

Humanising legal education

The University of South Africa's College of Law and the Institute for Dispute Resolution in Africa (IDRA) hosted a colloquium on 'humanising legal education and practice' in Pretoria in March. The speaker at the event was jurist and author Kim Wright who spoke about the manner in which integrative law models are being applied in a range of practice areas, from restorative justice in the criminal context to collaborative law in divorce matters and mindful value-based contracts in business.

In introducing Ms Wright, the head of IDRA, Professor John Faris said that he believes that there is a new consciousness in the world. He added: 'We are wrestling with the problems of legal practice and the conduct of practitioners. The stress that it causes upon the adversarial system, affects the clients and the people who need these services. This is a long-going debate. There is a shift and we need to be part of that, we need to be aware of it.'

Ms Wright said that there were a lot of systems changing in the law. She added that she was convinced that lawyers all over the world were in the process of creating an alternative system. 'We cannot argue that there is a change happening but we all see different parts of it. It is a collective intelligence systems change that we are all working towards,' said Ms Wright.

Ms Wright said that humanising legal education was an initiative shared by legal educators seeking to maximise the overall health, wellbeing and career satisfaction of law students and lawyers. 'We find cause for concern in our observations of law students and in the research on, and reports of, problems in the legal profession including dissatisfaction, depression, excessive work, substance abuse and eroding professionalism. We are interested in the ways legal education is conducted, the impact those choices may have on the attitudes, values, health and wellbeing of law students, and the possible relationship between each of those matters and the problems experienced by our graduates in the profession. Through scholarship, web-based discussion, empirical research and conferences, we hope to inform the development of innovative teaching methods when appropriate,' she said.

According to Ms Wright, there are many symptoms showing that the legal system is declining. She added that there was evidence that lawyers do not like what they do and added that there is a high level of alcoholism, suicide, divorce and all kinds of addiction. 'We are just not a happy profession as a general rule and a lot of people are leaving the profession. At one point there was a study that asked if you had a chance to do it all over again, would you become a lawyer and 86% said no. Something is not working. If people that are called to the law are not happy there, then something needs to change,' she said.

Speaking on access to justice, Ms Wright said that according to the American Bar Association, 70% of people in the United States (US) cannot afford legal representation and are not eligible for legal aid. She added: 'There is a percentage that can get legal aid and a percentage who can afford their own legal fees, and in the middle, there is 70% who cannot afford lawyers and so it has become a much polarised profession.'

Ms Wright said that another study indicated that in California 90% of people now file their own divorces rather than using a lawyer because they do not trust lawyers and do not want to work with them.

Ms Wright said Berkeley and Hastings, a law school in California, decided that it was going to determine how to admit students that were going to be successful lawyers and drew up a list of the qualities an effective lawyer should have. Ms Wright said that the law school did extensive research and came up with 26 factors under the following headings –

- intellectual and cognitive;
- research and information gathering;
- communications;
- planning and organising;
- conflict resolution;
- client and business relations – entrepreneurship;
- working with others; and
- character.

She asked the audience how many of these were on the curriculum. 'Are we learning as law students to develop relationships or about passion and engagement or stress management?', she asked adding that most law schools in the US said that the most they were teaching were 15 of the 26 factors.

Ms Wright said that humanising legal education involves –

- promoting emotionally competent lawyering;
- enhancing wisdom and compassion throughout all interactions with the legal system;
- encouraging accountability, engagement, and restoration;
- preventing legal problems from the beginning; and
- responding to societal changes mindfully, resolving conflicts and promoting client-centered lawyering.

Ms Wright said that procedural justice was an aspect of humanising legal education. She asked: 'What is it that makes people feel like justice was served? There are two primary components of this. The first is, did I tell my story? And was I treated with respect? If so, I am satisfied, no matter the outcome.'

Ms Wright said that there is a study going on in a few courts in New York where they call people by their name instead of 'the litigant' or 'defendant' etcetera. She said that litigants are referred to by their names instead of case numbers. 'The satisfaction with the court system has sky rocketed', she said.

Therapeutic jurisprudence

Speaking on therapeutic jurisprudence Ms Wright said that this type of law started out as an academic inquiry on how legal practice promotes psychological and principle wellbeing. She said that it was using social science to 'study the extent to which a legal rule or practice promotes the psychological or physical wellbeing of the people it affects' (C Slobogin 'Therapeutic jurisprudence: Five dilemmas to ponder' (1995) (1) *Psychology, Public Policy, and Law* 193).

Ms Wright added that this type of law uses law and legal processes that promote therapeutic consequences and minimise anti-therapeutic consequences, without trumping legal rights. Because of this, the US came up with problem- solving courts.

These courts use an interdisciplinary team approach and focus on the fact that if someone has an addiction, they will keep committing that crime to feed their addiction. So these courts deal with the addiction and focus on rehabilitation.

Below are some facts about these courts:

- There are more than 2 800 drug courts in the US and more than 1 200 other problem-solving courts.
- Problem-solving courts are now operating in 20 other countries.
- In some communities, prisons have closed due to reduction in inmate populations and drug courts were credited.
- Some studies estimate drug courts reduce crime by as much as 45%.
- Seventy-five percent of graduates remain arrest-free after three years. Typically, without this intervention, the recidivism rate (return to incarceration) is the opposite; about 69% go back to prison within three years.
- Family reunification statistics are 50% higher for family drug court participants.

Other problem-solving courts include –

- domestic violence;
- homelessness;
- mental health;
- veterans;
- community court;
- gambling court;
- truancy court;
- gun court; and
- father's court (to help fathers develop relationships with children so they support them).

Preventative law

Ms Wright said that preventative law focuses on predicting legal disputes and avoiding or minimising them before they occur. She added that proactive law falls under this type of law. Ms Wright said that proactive law considers law as an instrument that can create success and foster sustainable relationships.

Ms Wright concluded her dialogue by saying that lawyers need to become the bridge to the new paradigm of law. She said that this can be done by:

- Creating the infrastructure for an alternative legal system that works for our times and harnesses the best practices of the innovators, names them, supports them, connects them with clients, and illuminates new ways of preventing and resolving conflicts.
- Collaborating with most lawyers.
- Creating a world that works for all.

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