

Classical legal thinking has been criticised by scholars of Critical Legal Studies, feminist jurisprudence and Critical Race Theory. Literature and narrative have become significant forces in the critique genre; popular culture has also taken a critical stance in its portrayal of legal actors, who find the legal world and legal education problematic. In this article, there is a discussion of the legal world view of Rudy Baylor, a law student / lawyer in John Grisham's novel *The Rainmaker*.

The Rainmaker begins with Rudy explaining why he chose to become a lawyer — 'My decision to become a lawyer was irrevocably sealed when I realised my father hated the legal profession.' Rudy Baylor enters the law to register protest against his father or perhaps unconsciously to set about replacing an absent, unloving father.

Rudy Baylor, like many lawyers, sometimes finds it necessary to explain how he found his way into law. Mitch McDeere, the lawyer protagonist in an earlier Grisham novel, *The Firm*, is a small-town, western Kentucky boy who manages to succeed at Harvard Law School and is ready to capitalise on his hard work and educational success. Mitch McDeere has driven himself hard — hard enough that one suspects he has a strong psychological need to prove something to somebody.

Law sets one upon a heroic journey, a mythical quest under-written by psychological need. The legal world beckons those who would move from periphery to centre, inaction to action, silence to speech, vulnerability to empowerment, slave to master. We come to the law to prove to ourselves and the world that we are competent, strong and virile. Law is attractive to those with high-minded ideals, a

sense of entitlement and a touch of narcissism.

We become lawyers only by making our way through the eye of the needle — legal education. Some students do not find legal education all that wondrous. Rudy Baylor says 'My classes this Spring are a joke — Sports Law, Art Law, Selected Readings from the Napoleonic Code and, my favourite, Legal Problems of the Elderly.' When Baylor describes the teacher of his 'Geezer Law' course, Professor Smoot, we begin to get a better idea of what has gone wrong for Baylor personally, if not for legal education in general — 'He's a kindly soul .. and for 20 years he's taught the kindly courses no one wants to teach and few students want to take .. Children's Rights, Law of the Disabled, Seminar on Domestic Violence .. It's his opinion that all students enter law school with a certain amount of idealism and desire to serve the public but after three years of brutal competition we care for nothing but the right job with the right firm where we can make partner in seven years and earn big bucks. He's right about this.'

The sincerity of the Professor's concern and the truth of his observations do not spare him the contempt of his students. The life he fears for his students is the life that Rudy Baylor and his colleagues assume will not befall them; they will succeed notwithstanding the failure of those who have gone before them — they are on a disguised, heroic quest. For those seeking to take up life in the Law Firm World of imagined privileges, honours and rewards, Smoot seems an obstacle, standing against the power and glory that his students seek.

Rudy Baylor's despair arises because he is unable to embrace Professor Smoot's ideals of public service and does not see the pitfalls of a profes-

sional life that does not take adequate account of those whom society deems marginal — the disabled, the mentally ill, victims of domestic violence and the forgotten elderly. As Professor Smoot's concerns are institutionally marginalised, the law students who learn to *hate* law school will multiply and their bad feelings will find an ultimate expression in their professional lives.

The time of automatic succession to the legal world and a career that provides a safe haven is now over. It is no longer possible to study, graduate and become a lawyer and all that brings with it: respect, privilege and financial security. We need to explore and explain what brings us to law and how we should deal with the disparity between the ideal and the real world.

There is a growing disjuncture between the traditionalists and contemporary law teachers. The 'new' professor finds legal education troubling and sees law as an 'integrative' discipline. Legal education takes place in a world where all but the most devoted traditionalists are practitioners of doubt. Anthony Kronman, dean of the Yale Law School, and others argue that we have entered a perilous time with the passing of those lawyers who loved law deeply and acted as statesmen within the legal arena. When law students are driven by practical concerns and have no affinity for the statesman ideal, they will find professors like Smoot irrelevant, incompetent and targets for ridicule.

Educating the 21st century lawyer

R C Cumbow

32 *Idaho L Rev*, 1996, pp 407–416

Lawyer bashing is rooted, not in mere resentment of lawyers as a necessary evil, but in the disillusioned belief that

the entire judicial process is out of touch with the human needs and values it was meant to serve.

The current critical perception of lawyers by the public at large is reflected in the way lawyers are regarded by their clients and by the professional staff they work with, as well as in the way lawyers look at themselves. The contemporary image of the lawyer is of one who wins outrageous settlements of frivolous claims, one for whom zealous representation means winning whether right or wrong and one who readily argues either side of an issue to achieve her client's desired end without regard to truth, justice and values. Some lawyers perceive themselves almost as critically. Many who leave the profession cite frustration with the lack of personal reward in the practice.

What is the cause of this criticism? Largely, it is the fact that law has been separated from its moral underpinnings. Law should embody some consensual value system, otherwise it is mere politics, mere economics. Where law is merely political and economic, justice is pragmatic, arbitrary and ultimately evanescent.

We cannot, by reliance on law, escape the duty to judge right and wrong, said Alexander Bickel. Yet much of contemporary legal practice does precisely that. Too many contemporary lawyers buy into the notion that law is not justice nor inquiry into truth but a mere mechanism for dispute resolution. The only way to change the way we make law is to change the way we make lawyers.

Law school today selects for high intelligence and achievement, then employs as key mechanisms isolationism, elitism, and limited contact with the non-law-school world. Lawyers should be trained more like doctors,

because lawyers are, like doctors, care givers. They are entrusted with nothing short of the moral health of their society. In a greater sense, lawyers should not be 'trained' at all; they should be educated. Today's lawyers are taught to consider what behaviour and what policies the law should reinforce, not what values. (p410)

Today's law school graduate enters upon legal practice with no notion of how to talk with a client, determine and meet that client's needs, how to work with other attorneys, how to work with and treat professional support staff such as secretaries, clerks and paralegals. A young lawyer today obtains from law school little or no sense of the foundations of law; graduates have no idea of the philosophical, cultural and theological underpinnings of law and justice as those concepts have come down to us.

Creating the 21st Century Lawyer cannot begin with reforming law practice; law is not only a mission but a business and it cannot be expected that firms and practitioners become laboratories of experiment. What must be done is to reform law school. Law schools should employ faculty who embrace rather than shrink from the ideological underpinnings and policy implications of the black-letter law they teach. Faculty should have an approach to law which is informed by an understanding of and commitment to an underlying value system that defines and directs the law itself.

Law schools should consider a three and a half or even a four year program and the possibility of post-degree practice requirements. A longer academic program could supply the bottom rung of broader grounding in the values on which our system of law is based; post-degree requirements

could supply the missing top step of practice management and client service.

The bottom rung is provided by required coursework designed to create responsible professionals grounded in the ominous ethical responsibility they are undertaking and prepared to be personally accountable for their practice and application of the law. This broadened, basic legal education should be augmented in the third year by opportunities for international learning experience and exposure to other countries' legal systems, through student and faculty exchange programs and by frequent use of guest lecturers, special seminars, and short courses.

The top rung consists of clinical coursework as well as post-degree experience. By post-degree requirements, more is meant than sitting in a half-day CLE a few times a year — rather, what is contemplated resembles a medical internship. What is needed is a more ambitious program of learning to deal with clients of all types as human beings: to recognise, identify and serve clients' needs and to accept the responsibility of guiding those clients' courses of action within the context of a social ethos.

Law school should become an institution not just for learning substance and technique but for acquiring professional and social responsibility, at both the foundation and the practical end of the ladder. If successful, such a law school will create an attractive alternative to the lawyer who is so ill-perceived today: a lawyer who is respected by associates and adversaries, who enjoys being a lawyer, who is guided not by what can be done but by what should be done and who is not hated but honoured by the society he serves, because he contrib-

utes to the preservation, not the erosion, of the values upon which society depends.

LEGAL ETHICS

'Simple truths' about moral education

E W Myers

45 *Am U L Rev*, 1996, pp 823–858

At the same time that law schools have been called on to intensify their focus on ethics education, there is growing appreciation that it is workplace experiences that have the greatest impact on shaping professional behaviour. Ethical education may be eclipsed if law students encounter workplaces that are unsympathetic. Complicating the problem is a widespread perception that commercial pressures have transformed workplaces formerly congenial to training in values, however modest, into soulless businesses, indifferent or actively hostile to ethical practice. The declining emphasis on professional values in the workplace makes ethical legal education both more difficult and more important.

It is ironic that the outcry about declining professional values comes when law schools have been paying increased attention to teaching professionalism and ethics. The increase in law review articles and other research about values education is one such indication. Another indicator is a 1991–2 American Bar Foundation survey. In that survey, lawyers ranked their perceptions of the relative contributions of law school and practice to the development of skills and values. The results showed that young lawyers ranked law school, along with advice from other lawyers, as their most important sources for learning 'sensitivity to professional ethical concerns'. Inasmuch as in-

creased attention to teaching professional responsibility in law schools apparently has not alleviated concerns about declining professionalism, perhaps we need to shift our focus. While there is a role for education in influencing moral behaviour, that role should be properly understood. Even the finest moral education is likely to be undermined if the workplaces in which our students practise systematically undercut expressions of personal values or constrain the exercise of judgment.

The ABA has acknowledged the importance of workplace experiences in shaping professional behaviour but has nevertheless continued to emphasise law school education as the primary remedy for problems regarding professional values. One reason workplace experiences importantly affect behaviour is that, within the framework of professional rules and mores, lawyers have substantial discretion in determining how to act. Another is that experiential learning in general is critically important to moral development. It is not until students experience the reality of practice that they begin to internalise and make their own moral and ethical judgments that are at the core of practice.

The organised bar's emphasis on promoting the idea of a unitary professional experience undermines the effort to instil a spirit of aspiration in students. Such a notion reinforces students' tendencies to see ethics as a code of obedience rather than a system requiring discretion and judgment.

It is important for law teachers to convey to students the diversity of practice and the accompanying modes of professionalism. There are several ways to do this. One method is to highlight the nature of the work of

lawyers who practise the law. In a Corporations course, we can contrast the roles of in-house and outside counsel, particularly in the area of corporate compliance, and examine the role of the lawyer as planner. In Family Law, we can expose the degree to which non-client interests (e.g. children) are taken into account by lawyers representing parents. A second method is to bring practitioners into each of our substantive classes to discuss the nature and culture of their practice. A third method is to build on the students' own experiences, helping them to appreciate that they have already begun to face the issues which will define them as practitioners. The goal is to give students an appreciation of the profession's diversity so that they seek out opportunities to develop as professionals in ways that comport with their self-conceptions, by finding a practice that conforms to their own character and style.

As we realise the importance of workplace experiences in influencing ethical behaviour, we must take account of that reality in our teaching. Our goal should be to assist our students in developing tools and skills, such as moral courage, to navigate the pressures of the workplace.

RESEARCH

A survey of law schools in the United Kingdom, 1996

P Harris & M Jones

31 *Law Teacher* 1, 1997, pp 38–126

Given the need to update information about law schools, and to ensure that common questions were asked of all university law schools, both old and new, the present survey was undertaken in 1995 as part of a collaborative project with the CTI Law Technology Centre at Warwick Univer-