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-

fluenced morally, and believed that the university has a clear role, even a duty, to provide moral guidance, particularly in law schools. A moral framework for ethical legal decision making is needed; teaching law without emphasis on its moral aspects is quite useless, even dangerous. It is interesting to note that the subject of jurisprudence, which deals in part with legal philosophies and legal ethics, is invariably described in the syllabi of the law schools offering it, as fundamental and necessary to any study of the law, yet in many law schools it is an elective subject.

Moral systems embodied in the law rely on education. No law course should be taught without providing a great emphasis on legal ethics. The findings of this research into the philosophy and practice of ethics teaching in law schools are broadly encouraging, but there is tension between these findings and the current situation of legal practice. Many educationalists believe that law should be a postgraduate course, that the study of law requires a substantial measure of maturity and life experience on the part of its students.

What is needed is recognition by the government of society's requirement for an ethical functioning of the law and its instruments, amongst which law schools must be included. Society must consider, for those in need, the subsidising of legal services in a much wider fashion than it does at present, as these are required just as much as health services.

It is important to recognise how fragile a legal system can be and what can happen in a society where law has come to abandon and is no longer governed by moral principles. The preservation of moral values depends on eternal vigilance, as does our democratic way of life itself. Our education system, in high schools as well as in law schools, must include an understanding of the role of law and of the judiciary, and of the dangers of contempt for these. This must constitute a vital part of the teaching of legal ethics.

PRACTICAL TRAINING

Evaluating articling — a recommended process

M F Fitzgerald

16 *J Prof L Educ* 2, 1998, pp 209–228

In Canada, as part of each provincial law society's admission process students are required to work inside a law firm for up to 12 months to gain experience with the practice of law. Law firms hire students for a set period and have no continuing obligation to them after articling has been completed. There are very little data about what is actually learned during articles. It is clear, however, that there are widely ranging articling experiences. Some are excellent while others are questionable. Since most lawyers practise in only a few areas it is unlikely that all articling students obtain similar experiences with the law. However, there is some sense that students receive a certain level of training regardless of where they article.

Each law society across Canada regulates articling in a particular way, at the minimum providing guidelines about what should be happening during articling; requiring students and principals to complete reports at the completion of articling; and requiring that supervising lawyers have a number of years of practice experience. Some law societies have added another layer of regulation to these basic requirements, for instance requiring that firms file education plans to the law society and assigning mentors to students. It is not yet clear whether this new layer of rules has improved articling. Overall, the regulation of the articling process is considered to be fairly minimalist. What happens during articling is determined primarily by students and principals. The law societies do not interfere unless they receive complaints which indicate a concern about a student's or principal's character, repute or fitness.

Concerns about the process have led to debate about the abolition of articling. The primary concerns are that: the experiences of students are different; feedback, supervision and mentorship is inconsistent; instruction about professional values and attitudes is inconsistent; the process is used as a probation period for new lawyers; and students are often assigned routine or mundane tasks.

Perhaps the most significant benefit of articling is that students are provided with an opportunity to apply their knowledge and skills to real life transactions. This is something that may not be replicated in law school or professional legal training. The opportunity, however, is not available to all students to the same extent. During articling, skills and knowledge are often passed along randomly, and since many lawyers specialise, students' experiences are very different. There is no assurance that each student will have carried out legal tasks under guidance and supervision. Training is rarely accompanied by constructive criticism from senior lawyers, and the competence of some principals to teach at the level required has been questioned.

Lawyers openly admit that articling is a way for law firms to test the suitability of law graduates. This is not an evil on its own but can be problematic if it is the sole purpose of articling. Furthermore, articling students are sometimes having to operate as viable economic units within firms as opposed to learners in an educational process. Since articling is mandatory and the articling period is a term position and will only be renewed if the student excels, articling students tend to feel vulnerable. Often they are called upon to carry out routine repetitive or mundane tasks or act primarily as legal researchers. There is a sense that students tend not to complain because they either are