though more than half of Citizens' Advice Bureaux either stocked the forms or knew where they could be obtained, this still means that 41.5% had no knowledge of the form's existence.

The study had an educative value not only for the students who conducted the surveys but also for the personnel in the organisations and agencies and for the individuals approached. Many students commented that people were very interested to know more about parental responsibility agreements. At the intellectual level, students not only became conversant with the law relating to parental responsibility, but their awareness and interest was raised generally about the impact of law on family relationships and how 'ordinary' men and women perceive this.

It is trite to acknowledge that the majority of students will remember little of the detail of what staff specifically lectured and tutored them about during their undergraduate years. However, the authors believe that their students will remember how they were treated in the course of carrying out this project, particularly whether it was with understanding and respect. They also believe that students will remember and value a course which made them think for themselves and stimulated intellectual inquiry.

## INSTITUTIONS & ORGANISATIONS

**The academic and the practitioner**
P Birks
18 *Legal Stud* 4, 1998, pp 397–414

Times have changed very rapidly. We take for granted the flourishing literature of the law, all those ever-multiplying journals, monographs and textbooks. It is difficult to remember that for centuries there were almost no books. The situation which we take for granted is a situation which is no older than the Second World War. Its final recognition is happening only now. Even a decade ago many practitioners would have said that their reading could safely stop with the cases and statutes. The law library already evidences the transformation. The common law which, apart from reports and statutes, for centuries had no books at all, suddenly has a vast library and one which grows from day to day with new textbooks, monographs and periodicals.

The self-image of the common law as judge-made is incomplete. It is judge-and-jurist made. The common law is to be found in its library, and the law library is nowadays not written only by its judges but also by its jurists. The juristic function is to analyse, criticise, sift, and synthesise, and thus to play back to the judges the meaning and direction of their own daily work, now conducted under ever increasing pressure. Everyone who writes even so much as a case-note in a journal joins in that law-making function. It happens that the juristic function is now concentrated in the university law schools.

The common law grew up as a system which combined the functions of juristic interpretation and adjudication. In their judgments judges both reflected upon the law and resolved particular cases. Our judges still do both these things, but the juristic function is increasingly shared. There is a partnership, apparent in the law library and hence in the reading which every practitioner does in preparation for a case, between the judgments of the higher courts and the books and journals which emanate, preponderantly, from the universities. We might say that the interpretation of the law is now done both in court, in judgments, and out of court, in all other kinds of legal literature. And it is in the interpretative writing which goes on out of court that the universities have in practice something approaching a monopoly.

If you are running a university and you take your eyes off the importance of law schools and forget that their graduates are the law's missionaries in a society which is inclined to underestimate its dependence on law, you can persuade yourself that you are selling a product as prosaic as Mars bars. Law and legal education sell well. There is a temptation to milk this potential. The down-market strategy is attractive. It is possible to deliver something resembling legal education with very little investment. The money law earns can then prop up other subjects. There are overheads which can be cut. One is the library. Another is research. A third is diversity. And a fourth is personal contact with teachers. Students can be made to manage with a skeleton library. Critical review of written work can be phased out. Every concession to this temptation is a step towards impoverishing the law library and producing pitiful and powerless lawyers. A weak, down-market law school can make no contribution to the long-term needs of this society. At the moment those universities and other law-teaching institutions which are more interested in taking money out than putting money in have nothing to fear from the professions. That is why law comes out as being amongst the cheapest subjects in the book.

A second danger is the 'rite of passage' attitude: that the would-be lawyer just has to grin and bear a spell of legal education. It will not actually do any good, but it must be endured. It is an attitude found chiefly among practitioners. It holds that legal education has no real importance, it is just something that lawyers have to go through. It explains why there is no professional insistence on adequate investment in law libraries, no requirement that law schools meet high standards for the provision of information technology, no concern among practitioners about the quality of university lawyers or their quantity in relation to the number of their pupils. Those in the universities who want to market cheap law long to hear that the professions do not much care what they do.

A third dangerous attitude, the 'ivory tower' mentality, tends to the view that the intellectuals of the law must be above, beyond and outside the courts. In its extreme form it accords prestige only to high theory. It uses pejoratively the phrase 'black letter law' and attaches that phrase to most of what the courts actually do. It rejoices when it hears that it is the business of law schools to deliver a liberal education which is not directed by any particular profession.

Law is the highest branch of ethics. It is ethics subjected to the discipline of practical application in decisions which have to be made, day after day, in the full light of publicity and under the pressure of the elementary requirement of justice that like cases be treated alike. Unless in the hands of bad or hopelessly over-burdened teachers, it cannot but be a liberal education. Law can indeed be the new classics, a liberal education valuable in many walks of life. But neither its teaching nor its research can be detached from what the courts do. Nor can it be directed to no particular profession. It is a terrible mistake to think that, because many people passing through law school will not in the end earn their living in legal practice, the menu must change. Law schools are law schools. They cannot separate themselves from the mission of producing good lawyers.

University jurists have to be very good lawyers. If they are to do what modern conditions expect of them, they have to come from those who have studied longest and achieved the highest honours. If the task of shaping the development of the law is shared between judges and university jurists, the jurists must come from the same intellectual bracket as the judges. Law professors have to do extremely difficult work. Conditions are changing. The life of a law professor has changed. The demands of research are heavier, but, between the academic and his research, there is now an unprecedented amount of administrative work and an entirely new conception of the leadership role of senior academics.

## LEGAL ETHICS

### The teaching of ethics in Australian law schools

F Armer

16 *J Prof L Educ* 2, 1998, pp 247–260

The rationale of this research study was to investigate the causes of the low popular regard in which the law, lawyers and even the courts are held. If the conduct of lawyers is implicated in these public sentiments, it is relevant to look at the law schools where the law's future practitioners have first contact with the law. The essential source for the study is a survey of Australian law-school teachers responsible for or directly charged with the teaching of ethics. The survey was conducted by means of extensive and carefully structured personal interviews with 17 law teachers from 15 different law schools throughout Australia. The interview agenda included both structural and philosophical questions on ethics teaching.

Since the late 1980s the notion of the importance of teaching legal ethics has gained substantial ground. Most law schools now teach the subject, in one form or another, and where it is not taught, there are plans to introduce an appropriate course in the near future. All law teachers agreed that legal ethics is vital. They did not agree on how it should be handled. In regard to the purpose of legal education, there is continued support for the two major views. That law schools are primarily in the business of producing competent lawyers was less favoured by respondents than the opposing view, that law schools are primarily in the business of providing a general liberal education.

Two major methods of teaching legal ethics emerged from the study. The first is the pervasive, or integrated, method whereby ethics forms part of all relevant core subjects within the entire law course. Disadvantages of this method include the perception that instruction is fragmented and haphazard, dependent on the skill of the subject lecturer, and that the ethical aspect of the subject is often swamped by its technical dimensions and thus readily ignored by students. Advantages include the fact that instruction is constant and repetitive, that it is seen to bear a direct relationship to the course, particularly if it is emphasised at the correct juncture.

The second method is the discrete method where one or even more than one separate subject of legal ethics is taught. Perceived disadvantages include the cost of allocating the required time in a crowded syllabus and the need for appropriate placement within the law course. A perceived advantage of the discrete method is that it is intensive and specifically focused on ethical issues. However, it is important to have teachers experienced in the area of teaching legal ethics and several respondents indicated that these may not be easy to find. Respondents also stated that Australian students tend to adopt a cynical and critical approach to ethical 'indoctrination' and are not as easily influenced as American students.

An ideal solution would combine both constant, pervasive teaching with at least one discrete legal ethics subject, including moral philosophy and jurisprudence. The new College of Law at the University of Notre Dame in Fremantle, Western Australia, places emphasis on producing lawyers with strong ethical considerations and professional morals. It claims to be the first in Australia to offer a law degree with a focus on ethics from the first semester of a student's study.

The majority of the respondents supported the view that university students are not already too old to be in-