

25TH ANNIVERSARY OF THE UNIVERSITY OF NEW SOUTH WALES LAW SCHOOL

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One of the pleasures of judicial life is the friendship and respect that a judge may enjoy with his or her judicial siblings whilst both the sibling and the judge are entirely free to agree or disagree with each other's judgments. I was therefore delighted when my former Chief, and your present Chancellor, after failing on some notable occasions to perceive the depth of scholarship, the irrefragable logic and the profound wisdom of my judgment, let me know that I was nevertheless to be invited to address this celebration of the University of New South Wales Law School. There is much to celebrate, and some challenges to ponder.

Twenty five years ago, when Professor Wootten, the Foundation Dean, wrote his welcome to the first students, he set out the credo of the new Faculty. The Law School staff, he wrote, shared the belief:

...that law is not an end in itself. It is to be judged by the extent to which it promotes the well-being of the people living in society. We believe that the study of the law should never lose sight of the social problems that law exists to deal with, and that lawyers should always be ready to criticise and reform the law.

We believe that a Law School should not exist in an ivory tower. Staff and students should build and maintain contacts with the practising profession, and with the real world in which lawyers work. On the other hand the Law School should be a good

* Chief Justice of Australia, 18 July 1996. This speech was presented at the 25th Anniversary of the University of New South Wales Law Faculty Dinner, Intercontinental Hotel, 18 July 1996.

vantage point from which to stand off and look at the law and the profession with a detachment the practitioner can seldom enjoy.

These were lofty aspirations. They set an agenda for the new Law School that would distinguish it from other like institutions. The study of law would not be seen merely as a study of particular laws or as an exercise in abstract criticism of legal concepts. The law would be seen as a major historical force that works upon, and is worked upon by, society in its ever-changing forms. The Law School would not be a mere primary school for professional legal training; but neither would the law be taught as an abstraction to which endless speculative thought might be devoted. Knowledge was to precede critical evaluation. "For every hour in class", Professor Wootten warned, "you will have to spend several in the library or in private preparation".²

In that year, 227 students were enrolled. In June of this year, the undergraduate enrolment was 1519, the third largest in the Commonwealth after Monash and Queensland University of Technology. Class sizes have been a problem but Dean Redmond notes the Law School's "insistence on active learning" and, to that end, its endeavour to keep classes to a small size. He records that "special tutors are appointed to assist indigenous students and students whose first language is not English". The method of teaching and the facilities available to students have maintained a high pedagogical level: research has been encouraged and the concurrent functions of teaching and research have no doubt enhanced each other. Research informing the teaching, undergraduate questioning and analysis provoking more profound examination of principle. Contact with other disciplines has been encouraged, so that the Law School has been integrated in the wider community of learning. Thus it has contributed to the fulfilment of one of the leading objects of the University: "to provide a learning environment in which students acquire, develop and deploy skills of rational thought and critical analysis".

The curriculum described in the current handbook left me regretfully envious of those who might profit from it. The law course upon which I entered half a century ago was not nearly so comprehensive. And there were some less fortunate than I. There was, for example, the young depositions clerk in the Magistrate's Court who decided to obtain legal qualifications to fast track his prospects in the Justice Department. He was studying Snell's *Equity* when the then Chief Stipendiary Magistrate offered some advice based on his experience of the "equity and good conscience" jurisdiction in the Small Claims Court: "Don't bother about equity, boy," said his Worship, "it applies only in cases below ten pounds".

Two main conceptions of the role of a law school have vied for dominance in recent times. The first is that of a professional training institution; the second is that of an academic institution devoted to learning about law as a phenomenon and general legal principles. Although there is a tension between the two conceptions, heightened by any shortage in resources, the preferred model seems to be a combination of the two. Hence the Law School has insisted upon a substantial

1 University of New South Wales Faculty of Law, *Handbook* (1971) p 6.

2 *Ibid* at 5.

group of core subjects in which the general modes of legal reasoning might be acquired and has offered both specialist electives and practical training which keep the students attuned to the practical operation of the law.

The Law School has set standards in legal education that others have followed. To the Pearce Committee in 1987, the Law School was a model of “what was possible in legal education”.³ In 1991 the *Independent Monthly* stated:

The UNSW law course has long been acknowledged as the best and most innovative in the country. It led the way in using small teaching groups, well-prepared study materials for students, continuous assessment (rather than end-of-year examinations) and a clinical program in which students learned the trade through working in community legal centres. ... UNSW must still be regarded as at least the equal of any other and is one of a handful of university courses which show that a good education can and should be both intellectually stimulating and a good preparation for work.⁴

Then, in 1994, a post-Pearce review concluded with a resounding tribute:

What is probably most remarkable from the case study is the stability and consistent success of the NSW school. The mission, style of teaching, curriculum, student profile and resources have essentially been unchanged since the mid 80s. Yet there is no evidence to suggest that the school is stagnating or being threatened by the new schools. We found some instances where NSW is still the model that some others strive towards. The impact of Pearce has been to reinforce the core values and practices of the school, not to change them in any significant way.⁵

Now all this provides a sound basis for celebration. It indicates an active Faculty, reciprocating with the undergraduate body, each of them deriving stimulus from the other. It indicates an appreciation of the law both as a conceptual phenomenon and as a set of practical rules for the organisation of social relationships and institutions. Yet there are, I suggest, some challenges, inadequately acknowledged, that face all law schools. They merit mention to a gathering that commemorates the edifice built on that first credo in the 1971 Handbook.

A report by Christopher Roper on the Career Intentions of Australian Law Students contains much food for thought.⁶ The Department of Employment, Education and Training published a brief summary of the highlights in the report that sets out in priority the reasons why students study law:

The most popular reason for studying law was an interest in the subject matter of the law.

The second ranking reason was that doing law, as part of a double degree, would increase career options.

The third ranking reason was that being a general degree, law provided a good basic training for a number of occupations.

Although not as high ranking as these reasons, the more altruistic reason that law was seen as a way of making a contribution to the community, had some support amongst students.

3 Commonwealth Tertiary Education Commission, *Australian Law Schools*, (“the Pearce Report”) 1987 at 38.

4 “The Good Universities Guide”, *The Independent Monthly*, (August 1991) p 27 at 30.

5 C MacInnes and F Marginson, *Australian Law Schools after the 1987 Pearce Report*, DEET & AGPS, (1994) p 98.

6 C Roper for the Centre for Legal Education, *Career Intentions of Australian Law Students*, DEET (1995) p xiv.

Reasons which related to prestige or high income were very lowly ranked. Similarly entering law simply because of students' high HSC marks was a very insignificant reason.

Now these are the views of the elite group who achieve entry into our Law Schools. The motives for studying law have become increasingly self-regarding, altruism losing the precedence it once possesses. This has been noted by Professor Andrew Goldsmith in the 1995 *Monash University Law Review* in an article catchily entitled: "Warning: Law School Can Endanger Your Health".⁸

There are no doubt economic and structural reasons for what Professor Goldsmith calls the "progressive loss of idealism among law students", but the question must be asked whether that loss of idealism can be turned around. The Law School is a place and a time in which attitudes and ambitions are formed; it is an institution in which values that underlie the important principles of law can be expounded; it creates an intellectual climate in which the social utility of the law and the profession which practises law can be critically examined; and, most significantly, it provides an opportunity for pointing the way to changes in attitude and in professional structures that will more fully respond to altruistic ideals. Let me recall another passage from the 1971 handbook:

...we believe that a Law School should have and communicate to its students a keen concern for those on whom the law may bear harshly, either because they cannot afford its services, or because it does not sufficiently recognise their needs, or because they are in some way alienated from the rest of society. The poor, the aborigines, the handicapped, the deviants, all need their champions in the law as elsewhere.

Now these are words of generality. But they can be translated into action. The law student of today is no doubt concerned about the prospects of future employment, but the concern need not be overstated. Statistics show that law students do extremely well in the employment race. The real risks are not in getting employment but in getting and retaining satisfaction in a legal career. Too often the search for the pot of gold at the end of the rainbow finds only bitter ash; frequently, the only and unsatisfying reward of hours of grinding work is pecuniary; sadly, the intensity of legal work produces disruption in familial relations. Unless the self-regarding reasons for undertaking the study of law encounter a contrary set of values in the Law School, the student enters upon a career that contains the risk of disillusionment.

Yours is a law school that can assume a leadership in the programme of professional satisfaction, turning around the cynicism that oftentimes seems to affect those who regard law as the means by which battles can be won for profit, instead of a civilising influence that facilitates the peace and progress of society.

In this adventure of the next 25 years, I wish you well. I thank you on behalf of the Judiciary for equipping competent lawyers to service the courts, particularly the Courts sitting in this State. I congratulate not only the University, the Deans, the Faculty and the visiting lecturers, but also the students who have together made

7 *Ibid*, p xiv.

8 A Goldsmith, "Warning: Law School Can Endanger Your Health" (1995) 21 *Monash University Law Review* 272.

9 Note 1 *supra* at 10.

the Law School an integral part of a community of learning. The reputation stands high. The prospects of the future are higher yet.