fore question the fundamental premises of Western 'model jurisprudence' as a way of eventually understanding that the legal situation of ethnic minorities cannot be adequately analysed within traditionally accepted 'black-letter' renderings.

While students often find intuitive appeal in reading legal pluralist perspectives, they are often much more reserved about their practical value. The use of expert reports therefore enables students to see how field knowledge can actually be applied in real casework contexts, thereby opening the door to discussions about how legal pluralism could work in practice. The author is convinced, despite what may be apparent from law reports, that a huge market exists for such work as long as it is possible to train people with the right sort of skills.

One key issue will be that of teaching materials. Using law reports as a teaching tool is, of course, indispensable. However, law reporting remains fraught with its own politics that have ensured the systematic non-appearance of cases of crucial relevance to ethnic minority laws. Articles, largely though not exclusively, derived from the minority press have been a key source of information showing how the social basis of the legal system is changing ethnically, and in ways which are barely discussed in the academic literature. Although matters are improving, reliance on 'unorthodox' sources is still necessary.

A more general curricular concern is whether one should teach a course on Ethnic Minorities and the Law as a separate optional offering, or whether an ethnic minority focus ought to be integrated into all areas of teaching. In principle, the latter approach is favoured. Indeed, if it is accepted that police, magistrates, judges and other officials are prone to institutional racism and that training is essential to mitigate its effects, then it would now seem impossible to argue that students should not be taught about the implications ethnic diversity has for all areas of law.

A real danger still exists that separate optional courses on ethnic minorities can be pushed further into an 'ethnic niche', so that other academics can comfortably avoid taking seriously the need for changes in their own curricula. This should not, in any case, deter committed individual teachers from being more adventurous in their own repertoires.

LAW SCHOOLS

Access to justice: The social responsibility of lawyers — markets and mindwork
D Bok
11 *Wash U J L & Policy* 2003, pp 1–13

In the last twenty-five years, markets have strengthened their hold on the American imagination. In economics departments, business schools, public policy faculties and even law schools, free market doctrines have become more visible and more ingenious in their claims for extending the principles of competition to other areas of American life.

Buoyed by the ideas of free market intellectuals and swept along by the current *zeitgeist*, competition has increasingly entered professional life. In the legal profession, law firms compete for the brightest students, while personal injury lawyers advertise loudly to capture business from competitors. In higher education, universities publicise their attractions more widely than ever before to enroll the students they want.

Despite this wave of popularity, it is worthwhile to question how beneficial competition is for institutions that traffic in the work of the mind. There can be too much competition in intellectual pursuits. At least, in these fields of endeavour — including law and education — there is no invisible hand that automatically guides human activity to optimum results. On the contrary, intellectual services share certain characteristics that make competition highly problematic unless great care is applied. In fact, competition is already doing some damage to America's three most prominent intellectual institutions: public schools, universities and law firms.

Competition in intellectual pursuits is problematic in that it is often hard to measure the quality of the product. How is one to tell whether one law firm is better than another? In law, judgment is what the world pays for. However, judgment is very hard to measure even in retrospect — and harder still before the fact when someone is trying to choose which law firm to employ. If anything, the problem is even greater in choosing among schools and universities. Who among us really knows how much we learned in three years of legal training, and whether we might have learned more or less at a different school?

Lacking good indices of quality, we tend to fall back on crude measures. We must make judgments about what law firm to engage or what university to attend. In choosing a law firm, we look at earnings per partner, or perhaps at the law schools members of the firm attended, or at the stature of the clients that hire the firm. For universities, there are the US News & World Report rankings.

University rankings are at least as unreliable as law firm rankings. The results are primarily based on evaluations from educators at other institutions. Other indicators enter into the rankings — SATs of the entering class, alumni contributions, dropout rates, and the like — but all of them bear little connection with how much students are actually learning and developing at the institutions being measured.

The fact that standards of performance for intellectual services are seri-

ously flawed does not necessarily prevent them from being used. After all, some unit of measure must exist to help clients or prospective college students choose among competing providers and — in the case of schools and universities — to give the government some means of assessment. Flawed standards, however, are not without consequences. In practice, they lead to all types of unfortunate results.

Universities engage in questionable conduct through the force of competition based on imperfect criteria of success. Universities elevate research over teaching, not because teaching is unimportant but because its quality is hard to measure and is generally unknown outside a professor's own campus. Research is what establishes the university's reputation in computing the annual ratings in US News and World Report and research is what determines a professor's success, job offers, awards, and public recognition. Universities can neglect teaching with impunity, because it does not play a role in students' enrolment decisions, in the published rankings of academic institutions or in individual professors' standing in the profession. Consequently, teaching does not receive the effort and attention it deserves on most university campuses.

A second major problem with competition is the opposite of one of its greatest strengths. Competition is a powerful force capable of unleashing great energy in pursuit of an established goal. Yet competition is single-minded. It focuses effort on a designated end without regard for other ends. The most ambitious, determined, successful competitors set the amount of effort required to reach a specific goal. Other rivals must try to keep up with these hard driving characters or resign themselves to losing the race.

The powerful motivations unleashed by competition have other unfortunate by-products as well. The desire to win the contest, and the fear of failing, create strong pressures to resort to unsavoury methods to improve one's chances of success. Competition causes these dubious tactics to spread, because competitors feel obliged to follow suit in order to keep up.

Admittedly, competition has an important role to play even in the lives of intellectual services organisations. The challenge is to direct competition toward the right goals and keep it from violating sensible limits while still retaining its capacity to summon the creative energies of the participants.

The first step would be to devise better standards of quality by which to evaluate schools, universities, and law firms in order to help citizens make more enlightened choices among competing organisations. For example, rather than complain about the ratings of colleges and professional schools in US News & World Report, universities could devise better measures. Carefully constructed surveys of recent graduates might provide better guidance than the uninformed opinions of university presidents and deans about institutions other than their own. Better yet are efforts which evaluate colleges on the basis of how extensively they use effective teaching methods. These methods include smaller, more participatory classes, frequent interchange between students and faculty members, and substantial, supervised projects and papers. Rankings based on factors such as these would at least use competitive pressures to bring about improvements in the quality of education.

Improving the definition of goals and amplifying the information about the performance of competing organisations are useful steps, but they can accomplish only so much. University faculty and staff should do what they can to prepare students to make competition work better. The challenge law schools face is to prepare students for the increasingly competitive, profit driven world of contemporary private practice.

First, law schools should offer courses concerning the recurring moral dilemmas lawyers face in order to help students resist the pressures competition can bring to erode ethical standards. It is fashionable in some law schools to deprecate such courses, but the reasons for doing so are not convincing. The ethical dilemmas of practice are just as intellectually challenging as the problems discussed in standard law courses. Properly taught, courses in legal ethics can add a lot to a legal education. Well taught courses can help students think through moral problems in the safety of the classroom so they can be much better prepared than they would be if they encountered such issues for the first time amid the pressures of practice where expedience and self-interest can easily cloud one's moral judgment.

Beyond arming students to avoid unethical behavior, law schools need to consider ways of helping their students think about how they can live a fulfilling life in the profession. Law students are uniquely in need of help in thinking about their careers. Surely, law faculties could acquaint students with what is known about the advantages and disadvantages of different forms of practice, the organisation and economics of modern law firms, and the factors that help or hurt professionals in finding fulfilment in their careers.

Although competition in some form is desirable, even imperative, substantial effort is needed to make competition work well for universities, schools and law firms. This point is often overlooked by those who worship the market, regardless of their ideological persuasion. For competition to work well, especially in the fields discussed herein, much must be done to prepare competitors for the contest. They must be informed enough to make good choices. They must understand themselves enough to know which opportunities will give them lasting satisfaction. They must be virtuous enough to

withstand the pressures that competition often creates to act unethically in the struggle to succeed. Only when we appreciate these requirements, can we understand how much universities need to do to prepare students for the competition and to help the market function humanely and well.

SKILLS

Beyond mere competency: advanced legal research in a practice-oriented curriculum
M Cordon
55 *Baylor L Rev* 2003, pp 55ff

During the past thirty years, law schools have responded to the challenge of adequately preparing their students to conduct legal research by placing more emphasis on research courses in their curricula. Criticism of instructional methods prompted much of this reform, as did the development, growth, and expansion of computer-assisted legal research (CALR). Some schools have expanded such course offerings, providing separate advanced research courses in specialised areas. Improvement in legal research instruction has coincided with a rather spirited debate regarding the role of law schools as training grounds for training lawyers, not merely as graduate schools teaching about the theory of law.

What we are really doing, and indeed what we ought to be doing in the curriculum, in pursuing the goal of preparing our students adequately for legal practice is not to teach law so much as to teach lawyering, ie. the development of lawyering skills and professional values in context.

The MacCrate Report recognises the importance of legal research instruction in professional development programs of law schools, and details the fundamental research skills lawyers should possess. Recognition of legal research as a vital skill, however, is really nothing new.

Baylor Law School first offered a course in Advanced Legal Research in 2001. Baylor's program is rather unique in its approach to the teaching of law. It explicitly rejects the common claim that law professors are primarily responsible for teaching students to think like lawyers, leaving students to learn the actual practice of law in other settings. Unlike students at schools employing a traditional curricular structure, Baylor law students must, for the most part, complete their courses of study in a structured upper-level curriculum, including but not limited to the third-year required courses. These requirements allow instructors in other upper-level courses to know in advance that students have had exposure to certain subject areas prior to taking the advanced courses.

Baylor's Advanced Legal Research class is a direct beneficiary of Baylor's overall approach, because 'skills courses' generally are not treated as less important and less relevant to legal education than doctrinal courses. Baylor employs a structured program during the students' first year known as Legal Analysis, Research, and Communication (LARC) that differs somewhat from similar research and writing programs at other law schools. Each of the three components of the course is taught in a separate quarter, with full-time, tenure-track faculty teaching each component. Students receive three months of concentrated instruction in research during the second quarter which serves as a bridge between written legal analysis instruction in the first quarter and oral and written communication taught in the third quarter. Given the focus on legal research in the first-year curriculum, Advanced Legal Research has been developed to be just that – advanced.

Legal research is a skill, and like other skills components of law school curricula, including trial advocacy, negotiations, and brief writing, it requires considerable resources to be taught well. Skills training requires ongoing development of detailed problems, a high faculty-student ratio, and substantial clerical and administrative support, as well as funding for new staff or the time and attention of existing faculty – all of which translates into a very resource-intensive curriculum.

Baylor's structured curriculum benefits instruction in Advanced Legal Research because the course can be designed and taught with the knowledge that the majority of students will be familiar with certain subject areas. If some students have not yet taken certain substantive courses prior to the Advanced Legal Research course, these students must take the substantive course concurrently with or shortly after the research course.

Development of the Advanced Legal Research course has also involved consideration of the six areas of concentration offered in the law school. Requiring students to complete a broad study of basic legal doctrine provides the foundation for advanced study. Once students have been equipped with this broad foundation, they are then prepared to pursue more specialised study in areas of interest. Focused study in a particular field exposes students to the depth and complexity of law and these areas directly affect the focus of instruction on the areas of specialised research.

Students are expected to focus their attention for an entire quarter on the methods for conducting research and citing sources. Instructors base grades primarily on a memorandum assignment and a final exam at the end of the quarter, both of which require students to demonstrate their ability to research a problem and cite legal authority properly. Instructors also require students to complete ten research assignments that correspond to instruction from each class. Research instructors have end responsibility for assigning and grading assignments, the memorandum assignment, and the final exam.