

## Editorial

This issue of *Legal Ethics* shows how broad and deep the field has become. It is now virtually impossible to do any scholarly work in applied ethics and escape the central importance of education to the ethical development of individuals and institutions, and this is underlined by the current issue's collection of articles. Professor Richard Devlin, Justice Adèle Kent and Susan Lightstone give a fascinating account of the development of ethics education for judges in Canada. Their paper reveals judges' increasing acceptance of the significance and usefulness of ethics education, and the development of a judicial ethical identity in a contemporary, pluralistic and democratic Canada. Two different sides of law school education, one potentially promising and the other potentially disturbing, are addressed in the next three papers. Professor Donald Nicolson discusses the enhanced capacity of clinical legal education to develop students' ethical awareness, and outlines the theoretical and practical rationale for what he terms an 'altru-ethical' professional education. An account is given of a Clinical Bachelor of Laws course in Scotland, and the relative success it may have had in instilling more prominent altruistic traits in law graduates. In her article, Dr Lillian Corbin similarly advocates the idea of lawyers as public citizens and, with a focus on American and Australian rules of professional conduct, she draws on philosophies of civic republicanism as the ground for inculcating in lawyers an obligation to advance the public good. The journal returns to Canada for a fourth, and initially more pessimistic, perspective on legal education. Professor Annalise Acorn and Jason Buttuls speculate about the way that a typical Canadian law school education has the potential to exacerbate student inclinations to procrastinate—and therefore to develop habits that themselves can contribute to lawyer indiscipline and hence to client loss. However, their argument does lead Acorn and Buttuls to propose a number of reforms to Canadian legal education that, at the least, could reinforce timely attention to legal work. Interestingly, they choose to support these proposals by using Abraham Lincoln as a model for the diligent lawyer.

Amy Salyzyn's article approaches other—albeit fictional—models of lawyers, but from a critical standpoint. Salyzyn identifies that a current concern, especially in the US, has been with what is perceived to be a growth in 'lawyer incivility'. The debate this has engendered has revolved around the construction of two ideal type lawyers: the 'gentlemanly' Atticus Finch and 'the Rambo-litigator'. Her critique centres on the masculinity of both models and consequently exclusionary nature of the debate. Her discussion also reveals the anxieties induced by the changes undergone by the profession in recent decades, which include a sense that traditional forms of authority have been eroded. This implicit reference to the significance of history to the profession leads us nicely into the following article. Dr Sarah Mercer and Clare Sandford-Couch's analysis of the trial of Oscar Wilde also brings together this issue's focus on educational issues and models of legal practice. Although the 'Trial' actually focuses on a prosecution brought by Wilde, its ethical interest lies in defence counsel Sir Edward Carson QC's cross-examination of Wilde. Mercer and Sandford-Couch

draw on the ethics of taking instructions, abandoning proceedings and the cab-rank rule to argue for the use of Wilde's Trial—and similar *causes célèbres*—for students to develop richer, contextualised understandings of ethics in legal practice while also promoting the study of law as a liberal arts degree.

The importance of thinking practically about how to inculcate ethical understandings is the key concern of the article by Professor Adrian Evans and Dr Helen Forgasz. Building on Evans' earlier work in *Assessing Lawyers' Ethics* (Cambridge University Press, 2011) on lawyers' use of self-assessment tools to help them determine more explicitly their own ethical priorities, Evans and Forgasz argue that, merely by raising lawyers' own awareness of how they rank ethical considerations and reason ethically, lawyers are more likely to act with greater ethical sensitivity—making ethics assessment exercises a worthy project.

The need for ethical self-assessment is also demonstrated by the next paper, which suggests that criminal law practitioners in England and Wales may regularly be failing to live up to the profession's service idea. Dr Daniele Alge's article is based on interviews conducted with lawyers and judges to identify whether there are systemic incentives to enter late guilty pleas and, generally, the relationship between cracked trials and plea bargaining. Alge's discussion of her data is anchored in a consideration of the literature which generally indicates that there is a strong tendency on the part of criminal lawyers to act against their clients' interests in the matter of plea. While she notes that the (relatively weak) professional and informal sanctions do have some impact on lawyer behaviour, she concludes that there are, nevertheless, few material, ethical and reputational incentives to reduce this risk of lawyers acting against client interests. Her analysis of the weak nature of the barrister's relationship of agency with the client is an insight that many divided legal professions may need to revisit, if client interests are genuinely to be promoted above the lawyer's personal concerns.

The issue's final contribution is a response by Bobette Wolski to an article in the previous volume of *Legal Ethics*,<sup>1</sup> in which Dr Jim Mason proposed a special ethical code for mediation advocates. Undertaking a thorough comparative analysis of American, Australian and British conduct rules for lawyers, Wolski attacks some assumptions made about mediation practice—such as that it is non-adversarial and that lawyers are often unhelpful in mediations. However, she agrees with Mason that, so far as they apply to mediations, some conduct rules need fine-tuning, but is sceptical of the value of more rule-making in this field.

Regular readers of *Legal Ethics* will observe that this issue brings some change to the structure of the journal. A new section entitled 'Reports, Comments and Notes' replaces the 'Ethics in Practice' section. 'Reports, Comments and Notes' is dedicated to brief contributions (of roughly 1,000 words) on developments in the ethics of lawyers, professional conduct codes, the law of lawyering and the regulation of the legal profession. Contributors are invited to submit notes and comments on judicial decisions; legislative developments; national debates or reports on topical questions about lawyers and their ethics; and reports of conferences and colloquia. Enquiries about topics and journal space

<sup>1</sup> Jim Mason, 'How Might the Adversarial Imperative be Effectively Tempered in Mediation?' (2012) 15 *Legal Ethics* 111.

should be made to the 'Reports, Comments and Notes' Editor, Dr Suzanne LeMire, at the University of Adelaide. The national reporters will review material that is relevant to their own countries or regions.

Last, but by no means the least, we wish to thank the retiring General Editor, Professor Christine Parker of Monash University, for her work on the journal over the last five years. Christine has worked tirelessly to promote *Legal Ethics* and maintain the highest quality in all sections of the journal. The bumper size of this issue, and the growth in the number and nationalities of the journal's contributors, owe much to Christine's efforts. She continues as a member of the Editorial Board. We also thank another Melburnian, Dr Linda Haller, who steps down as both 'Ethics in Practice' Editor and Australian national reporter, and who has calmly coordinated the difficult task of arranging the national reports. And we thank John Steele, who has been carrying the large responsibility of United States national reporter, and now welcome Professor Ben Cooper of the University of Mississippi to the role. We continue to express our gratitude to Professor Alice Woolley for her work as Book Review Editor, and for her valuable advice and support on the work of the journal. Finally, for this issue we both express our deep gratitude to Ms Anneke Logan, who has been serving as *Legal Ethics*' Administrative Officer since July 2012. As such, Anneke conducts the complex web of communications among editors, authors, referees and publisher, and keeps the editors organised. Her work makes it that much easier for us to find the editors' role such a pleasure.

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