of teaching, particularly for legal ethics. While recognising the benefits of providing comprehensive coverage of legal ethics issues in substantive law subjects, various concerns have been raised regarding the use of such approaches. One is the criticism of tyranny of content. With any pervasive or infusion teaching approach there will be some tension, or at least a balancing act, between the concrete subject matter of substantive law and

the ethical issues the subject raises. The opportunity cost of teaching legal ethics pervasively is the loss of teaching time usually spent on other substantive law topics.

Confronting ethical queries in a legalistic fashion and neglecting the moral dilemmas posed by such queries fails to achieve the goals of legal ethics teaching. Even if legal ethics is taught pervasively, the rules of professional conduct might be covered with little reference to moral content. The importance of encouraging students to think of professionalism in broader terms than the strict rules of professional responsibility highlights the importance of developing links between discussions of ethics in substantive subjects with the coverage in jurisprudence-style subjects.

Teaching any subject with a pervasive ethics component requires teachers to become familiar with relevant materials, theories and knowledge. The effectiveness of such teaching could be undermined if the teachers do not have the time to prepare and teach such matters satisfactorily or are unwilling to teach or uninterested in legal ethics. Rather than viewing these matters as criticisms of coordinated ethics teaching, it is appropriate to treat them as challenges to be met as more comprehensive and coordinated methods become more widely and frequently adopted. Co-ordination will be crucial to the success of such endeavours. In 1998, the author received a Griffith University Teaching Development Grant for the project '*Teaching the Ethics of Criminal Law: Developing Our Pervasive Teaching Methods*'. The project has involved the development of a curriculum, preparation of course materials and the incorporation of ethical issues in the Griffith University law school's undergraduate subject Criminal Law and Procedure.

The project has seen the school's first move towards the possible use of the pervasive method of teaching professional responsibility and legal ethics. Materials developed have been further refined for the 2000 and 2001 offerings of the subject. The project is designed to improve student understanding of the ethical responsibilities of lawyers. The aims are: to enable students to better understand the ethi-

cal responsibilities of lawyers and now ethical issues arise in practice; to enable students to appreciate the importance of ethical behaviour, especially in relation to criminal law; to determine the potential application of this teaching method across the law curriculum; and to enhance the involvement of the legal profession in the teaching of legal professional responsibility.

A Project Reference Group, made up of legal practitioners and academics, was consulted to assist in identifying examples of each of the key ethical responsibilities of criminal lawyers.

The discussion of issues related to ethics in criminal law has worked very well. The students respond enthusiastically to the ethical issues included in their materials and raise a wide range of questions. Some students recall matters from the ethics teaching in the first year foundation study. An evaluation of the ethics component of the 1999 offering of the subject was conducted during the final large group class. The evaluation responses were encouraging and provide useful feedback on how the coverage of ethical issues can be improved.

Discussing in detail the ethical issues related to the practice of criminal law has been a valuable addition to the teaching of this subject. The students responded enthusiastically and hopefully gained a strong appreciation of the importance of ethical behaviour to the integrity of our criminal justice system. The next challenge relates to working with colleagues to explore the potential for the incorporation of greater legal ethics content in the substantive law subjects they teach.

## LEGAL PROFESSION

### Professional work, professional careers and legal education: educating the lawyer for 2010

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The results of specialisation in the legal profession, competition and changes in legal aid have led to a form of industrialisation within the legal sector. Legal work is often organised in a more standardised and

repetitive fashion. Work is deskilled and broken up into different activities which can be handled by lower-level operatives. Many working within this new system find it easier to begin areas of highly complex work. However, long hours and the repetitive nature of the work have caused many young solicitors stress and worries about whether they have made the right choice of career.

Instead of one lawyer carrying out all the work on an individual client's matter from first interview to closing the file, the paradigm has now changed. Different lawyers, paralegals and others may deal with the different elements of a legal matter and with the client through the course of each case. Different skills therefore become important, as do different levels of understanding and assumption and therefore possibly different approaches in education, training and socialisation of neophyte lawyers to these tasks.

In this article it is intended to pose questions about the future content, style and objectives of legal education, in order to initiate a discussion. It will, as always, be easier to ask the questions than to answer them. But failing to ask the questions means that answers are even less likely to appear.

What is the best approach to educating law students, some of whom may be actually going into legal practice and many more of whom will be wanting to go into legal practice, beyond the turn of the century? Legal practice itself seems to have provided, until now, some guide for what an undergraduate law degree should contain and involve. Will legal practice continue to provide such a plan? Should it? Can we afford to ignore modern or post-modern legal practice?

How should one begin the process of constructing legal education for a globalised, internationally regulated, industrialised, 'deprofessionalised' legal profession with its resultant effects on legal careers, legal concepts and legal subject classifications?

Recent research on 'graduateness' considers notions of what it means, or should mean, to complete any degree-level program of study. Consideration of such is-

ssues across the range of different subjects and disciplines stimulates a more general view of the skills which need to be taught in order to prepare graduates for life beyond university, the world of work and their own self-development. These core 'transferable skills', produced, as they have been, in the context of present-day employment needs, are a useful guideline to and comparison with the traditional and current practices of the law degree.

Although no specific attempt has been made to take into account the changing nature of legal professional work in the production of the law benchmarking currently being undertaken in the UK, the exposure of draft standards to the legal professions and the knowledge of those involved in the exercise of the current nature of legal work seem to have led to a vision of a law degree which may be closer to the current conditions of legal work.

If legal education needs to think quite differently about the nature of legal careers, then it would be sensible to think through what types of legal career, different from our traditional perspectives, can already be seen to be evolving in law firms. Not only are lawyers specialising within particular subject areas or sub-subject areas, they are also beginning to specialise, at different points in their careers, in different elements of the work process involved in those subject areas.

The nature of jobs and occupations is changing both inside and outside of law and it is clear that fewer lawyers in the future are likely to have the same certainty of job tenure as in the past. There is already much more movement between firms at both the assistant solicitor level and the partner level than there has been in the past. A new division of labour within the profession is a further distinction related to the 'industrialisation' of the legal enterprise, forced by costs and high competition levels, as well as the large numbers of potential entrants to the legal profession. A small selection of the occupations observed currently to be evolving within the profession include: draftsman; information officer; specialist technician; advocate; manager; client handler/manager/partner; strategist; and risk manager.