

ping out. Because Access students are a valuable resource for society, as well as being individuals with great potential and determination to succeed, we should be finding ways to help them more, rather than putting obstacles in their way.

GENDER ISSUES

'The adequacy of their attention': gender-bias and the incorporation of feminist perspectives in the Australian introductory law subject

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Since the Pearce Committee's review of Australia's then law schools in 1987, there has been a strong movement toward the incorporation of feminist (and other) theoretical and critical perspectives in the introductory courses. However, there are still a significant number of courses that approach the subject-matter uncritically with very little or no feminist content. A law course that uncritically presents legal doctrines risks adopting and perpetuating the unstated point of view of a particular cultural group in our society. Legal education should be openly self-conscious on the culturally-specific point of view of the law and should recognise and address its own partiality.

Feminist scholars have argued that to fail to consider and teach the law critically, and instead to consider and teach it in isolation from its relationship with the rest of the world would be to fail to consider and acknowledge the underlying masculinity of law and legal systems. They argue that legal education delivers inaccurate messages about women because these messages derive from an androcentric perspective. From this perspective, men represent a paradigm and women are portrayed as different: a difference that is thought to make women inferior to men. Yet, paradoxically, at other times, women are also portrayed as having needs and experiences that are no different from that of men because the male is the measure of the legal person - the subject of the law.

For the purpose of the present study, legal education is considered to disclose gender-bias if it portrays the stereotypical male and his values as the paradigm and ignores the diversity of the lives of individual men and women. The extreme manifestation of gender-bias is an absence of women and women's needs from legal education, virtually giving the appearance that women do not exist.

There are at least three closely-related reasons for conducting a feminist analysis of legal education. The first is that legal education is a socialising process. Any experiences, philosophies and prejudices that a student may encounter at law school concerning men and women and their respective social roles will contribute significantly to the formation of the law graduate, as well as reinforcing or challenging any pre-existing biases. The second reason for conducting this kind of analysis flows from the ultimate societal roles of most law graduates, who clearly have the capacity to participate in and influence social and cultural outcomes, shape social and cultural development and pursue or resist change to the social and cultural status quo. A third reason why a feminist analysis of legal education is important is that modern legal education affects the quality of legal services that women in our community receive.

The objective of this study was to conduct a very detailed analysis and critique of the contents of the introductory law subject. After communicating with each Australian law school teaching a law degree and requesting the course outlines and reading lists of their introductory courses, it was possible to include in this analysis 36 introductory courses from every such law school bar one.

The introductory law subject typically covers certain issues fundamental to the Australian legal system. Australian legal and constitutional history is a very common topic in the introductory law subject. The very important part played by women of different social and cultural backgrounds in the development of An-

glo-Australian legal history and Australian nationhood was discussed in one law school only.

A consideration of the sources of Australian law, including its English sources, is also common in introductory courses. There was some exploration of feminist issues in several of the courses. Legal analysis and dispute resolution involves the reinterpretation of individual human problems to fit within pre-constructed legal categories. Law students are taught to approach the resolution of human problems by this method. An important question, therefore, is from whose standpoint these legal categories have been constructed. Feminists argue that it is an androcentric standpoint and that women have not participated in the construction of these categories. None of the courses in this study engaged with this important feminist discussion.

Introductory courses usually also include an exploration of the Australian legal system in the state and federal context and its various components, such as parliaments, courts, the Crown and the executive. No course introduced any feminist content in teaching this broad area.

In the broad area of legal reasoning, introductory courses teach methods and tools of legal reasoning and judicial decision-making. Primary among these are the doctrine of precedent and the methods and rules of statutory interpretation. The process of common law reasoning and *stare decisis* has been subjected to feminist criticism in that, without statutory intervention, the common law is often slow to respond to women's needs and experiences of life, and helps perpetuate the existing androcentricity of the law. The common law has, for example, been slow to recognise what is known as battered woman syndrome to assist women who have been victims of domestic violence. These important feminist issues were raised in two law schools. Including feminist perspectives on the topic can help students to understand that the doctrine of *stare decisis*, an apparently neutral legal doctrine, is capable of having a gender-biased effect on the law

and one which is not readily adapted to dealing with the diversity of women's experiences of life.

The concept of the legal person can be used to demonstrate to the student some of the instances of overt gender-bias in the law through the medium of the apparently neutral legal doctrines of statutory interpretation. In the way most course contents are presented, the concept of the legal person is one often simply overlooked or taken for granted, but it is one issue on which feminist jurisprudence, in particular, has shed light. No law school introduced this important theme in its teaching of this topic.

Issues connected with the adversarial dispute resolution process also commonly find a place in introductory courses. These include an examination of the adversarial trial and discussions of the development of the jury system and the role of lawyers, the jury and the judiciary in trial outcomes. There have been many feminist critiques of the adversarial, confrontational trial as an inadequate and, at times, inappropriate method of dispute resolution. Any discussion of the trial as a means of dispute resolution is, arguably, seriously lacking without a consideration also of these feminist analyses.

Legal aid, and the dearth of government funding made available for legal aid, is an important, related issue in this area because women, being relatively poorer, are less likely than men to be able to afford private legal services. Without some exposure to these issues, the provision of legal aid can appear to students to be neutral, in its availability and effect, in relation to men and women, and also among women. The introductory course at only four law schools discussed funding and access to justice and the experiences of the legal system had by women.

Several of the introductory courses taught the typical core topics of the subject within a critical or contextual framework. A student of these courses would arguably have a better grounding in the skills necessary to think critically in the remainder of their law studies than students who have been taught the intro-

ductory law subject in a largely conventional, uncritical manner, and this is indeed the stated objective of several of the introductory law courses.

There is some validity in the feminist argument that legal education is gender-biased in favour of men. Feminist scholars have argued that legal education is gender-biased because it portrays men as the human norm whereas women are depicted as different and inferior to men. Since the Pearce Report, most law schools have attached considerable importance to students developing a critical perspective of the law in a social context. This study indicates that the majority of the introductory courses have been taught with a critical approach to the subject topics and there is a considerable diversity of approach taken, consistent with the freedom teachers of this subject have to design their courses.

However, although there was some feminist discussion in most law schools, feminist critiques relevant to the introductory topics were not incorporated in the curriculum as frequently, or to the same extent, as other critiques. In many introductory courses, there was no feminist content, nor any content concerning women's distinct, yet diverse, legal needs or experiences.

Legal educators, as university teachers, should be reflective and inclusive. It follows that they should not present any point of view as a universal, objective truth about the whole world and all those who live on it.

INDIVIDUAL SUBJECTS/ AREAS OF LAW

Teaching evidence: inference, proof and diversity

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When issues of diversity are raised in a law topic, they often appear - or will be regarded by the students - as not central to the substantive legal or doctrinal aspects of the topic. Thus, a preliminary teaching question which arises is the spe-

cialisation/ mainstream debate: should such material be presented in a separate segment of the topic (a specialisation) in order to give it some overt visibility, or should it be 'mainstreamed' by including references to it throughout the topic? Either approach can lead to marginalisation.

The approach to take in teaching evidence is to show how such issues of diversity are not marginal, but central, by considering diversity from the very beginning, as embedded in the fundamental evidentiary questions of relevance and the logic of proof, by referring to race and gender issues in a range of evidentiary contexts, by having at least one specialist section which focuses intensively on diversity and by including consideration of race and gender in assessment.

Evidence is the law of facts. The objectives in the author's subject topic guide reflect this emphasis on facts, rather than a rule-sensitive approach. Evidence rules about what cannot be done with facts and inferences make no sense to students unless they first know how to use facts and to draw inferences from them. This approach to evidence law requires teacher and student to investigate how we think and why we think a certain way and to expose unacknowledged assumptions, beliefs and ideas. Analysing the intuitiveness of reasoning about facts orients us towards understanding people, ourselves and others, and it is an infinitely generalisable ability.

The course begins by asking what it means to call the reasoning process behind the law of evidence 'natural'. In its deployment of these so-called 'natural' processes of fact discovery, the law of evidence makes a number of explicit and implicit assumptions about human behaviour and reasoning processes. Evidence law assumes that fact finding is and should be entirely 'rational' in the sense that it is governed by principles of logic. An implication of this rationalist approach is the correspondence theory of truth: events occur and exist independent of human observations, and true statements correspond with these facts. A further assumption of the law of evidence is 'uni-