COMMUNITY LEGAL EDUCATION IN AUSTRALIA

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"Law" and "layman" are concepts now increasingly juxtaposed and seriously discussed in Australian legal circles. Similarly, the layman himself is being increasingly involved in the administration of justice, and in important legal reforms. Community legal education (C.L.E.), however, has escaped serious discussion in Australia,[1] especially concerning its theoretical basis, aims and implications. In the United States, "law related studies" and "preventive law projects" are well advanced[2]—the latter, it appears, more in practice than in theory.[3] In Australia, recent years have seen a bewildering proliferation of activity aimed at bringing law to the layman at various levels. This article is an attempt to review these developments, and fill the theoretical gaps. It is an area rife with legal, social and political implications—and fierce disagreement.

A problem of perception immediately arises. Put simply, C.L.E. is seen as part and parcel of legal education, that is, one aspect only of the many-faceted problem of meeting the future legal needs of our society. As such, C.L.E. is an important element in the administration of justice, and becomes a professional responsibility for those most involved: lawyers. However, as a relatively new concept to Australian lawyers, its existence, let alone the nature of this responsibility, has yet to be recognized.

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1 The best and most recent discussion is R. J. Gilbert, *In The Balance: Law Studies in the Junior School* (mimeo, Department of Education, James Cook University of North Queensland, 1977), being "a curriculum guide for legal education in secondary schools". See also proceedings of a conference "Legal Studies in Australia: A Conference on Law for Non-Lawyers", University of Newcastle, August 1977, reviewed at (1977) 2 *Legal Service Bulletin* 291.

2 As to "law related studies", a number of courses are now well established, e.g. Georgetown University Law Centre Street Law Project, Washington; the Law in a Free Society Programme conducted by the American Bar Association; and the Colorado Legal Education Programme being only the best known. These have attracted an avalanche of associated materials and commentaries. See *Law Related Education in America: Guidelines for the Future,* Report of the A.B.A.'s Special Committee on Youth Education for Citizenship (St. Paul, Minn., West Publishing Co., 1975); Joel F. Henning, "Education of Citizens about Law" in M. L. Schwartz (ed.), *Law and the American Future* (The American Assembly, 1976) 192-205.

3 A recently published American Directory lists 49 "Preventive Law" projects in 27 states. The various projects are briefly described, and some general conclusions drawn, including the following: "Most projects state they have a specific philosophy about why they are doing what they are doing, but do not, in fact, appear to have such a philosophy". See *Community Education Directory* (mimeo, Legal Services Corporation, Washington D.C., October 1977) unpaginated.

I. PHILOSOPHIES

In any educational discussion, aims and objectives should come first. Here, the question arises: is C.L.E. concerned primarily with society, the individual, or relationships and interactions between the two? Clearly, community legal educators will be concerned with all *three* factors in varying degree. Equally clearly, any action programme will be regulated, in the last resort, as much by pragmatism as by what is deemed theoretically desirable. The broad problem is most intractable, that is, an understanding of the underlying philosophies of C.L.E., and its impact on law and society, present and future. Here, the individual's role in society; the developing roles of law, lawyers and the legal system; and the special role of the community legal educator, become important questions. The future role of law in society, the legal profession and recognized institutions of legal administration, such as the courts, the law schools, and the legal bureaucracy, are also questioned.

(a) *What is to be Done?*

Two questions may be considered: what are community legal educators trying to do? And how should they do it? These questions should not be approached from a doctrinaire position. We are here working in the future, both with individuals and with institutions in society which must develop and change to meet the changing needs of these individuals—who, after all, make up the institutions.

Amongst many scenarios looming in the 21st century, two simple concepts may be isolated: heterogeneity and homogeneity—being social conditions not necessarily mutually exclusive. There is an evident tension between, on the one hand, massive global forces leading towards homogeneity in many spheres (political, economic, cultural)[3a] and, on the other, the individual's wish to maintain individual and group identity. Many of the global homogeneous trends appear to be irreversible, and some of them seem worthwhile. For example, political and economic nationalism appears to be waning. Yet, against these forces, a way must be found to ensure individualism. Law can assist in this process. And C.L.E. assists and *is part of* the administration of law.

A system should be found whereby a balance is struck between the need for homogeneity in public life—to avoid, inter alia, conflict, competition and unnecessary exploitation of resources—and yet maximize heterogeneity in private life; to encourage individualism and the survival

[3a] P. Selznik, in "Legal Institutions and Social Controls" (1963) 17 *Vanderbilt L. Rev.* 79-90, refers to two master trends in modern society: (a) the drift to a "mass society" resulting *inter alia* in a great reduction in diversity of culture; and (b) "increased bureaucratisation and centralisation of industrial society": Cited in C. Sumner, "Law and Sociology—The Cases for Partnership" (1973) 7 *The Law Teacher* 7, 11.

of cultural and legal pluralism across the world. Here, various approaches are possible. Law might retract into public arenas, and concern itself solely with the international order, the global organization of production, distribution and exchange. Law concerning individuals *per se* (morals, customs, family relationships) might disappear as incompetent and incapable. Private interrelationships (contract, tort) might be run with a minimum of rules, and a maximum of "good faith and fair play".[4]

Alternatively, law may be applied not on a national, but on an ethnic or cultural basis.[5] In this world, there is separate law for separate ethnic groups (e.g. American and Canadian Indians; Australian Aboriginals; White Anglo-Saxon Protestants) with a superstructure of global regulation. This may have advantages in terms of sustaining a heterogeneous world. But is it workable? The required reorganization and reaffiliation from national to cultural boundaries, and the interdependence of today's world, would, it is suggested, merely replace one set of problems with another. Nevertheless, this is the order of problems that we face, when discussing the future of law and society, and the role of C.L.E. in that scene.

In this context, education and law cannot solve all of society's problems, present or future. But both forces can be harnessed, and carefully directed. The role of C.L.E. is seen as creative: to provide the community with the means of developing critical awareness of law in society; to enable society to subject accepted modes of thought and behaviour to objective and constant scrutiny; and to take an active and informed role in developing workable systems for the future. If the above concerns are genuine, then individuals must be informed, so that a degree of self-determination can come about. Thus, individualism and cultural heterogeneity can be preserved and worked into the legal/social systems of the future, if that is society's wish.

Such a process, which C.L.E. can facilitate, may involve useful side benefits. For example, with dialogue and increasing lay input the "them-us" syndrome between lawyer and layman must surely diminish. Law might also become more integrated with, more at one with, society, since society will be more directly involved in its development. Perhaps, indeed, lawyers and their institutions will diminish in importance in various societies, as reliance on positive law is replaced by reliance on cultural mores, rather like the football umpire who is unnoticed because he does a good job. Private society and the private man become self-regulating. Then, at least, lawyers and the law would cease to be unpopular.

[4] See B. A. Keon-Cohen, "The Doctrine of Good Faith in Japanese Contract Law" (1973) 4 *Lawasia* 177.

[5] See A. Toffler, "The Future of Law and Order", 41 *Encounter* (July 1973) 13-23.

(b) *Outsiders and Insiders*

Some might object to the above process because it works from without rather than within. The debate is thrown into the social arena so that those who think they know best (educators, lawyers, politicians) face the unpleasant prospect of losing control of its direction and resolution. In that context, potential conflict is set up between lawyer and layman; that is, each group will believe that it knows what is best for the other. Clearly, this is reform through planned confrontation, something the status quo traditionally views with some alarm.

Such alarm is surely unwarranted. One might favour revolution, evolution, or the status quo, but one must also be practical. One *could,* with help from friends, burn all the (law) books (just as it appears one *can,* with similar assistance, sack an elected government), but would such senseless arson induce the public to think critically and objectively about the law? I think not. Too many factors militate against such a result. For example, whatever the merits of the act *per se,* the sensationalist and self-serving media treatment that follows[6] largely precludes meaningful community "education"—legal or otherwise—about that act.

It is argued, however, that in C.L.E. some confrontation is desirable. Indeed, if society is to be honest in its efforts in community legal education, there is no real alternative. The public should not be lead, hamstrung, with a ring of ignorance through its collective nose, in directions which educators, legal or lay, the so-called cognescenti, deem desirable. Rather, educators should provide society with the intellectual equipment it needs to challenge and question the law from a position of strength, not inequality. If the process is begun quickly enough, that is, while public sympathy and interest in things legal can still be saved, then it need not be confrontation at all, but rather a dialogue. In that event, we need not emerge with a victor and a vanquished. Rather, we should aim to emerge with newfound mutual respect, and improved prospects of living together.

The choice of intellectual equipment is obviously important. Here, "insiders" work on the assumption that the system is intrinsically worthwhile, but requires a little patching. Much of our law school education involves this sort of insipid conditioning. Alternatively, "outsiders" confront: they assume that a radical turnabout is required, and challenge the accepted articles of faith. But is that going too far? Healthy confrontation is one thing—"sedition" and fostering disrespect and downright disobedience is another. As a responsible educator, where does one draw the line?

It is argued that it would be non-creative and counterproductive to teach the community as we teach our law students. If critical, useful

[6] E.g. concerning the events of 11 November 1975; the Sydney Hilton bombing of February 1978; and numerous gruesome homicides, rapes etc.

thinking and involvement is sought, then there can be no compromise. The whole story should be told uncensored, enabling realistic assessment and involvement. Anything less is a waste of time and less than honest. In any event, one works here as a rational and responsible being within the system. Progress is slower, and the result much more of a compromise—a compromise which will inevitably involve careful hedging designed to perpetuate much of the present and to cushion much that might appear unpleasant. Unfortunately, compromises between law and laymen, as between developed and underdeveloped cultures, tend to be one-sided.

II. SOME OBJECTIVES

C.L.E. might concentrate on several goals, "social", "legal" and "educational". "Social" objectives, in the long term, aim, for example, to achieve a more egalitarian society; to achieve real equality and justice before the law; to bring law and society together. "Legal" objectives will relate to developments envisaged for the administration of law, such as the reduction of crime and antisocial behaviour; to facilitate dispute-resolution in society by legal and especially non-legal means;[7] to develop critical awareness of law in society and the ability to make substantial input to legal debate. "Educational" objectives relate to the individual, namely the imparting of knowledge and development of analytical and associated skills to enable him to grapple with problems. The labelling is not important, and the classification, especially in the first two elements, is fluid. Some broad objectives only will be discussed here.

(a) *Social/Legal*

(1) TO INCREASE PUBLIC KNOWLEDGE AND UNDERSTANDING OF, AND INCULCATE *desirable* ATTITUDES TO, LAW, LAWYERS AND THE LEGAL SYSTEM

From these goals, all else flows. Arguably, public knowledge of the law in Australia relates mainly to public issues, personal problems, unavoidable procedures[8] and entertainment habits (such as T.V. crime). This nauseous and misleading mixture should be clarified. A thorough social audit is required of specific legal knowledge residing in the community so that important gaps can be located and priorities of course-content and target audiences worked out.

[7] I.e., without recourse to legal powers, be it court, tribunal or lawyer.

[8] E.g. constitutional crises and strikes; consumers in debt and family law matters; tenancy agreements, hire purchase contracts, wills and property transactions; and T.V. crime respectively. It is estimated that over half a million ordinary Default Summonses (whereby a creditor claims sums from a debtor in the Magistrates Court) are issued in Victoria each year. See J. Willis, "Of Process Services, Default Summonses and the Judicial Process", (1975) 10 *M.U.L.R.* 225, 228.

If knowledge is at best haphazard, understanding appears to be abysmal. Responses to a N.S.W. Law Foundation survey[9] of 1976 recorded

> "a damning indictment of the mystification and obscurantism that is perceived to be the law. The fact that over 70% of the sample (questioned) complained of the complexity of the law is a clear case for urgent action to both simplify the law and at the same time educate the public as to their legal rights and obligations."[10]

In *The Law In Crisis*,[11] Professor Weeramantry has indicated the dangers inherent in ignoring such public ignorance and distrust of the law. Indeed, where a "them-us" division now exists,[12] law-related education can "bridge that gap" and bring cohesiveness to the legal system and society's needs. Public surveys indicate "a high degree of public disenchantment with legal processes (especially amongst) those who have had most contact with the law".[13] Disenchantment leads to outright distrust, or worse, apathy. These attitudes (especially the latter) should be challenged.

This challenging process involves courses and activities whose main goal is an informed citizenry. Here, the emphasis has been in two directions: (1) knowing the "rules", and (2) teaching legal "concepts", the ideas upon which the legal process is based, or for which it strives. Examples of the former include the Victorian Legal Studies Course, especially prior to 1972, and the Georgetown University Street Law Project in the U.S., which aims to "provide an understanding of practical law which will be of use to lay persons in their everyday lives".[14] Such courses face a problem of content selection: to what portions of "the law" should tomorrow's citizen be exposed? Australian responses to this question are discussed within.

The "concept" approach has often been combined with instruction in rules. The U.S. Law in a Free Society Programme, for example, perhaps the best-known of the conceptual approaches, includes in its objectives an "increased understanding of the legal, political and educational

[9] R. Tomasic, *Law, Lawyers and the Community* (Law Foundation of New South Wales, 1976) 17, being a survey of community attitudes and experiences concerning law and lawyers conducted by the N.S.W. Law Foundation.

[10] These conclusions arose from the following data. Statement: "I find legal matters a bit difficult to understand". Interviews: 927. Strongly agree—30.0%. Agree with reservations—40.2%. Not sure—8.1%. Disagree with reservations—15.6%. Strongly disagree—6.0%. See ibid.

[11] See C. G. Weeramantry, *The Law in Crisis* (London, Capemore, 1975).

[12] The N.S.W. Law Foundation survey reported, *inter alia*, "a deeply felt and widespread reluctance upon the part of respondents (to a questionnaire) to themselves be involved with lawyers. Thus 59.3% of the sample agreed . . . to some degree (with the following proposition): If I can help it I don't get involved with solicitors at all". (See R. Tomasic, op. cit. 55.)

[13] Ibid. 5-6. The "disenchantement" related specifically to delays in the legal process.

[14] See Georgetown University Law Centre, *Introduction to the National Street Law Institute* (Washington D.C., undated), cited in Gilbert, op. cit. 1. A course covering crime, consumer affairs, the family, housing, individual rights, and the environment was taught initially by law students in schools and prisons in Washington D.C.: ibid.

institutions of our constitutional democracy and the fundamental values, processes and principles upon which they are founded".[15] A marxist writer might express it somewhat differently.

Closely related to these objectives, on a "conceptual" level, are those attempting to inculcate what are considered "desirable" attitudes to law. These are usually couched in terms of supine deference, or less often, encouraging constructive participation in the legal system. The desired political socialization underlying such goals is, of course, a critical question, and the source of much dispute. The trend to date is decidedly middle-of-the-road, both in the U.S. and in Australia. Enunciated aims of this idolatrous kind include: "to develop appreciation of and respect for the merits of our legal system and its representatives";[16] "to provide a sense of responsibility towards the social contract between people";[17] "to develop a more positive attitude toward the role that law, law enforcement officers, lawyers and the judicial system play in society".[18] More useful—and it seems effective— is the following

> "I attempted, in my most recent African post, to teach in a way which *critically examined* the social content, policy assumptions, actual administration and behavioural impact of laws. The Government of Kenya threw me in jail for my pains."[19]

The power of ideas (even legal ones) and their pedagogical potential should not be underestimated, especially, it seems, in totalitarian states. As argued above, *critical examination* is also considered desirable in democracies—even those as apathetic as Australia—although the short-term feedback might not be quite so exciting. Thus, increasing numbers of C.L.E. programmes in America, for example, are including elements which "focus on social problems, value issues, and the role of law as a dynamic tool for their solution".[20] Here, objectives include: "to demonstrate that law is not static, and further show how it can be changed";[21] "to examine moral and ethical values".[22]

The attitudes a teacher attempts to develop will relate both to his political and social philosophy, the role of legal education in society, and the capacity of the students involved. It appears in Australia that the

15 Law in a Free Society, *An Overview of the Law in a Free Society Project* (Santa Monica, California, undated typescript), cited ibid. 3.
16 Colorado Legal Education Project, cited ibid. 4.
17 W.A. Department of Education, Curriculum Branch, *Law in Society* (undated typescript) cited ibid.
18 Street Law Project, cited ibid.
19 R. Martin, "Lawyers For the Third World?", review of the Committee on Legal Education in the Developing Countries, *Legal Education in a Changing World* (International Legal Centre, New York and Uppsala, 1975) in (1976) 4 *Melanesian Law Journal* 270, 273. Emphasis supplied.
20 Street Law Project, cited in W.A. Department of Education, Curriculum Branch, *Law in Society* (undated typescript) cited in Gilbert, op. cit. 4.
21 Colorado Legal Education Programme, cited ibid.
22 Street Law Project, cited ibid.

emphasis is on acceptance, with some token gestures towards evolution and reform. Teachers, courses and students are all involved in perpetuating such conservatism. The first two elements are discussed elsewhere in this article.[23]

(2) TO ENCOURAGE PARTICIPATION IN THE LEGAL AND POLITICAL PROCESS

Such participation might ensure that the law is both responsive to developing social needs and held up to constant scrutiny. Possible roles envisaged for laymen are both non-technical (administrative) and substantive. With greater participation in, and understanding of, the law-making and law reforming process, for example, individuals are more likely to provide valuable input to, and evaluation of, those processes. The public consultation pursued by the Australian Law Reform Commission is one example of successful public involvement in legal administration.[24]

Similarly, in the political sphere, to fully exercise democratic rights and duties, it would appear axiomatic that citizens must understand law, legal process, and legal institutions. Society and its legal and political systems being complex, citizens require assistance in understanding and utilizing their rights and duties. As a corollary, such educational programmes might aim at increasing public involvement in various levels of government, especially local government.[25]

(b) *Educational*

These objectives relate to the individual. His intellectual skills and knowledge are developed to enable him to cope with a difficult social, legal and political environment.

(1) TO DEVELOP ANALYTICAL ABILITY

The study of law at any level—tertiary, secondary and "community"—emphasizes this facet. Reasoning ability is of general use in daily life, and can be developed by utilizing a variety of topics and pedagogics.

(2) TO DEVELOP SPECIFIC LEGAL SKILLS

C.L.E. may be said to have three specific "legal" aims concerning the individual's legal problems; that is, C.L.E. should enable the layman to perform the following basic legal functions:

(a) Recognize a legal problem when it arises. Legal problems are often difficult for the layman to recognize, let alone solve. Any "problem" or "dispute" in society—domestic, residential, consumer, or criminal—can

[23] See infra, fnn. 30-41, 55-60.
[24] Between February 1975 and December 1977, for example, the A.L.R.C. had conducted approximately 70 public hearings on a variety of references.
[25] See J. A. Stanley, "The Lawyers Role in Educating Young People for Citizenship" (1974) 60 *A.B.A.J.* 1367.

have its legal aspects. Too often, however, through ignorance, these aspects are not recognized, often to the disadvantage of the ignorant. *Non est factum* aside, before signing anything it would be advantageous to know one's rights, duties and the legal exemptions to, for instance, liability. Understanding exemption clauses in standard form contracts is a prime example.

(b) Gain access to legal advice or the legal process. An individual who wishes to protect his rights in our society is expected to work through the legal system. An elementary understanding of the legal structure, its processes, and the role of various legal institutions must assist him in obtaining redress or effecting his rights. The better informed the citizen, the more likely he is to make appropriate use of the services of the trained lawyer.

(c) Satisfactorily resolve for himself his own legal problems.[26] This may be through substantive legal knowledge, or knowledge of available means of redress such as means of dispute resolution.

These aims may or may not be achievable solely through education. With other parallel developments, however—for example, substantive law reform,[27] reform in procedures[28] and developing technology[29]—it is suggested that these goals become feasible, even in the short term.

III. CONTENT

Given the problems and goals outlined above, course content becomes all important. As mentioned, two broad approaches are apparent—"conceptual" and "practical". However, most programmes to date have overwhelmingly emphasized "practical" aspects. Here, technical rules are taught as a means of solving day-to-day problems, with lip-service given to "concepts". However, this approach also aims, importantly, to teach skills and expertise to enable students to cope with the legal system: for instance, to initiate claims of one sort or another; what to do if you are arrested; how to complain to various bodies; and so on. In Australia, numerous examples of both *approaches* could be given, though it is

[26] The N.S.W. Law Foundation survey responses indicated "some agreement, in principle at least, with the self-help hypothesis, with 48.8% of the sample agreeing with (the following proposition): "People should not take their problems to a solicitor before they have tried every way they themselves can to solve them". R. Tomasic, op. cit. 41.

[27] The simplification, codification and unification of law, particularly that affecting "people" (e.g. contract, tort, crime, consumer law, welfare law, family law) would do much to increase general understanding.

[28] E.g. reforms not only in pre-trial and trial procedures, but also in general legal procedures, such as conveyancing in the case of S.A. landbrokers. Self-representation in family courts and small claims tribunals are other examples of procedural reforms.

[29] The potential includes home-based computer terminals, plugged into data banks where statutory law and much case law is programmed. Many answers might be "laid on" for the layman, as never before.

somewhat more difficult to cite examples of "conceptual" *courses* as such. Topics such as "Legal Philosophy" or "Concept of Law" still tend to be slotted in amongst solid slabs of consumer protection legislation, contract (i.e. minors), crime and much more. This technical, restricted mixture is, happily, now beginning to break down into something broader-based, more appropriate, and hopefully more palatable. A useful and significant example of such an evolution is the subject Commercial and Legal Studies as taught in Victorian secondary schools.

(a) *The Rules Approach: Commercial and Legal Studies*

A species of "law" has in fact been taught at senior levels of secondary schools in Victoria for more than fifty years, that is, since 1925. The content, however, of these earlier courses was excessively technical and commercially oriented.[30] Between 1968-70 a Committee of the Victorian Commercial Teachers Association (V.C.T.A.) reviewed and criticized the course, questioning "the basic notion that a study of many business law topics was an appropriate study for leaving students".[31] One could also question the total denial of "concepts"; the perpetuation of the commercial ethic in classrooms; the irrelevance of business law to the needs of most students, and the ignoring of other more relevant areas, such as family law. Following the above review, the new, revamped "Commercial and Legal Studies" was introduced generally into Victorian secondary schools in 1972 (Leaving level) and 1973 (Matriculation). Student response was overwhelming,[32] such that by 1976, in only its fourth year, Commercial and Legal Studies was the third most popular subject at the Year 12 level, behind Biology and Australian History.

The content of the remodelled course, however, still remains strongly "commercial" and "rules" based, although there is a fair leavening of broader material. The syllabus is still prescribed and externally examined. Subject areas actually covered, however,[33] may be classified, for the purposes of argument, into:

(a) skills: statutory interpretation, case analysis, legal writing;

(b) the legal system: institutions and functionaries of the law;

[30] I.e. leaving Commercial Principles (Pass) (Year 11) and Leaving Commercial Principles (Honours) (Year 12). The Pass course comprised the following: "Contracts, Agency Partnerships, Sale of Goods, Bills of Exchange, Promisory Notes, Cheques, Insurance, Bills of Lading, Charter Parties, Trustees under Wills, Arbitration, Nature of a Company, Classes of Shares". This remained essentially unchanged as *Leaving Commercial Principles* until 1971. See J. A. Sonneman, "The Legal Education of Minors", paper presented at a Community Legal Education Conference, La Trobe University, 2nd July 1977.

[31] Ibid.

[32] For the year 12 level, the figures are as follows: 1973—2807; 1974—4800; 1975—6216; 1976—6714; 1977—7214. Ibid.

[33] Reviews conducted at the Monash Law School during 1977 of some first year students who had completed the H.S.C. subject show little commonality of substance in the courses undertaken during 1976.

(c) some legal rules: contract, tort and crime;

(d) legal history and legal philosophy.

Although this syllabus undoubtedly has a broader perspective and more balanced approach, it could, in my view, be further improved through a general emphasis on "social and legal studies". Law is much more than a commercial study. However, the V.C.T.A. argues that the course name is now a misnomer; that the emphasis is already "social" rather than "commercial"; and that there is "no academic reason" why commercial teachers should not continue to teach the subject, since they developed it and know it best.[34] That issue aside, it is planned to extend the course to middle school levels (3rd and 4th forms) within two years,[35] and thereafter to primary levels.

The subject has in fact become a massive growth industry. A similar course has been proposed for senior secondary levels in South Australia, junior secondary levels are pursuing a pilot project[36] in Victoria, and similar developments can be expected in other States. It is, however, submitted that educators at various levels, and the community at large, should stop and think out their approach. It is reported, for example, that the approach at junior secondary levels may be "interdisciplinary, thematic, a separate subject, selected units, or integrated into existing subjects".[37]

(b) *The "Conceptual" or "Cultural" Approach*

Here, both content and methodology are different. The basic thrust is to discuss "legal concepts", utilizing a wide ranging of materials in order to present law as a cultural discipline.[38] These courses thus centre on concepts rather than skills. For example, in America, the Colorado Legal Education Programme includes in a comprehensive list of objectives, the desire to "develop an understanding of such concepts as justice, freedom, equality, fairness, law, legal institutions, legal sanctions, due process, and so on".[39] The list could be extended, drawing concepts not only from law, but other humanistic disciplines such as politics and philosophy.

As to methodology, such courses assume that legal education, especially at the professional level, is too concerned with immediate problem-solving

[34] Discussions with Mr Bob Anderson, V.C.T.A.

[35] In Victoria, the V.C.T.A. has undertaken a pilot study during 1977 in twelve schools, using law-related materials at the year 9 and 10 levels.

[36] See infra 36-47.

[37] See J. A. Sonneman, op. cit.

[38] See C. G. Weeramantry, "Law as a Cultural Discipline", paper presented at the Australian Universities Law Schools Association Conference, Canberra, August 1977 (1978) 4 *Recent Law* (N.Z.) 31, 70; and the same author's, "The Need for Community Legal Education: Some Practical Suggestions", paper delivered at the Community Legal Education Conference, La Trobe University, 2nd July 1977.

[39] See Colorado Legal Education Programme, *Legal Education Handbook* (Boulder, Colorado, undated mimeo), cited in Gilbert, op. cit. 3.

to the exclusion of broader questions of values, traditions and ethics: the traditional concerns of the humanities. Thus students explore and apply to legal studies the insights and methodologies of the humanistic disciplines,[40] and teachers are involved with these disciplines, so that students are not only exposed to different areas of thought, but different modes of thinking. This approach applies equally to institutionalized as well as non-institutionalized C.L.E., although limits will be placed on a teacher's activities according to the intellectual abilities of the pupils. Even at leaving or matriculation levels, conceptualizing must be leavened with more practical material.

On the other hand, this methodology has many advantages. For example, it allows for considerable flexibility in content and pedagogy. An American authority, speaking of "conceptual" courses in the U.S.A., states

> "There is much emphasis on clarifying values and developing critical reasoning abilities. Law is viewed from a broad, humanistic and interdisciplinary perspective. How is it that disputes in our society can be settled? How can we direct our social interactions to maximise individual rights while insuring societal safety and well-being? . . . Quality law-related education programmes encourage students to identify and analyse issues, not to learn uncritically legal facts and principles. Such programmes thereby promote the development of thoughtful and active citizens who are better prepared to understand and deal with the many facets of their lives which are touched by the Law."[41]

It is argued by proponents of law as a cultural discipline, and few would deny it, that the humanities offer rich insights into legal problems. Professor Weeramantry notes that

> "from the field of literature alone a great deal of material can be culled of extreme relevance to many of the practical problems which the law faces today. Readings from Dickens for example stimulate an interest in many poverty law problems. (Dickens') discussion of *Jarndyce* v. *Jarndyce* and the Court of Chancery forces attention compellingly on the problem of the law's delays . . . Likewise, the play *A Man for All Seasons* directs attention to unjust demands by a sovereign power, the novel *The Man in the Iron Mask* to cruel and unusual punishments."[42]

Thus, a more attractive and interesting content for a "law course" becomes possible, and especially useful for adult audiences where, unlike

[40] E.g. history, philosophy, literature, economics, anthropology, sociology, etc. on a traditional level and, on another level, community organization, ethnic cultures etc. See, for a discussion of "Law as a Humanity" and "Cases in Context" courses conducted at the Harvard Law School, D. L. Kershen, "Humanization of Lawyers at Harvard" (1975), 61 *A.B.A.J.* 223. See also L. H. Frankel, "Humanist Law: The Need for Change in Legal Education—or—If judges do not find the law, but make it, what do they make it from?" (1976) 39 *Utah L.R.* 39.

[41] Susan E. Davison, former Assistant Staff Director, A.B.A., Special Committee on Youth Education for Citizenship. Cited in J. A. Sonnemann, op. cit.

[42] See C. G. Weeramantry, "Law as a Cultural Discipline", op. cit.

secondary education, there is no compulsion to learn. The presentation can also be related to the immediate interests of the target audience, for example, consumer protection, civil rights, aboriginal affairs, poverty law, government and the constitution, the family, the motor car, and so on. Such thematic approaches are now common chapter heads in many publications dealing with the legal studies course.

It is suggested that, for lawyer and layman, but especially the layman, the denial to date of law as a cultural discipline is unfortunate, to say the least, for the student, and counter-productive for the teacher. A balance should be struck, the current "rules" emphasis reversed, and a broader outloook introduced. There is already some treatment of legal history and legal philosophy in some high school courses in Victoria. It is strongly suggested that this is a more fruitful area of study than the technicalities of commercial law.

IV. PROGRAMMES

When considering how it is to be done, objectives and course content are only two of many problems; others such as available resources and machinery, selection of target audiences, methods of reaching them, teacher training, funding and national co-ordination must all be faced. Again, arbitrary choices must be made, often influenced more by available resources and local conditions than carefully considered pedagogical principles. Resources and machinery are clearly related, and will be discussed only briefly. Some broad programmes, including manpower problems, will be considered in more detail.

(a) *Resources*

A variety of resources is available for C.L.E. programmes. Human resources include professional organizations of lawyers and educators; various university faculties (sociology, law, education); teacher-training institutions; law-in-society departments of Colleges of Advanced Education; various government departments (Education, Publishing, Attorneys-General); Citizen Advice Bureau offices; Justices of the Peace, Magistrates and Clerks of Courts. All these could be called upon in a systematic way. Private enterprise should not be forgotten in this effort. Insurance companies, law-sensitive organizations (R.A.C.V., trade unions); business enterprises required to compensate persons affected by their activities (polluting industries, mining companies); cultural/learned societies whose deliberations have hitherto been confined to the chosen few (e.g. medico/legal societies) all possess expertise and experience. Mere listing, however, does not face the difficult problem: how adequate, let alone competent, are these resources in meeting the community's needs? This question is considered within.

(b) *Machinery*

An enormous and unco-ordinated range of machinery is already available in the various States for C.L.E. programmes. In addition, new machinery is now beginning to emerge designed specifically for this purpose. Machinery available through regular channels may be classified under (1) professional organizations,[43] (2) private organizations,[44] (3) government (educational[45] and non-educational[46]) and (4) miscellaneous.[47]

(c) *General Community Programmes*

Almost any experience can have legal educative aspects. A host of activities which could be deemed "educational" could therefore be suggested, many of which are currently being pursued in America and, to a lesser extent, in Australia. In the U.S.A., programmes conducted to date by various Preventive Law projects are both instructive and somewhat overwhelming. The Spokane Legal Services Center, Spokane, Washington, for example, reports as follows

> "The community education efforts began with numerous public speaking engagements to inform people of the existing program. Further outreach was done through public service announcements and spots on local news shows. Two dozen pamphlets were already in existence, covering all areas of the law and citizen's rights, to which two more pamphlets "Search and Seizure" and "Legal Myth or Legal Truth" were added by the Preventive Law Project. These were distributed to waiting rooms, at food stores, banks, social security offices, DSHS, county corrections, juvenile court, travellers' aid, veterans services offices, public defenders offices, Salvation Army, and all city libraries. These pamphlets have been updated and revised periodically and will continue to be available. A poster for waiting rooms has been designed and is being printed. A Clients Council flyer has also been written. Several special projects have been undertaken: a workshop on "women and the law" in co-operation with the local college and the Women's Resource Center; a half hour program on consumer law, composed of a skit by legal services staff and a consumer law talk, was taped by the local community college for airing on cable t.v. this fall; successful negotiation with jail staff and Superior Court judges has made possible

[43] E.g. law societies, law foundations, committees of The Law Council of Australia.
[44] Interface societes and organizations; radio, especially community accesss; press; T.V.; Social Education Materials Project (S.E.M.P.) (Vic.); Y.M.C.A.; Y.W.C.A.; Brotherhood of St. Laurence; Australian Trade Union Training Authority; Trade Unions.
[45] Law schools—especially Continuing Legal Education and Summer School programmes; education facilities and teacher training institutions—teacher training programmes; C.A.E.s—law in society courses; Victorian Council of Adult Education—thematic boxes; Victorian In-Service Education Centre; Technical and Further Education Centres of Education Departments; Curriculum and Research Branch, Victorian Education Department; Victorian Council of Adult Education; V.C.T.A.; Country Continuing Education Centres.
[46] E.g. municipal councils; libraries—especially local; law departments, commonwealth and state; radio—especially community and access; T.V.
[47] U.N. Associations; Amnesty International; International Commission of Jurists.

> an ongoing weekly legal services group in the Spokane County jail. Currently the rap group for parents whose children are in foster care is being organised at the request of the members of the Clients Council. There will be a feature in the local newspaper Sunday Supplement and a public television program on the Spokane Legal Services Center."[48]

This result was apparently achieved "sporadically" over six years by two full-time people (an attorney and a secretary), and one part-time person (an "educational co-ordinator"). Details of funding are not recorded. No single Australian organization can boast of such a track-record, although much good work is being done.

(d) *Teaching*

Although teaching law to non-lawyers is a rapidly growing sector of the educational industry, outside "Commercial Studies" in secondary schools, such teaching is a relatively recent phenomenon in Australia. The mystique and difficulty of the law, plus the apathy of the legal profession have for too long discouraged educators from attempting to teach law outside a law school. Fortunately, these barriers have now been shattered. Teachers at institutional and "community" levels have launched into various courses aimed at a variety of target audiences and using a wide range of course content and materials. For current purposes, only broad pedagogical approaches and problems will be mentioned. I am most concerned to (1) discuss alternative, non-structured, community-based programmes, outside educational institutions at primary, secondary or tertiary levels; and (2) assess the involvement of the legal profession in these programmes.

(1) LAW BODIES

Most state law societies of Australia have taken some initiatives in this field in recent years, although it must be said that brief inquiries[49] indicate that most are doing next to nothing. The old modes of thought prevail, and although all societies have Legal Education Committees, these do not generally include C.L.E. in their activities. Some, however, have broken new ground. The most active states appear to be the eastern axis of Victoria, New South Wales and Queensland, in that order. All State societies report the well-established practice of individual practitioners lecturing occasionally to school groups and other community audiences, usually through requests to the society being referred to a

[48] See *Community Education Directory*, op. cit.

[49] I am indebted to the following for information relating to Law Society programmes; Victoria—Mr Chris Roper, Leo Cussen Institute, and Mr Nick Thornton, Law Institute; N.S.W.—Mr Ian Campbell, Law Foundation; Qld—Miss B. K. Donkin, O.B.E., Law Society; S.A.—Mrs Sedsman, Law Society; Tas.—Mr Harrison, Law Society; W.A.—Mr Franklin, Law Society; A.C.T.—Miss Bodley, Law Society.

panel of willing practitioners. For most, such tokenism along with the occasional pamphlet is the extent of C.L.E. activity.

In New South Wales, however, the Law Foundation has initiated its High School Education Law Project (H.E.L.P.) which publishes a quarterly newspaper, *Legal Eagle,* for junior secondary schools.[50] The local Law Society has also established a Community Law Committee which in 1976 initiated a Schools Legal Education Programme.[51] In Queensland, the Law Society prints and distributes "Public Relations brochures";[52] conducts a T.V. programme;[53] arranges lectures "from time to time" in country centres; runs a Speakers' Bureau with a back-up library of materials; and rosters solicitors to provide free legal telephone advice through a radio talk-back programme on Sunday nights. In Victoria, the Victorian Law Institute has pursued a number of similar projects.[54] Of special note is the appointment of an "Education Department, Court and Law Institute Liaison Officer", with initiating and co-ordinating functions which offer great potential. The Institute is also supporting a recently formed Community Legal Education Committee of Victoria (C.L.E.C.). This widely representative committee

> "aims to involve a wide range of organizations in the co-ordination of already existing efforts in C.L.E. and . . . to raise the level of awareness of all members of the community in regard to legal issues."

The committee has staged an initial one-day conference, and envisages performing a clearing-house, co-ordinating and initiating function within Victoria. It is hoped that similar committees will emerge in other States.

(2) NON-INSTITUTIONAL TEACHING

A good deal of teaching of law to non-lawyers goes on outside legal or educational institutions, much of it being organized by non-legal groups. Many of these use materials by way of correspondence courses, or lecture/tutorial notes. The Y.W.C.A. correspondence course, *The Law and You,*

[50] See infra, fnn. 82-3.

[51] Here, a practitioner delivers four lectures to sixth form students on selected topics, i.e. introduction to the legal system in N.S.W.; contract and consumer protection; criminal law—rights and obligations; the motor car and you. The N.S.W. Law Society believes the scheme has been "of great benefit to the community". These claims are questioned within, at fnn. 55-60. See *Schools Legal Education Programme* (November 1975), prepared by the Community Law Committee of the Law Society of N.S.W.

[52] Entitled "How a solicitor can help you in" *Buying or Selling a House or Land; Making a Will;* and *a Motor Car Accident.* To an outsider, the main thrust of each pamphlet is to emphasize legal problems involved and encourage the reader to "consult your solicitor"—i.e. professional advertising, rather than community education.

[53] Entitled *Your Solicitor . . . Helps You Get It Right The First Time.*

[54] Co-operating with school lecture requests; pamphlet production; and filming of a 60 minute colour videotape concerning civil litigation, to be shown in Victorian schools.

is a well known example, designed specifically (and solely) for women.[55] Numerous similar teaching programmes could be mentioned, such as occasional and well-attended lectures to local groups by community-based organizations such as the Fitzroy and Redfern Legal Services. These have dealt with areas such as landlord and tenant, consumer protection, family law etc. Legal Aid offices are particularly well situated for this sort of work, as the audience is assured, and the expertise is available. There are doubtless dozens of similar programmes being presented all over the country which are unknown to me. Suffice it to say here that there is a growing amount of expertise and experience at a grass-roots level, and a real need for funding, co-ordination and trained educators. However, the lastmentioned raises difficult problems.

(3) TEACHERS OR LAWYERS?

An important element in the development of the above programmes is the provision of sufficient trained manpower, competent to present law-related courses to their audiences. Whether it be at primary, secondary or community levels, C.L.E. is clearly (yet another) specialist pedagogy, requiring specially-trained, full-time professionals. Without entering into educational arguments *per se,* two related problems may be isolated: the provision of competent instructors for (1) the formal primary and secondary schooling system; and (2) community-based programmes.

The first problem is well understood, and its resolution apparent. In Australian schools until very recently, secondary teachers trained, *inter alia,* in commercial teaching methods staffed such law-related studies as existed. In Victoria, *specialist* teacher-training at the secondary level has now begun, with the introduction of H.S.C. Commercial and Legal Studies. However, teachers and courses at this level are still totally lacking in other states, whilst teachers' general competence in Victoria, although improving, still leaves much to be desired. This is to be expected. Law or law-related teaching, whether it concerns rules or concepts, high-school students or housewives, is a difficult, demanding job requiring substantive knowledge, teaching experience and adequate teaching materials. All of these elements are developing, but slowly. No states, however, have ongoing teacher-training programmes at primary or community levels. Manifestly, there can be no real advances, Australia-wide, until significant efforts are made in teacher-training at all levels.

This raises the second, more difficult, problem: the provision of competent instructors for informal community-based programmes. Given

[55] A booklet is forwarded, and assignments submitted, which are then farmed out to practitioners designated as tutors to assess. The course is described as "a study of some aspects of our legal system and its impact on us as citizens, including (study of) family law, will making, probate administration, housing, buying and leasing, hire purchase and other contracts, and our obligations for negligence" (sic). Judged by student correspondence, this programme appears to meet a great need.

that this is again a job for full-time specialists, and that it is a different job, with different demands on the instructor to classroom teaching, staffing of the abovementioned programmes is clearly inadequate, both as to quality of instruction, and the ability to service an enormous community need. Even if institutional teachers were competent, they, like lawyers, simply do not have the time.

What is an appropriate response is a perplexing problem. Given that lawyers, even part time, are an obvious source of manpower, but are not trained teachers, the critical question is: should lawyers be utilized in C.L.E. programmes, and if so, how? The question particularly concerns the traditional law-society lecturing activities mentioned above.

Here again, Utopia and reality diverge shamelessly. Ideally, *today's* lawyer should play a minor role in C.L.E. Firstly, the lawyer is not trained for the job; and in fact may be quite incompetent. He may know a lot about law, but he knows nothing, generally speaking, about teaching. Secondly, and more seriously, his impact may in fact be counter-productive in achieving C.L.E. objectives outlined above, especially those of critical assessment of, and contribution to, legal administration. Lawyers, especially the great mass of practitioners, bring with them into the classroom all the prejudices, perspectives and thoroughly conditioned intellectual processes of their profession. The lawyer is neither trained in, nor inclined towards, expansive critical thinking. His is a closed, analytical system. Further, he works to club rules, and though he knows a good deal about legal administration, undoubtedly he may feel constrained in what he can say.[56]

Thus, C.L.E. cannot succeed in its objectives if it is led by the bleatings of discontented academics, or the self-serving platitudes of part-time practitioners. The utilization of today's lawyers as guest lecturers in schools and elsewhere, which most Australian law societies are encouraging, is thus seriously questioned.[57] These inadequacies, however, are unlikely to be overcome, and little real progress will be made, until these lawyer-teachers are either carefully chosen, or a new breed of lawyers is produced—people not only not afraid to criticize the legal system but trained to think and teach from a position knowledgeable of but essentially otuside it. Unhappily, that day lies further ahead than the legal system can afford to wait.

Reality, however, is very different. Firstly, in this country the "radical" lawyer, one prepared to work outside the system merely at the intellectual level, let alone the ethical one, still faces significant career disadvantages

[56] For example, the Victorian Bar, for ethical reasons, has recently declined involvement in the production of a T.V. programme depicting civil litigation.

[57] F. L. O'Brien, "Law for Lay Persons Spreads Across the Nation", (1977) 11 *New Directions in Legal Services* 54, 55, where it is argued that practitioners can and should play a number of vital roles as, e.g., (1) initiators of projects, (2) developers of curriculum and other materials, (3) teachers and lecturers.

and personal pressures. The unfortunate result (for legal administration) is that the creative unconditioned minds go elsewhere (sociology, politics, overseas); drop out of social activism and drop into their own private world (communes, poetry, drugs); or simply do not get jobs. The net result is much wasted "legal" talent, often subsisting for preference on the dole, and very few lawyers willing to work towards reforming the system, be it through education or other means.[58] Accepting for the moment Professor Weeramantry's legal "crisis", the inevitable compromise follows. Community legal educators must utilize that manpower which is available, however inadequate, whilst training more useful alternatives. These future educational-legal specialists (who may or may not be equipped to practise law) should be recruited from revamped legal *and* educational courses, and a reorientated profession.

Thus C.L.E., in the final analysis, relies heavily on the provision of instructors whose basic training will, like the courses they teach, be interdisciplinarian, involving law, education, and perhaps other specialities, such as modern languages. To that extent, C.L.E. relies heavily on formal legal education. Despite recent efforts to the contrary,[59] one cannot divorce the two. They are integral parts of the same process: servicing the community by training not just practitioners, but lawyers of every type, including teacher-lawyers. C.L.E. becomes an ongoing responsibility for the legal profession.[60]

To be only slightly cynical, there is an element of professional self-interest in such involvement which might impress some. In the long term, the community might utilize the system more; individual clients might consult their legal advisers earlier, before the matter is beyond hope; and once there, clients might offer more useful assistance. They might for example bring the relevant documents to the *first* interview, and know something of their content and legal effect. C.L.E. should in fact make the practitioners' daily life more remunerative, efficient, and intellectually satisfying.

[58] For example, after four years of publication, the only "reformist" or "radical" legal periodical in Australia, the *Legal Service Bulletin,* appears to have already unearthed most of the outspoken critical legal mind-power locally available. Most of these are academic, mostly somewhere left of centre, working well within the system and with their right eyes firmly fixed on professorial chairs, or their equivalents.

[59] See the agenda of the National Conference on Legal Education in Australia, Sydney, August 1976, discussed in the author's "Open Letter", and the Organising Committee's reply at (1976) 2 *Legal Service Bulletin,* 31-4.

[60] Cf. The American Bar Association, which initiated activity in the early sixties. Its 1974 *Directory of Law Related Educational Activities* "lists more than 250 projects in school systems throughout the country". See J. A. Stanley, op. cit. 1367, 1368. Enthusiasm appears to be waning, however, for a 1977 survey conducted by the Legal Services Corporation reports that "local Bar Associations are usually indifferent (but) the general public is usually supportive of . . . community education effort(s)". See *Community Education Directory,* op. cit.

(e) *Publishing*

Legal publishing for the lay community has been virtually ignored by both private and public (government) publishers until recent times. There is enormous potential here, much of which will be immediately obvious. The main problem in this area is identifying clearly one's target audience and its needs, and gearing the message accordingly. There is, however, an immediate problem of comprehensibility. Law can be difficult, and legal materials complex. In a recent article the authors, both lawyers, applied a readibility test, the Flesch Reading Ease Index,[61] to a variety of legal and non-legal materials and drew up a Reading Ease Table.[62] They concluded, *inter alia,* that some of the basic legal materials tested "are extremely difficult to read and understand. . . . Some demand the reading skills expected of a university graduate",[63] while much of it (e.g. police Standing Orders (Vic.)) "will not be understood at all by many of those wishing to read them".[64] The implications of these recent findings are important for anyone contemplating a publishing programme of C.L.E. Publishers will have to think much more carefully about aims and objectives, target audiences, and presentation of material, than hitherto. It seems that, for most people in need of legal information, anything more sophisticated than a pamphlet in simple point form is a waste of time and resources.[65] It is heartening to note that a Victorian Committee was appointed in 1977 to advise on ways and means of simplifying and

[61] See, R. Flesch, *The Art of Readable Reading* (25th ed., New York, Collier Books, 1972). A computed number representing a Reading Ease Score is derived from a formula. The formula relates to sentence number, length of sentences, and number of syllables per 100 words selected from the text under study. The more difficult a passage of prose is to read, the lower the Reading Ease Score. For example, a score of 22 (Victorian Police Standing Orders) represents "very difficult" material. A person would require very advanced reading skills, equivalent to university level education, to read the passage with any ease and to understand it. A score of 71 (*Truth* newspaper) represents "fairly easy" material which 6th grade children could read and understand.

[62] See G. Lyons and J. Tanner, "Legal Documents: Can Anyone Understand Them?" (1977) 2 *Legal Service Bulletin* 283, 286.

[63] Materials tested, and scores recorded, included the following: Comics and Children's Books (90-100)—"very easy"; *The Herald* (Melb.) (68), *The Sun* (Melb.) (62)—"Standard"; Ordinary Default Summonses, i.e. *Magistrates (Summary Proceedings) Act* 1975 (Vic.) *Form 8* (48); B. Russell, *The History of Western Philosophy* (London, 1946) (46)—"Difficult"; E. Campbell and H. Whitmore, *Freedom in Australia* (S.U.P., 1973) (29)—"Very Difficult"; *Small Claims Tribunal Act* 1973 (Vic.) (7)—"Extremely Difficult"; *Bail Bill* 1977 (Vic.) (–11)—"Incomprehensible?". Ibid. 283.

[64] Ibid. 285.

[65] See, for example, a recent report, *Australian Studies in School Performance,* Vol. 1, *Literacy and Numeracy in Australian Schools* (Australian Council for Educational Research, 1976), which documents the appalling literacy levels of 6,228 14-year-olds in Victorian schools. The study found, *inter alia,* that "a quarter of the (14 year olds) were unable to comprehend the literal meaning of an apparently straightforward newspaper article".

clarifying Victoria's written law. The Committee has a distinguished membership,[66] and is required

> "to advise the government on what parts of the law are obsolete and unnecessary; ways in which the preparation, formulation, expression, printing and distribution of the law can be improved; what steps should be taken to revise, consolidate and restate the law in modern form; and the resources necessary to carry out any recommendations made "[67]

This is a promising step in the right direction—though surely an impossible task for a part-time committee!

Despite the above difficulties, a great deal of publishing of legal material for various sectors of the community has taken place, much of it successfully.[68] As could be expected, it has in the main been a middle-class-mobility operation, and largely undertaken by bodies outside the recognized legal publishers. Once again, innovation and initiative in legal administration has emerged outside the recognized legal institutions. For purposes of review, these programmes can be divided into private and public.

(1) PRIVATE PUBLISHERS

Legal publishing in this country has long been dominated by the established publishing houses—The Law Book Company, Butterworths, Commercial Clearing House—whose track record in the area of C.L.E. has been virtually non-existent until the last two or three years.[69] For that matter, their track record in publishing non-commercial law materials generally in Australia is not much better, although "law in society" series are now well established in England[69a] and America. The Australian industry in fact requires close investigation and a thorough shake-up.[70] Outmoded policies and monoply practices have led to an almost total

[66] I.e. a Queens Counsel (Chairman), the principal of a private girls' school, a professor of law, a senior city solicitor, and a senior journalist.

[67] See Editorial Note (1977) 51 *A.L.J.* 746; Melbourne *Herald* 18th July 1977.

[68] 34 separate items—books and materials—were recommended for H.S.C. Legal Studies in Victoria in 1977 though several, it is submitted, are too sophisticated, e.g. A. Harding, *A Social History of English Law* (Penguin, 1966).

[69] An indication of these companies' publishing policies may be gained by simply counting monographs listed in annual catalogues. Statutory, Court/Tribunal reports, periodicals, digests etc. were omitted, as not involving individual publishing decisions. The following figures emerge. "Lay" means comprehensible by lay audiences, e.g. students of Commercial and Legal Studies. "Law" includes the rest.

Law Book Co. Ltd, *Catalogue*:	1976-77:	Law:	187
		Lay:	19 (10.16%)
Butterworth's, *Australian Legal and Commercial Catalogue*:	1977-78:	Law:	136
		Lay:	4 (2.94%)

[69a] Though only very recently in England. See, for complaints about "the paucity of suitable and accessible material" and recourse to "quality newspapers . . . Government White Papers and reports . . .", R. C. Elliot, "The Teaching of Law to Non-Lawyers" (1973) 7 *The Law Teacher* 81, 83.

[70] Such investigations are currently being pursued by the Society of Public Teachers or Law in England. A Working Party on Law Publishing was established in 1974 "to investigate the problems of law publishing as they bear on legal scholarship

disregard of the laymen's need for legal literature. However, in response to Commercial and Legal Studies,[71] an interest by lawyers and journalists publishing for the community,[72] and recent law reforms of wide community interest,[73] some titles specifically designed for the layman are beginning to appear.[74] These have been well received, and generally well reviewed,[75] though the "course" orientation, albeit for secondary schools and Colleges of Advanced Education rather than for law schools, is still very evident.[76] The most useful and imaginative work has been done by non-legal publishing houses, or by private bodies.[77]

(2) PRIVATE ORGANIZATIONS

A good deal of work has also been done by private organizations.[78] Books and pamphlets have been produced, usually orientated to the organization's particular interest and perspective. I concentrate here only on publications dealing substantially with law: many other community/group publications consider, *inter alia,* legal problems.[79] Four recent efforts might be mentioned, as an indication of what can be done.

Your Rights is a pamphlet, now in its fourth edition, published by the Victorian Council of Civil Liberties.[80] It details practical advice for laymen covering a range of subjects, from police practices and citizens'

and legal education and to make recommendations". The working party is producing the following working papers: *Marketing Your Manuscript to Commercial Publishers; Law Journals; Semi-Publishing; New Technologies; Small Jurisdictions.*

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71 See, e.g., Greene, Malony and Bates (eds.) *Readings in Legal Studies,* Law Book Co. (2nd ed.) 1976, reviewed by this writer at (1977) 2 *Legal Service Bulletin,* 258-60.

72 See S. D. Ross and M. Weinberg (eds.) *Law for the People* (Penguin, 1976); B. Bishop and K. Petersen, *Pink Pages* (Penguin, 1978).

73 See *Marriage Divorce and the Family: New Rules for Australians,* (C.C.H., Aust. Ltd, 1975), being questions and answers in simple format designed for the layman.

74 See also infra, fnn. 80-8.

75 See, e.g., G. Evans, *The Age,* 9th July 1977.

76 See C. Enright, *Constitutional Law* (Law Book Co., 1977). The author states in his preface: "Whilst this text is directed primarily at beginning law students, it may be useful for others studying aspects of law outside an ordinary law degree, for students of government, and for interested laymen". Ibid. ix. The book is in fact not far removed, in substance and in difficulty, from the established academic texts in this area, although the contents are somewhat broadened.

77 As to the former, see e.g. Braybrooke, Sinclair and Sonnemann, *Ignorance is No Excuse* (Cheshire, 1976), reviewed by the author at (1977) 2 *Legal Service Bulletin,* 259-60.

78 Forty-nine such (legal aid) organizations conducting "Preventive Law" projects were surveyed recently in the United States. It was concluded of such programmes that:
"* print is, almost without exception, everyone's starting point. Pamphlets first;
* almost all the projects (90%) developed their materials themselves."
See *Community Education Directory,* op. cit.

79 See, e.g., *Gay Liberation,* journal of C.A.M.P., N.S.W.; *Alternative Free Press,* Perth; *Civil Liberty Newsletter* (Victoria and N.S.W.); Society of Labor Lawyers *Newsletter* (Victoria).

80 J. Bennett (ed.) *Your Rights* (4th ed. 1977), Civil Liberties Publications, reviewed by G. Evans, *The Age,* 9th July 1977.

rights to such matters as house purchasing, wills and estates, local government and the rights of mental patients, and other poverty law topics.[81]

Legal Eagle is a quarterly newspaper for N.S.W. secondary schools produced by H.E.L.P.—the High School Education Law Project initiated by the N.S.W. Law Foundation in mid-1975 with the co-operation of the N.S.W. Department of Education. This attractively presented broadsheet is utilized at junior secondary levels in various law-related programmes,[82] and appears to have been well received by teachers and students.[83]

The Legal Resources Book, published by the Fitzroy Legal Service, Melbourne, has been the publishing success story of the legal year. This book is a practical advice manual for poverty-practice lawyers, social workers, teachers, clergymen, community organizers and other "interface" persons involved in advising on legal problems, or interested in acquiring a practical working knowledge of the law. As stated by one reviewer, "the book aims to give the answers—without frills—to the kind of legal problems that are experienced by people who can't afford lawyers to solve them".[84] The contents are closely geared to its audience,[85] which includes health inspectors, teachers, social workers, the staffing departments of several large companies and ordinary people simply wishing to have such a book in their homes. There are surely important lessons to be learnt from this unprecedented publishing success. Apart from side issues (e.g. there is nothing essentially difficult about "publishing") it appears that there is, as is the case with legal aid, a massive demand, as yet unserviced, for hard information about specific legal problems; that this demand can be assuaged at least partially through published material; and that wide sections of the community are prepared to purchase to meet that need".[86] How effective the book will prove remains to be seen.

The Legal Service Bulletin, a bi-monthly national journal, commenced publication early in 1974. It aims to bridge the communication gap between lawyers and laymen, discuss inadequacies in legal administration,

[81] V.C.C.L. publications and sales are as follows: *Your Rights* (1974-77) 60,000; *Police Powers* (1968) 20,000; *Freedom of Expression* (1968) 8,000; *Abortion Law Reform* (1968) 6,000; *Handbook of Citizens Rights* (1970) 40,000. All figures are approximations only from the editor, John Bennett.

[82] E.g. Teachers have used *Legal Eagle* in "Social Science, Commerce, Economics, English, Geography, History, Personal Development, General Studies, Consumer Education, Current Affairs, Family Conflict, Crime and Society, Life Skills". See *School Survey,* 1976, conducted by H.E.L.P.

[83] E.g. teachers commented that Legal Eagle "assists in reducing the ignorance and antipathy towards the law that many students feel"; "aroused interest in and greater knowledge of (1) processes of law making, (2) the need for laws, (3) the need for law reform"; "gave students a greater awareness of their rights and obligations". Ibid. Cf. C.L.E. objectives outlined supra fnn. 7-29.

[84] G. Evans, *The Age,* 9th July 1977, p. 23. See also a glowing review by G. Nash at (1977) 2 *Legal Service Bulletin* 258-9.

[85] I.e. chapters cover consumer and debt law, landlord and tenant law, pension eligibility, children's court procedures, drugs, rights of infants, bankruptcy, noise, town planning, injuries, employment, mental health etc.

[86] Cf. the American preventive law projects survey, which concluded *inter alia*: "People want 'how-to' manuals . . . the most, audiovisual materials second". See *Community Education Directory,* op. cit.

urge reform, and develop poverty law areas generally.[87] The journal attempts to present discussion of socio-legal issues in such a way that it is interesting, comprehensible and useful to the intelligent layman, yet sufficiently substantive to attract poverty-practice lawyers, welfare workers, students, etc.[88] Material published is generally informative, discursive, and analytical rather than instructional.

(3) PUBLIC ORGANIZATIONS

As with the major private law publishers, so in the public sphere, C.L.E. publishing has been largely ignored, such that government departments and instrumentalities, at federal, state and municipal levels, have likewise a deplorable track record. In fact, at times government departments appear to delight in *restricting* information, or issuing *false* information.[89] For example, the Federal Department of Social Security has recently *denied* public access to manuals explaining the operation of the *Social Services Act*. Without these departmental manuals, which explain the Act in simple language, "it is impossible for anyone, even the most sophisticated lawyer, to determine entitlements to benefits or allowances".[90] Again, though on a different level, it is virtually impossible to obtain copies of High Court judgments without paying an annual subscription to the Commonwealth Law Reports ($38.50), purchasing a "part" of a volume ($11), reading the transcript in the High Court Registry, or purchasing a copy of the transcript at 50c per page.[90a] When one considers the enormous volume of unreadable bureaucratic reportage that is produced by A.G.P.S. every year, at public expense, this is surely ridiculous.

Manifestly, there is no government policy of consistent legal publishing for the lay community, and only infrequent *ad hoc* efforts are made by the bureaucracy in this area. It is surely time for a change. Governments should, as a matter of priority, initiate large-scale and long-term legal publishing programmes in a variety of areas, aimed at specific target audiences. If public monies can be spent on providing every voter with information concerning constitutional referenda, one may presume that (a) the government considers published legal information to have some influence; and (b) the machinery and finance is there to do it. It is

[87] The magazine covers a wide scope, e.g. legal aid, law reform, family law, police practices, legal profession, legal education, Aborigines, landlord and tenant, consumer protection, welfare law, juvenile, crime etc.

[88] The closest parallels are the Legal Action Group *Journal* in the U.K. and the *Clearinghouse Review* in the U.S.A. Both, however, are essentially technical service journals, for poverty lawyers only.

[89] See, e.g., the Department of Social Security's pamphlet *The Newcomer and the Law* (March 1977) which, when discussing family law, omitted any mention of new divorce legislation, while the addresses and phone numbers of every capital city A.L.A.O. office were wrong. See letter, J. Bennett (1977) 2 *Legal Service Bulletin* 216-7.

[90] See editorial (1977) 2 *Legal Service Bulletin* 227.

[90a] Prices as at March 1978.

suggested that three broad publishing programmes should be pursued as a public service:

(a) The publication, with explanatory notes and annotations, of basic statutes. This has been done, for many years, and very successfully, overseas. For example,

> "In Japan, over 80 collections (called Roppō) of relevant legislation in particular fields such as Education Law, Labour Law, and Welfare Law appear annually and enjoy an enormous sale. This is in addition to the Annual Collections of major laws and amendments (also called Roppō) and the annual Publication of the Six Codes and major laws (the Shoroppō). Sales by the three major publishers of these volumes run to over half a million copies annually."[91]

Whether Australians would take to the *Crimes Act,* annotated and explained, as they do to their Saturday footy programmes is another matter.

(b) The publication, especially at local government level, of explanatory pamphlets, leaflets, brochures, posters, in several languages, as a service towards greater utilization of the legal system. The Department of Social Security, *The Newcomer and the Law* pamphlet, the Small Claims Tribunal's *Information Leaflet,* and legal pamphlets available from the various law societies are examples to emulate. These usually do not contain any substantive law: they merely direct people procedurally, for example, how to utilize a tribunal or seek further advice.

(c) Publication of booklets and periodical journals in specific interest areas, various languages and directed at specific target audiences. The V.C.C.L. booklet, *Your Rights,* discussed above, is perhaps the best example.[92]

(f) *Experiential Learning*

As stated above, almost any experience can have its legal educative aspects. On a more structured level, a range of practical legal activities involving the layman can be devised for purely educational purposes. The possibilities are endless. Short of arrest, perhaps the most common examples of the "school of hard knocks" are the solicitor-client advisory situation; involvement in litigation or court procedure of some sort; jury service; and consumer purchases. This is undoubtedly the best school, but its curriculum is sadly under-developed.

The solicitor-client relationship, for example, has enormous pedagogical potential, particularly with those clients who perhaps need it most, such as legal aid clients. For example, practitioners could be encouraged to

91 C. G. Weeramantry, *The Law in Crisis,* op. cit. 140 fn. 13.

92 See, also, *Women and the Family Law* (February 1977), a 14-page booklet produced and distributed by the Community Services Centre of the Victorian Premier's Department. There are doubtless many other similar publications unknown to me.

distribute Law Institute-produced literature to clients on the substantive questions under discussion. This would take no time, and would cost the practitioner nothing.

Other "experiential" possibilities might include lay involvement in legal administration or review, especially at a local level. Thus lay persons could sit on local suburban/country Law Institute committees (especially those dealing with complaints against practitioners) or A.L.A.O. committees of management.[93] Along the same lines, lay people could—and already have—become involved in the establishment and administration of locally orientated legal services, community advice schemes, Citizens' Advice Bureaux, etc. Such involvement is in fact a fundamental tenet of the voluntary legal services in Victoria.[94]

For the spectators rather than the players in our community, a variety of stratagems can be suggested, many of which have already been tried in the U.S. "Open Days" as presented by universities, for example, could be organized for various legal functionaries.[95] Court visits—still a powerful drawcard when anything is "on"—could be organized. Court attendance at the Magistrates' level is now a popular outing for Legal Studies students in Victoria. A national "Law Day" concentrating on such activities, could be proclaimed.[96]

Law reform activities can also provide valuable information and practical training in the mysteries of the law. The A.L.R.C., with its emphasis on socially orientated references[97] and its practice of pursuing those matters in a very public way through media publicity, the encouragement of submissions from interested parties, public hearings advertised as such, and the extraordinary round of conference lecturing pursued by the current Chairman, Mr Justice M.D. Kirby, has raised public interest and involvement in law reform as never before. These are commendable initiatives which could well be emulated by other state law reform bodies. The A.L.R.C., perhaps unintentionally, has done as much in C.L.E. as any other legal institution in the past few years.

[93] This was the strong recommendation of Professor Sackville in his report *Legal Aid in Australia* (A.G.P.S., 1975) 172, 178-9.

[94] The Fitzroy Legal Service, for example, was in fact started in 1973 by a youth worker, John Zakharov. Similarly, the Broadmeadows Legal Service in Melbourne was begun by a local housewife, Lynda Blundell.

[95] E.g. courts, law faculties, libraries, official offices (Companies, Titles), gaols, police stations, solicitors' offices etc.

[96] Law Day U.S.A. was introduced by President Eisenhower on 1st May 1958, and has occurred annually ever since. It has developed into "an extraordinary professional exercise in public education". In 1972, for example, Law Day planning committees throughout the country were encouraged to develop local projects concerned to "(1) improve society, (2) strengthen the legal process itself, and (3) clarify the rights and responsibilities of citizenship". See L. Jaworski, "Note" (1972) 58 *A.B.A.J.* 223. For a discussion of Japan's Law Day (1st October, initiated in 1960) see N. Naritomi, "Some Thoughts on Japanese Law Day" (1972) 58 *A.B.A.J.*, 1070-2.

[97] E.g. *Alcohol, Drugs and Driving; Human Tissue Transplants; Privacy; Criminal Investigation; Access to the Courts; Aboriginal Customary Laws; Defamation; Consumers in Debt.*

V. A QUESTION OF RESPONSIBILITY

Undoubtedly, governments, lawyers and educators must accept responsibility for C.L.E. For the lawyers, it is merely another aspect of legal administration. For governments, priorities must be adjusted, substantial funds committed and on-going programmes organized. The legal and educational bureaucracy is already established, although much co-ordination would be required.

A special branch in the various state Attorney-General Departments could be established, with appropriate secondments from Departments of Education. The Attorney-General's Department is to be preferred, for one reason only: that this must be seen as a responsibility of lawyers, government and private, not just educators. This single factor is the most intransigent and frustrating problem facing workers in this field. A profession's concept of itself, its training, its daily responsibilities and practices and its functioning in the legal system, must be changed radically if C.L.E. is to gather momentum. Government and the legal profession at an institutional and personal level must not only accept responsibility, but also take the initiative in this important field.

Alternatively, a C.L.E. Commission, organized on a local level with majority lay involvement, closely parallelling the Legal Aid Commissions recommended by the Poverty Inquiry seems to offer most potential. Indeed, C.L.E. can be seen as one of the preventive law strategies of legal aid. Unfortunately, that particular legal aid argument has been lost. Under the current government at least, one would not expect C.L.E. to do any better. For the record, a C.L.E. centre (like a legal aid centre) is now a recognized need in every community in the U.S.[98] Such centres may be based[99] at "a legal services organization, a bar association, a law school, or a school system". Activities envisaged include

"(1) developing local and state curricula and materials;
(2) assisting in training . . . school teachers to teach law;
(3) co-ordinating and training lawyers and law students who go into classrooms to lecture or teach courses;
(4) supplying teachers to institutions or groups which desire courses;
(5) developing media presentations in law." [100]

There is no reason why such programmes could not be successfully introduced in Australia—given direction and resources.[101]

[98] See F. L. O'Brien, op. cit. 54, 55.
[99] Ibid. 55-6.
[100] Ibid. 56.
[101] Of 49 American projects recently reviewed, recorded funding ranged from "minimal" to $1,700 p.a. (Chemung County Neighbourhood Legal Services Inc., New York) to $100,000 p.a. (West Virginia Legal Services Plan). Most projects involved only two or three full-time staff. See *Community Education Directory*, op. cit.