

# THE FOUNDATION OF THE MONASH LAW SCHOOL

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## INTRODUCTION

From 1853 to 1878, an Englishman named John Hughes Clayton practised as a solicitor in the City of Melbourne.<sup>1</sup> At the end of the working day, he was usually driven home by his coachman: a journey of about twelve miles to his property in a district known as “Old Damper”.<sup>2</sup> In the course of time, the north-south road running past his property came to be called “Clayton’s Road”: the name was ultimately shortened to Clayton Road and from it derived the present name of the district.<sup>3</sup>

Clayton had become a suburb of Melbourne long before 1958, when Monash University was established by legislation of the Victorian Parliament.<sup>4</sup> Nevertheless, the Interim Council of the new University was able to find there 250 acres of largely vacant land which it chose as the site on which to build.<sup>5</sup>

Sir John Monash (1865–1931), after whom the University was named, is celebrated as a soldier, as an engineer and as an administrator. He was a graduate of the University of Melbourne in Arts, Engineering and Law. He never practised as a barrister or solicitor, although, in the 1890s and the early years of the twentieth century, he appeared as an advocate in arbitrations on engineering disputes and frequently gave evidence as an expert witness in engineering and patent matters.<sup>6</sup>

This article gives an account of the foundation of the law school at Monash University, Clayton, in celebration of the twenty-five years of teaching which have now been completed. In doing so, it attempts to evoke something of the

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<sup>1</sup> Robert Haden Smith (comp.), *1863. The Law List . . . in Victoria* (Melbourne, Sands & McDougall, 1863) 40. Roll of Attorneys, Solicitors & Proctors of the Supreme Court of the Colony of Victoria, printed in *Catalogue of the Library of the Supreme Court of Victoria* (2nd ed., Melbourne, Stillwell and Knight, Printers, 1875). *Sands & McDougall’s Melbourne & Suburban Directory* (Melbourne, Sands & McDougall, annual issues). May Keeley, *A Journey into Yesterday: a History of Clayton* (Clayton, the author, 1980) esp. ch. 9. *Argus*, 25th April 1878, p. 5, col. d.

<sup>2</sup> Keeley, *op. cit.* 21, 28. Susan Priestley, *Cattlemen to Commuters* (Sydney, John Ferguson, 1979) 8–12.

<sup>3</sup> Keeley, *op. cit.* 52. Les Blake, *Place Names of Victoria* (Adelaide, Rigby, 1977) 66. The name has nothing to do with the “uncompromising clay” which hampered the development of the Monash site: Martin Canny, “The Grounds: an act of faith” in F.W. Kent & D.D. Cuthbert (ed.), *Making Monash: a Twenty-five Year History* (Clayton, Monash University, 1986) 25.

<sup>4</sup> *Monash University Act 1958* (Vic.).

<sup>5</sup> Sir Robert Blackwood, *Monash University: The First Ten Years* (Melbourne, Hampden Hall, 1968) ch. 3.

<sup>6</sup> Geoffrey Serle, *John Monash: A Biography* (Melbourne, Melbourne University Press in association with Monash University, 1982) 108–9, 113–4, 126–34, 151–2.

opinions that were held in Victoria, twenty-five or thirty years ago, about universities and legal education and related matters.

"Clayton's", a cant usage of the 1980s meaning "something which is largely illusory or exists in name only", derives from the proprietary name of a soft drink.<sup>7</sup> Inevitably, however, "Clayton's Law" was the name of a short-lived publication of the Monash Law Students' Society in 1984.

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### THE FOUNDATION OF MONASH UNIVERSITY

The circumstances in which the Monash law school was founded can best be understood in the light of the circumstances which led to the foundation of the University itself; and the attitudes and expectations at the time of governments, the community generally and the legal profession.

During the 1950s, the future prosperity of Victoria was considered to depend upon an increase in the availability of technological skills; and it was believed that this could only be achieved through the provision of increased educational facilities at tertiary level. These views have of course been restated in the late 1980s by the Commonwealth Minister for Employment, Education and Training.<sup>8</sup> During the 1950s, the numbers of young people seeking a university education increased significantly; and the trend seemed certain to continue. Furthermore, it was supposed that, in the near future, Victoria's only university — the University of Melbourne, established in 1853 — would be unable to accommodate them all.

<sup>7</sup> W.S. Ramson (ed.), *The Australian National Dictionary* (Melbourne, Oxford University Press, 1988) sub. tit. "Clayton's".

<sup>8</sup> *Higher Education: a policy statement*, circulated by the Hon. J.S. Dawkins M.P., Minister for Employment, Education and Training, July 1988 (Canberra, Australian Government Publishing Service, 1988) 5-11.

Associated with a natural concern about the increasing numbers of students at that university, and similar increases at universities in other States, was the belief that any course at a university should be open to all who were qualified for it and wished to undertake it.<sup>9</sup> This belief was not always articulated, presumably because it went, as it were, without saying.

In 1957 enrolments at Melbourne totalled 7,916, including research students and those taking single subjects.<sup>10</sup> A quota for admission to the medical course had been introduced in 1946; and by 1959, when comparable enrolments totalled 10,279 students, quotas had been fixed for most first year courses, though not for Arts, Law or Architecture.<sup>11</sup> In fact, the University of Melbourne has subsequently come to enrol much greater numbers of students than were then conceivable, by no means entirely as the result of the amalgamations which have been encouraged in the late 1980s by the Commonwealth Minister for Employment, Education and Training.<sup>12</sup> At 31st March 1989, its student population had reached 22,402, over 17,000 of whom were attending at the original university site.<sup>13</sup>

But, as a new major tertiary institution came to be considered for Victoria, there was at first no likelihood that it would have a faculty or department of law. What was being proposed, during the Second World War and for ten years afterwards, was an Institute or University of Technology. An institution of that kind, it was thought, would best serve Victoria's needs and meet the demand for the doctors, scientists, engineers and industrial managers who were in such short supply.<sup>14</sup> There was, after all, the precedent of the New South Wales University of Technology, established in 1949 and using initially the buildings and equipment of the Sydney Technical College. It did not become the University of New South Wales until 1958 and did not take its first law students until 1971.<sup>15</sup> Victoria seemed likely to follow that precedent, particularly when, on 21st November 1956, the Premier, the Hon. H.E. Bolte, actually gave notice of a motion for leave to bring in a Bill "relating to the establishment of a University of Technology".<sup>16</sup>

Not long afterwards, the Commonwealth government set up a Committee on Australian Universities, under Sir Keith Murray, and the Victorian government prepared a submission for the establishment, with Commonwealth assistance, of a University of Technology in Victoria. The University of Melbourne, however, submitted to the Committee that what was needed was a new university with a general charter and, to its credit, the Victorian gov-

<sup>9</sup> See p. 155 *infra*.

<sup>10</sup> *The University of Melbourne Calendar 1961*, 589.

<sup>11</sup> K.F. Russell, *The Melbourne Medical School 1862-1962* (Carlton, Melbourne University Press, 1977) 181. *The University of Melbourne Calendar 1961*, 589; 1960, 618.

<sup>12</sup> *Higher Education: a policy statement*, 41-8.

<sup>13</sup> Information from Mr Ian Dobson, Manager (Data and Statistics), University of Melbourne.

<sup>14</sup> Blackwood, *op. cit.* ch. 1.

<sup>15</sup> *Technical Education and New South Wales University of Technology Act 1949* (N.S.W.); *University of New South Wales Act 1958* (N.S.W.). *Report of the Committee of Inquiry into Legal Education in New South Wales (the Bowen Report)* (Sydney, Government Printer, New South Wales, 1979) paras 4.4.7 & 6.2.1.

<sup>16</sup> Victoria, 251 *Parliamentary Debates*, Legislative Assembly, 14.

ernment accepted that suggestion.<sup>17</sup> Mr Bolte proceeded no further with his Bill.

The Murray Committee, reporting to the Commonwealth government<sup>18</sup> in September 1957, and making a separate report to the Victorian government,<sup>19</sup> expressed the firm opinion that a new university should be established at Melbourne and that it should not be merely a university of technology.

“In the first place, it cannot be expected, whatever the provisions that are now made for new buildings, that the University of Melbourne will be capable of accommodating a student population much in excess of 12,000. That number will almost certainly be reached within seven years. Though pressure of first year numbers in the arts and basic sciences on existing departments may be relieved by the erection of a multi-storied building, accommodation in the library, the Union and in certain of the technological faculties must inevitably be over-taxed . . . .”

The members of the committee were of course thinking of students of the University being accommodated only at the original university site: the concept of a multi-campus university was not present to their minds. When they recommended the setting up of a new university, they were really thinking of a new campus: which meant to them — and to their contemporaries — a new university.

“Secondly, it is not possible, nor would it be desirable, for the University of Melbourne to attempt to meet future demand for graduates in both old and new technologies. . . . A modern and expanding industrial centre must have available to it facilities for undergraduate and graduate training and research in a wide variety of chemical and engineering technologies. These can only be provided in a second university. . . . Whatever the prime function of a new university, it must be of such a character that it can relieve substantially the pressure, not only on the Faculties of Science, Engineering and Medicine [sc. at the University of Melbourne], but also on many of the arts, such as history, English and psychology, and law, commerce and the social sciences. The association of these disciplines with the sciences and technologies would, we believe, be essential for the intellectual health of the new institution.”<sup>20</sup>

Nevertheless, when the Minister came to move the second reading of the Monash University Bill on 19th March 1958, he spoke of “establishing a new institution, to take, as its first charge, care of technological training at university level in this State”.<sup>21</sup> And when the Bill was passed as the *Monash University Act* 1958, these priorities were reflected in the order in which various branches of learning were listed in the first object of the University, as stated in s. 5:

<sup>17</sup> The Hon. J.S. Bloomfield, Minister of Education: speech on the second reading of the Monash University Bill: Victoria, 254 *Parliamentary Debates*, Legislative Assembly, 3699.

<sup>18</sup> *Report of the Committee on Australian Universities (the Murray Report)*, September 1957 (Canberra, Commonwealth Government Printer, 1957).

<sup>19</sup> There is a copy of this report in the Monash University Archives, file DA/1/0 “Provision of Funds — Murray Reports”.

<sup>20</sup> Murray Report, para. 315.

<sup>21</sup> Victoria, 254 *Parliamentary Debates*, Legislative Assembly, 3698.

“To provide facilities for study and education and to give instruction and training in all such branches of learning as may from time to time be prescribed by the Statutes, including, without limiting the generality of the foregoing, Pure Science, Applied Science and Technology, Engineering, Agriculture, Veterinary Science, Medicine, Law, Arts, Letters, Education and Commerce.”

But this object, and all the stated objects of the University, were amplified by an impressive requirement set out at the end of s. 5:

“and in the giving of instruction and training in any branch of learning the University shall aim to foster a desire for learning and culture and for a knowledge of the social and cultural as well as the technical and practical aspects of that branch of learning and an understanding of its relation to the whole field of human life and knowledge.”

It may be noted in passing that there is no provision of that kind in the later Victorian Acts which established La Trobe University and Deakin University.<sup>22</sup> Nor has there ever been such a provision in the legislation under which the University of Melbourne has operated.

Section 27 of the Act provided that there were to be faculties at the new University, but it did not specify their number or the branches of learning to which they should relate. The priorities were made explicit in s. 52:

“In determining the order of establishment of faculties within the University the Interim Council and the Council shall have regard to the urgent need for the establishment of courses in applied science and technology, and for the training of more engineers and scientists for industry and agriculture, and for the relief of those faculties in the University of Melbourne which have already reached or are approaching the stage at which limitation of the number of students is or will be necessary.”

The views of the government were explained further in a letter written by the Minister of Education, shortly before the Interim Council of the new university was to hold its first meeting, to Mr R.R. Blackwood, who had been appointed its Chairman.<sup>23</sup> The letter, in part, reads as follows:

“You and your Council will know that the establishment of Monash University follows the acceptance by the Government of the two reports of the Murray Committee . . . . You will also remember that the acceptance of the principles set out in these reports represented a departure from the previous intentions of this Government to establish a University of Technology in Victoria.

“We were persuaded to this change of thinking by the direction of attention to the difficulties of the University of Melbourne in providing for the general university requirements of the State at present, and, increasingly so, in the future. We were also much impressed by the principles enunciated in these reports which showed the need to avoid any tendency towards an excessively narrow and utilitarian form of education at University level. The advice of that distinguished Committee made two things clear. Not

<sup>22</sup> *La Trobe University Act 1964; Deakin University Act 1974.*

<sup>23</sup> J.S. Bloomfield to R.R. Blackwood, 18th June 1958 (copy attached to minutes of Interim Council Meeting, 19th June 1958: held by University Secretariat, Monash University).

only is there the need for another institution to promote generally culture and learning in the State; but we should also provide that those students whose aims are the attainment of high technological proficiency should acquire as far as practicable the advantages of University life and an understanding of the problems of people and peoples, during the course of their studies at the new University.

“At the same time it is appreciated that the maintenance of a proper standard of living, based on material welfare throughout the State, is an object to be served, and it can only be attained in the present day world by a State which has an adequate supply of highly trained individuals skilled in the application of advanced scientific methods to industrial processes. The Government realises that this latter need is grave in this State, and Monash University is to be looked to as a major source for its fulfilment.”

The Interim Council, at its first meeting on 19th June 1958, resolved that “the faculties of Engineering, Science and Medicine would be established first, followed closely by Arts, Commerce, Applied Science, Education and Law in that order”. Its Chairman has recorded that, in reaching this decision, the Council had regard to the requirements of s. 52 of the Act and to the departments most urgently in need of relief at the University of Melbourne.<sup>24</sup>

At or about this time, the Council decided that the first three faculties should begin teaching in 1961, Arts in 1962, Commerce and Applied Science in 1963, Education in 1964 and Law in 1965.<sup>25</sup> However, eighteen months later, the Australian Universities Commission, newly constituted by the Commonwealth government to advise it on the funding of universities, was urging Monash to begin teaching on a wider basis than had at first been intended: in particular to teach from the outset Arts and Economics, as well as Science.<sup>26</sup> That was in fact what happened when teaching began on 13th March 1961. There were from the outset five faculties: not only the Faculties of Science, Engineering and Medicine, as originally planned, but also the Faculty of Arts and the Faculty of Economics and Politics — one year ahead of plan in the case of Arts and two years ahead in the case of Economics.<sup>27</sup>

The Premier, Mr Bolte, had opened the University two days earlier, on 11th March, at a ceremony held on the paved area outside the main Science Building. Even then, the problem of the nature of the university was still in his mind. “You will remember”, he said to his audience,

<sup>24</sup> Blackwood, *op. cit.* 14.

<sup>25</sup> J.A.L. Matheson to V.F. Wilcox, 27 July 1960: Monash University Archives, file CF/230/0 “Proposed Faculty of Law — General”.

<sup>26</sup> Report on Meeting with Australian Universities Commission, 28th October 1959, (copy attached to minutes of Interim Council Meeting, 9th November 1959: held by University Secretariat, Monash University). [J.A.L. Matheson, Vice-Chancellor of Monash University], “Monash — Past, Present and Future”, *Chaos*, 4th March 1964, p. 15, col. b. *Chaos* was a Monash student newspaper; it attributes the authorship of the article to “One who should know”. J.A.L. Matheson, “Building a University: the Monash Story”, *Age* 6th April 1964, p. 2, col. b. Blackwood *op. cit.*, 49. Louis Matheson, *Still Learning* (South Melbourne, The Macmillan Company of Australia Pty Ltd, 1980) 5.

<sup>27</sup> Though whether those faculties were validly constituted is another matter: see pp. 163-4 *infra*.

“that prior to that Report [the Murray Report] being issued, a controversy was raging — and it’s happened since, of course — as to the nature of the new university, whether it be technology or traditional. . . .”<sup>28</sup>

The journalist Keith Dunstan, writing in the *Bulletin* three years later, commented:

“Originally Monash was meant to be a breeding ground for scientists and engineers. The first Vice-Chancellor is an engineer and, of course, the name of the University was taken from Victoria’s most famous engineer, Sir John Monash.”<sup>29</sup>

He might have added that the University’s Chancellor, Sir Robert Blackwood (as the Chairman of its Interim Council had by then become), was an engineer by training and experience and had indeed occupied for a time the chair in mechanical engineering at the University of Melbourne.

### PLANNING FOR THE FACULTY OF LAW

Sir Robert Blackwood explains, in his account of Monash University’s first ten years, that the Interim Council

“was unanimous that before any site works or buildings were designed in detail, and before any construction work began, there should be a carefully conceived master plan of the University when finally developed with a student body of 12,000.”<sup>30</sup>

In parenthesis, it may be noted that this was the figure which the Murray Committee had taken to be, effectively, the upper limit of the student body at the University of Melbourne: doubtless that was the reason it was adopted for Monash purposes.<sup>31</sup> It may be compared with the figures at 31st March 1989: 22,402 at Melbourne — over 17,000 of them at the original site, as mentioned earlier<sup>32</sup> — and 14,975 at Monash.<sup>33</sup>

At its meeting in February 1959, the Council endorsed a decision of its Buildings Sub-Committee to accept, for the purposes of the master plan, a distribution of students between faculties in proportion to that existing at the University of Melbourne. On this basis, considering only full time first-degree students, the enrolment in Law would be 930 out of a total enrolment of 8,000 students.<sup>34</sup>

<sup>28</sup> *Monash University Gazette*, vol. 1, no. 1, July 1964, 5.

<sup>29</sup> [J. Keith Dunstan], “Keeping Them Down on the Farm: Melbourne’s ‘other’ university”, *Bulletin*, 2nd May 1964, 19, 24. Dunstan wrote under the nom-de-plume “Batman”.

<sup>30</sup> Blackwood, *op. cit.* 25.

<sup>31</sup> *Fn.* 20 *supra*.

<sup>32</sup> *Fn.* 13 *supra*.

<sup>33</sup> Information from Dr Phillip Edwards, Planning Information Officer, Monash University.

<sup>34</sup> Report No. 1 of Buildings Sub-Committee (copy attached to minutes of Interim Council meeting, 9th February 1959: held by the University Secretariat, Monash University). Blackwood, *op. cit.* 26.

In 1964, Professor D.P. Derham's "A Plan for a New Law School" at Monash was to call for the fixing of the maximum size of the undergraduate student body at 1,200.<sup>35</sup> Actual undergraduate enrolments in all years of Law, in the 15 year period 1975–89, have averaged 1,430 a year: i.e. 20% more than the planned maximum.<sup>36</sup>

In May 1960, the Vice-Chancellor of Monash, Dr J.A.L. Matheson, received a letter from the Dean of the Faculty of Law at the University of Melbourne.<sup>37</sup> The Dean, Professor Zelman Cowen, explained that he and his colleagues were examining the question of a quota for admission to the Melbourne law school.

"I think it is overwhelmingly likely that our committee will recommend to the Faculty that a quota of just over 300 should be fixed for first-year entry in 1961. I do not know whether the Faculty will accept this, but if it does not I cannot see how we can carry on as an effective institution."

After referring to predictions of the numbers of applicants likely to be seeking entry to the Melbourne law school over the next few years, Professor Cowen continued:

"This means that in 1963 there will be more than 600 students seeking places in the Law School. If our quota is adopted, less than half of these will be accepted. . . . As I understand it, your plans do not envisage the establishment of a Law School until 1964. That delay may cause tremendous problems as the figures indicate, and I hope that you and your Council will think again about this. But whatever you do in respect of a starting date, I would suggest to you that you should set about getting a professor to head the School immediately. There are many things to be done."

He had in mind the need, first of all, to determine what shape the law course at Monash should take. Moreover, it would be necessary to negotiate with the Council of Legal Education, the body established by s. 13 of the *Legal Profession Practice Act* 1958 (Vic.) to determine the qualifications for admission to practise the law in Victoria. Naturally, it would be essential to have the Monash law course accepted by the Council as satisfying its requirements for the academic stage of legal education.

"Then you cannot start teaching without a reasonably good Law Library. This is not only expensive but it is hard to come by, and it would probably take quite some time before you had a library which would justify you in opening your doors to students."

On top of that, there was the problem of recruiting suitable staff. Professor Cowen went on:

"When Monash does set up its Law School it must be one which can compete on pretty fair terms with us. As you know I am not saying this with

<sup>35</sup> See p. 14 of "A Plan for a New Law School", Appendix "A" to the Report of the Professorial Board from its meeting of 26th November 1964, approved by the Council at its meeting on 14th December 1964.

<sup>36</sup> *Monash University Statistics*, annual editions 1975–88; as to 1989, information from Dr Phillip Edwards.

<sup>37</sup> Z. Cowen to Vice-Chancellor, 13th May 1960: Monash University Archives, file CF/230/0.

any illusions about our distinction, but it would be very bad for all of us if Monash were to be regarded as an overflow School. I am sure that you are deeply conscious of this problem. That is what makes it imperative to get a first class man as Head of the School from the very beginning and to get him now.”

He offered to meet Dr Matheson and talk about the matter further.

Matheson began his reply by saying “I have been expecting your letter, or something very like it, ever since I arrived”. He did not think the University could establish a Faculty of Law at this stage. He briefly contemplated the possibility that

“we could hire some buildings somewhere and operate off the site for a year or two but this would involve administrative complications that I would sooner avoid. Nor is it clear where the finance would come from.

“I think you’d better apply your quota — that would at least bring the urgency of the matter into the open.”<sup>38</sup>

The Vice-Chancellor reported the receipt of Professor Cowen’s letter to the next meeting of the Interim Council. The Council, having previously approved a plan under which the introduction of studies in law would take place in 1965,<sup>39</sup> considered that it would be difficult to bring the date forward, principally because of shortages of accommodation. At the request of the Council, the Vice-Chancellor subsequently discussed the matter with Professor Cowen, explaining the position but adding that an earlier start would be made if practicable. On further discussion, however, the Council felt unable to consider the establishment of any more Faculties until it became clear what financial provision would be made available by governments for developments of that kind.<sup>40</sup>

As has already been mentioned, the timetable for the establishment of the Faculty of Arts and the Faculty of Economics and Politics had already been advanced somewhat from the Council’s original plans, in response to the urging of the Australian Universities Commission.<sup>41</sup> On that occasion it was to be assumed, if indeed it was not made explicit, that the Commission would be advising the government to provide the necessary funds. No such assumption could be made in relation to an accelerated establishment of the law faculty.

Nevertheless, the University was not allowed to forget the matter. In July, Mr Vernon Wilcox, the senior partner in a firm of city solicitors and a Member of the Legislative Assembly, wrote to the Vice-Chancellor with a copy of a speech he had made in the Assembly, in which he urged university authorities to improvise, in an effort to meet the demand for places in law and other disciplines.<sup>42</sup> The President of the Law Institute wrote to the Vice-Chancellor in November, expressing the hope that a law school would be

<sup>38</sup> J.A.L. Matheson to Z. Cowen, 24th May 1960: file CF/230/0.

<sup>39</sup> See p. 144 *supra*.

<sup>40</sup> Council minutes, 20th June & 8th August 1960.

<sup>41</sup> Fn. 26 *supra*.

<sup>42</sup> V.F. Wilcox to Vice-Chancellor, 25th July 1960: Monash University Archives, file CF/230/0. Victoria, 260 *Parliamentary Debates*, Legislative Assembly, 18th May 1960, 3007.

established at Monash at the earliest possible opportunity and offering assistance.<sup>43</sup> Sir Edmund Herring, the Chief Justice of the Supreme Court of Victoria, also wrote to the Vice-Chancellor in November, in his capacity as President of the Council of Legal Education, communicating a resolution of the Council which urged "that the Monash University commence the teaching of law and the holding of examinations in law subjects at the earliest possible time".<sup>44</sup>

As a result of this correspondence, and other representations by word of mouth, the Vice-Chancellor reported to the Professorial Board in November 1960 that pressure for the establishment of the Faculty of Law was increasing. In the following month, he formally asked the Board to express an opinion on the matter. He indicated that if the proposal was approved, the teaching of Law would begin in 1963 and suggested that a chair of law be filled in 1961. In making that suggestion, he was no doubt adopting the advice of Professor Cowen, of the Melbourne law school,<sup>45</sup> and had in mind that the person appointed would be able to devote some or all of 1962 to the necessary preparations. The Board resolved

"that a Faculty of Law be the next Faculty to be established and that this should be done in 1963, provided that it did not retard the development of the present Faculties and that the necessary additional finance be made available."<sup>46</sup>

This resolution was reported to the Council but the proposal went no further at that stage, presumably because no additional finance was made available.<sup>47</sup> But the need for a second Victorian law school became even more apparent a few months later.

Law had been taught at the University of Melbourne since 1857, the Faculty of Law being established in 1873. For more than a hundred years "the University" (as it was naturally referred to — and indeed sometimes still is) had met the demand for legal education in Victoria. But at the beginning of 1961 it was driven to impose, for the first time, a quota on the admission of law students.<sup>48</sup> It is not easy, in 1989, for anybody under the age of forty-five to grasp that, until 1961, anyone who had passed the matriculation examination could enrol in Law at Melbourne on request.

For 1961, the quota was fixed at 330; and 30 suitable applicants were refused a place. In the following year, with the same quota, 182 were refused a place<sup>49</sup> — and the profession became alarmed. Mr Hulbert A. Greening, the President of the Law Institute of Victoria and ex-officio a member of the

<sup>43</sup> G.C. Wyatt to Vice-Chancellor, 8th November 1960: file CF/230/0.

<sup>44</sup> E.F. Herring to Vice-Chancellor, 10th November 1960: file CF/230/0.

<sup>45</sup> See p. 146 *supra*.

<sup>46</sup> Professorial Board minutes, 29th November & 1st December 1960.

<sup>47</sup> Council minutes, 12th December 1960.

<sup>48</sup> The reasoning on which the decision was based appears from a long memorandum, prepared in the Faculty of Law at the University of Melbourne and headed "Limitation of Numbers — 1961", a copy of which Professor D.P. Derham attached as Appendix II to his "A Plan for a New Law School" dated 7th August 1964: Professorial Board minutes, 26th November 1964.

<sup>49</sup> Peter Trumble, "The Council of Legal Education Course" (1963) 37 L.I.J. 144, 145.

Melbourne Law Faculty, recognised, in his presidential address on 6th March 1962, that

“this quota system is something which the University had absolutely no alternative but to impose having regard to facilities of accommodation, teaching staff and the like in relation to the number of would-be-lawyers.”

He went on, however, to draw attention to the heart-burning and disappointment felt by unsuccessful applicants and their parents. “In particular”, he said,

“the Solicitor-Father who from his Son’s cradle days looked forward to the Son following in his footsteps and joining him in practice in years to come must be almost heart broken and this year at least, there were such instances.”

Mr Greening could see no solution to the problem, but for the profession to institute “*immediately*” a system of tuition in law, which would entitle those who completed examinations policed by the University to practise, at least as solicitors. He continued by emphasising the need of solicitors for more qualified staff — “I believe that we are the most overworked profession of all professions” — and said he believed that “if there were 50% more admittees each year than at present, they could all be absorbed into the profession in this ever growing State of Victoria”.<sup>50</sup>

As Sir Louis Matheson recalls, it was in these circumstances that, in March 1962, he was

“waited upon by a formidable deputation from the legal profession. It had just been realized that Melbourne University’s distinguished Law School was full and that the children of lawyers could no longer rely on being accepted as students. Was not Monash intended to cope with just this sort of situation? It certainly was; but there was more to it than a mere matter of numbers.”<sup>51</sup>

It seems clear that the catalyst for the sudden pressure brought to bear on Monash at this stage was the realisation referred to in that passage. However, if Mr Greening was right — and later experience suggests that he was — the profession was genuinely in need of recruits; and the Victorian government, by accepting the recommendations of the Murray Committee, had recognised the need of the community for more university graduates, including graduates in law.<sup>52</sup> The deputation from the legal profession urged on the Vice-Chancellor that Monash should establish a Faculty of Law to begin teaching in 1963.<sup>53</sup> That was of course no more than he had himself suggested to the Professorial Board in December 1960.<sup>54</sup> But clearly considerations of accommodation and finance precluded Monash from committing itself to do so

<sup>50</sup> Hulbert A. Greening, “Presidential Address” (1962) 36 L.I.J. 145, 147–8.

<sup>51</sup> Matheson, *Still Learning*, 16.

<sup>52</sup> Fn. 23 *supra*.

<sup>53</sup> Council minutes, 19th March 1962.

<sup>54</sup> Fn. 46 *supra*.

within twelve months.<sup>55</sup> Moreover, how could Monash assemble the necessary staff and prepare the necessary subjects in so short a time?

A partial answer to that question is, that the Council of Legal Education did itself assemble the necessary staff and prepare the necessary subjects then and there. The Council's course, "conceived in compassion",<sup>56</sup> was hurriedly devised in response to what was seen as an emergency. Conducted by barristers and solicitors in rooms made available by the Royal Melbourne Institute of Technology, it began in April 1962 — thus satisfying Mr Greening's requirement of immediacy. It accepted as students only those who had been excluded from the Melbourne law school by the operation of the quota: 51 students, out of the 182 excluded, actually enrolled.<sup>57</sup> They were permitted to use the Supreme Court Library and the library of the Law Institute of Victoria.<sup>58</sup>

That is not however a complete answer to the question. The decision of the Council of Legal Education was opposed by its members representing the Victorian Bar Council, the Law Institute and the University of Melbourne.<sup>59</sup> That is to say, the decision was effectively that of the judges of the Supreme Court (led by the Chief Justice, Sir Edmund Herring) who, in numbers if not otherwise, dominated the Council.<sup>60</sup> They were motivated, no doubt, by sympathy for the disappointed applicants and their parents, of the kind expressed by Mr Greening in his address quoted above.<sup>61</sup> No doubt they earned the gratitude of the 545 individuals who qualified for admission to practise, by completing the Council's course, during the period of 21 years for which it operated;<sup>62</sup> and of those others who, after taking some subjects in the Council's course, managed to transfer to the Monash law school and complete there the Council's academic requirements for admission.

But for Monash there was no ready solution of the kind adopted, albeit with considerable effort, by the Council of Legal Education. As Matheson puts it,

"The Melbourne Faculty of Law had an enviable reputation and, over the years, had produced judges and scholars of great distinction. In this situation the second law school in Victoria would have to tread delicately and could certainly not run up a makeshift outfit simply to cope with a numerical crisis. The Monash faculty, if it was to meet the serious aspirations of possible students, would have to be professionally impeccable and recognized as having an original flavour of its own. The key to this would be the appointment of a dean who would command the respect of the legal pro-

<sup>55</sup> Blackwood, *op. cit.* 91.

<sup>56</sup> Willard H. Pedrick, "A Learned Profession?" (1963) 4 M.U.L.R. 167, 178.

<sup>57</sup> *Tertiary Education in Australia. Report of the Committee on the Future of Tertiary Education in Australia to the Australian Universities Commission, August 1964 (the Martin Report)* (Canberra, Commonwealth Government Printer, 1965) vol. II, 62-3. David P. Derham, "Legal Education in Victoria", 1 *The Australian Bar Gazette*, No. 4, December 1964, 6. Peter Balmford, "Changing Patterns in Enrolments at Victorian Law Schools and their Consequences for the Profession" (1981) 55 L.I.J. 507, 507-8.

<sup>58</sup> Trumble, *op. cit.* 145.

<sup>59</sup> Anon., "Legal Education" (1962) 36 L.I.J. 178.

<sup>60</sup> *Legal Profession Practice Act 1958* (Vic.), s. 13.

<sup>61</sup> Fn. 50 *supra*.

<sup>62</sup> Balmford, *op. cit.* 512; further information from Mr L.N. Rutherford, Royal Melbourne Institute of Technology.

fession and would also be able to create from scratch a law school with its own individual style and excellence.”<sup>63</sup>

When the Vice-Chancellor reported to the Monash Council that he had received the deputation from the legal profession, it appointed a sub-committee to meet representatives of the profession.<sup>64</sup> By the time the sub-committee met representatives of the Council of Legal Education, that body had already decided to establish its own course, but none the less it urged Monash to establish a law course immediately. Moreover, the sub-committee was informed of an offer from the Victorian Bar Council, made in an attempt to discourage the formation of a separate law school outside the universities. The Bar Council was prepared to find barristers who would teach the excluded students in professional subjects, and to make library facilities available to them. This would be on the basis that Monash would take the students over when its law faculty was established. The Bar Council had hoped that its offer could be accepted for 1962; but, now realising that to be impossible, it was still anxious for the proposal to be put into effect for 1963, if Monash could not itself begin teaching in that year.<sup>65</sup>

A leading member of the Victorian government was now pressing for Monash to begin teaching law. The Hon. A.G. Rylah, the Chief Secretary and himself a solicitor, was reported as saying, when announcing the establishment of the Council of Legal Education course, that

“the immediate creation of a faculty of law at Monash University was essential to meet the demand for trained barristers and solicitors in the community”.<sup>66</sup>

The sub-committee, however, thought that the most Monash could do would be to appoint a dean of law as soon as possible “and to look to him for advice regarding the nature of the Course and the date of its introduction”.<sup>67</sup> As Mr P.V. Feltham, another solicitor and a member of the Monash Council and of the sub-committee, had written to the Vice-Chancellor: “the Council should not experiment with the Faculty before the Dean is appointed”.<sup>68</sup>

The Professorial Board in its turn considered the request from the Council of Legal Education and the offer of assistance from the Bar. According to the minutes of its meeting,

“It seemed reasonably certain that no additional money could be attracted for the purpose of starting a law school and, indeed, there were, in any event, objections to soliciting earmarked grants from governmental sources.”

The minutes also record that, in the discussion,

<sup>63</sup> Matheson, *Still Learning*, 16.

<sup>64</sup> Council minutes, 19th March 1962.

<sup>65</sup> Professorial Board minutes, 28th March 1962.

<sup>66</sup> *Age*, 23rd March 1962, p. 10, col. h.

<sup>67</sup> Council minutes, 9th April 1962; Blackwood, *op. cit.* 92.

<sup>68</sup> P.V. Feltham to J.A.L. Matheson, 2nd April 1962: Monash University Archives, file CF/230/0.

“Some members were apprehensive that embarking upon the establishment of a new Faculty at this stage would add to the already formidable financial difficulties with which the University was faced. The contrary view was also argued, that a university, by its nature, was never in the position of saying that it had all the money it needed for its present purposes and could therefore look to new fields. New fields, it was argued, would need to be developed, even though existing Faculties or Departments had less than they might like.”

In the end, the Board agreed to recommend “that a Dean of the Faculty of Law be appointed as soon as possible, with the first duty of reporting to the Council upon the best way of establishing a Faculty of Law;” and that “law students should not be accepted until adequate additional finance is available”.<sup>69</sup>

At its meeting on 9th April 1962, the Council approved the first of these recommendations; noted the second; and resolved to proceed immediately with the appointment of a Dean of the Faculty of Law. On this basis, teaching of law would begin in 1964.<sup>70</sup>

The timing of that decision was fortunate. The University’s submission to the Australian Universities Commission, for funds in respect of the 1964–66 triennium, had to be lodged by the end of the month (April 1962). The Vice-Chancellor was able to include, in a revised submission, provision for the staff and buildings which would be necessary, if the Council’s decision was to be implemented.<sup>71</sup> In the revised submission, dated 12th June 1962 and approved by the Council at its meeting on 9th July, the Vice-Chancellor wrote:

“It is intended to proceed at once to the appointment of a Dean of Law and to await his advice on the best way of starting the Faculty at Monash. The location of this University makes it impossible to run courses on similar lines to those at the University of Melbourne and it may be necessary to run ‘pre-clinical’ courses in subjects such as jurisprudence at Monash and ‘clinical’ courses in the professional subjects at some centre near the Law Courts.”<sup>72</sup>

The problems arising from the relative remoteness of the University, foreseen by the Vice-Chancellor, are discussed later in this article.<sup>73</sup>

Table A shows the estimates, as given in the revised submission, of enrolments in law during the triennium.<sup>74</sup> The estimates may be compared with the actual enrolments in that period, which are shown in the last column.<sup>75</sup>

Table B shows the estimates, as given in the revised submission, of the number of academic staff required during the triennium.<sup>76</sup> The estimates may

<sup>69</sup> Professorial Board minutes, 28th March 1962.

<sup>70</sup> Council minutes, 9th April 1962. Report of Council 1962, *Monash University Calendar* 1964, 395.

<sup>71</sup> Monash University, Revised Submission to Australian Universities Commission Questionnaire 1964–66 Triennium, June 1962 (this work is cited hereafter as “Revised Submission”) (copy in Monash University Library); Blackwood, *op. cit.* 100.

<sup>72</sup> Revised Submission, 8.

<sup>73</sup> See p. 168 *infra*.

<sup>74</sup> Revised Submission, 41.

<sup>75</sup> The actual enrolments are taken from the Report of Council for the relevant year, as printed in the appropriate issue of the *Monash University Calendar*.

<sup>76</sup> Revised Submission, 18.

TABLE A  
ENROLMENTS IN LAW 1964-66, AS ESTIMATED IN JUNE 1962,  
COMPARED WITH ACTUAL ENROLMENTS

Year	Estimated	Actual
1964	100	149
1965	260	303
1966	505	392

TABLE B  
ACADEMIC STAFF REQUIRED 1963-66, AS ESTIMATED IN JUNE  
1962, COMPARED WITH ACTUAL NUMBER OF STAFF MEMBERS

Year	Professors	Senior Lecturers	Tutors	Estimated Total	Actual Total
1963	1(Dean)	-	-	1	-
1964	1	9	2	12	7
1965	1	18	5	24	10
1966	2	30	10	42	19

be compared with the actual number of members of staff during that period, as shown in the last column.<sup>77</sup>

The revised submission of June 1962 somewhat underestimated enrolments for the first two years; but overestimated them for the third year, when the student intake had to be reduced because of insufficient accommodation.<sup>78</sup> The estimated size of the academic staff was, in all three years, greater than the size of the staff appointed. Possibly the estimate had been fixed on the high side, in the expectation that the Universities Commission would be sure to recommend a lower level of funding than that requested. Doubtless, fewer staff were appointed than had been planned, when it became clear that the student body was to be smaller than had been expected.

The absence in the estimates of any provision for lecturers is presumably the reflection of a belief that appointments at a level below that of senior lecturer would not, for financial reasons, attract applicants of standing and attainments. Hitherto, the University of Melbourne had never made a permanent appointment in the Faculty of Law at the level of Lecturer.<sup>79</sup> Admittedly, there had only been three appointments at the level of Senior Lecturer before 1950: the Faculty had always relied heavily on the Independent Lecturers — members of the practising profession, for whom teaching was very much a part-time activity.

<sup>77</sup> The actual numbers of members of staff are taken from the Report of Council for the relevant year, as printed in the appropriate issue of the *Monash University Calendar*.

<sup>78</sup> Report of the Council for 1966, *Calendar of Monash University* 1968, 840.

<sup>79</sup> Professor Derham's "A Plan for a New Law School" dated 7th August 1964, 12: Professorial Board minutes, 26th November 1964.

The Interim Council's building programme for the 1961–63 triennium, approved by the Australian Universities Commission and by the Commonwealth and State Governments, had included an Arts block which would house Law, as well as Arts, Economics and Education.<sup>80</sup> This was the building which came to be referred to as the "Humanities Building" and which, in 1961, was officially named "The Robert Menzies School of Humanities".<sup>81</sup> The revised submission included, as part of the University's capital building programme for the 1964–66 triennium, a proposal for extensions to the "Arts block", only the west wing of which had by then been erected.

"A very economical solution to the problem of providing accommodation for Law and Human Sciences (Psychology, Geography, Anthropology, Sociology) has been found: a wing projecting south from the centre of the Robert Menzies building is proposed which will make use of the escalators now under construction. No further vertical transport (except escape stairs) is required."<sup>82</sup>

The extension proposed was a T-shaped block: the stem, of eleven stories, running south from the centre of the Menzies building and the cross-piece, of two stories, running east-west, with rather more of it to the west (roughly where the law building now is) than to the east.<sup>83</sup> Law was to occupy floors 1, 2 and 3 of the stem, the ground floor of the cross-piece and its upper floor on the west.<sup>84</sup>

However in July 1962, not long after the revised submission had been lodged, members of the Australian Universities Commission visited the University to discuss it. Their approach was described by the Chancellor as being "friendly and constructive"; but, he said, they indicated that they would not be providing funds for a Law Building in the 1964–66 triennium:

"they were being asked to finance Law Buildings or extensions of Law Buildings in two other Universities including the University of Melbourne and thought that a Law School in Monash could begin in the Arts Building. . . ."<sup>85</sup>

It was not until early November 1963 — sixteen months later, and a mere four months before teaching in law was due to start — that the government's decisions on the Commission's recommendations for the triennium were published.<sup>86</sup> The recommendations were contained in its Second Report, delivered to the Prime Minister under cover of a letter dated 27th August 1963.<sup>87</sup> The Commission reported that

"the greatest pressures of student demand in Victoria are in the Faculties of Medicine, Arts, Law and Commerce . . . . The immediate demands in Law

<sup>80</sup> Report of the Interim Council June 1958-July 1961, *Calendar of Monash University 1964*, 371–2. Blackwood, op. cit. 191–3

<sup>81</sup> Council minutes, 10th July 1961.

<sup>82</sup> Revised Submission, 82, 85, 89, 103–8. Blackwood, op. cit. 102, 105.

<sup>83</sup> The proposed extension is shown on a site plan reproduced by Blackwood, op. cit. 101. An earlier proposal is shown in Blackwood, op. cit. 193.

<sup>84</sup> Revised Submission, 89.

<sup>85</sup> Council minutes, 13th August 1962. Blackwood, op. cit. 94, 105–6.

<sup>86</sup> Blackwood, op. cit. 103.

<sup>87</sup> The letter is printed at the beginning of the Report.

should be met when Monash University establishes a Faculty of Law early in the 1964–66 triennium.”

and went on to say:

“Despite the Commission’s proposals for the 1964–66 triennium, the resources of Melbourne and Monash Universities are not likely to meet long-term demands for university education in Victoria beyond 1966. The Commission, therefore, is willing to support in the 1964–66 triennium the extension of university facilities in the Melbourne metropolitan area.”<sup>88</sup>

So, in the result, sufficient funds were made available to enable the teaching of law to begin at Monash University in 1964, but not of course for the erection of a new building. The establishment of the third Victorian university (La Trobe) — which is what the Commission meant, in speaking of “the extension of university facilities” — is not a matter for consideration here: but an understanding of events at Monash is assisted by recalling the pace of contemporary expansion of university education generally, in Victoria and elsewhere.

#### THE CONCERN THAT UNIVERSITIES SHOULD BE OPEN TO ALL

Mention has already been made of the belief, widely held in Australia in the late 1950s and early 1960s, that any course at a university should be open to all who were qualified for it and wished to undertake it.<sup>89</sup> That belief was really no more than a putting into words of what had always been the situation. Mr Vernon Wilcox, in his speech to the Legislative Assembly in 1960 already referred to,<sup>90</sup> put it this way:

“Students who reach the matriculation standard, and thereby qualify for admission to a university, are entitled to obtain a university education, and it is an infringement of their rights to deny them this opportunity.”

The prompt response of Mr Greening, and that of the Council of Legal Education, to the imposition of a quota for the admission of law students to the University of Melbourne, were striking manifestations of the belief.<sup>91</sup>

The ideal view was put forward in the memorandum, prepared in the Faculty of Law at the University of Melbourne, which led to the imposition of that quota.

“We believe ideally that the University should open its doors to every young man and woman who possesses the minimum educational qualification to use the opportunities provided by the University and that the community should make this economically possible for those genuinely handicapped by insufficient means. A quota is a confession of failure by the

<sup>88</sup> *Second Report of the Australian Universities Commission: Australian Universities 1961–66* (Canberra, Commonwealth Government Printer, 1963) 16, 92–3.

<sup>89</sup> See p. 141 *supra*.

<sup>90</sup> Fn. 42 *supra*.

<sup>91</sup> Fn. 50 and fn. 57 *supra*.

community to provide as it should. It is an evil. If it were avoidable it should not be adopted."<sup>92</sup>

The memorandum went on to argue forcibly that nevertheless, for practical reasons to do with accommodation and teaching facilities, the University of Melbourne ought to impose a quota for the admission of law students.

Similarly, in 1963, the report of the Ramsay Committee to the Victorian government:

"We consider . . . that as Australia can use, and in fact needs to use, the fully developed talents of all its citizens, no restriction should be placed on the numbers undertaking university studies of any kind, provided that applicants reach the required admission standards, and make satisfactory progress in their studies;

" . . . The imposition of 'quotas' in recent years, even though some of them have either not been filled, or do not appear to have turned any students away, has already had an upsetting effect on intending students. It has produced and is producing an anxiety in many students at school that is not in the best interests of their education. Quotas are making it unduly difficult for many students to plan their post-school education wisely in advance. They are preventing some students who deserve the opportunity from attempting university work.

"In a country rich in resources and initiative, and so much in need of further developed talent as we are sure Australia is, the need to exclude students from university education should not be accepted. . . ."<sup>93</sup>

So too the Martin Report in 1964:

"The Committee agrees with the view (widespread in Australia) that higher education should be available to all citizens according to their inclination and capacity. Such a view accords with the aspirations of individuals and serves the needs of the community in promoting dynamic economic growth".<sup>94</sup>

An editorial in the *Age* newspaper, on 8th December 1965, went further, in suggesting that governments and universities were at fault in allowing the education system to get to the stage where quotas became necessary.

"The quota system has been an academic fact of life for some years, and *threatens to remain so for several years to come*. The short explanation is that the explosive demand for higher education throughout Australia caught Governments and universities unprepared, particularly in Victoria. The pressure is still growing. . . . This unprecedented demand for learning may explain, but does not excuse, the failure of the education system to cope with it."<sup>95</sup> [emphasis added]

<sup>92</sup> See p. 1 of the memorandum. It was attached as Appendix II to Professor Derham's "A Plan for a New Law School" dated 7th August 1964: Professorial Board minutes, 26th November 1964.

<sup>93</sup> *The Development of Tertiary Education in Victoria 1963-72. Report and Recommendations of the Committee for Development of Tertiary Education in Victoria, (the Ramsay Report)*, August 1963 (Melbourne, Government Printer, 1963) 16.

<sup>94</sup> *Tertiary Education in Australia. Report of the Committee on the Future of Tertiary Education in Australia to the Australian Universities Commission, August 1964 (the Martin Report)* (Canberra, Commonwealth Government Printer, 1965) vol. 1, 1, 11-12.

<sup>95</sup> *Age* 8th December 1965, p. 2, col a.

In so far as a newspaper editorial may be said to reflect public opinion, it is apparent that even by the end of 1965 the public had not grasped the reality of the quota system. As Professor Derham put it in 1967: "Quota restrictions on entry to Victorian universities are not emergency measures but are with us forever".<sup>96</sup>

There has been a quota for admission to law at the University of Melbourne in each year since one was first imposed in 1961. The Council of Legal Education had expected that there would be no need for its course at all, once teaching of law had begun at Monash University. But in fact, admission to law at Monash has always been subject to a quota and, as at Melbourne, the demand for places has never been met. In 1970, the Council of Legal Education was itself forced to impose an entry quota for its course, and continued to have one until entry was discontinued altogether in 1978.<sup>97</sup> However, as was said, about this time, of another university in another part of the world,

"Further expansion of student numbers was inevitable even without conceding the point that a university education was the right of every student passing the matriculation examination."<sup>98</sup>

#### THE CONCERN ABOUT STANDARDS IN A NEW INSTITUTION

When it became clear, in the late 1950s, that a second university was to be established in Victoria, there were some fears that standards at the new university would not be appropriately high. The draftsman of the *Monash University Act 1958* (Vic.) sought to allay those fears by including, as one of the objects of the University, s. 5 (c):

"To confer after examination the several degrees of Bachelor Master and Doctor and such other degrees and diplomas as are prescribed by the Statutes but so that the standard for graduation in the University shall be at least as high as prevails in the University of Melbourne". [emphasis added]

The qualification in s. 5 (c), emphasised above, is perhaps ingenuous. Professor Legge refers to it as "a somewhat quaint provision".<sup>99</sup> But a concern for standards was natural, bearing in mind the place in the Victorian community that the University of Melbourne had held for so long.

<sup>96</sup> D.P. Derham, "Problems of University Selection; The Story of a Quota" (1967) 1 *Ormond Papers* (3) 45.

<sup>97</sup> R.L. Sharwood, "The Training of Lawyers Outside Universities" in Rosemary Balmford (ed.), *Legal Education in Australia* (Melbourne, Australian Law Council Foundation, 1978) 307, 311.

<sup>98</sup> Francis Stock, "A New Beginning" in Brian Harrison (ed), *University of Hong Kong: the first 50 Years 1911-1961* (Hong Kong, Hong Kong University Press, 1962) p. 89.

<sup>99</sup> John Legge, "Monash: The first XV years: One Man's View", *Monash Reporter*, 3 November 1975, Supplement, 4. See also John Legge, "Monash — Then and now", in *Monash University 1961-1986 The First 25 Years* (Clayton, Monash University Information Office, 1986) 5, 8. The second article is a reprint of the first, with some small alterations and a few new paragraphs.

“The University” had stood for more than a century as an important part of the ordered scheme of Victorian institutions. It was described in 1939, by an historian of education, as “the crown of the Victorian educational edifice and ‘the top of its ladder’ ”.<sup>100</sup> For many years, it had been the arbiter of educational standards in Victoria, at both tertiary and secondary level. It had constituted, by statute, the Technical Colleges Board, through which it recognised approved colleges, and the Schools Board, which exercised “a general control over the conduct of all Public Examinations and School Inspections and Examinations”.<sup>101</sup>

The new university could hardly be subordinated to the old one: but would its standards be appropriately high?

The same kind of concern, as that expressed about the new university, may be seen in the address by Mr Greening, to which reference has already been made. The examinations required, under his proposed system of tuition in law by members of the profession, were to be “policed by the University”.<sup>102</sup> Similarly with an anonymous writer in the *Law Institute Journal* in May 1962:

“It is of course essential that those taking part in the Council of Legal Education scheme should attain the same standard of education as students at the University and the Council [sc. of the Law Institute] is therefore pleased to note that for the current year the Faculty of Law has agreed to examine these students at the same examination as students taking the Law course at the University.”<sup>103</sup>

That was what in fact happened at the end of 1962.<sup>104</sup>

The provision in s. 5 (c) of the *Monash University Act*, as to the standard for graduation being “at least as high as prevails in the University of Melbourne” was of course no more than an object. One can understand how Parliament came to prescribe it, but it can hardly have any specific practical effect. How can one university, with any precision, ascertain and measure the standards prevailing at another university and then itself apply them? Fortunately, the provision was not a mandatory one and was not to be supported by formal inspections or penal sanctions. The substantive power to confer degrees and diplomas, contained in s. 23 of the Act, was not subject to any qualification as to standards.

The Vice-Chancellor handled the matter neatly, in the course of his address to the new graduates, at the first Monash conferring of degrees on 8th April 1964:

“Our Act requires that ‘the standard for graduation in the University shall be at least as high as prevails in the University of Melbourne.’ There is, of course, no ready way of auditing our work to make certain that we have really satisfied this criterion, but before long our degrees will begin to have a

<sup>100</sup> D.H. Rankin, *The History of the Development of Education in Victoria 1836–1936* (Melbourne, The Arrow Printery Pty. Ltd., 1939) 243.

<sup>101</sup> See, for example, *The Melbourne University Calendar 1939*, 117–22; *The University of Melbourne Calendar 1961*, 130–3.

<sup>102</sup> Fn. 50 *supra*.

<sup>103</sup> Anon., “Legal Education” (1962) 36 L.I.J. 178.

<sup>104</sup> Peter Trumble, “The Council of Legal Education Course” (1963) 37 L.I.J. 144, 145.

certain reputation which will depend upon your reputation. Reputations are slow to build and quick to destroy: you carry a great responsibility.”<sup>105</sup>

An echo of the same concern may be seen in another judgment by Sir Louis Matheson, in his book *Still Learning*, in relation to what he sees as an inevitable “retreat from educational innovation” at Monash:

“Monash was designed to grow very rapidly, and it was in a competitive situation. Melbourne University, with more than a century of achievement behind it, was the standard by which the new university would be judged by a traditionalist society which, suspicious enough of a brash newcomer, would vote with its feet if Monash was too unconventional.”<sup>106</sup>

This “retreat” — to a development along largely traditional lines — is one of the reasons put forward for regarding Monash as the last of the old universities, rather than the first of the post-Murray new ones.<sup>107</sup> It is not to detract from the force of that aphorism, to say that the Monash law school became the first of the law schools of the second round. In other words, Victoria was the first of the Australian states to have a second university law school.

Fears about standards at the Monash law school had been allayed entirely, so far as the legal profession was concerned, by the announcement in October 1963 that Professor David P. Derham had been appointed as Foundation Dean of the Faculty of Law. But even he thought it desirable to write in his annual report for 1964, the first year of teaching, “The annual examination results in the law courses were satisfactory and were comparable with the results in similar courses at the University of Melbourne.”<sup>108</sup> That statement does of course carry the authority of one who had taught and examined at the Melbourne law school for fifteen years.

The 1964 Act which established La Trobe University<sup>109</sup> contained in s. 5 (b) (iv) a provision similar to that contained in s. 5 (c) of the *Monash University Act 1958* and discussed above:

“... but so that the standard for graduation in the University shall be at least as high as prevails in the University of Melbourne and in Monash University.”

The wording of that provision might almost be taken as a legislative recognition that by 1964 the one standard did in fact prevail at Melbourne and Monash.

Ten years later, the Act establishing the fourth Victorian university, Deakin, contained no comparable provision.<sup>110</sup> Perhaps it was thought that,

<sup>105</sup> *Monash University Gazette*, vol. 1 no. 1, July 1964, 4.

<sup>106</sup> Matheson, *Still Learning*, 9.

<sup>107</sup> Legge (see fn. 99 supra): (1975) pp. 1, 2; (1986) pp. 4, 14. John Rickard, “Monash: the ‘University-in-a-hurry’” in F.W. Kent & D.D. Cuthbert (ed.), *Making Monash: a Twenty-five Year History* (Clayton, Monash University, 1986) 6, 10. Matheson, *Still Learning*, 171.

<sup>108</sup> Report of the Council for 1964, *Calendar of Monash University 1966*, 622.

<sup>109</sup> *La Trobe University Act 1964* (Vic.).

<sup>110</sup> *Deakin University Act 1974* (Vic.).

by that time, the community had become accustomed to the idea of there being more than one university in Victoria; and that consequently there was no need for such a provision.

### THE APPOINTMENT OF THE FOUNDATION DEAN

At its meeting in May 1962, the Council endorsed a suggestion from the Professorial Board that a Committee be established, to consider the drafting of the advertisement for a Dean and the ultimate appointment to be recommended.<sup>111</sup> A committee of ten was appointed, comprising the Deputy Chancellor (Mr Michael Chamberlin); the Vice-Chancellor; three members of the Council who were lawyers: Sir George Paton, who had been Professor of Jurisprudence at the University of Melbourne and was now Vice-Chancellor of that university, the Hon. P.V. Feltham, a solicitor and Member of the Legislative Council, and Mr J.A. Forrest, a solicitor and company director; the Dean of the Faculty of Arts and the Dean of the Faculty of Economics and Politics; and three other professors: S.R. Davis (Politics), J.D. Legge (History) and A.K. McIntyre (Physiology).

Financial difficulties at Monash, and the warning from the Australian Universities Commission, in July 1962, that it would not be providing funds for a law building in the 1964–66 triennium,<sup>112</sup> led to delay.<sup>113</sup> There was “a sharp division of opinion” on the committee “as to whether we should take immediate steps to establish the Faculty or wait until our financial position in the 1964–66 triennium is known”.<sup>114</sup> The committee decided to seek advice as to “the sort of costs which we might be faced with in each of the first few years” from Professor Zelman Cowen and Professor David P. Derham, both of the Faculty of Law at the University of Melbourne.<sup>115</sup> Their replies did not come to hand until shortly before Christmas.<sup>116</sup> Estimates were obtained from Mr George Alcorn, the Supreme Court Librarian, (who had consulted the librarian of the University of Melbourne) as to what it might cost to establish an appropriate law library.<sup>117</sup> In consequence of all this, the Deanship was not advertised until early in 1963,<sup>118</sup> and the selection committee did not meet to consider applications until May.<sup>119</sup>

In July, the committee was given authority to offer the position without prior reference to the Council,<sup>120</sup> and it then decided to approach Professor

<sup>111</sup> Professorial Board minutes, 2nd May 1962; Council minutes, 14th May 1962.

<sup>112</sup> *Fn.* 85 *supra*.

<sup>113</sup> Council minutes, 13th August 1962.

<sup>114</sup> Selection committee minutes, 24th October 1962; J.A.L. Matheson to E.F. Herring, 31st October 1962: Monash University Archives, file CF/230/0.

<sup>115</sup> J.A.L. Matheson to Z. Cowen, 29th October 1962; J.A.L. Matheson to D.P. Derham, 29th October 1962: file CF/230/0.

<sup>116</sup> Z. Cowen to Vice-Chancellor, 19th December 1962; D.P. Derham to Vice-Chancellor, 21st December 1962: file CF/230/0.

<sup>117</sup> G. Alcorn to P.V. Feltham, 31st October 1962; P.V. Feltham to Registrar, 8th November 1962: file CF/230/0.

<sup>118</sup> File CF/230/0.

<sup>119</sup> Report of Selection Committee to Council meeting on 14th October 1963.

<sup>120</sup> Council minutes, 8th July 1963.

D.P. Derham, Professor of Jurisprudence at the University of Melbourne. Evidently the Deputy Chancellor and Mr Forrest played the major part in the negotiations.<sup>121</sup> On 14th October 1963, the Council was informed that Professor Derham had accepted an invitation to be Dean and that, despite his existing commitments, he intended to mount a first-year law course at Monash in 1964.<sup>122</sup>

Dr Matheson was abroad at the time it was decided to approach Professor Derham. In his book, he comments that, although he applauded the choice, he “was uneasy about the propriety of making an unsolicited approach to a leading member of the Melbourne faculty”, and that it “was only justified by the importance and urgency of the particular position”.<sup>123</sup>

David Plumley Derham (1920–1985) completed his law course at the University of Melbourne, after four years war service, in 1947 and won the Supreme Court Prize. He practised as a barrister, and was Independent Lecturer in Constitutional Law at Melbourne, from 1949 until his appointment as Professor of Jurisprudence there in 1951. He had occupied this chair for twelve years before his appointment to Monash and was well known and highly regarded by the legal profession. As has already been mentioned, an important effect of Derham’s appointment was that the confidence of the legal profession in the standards of the Monash law school was assured.<sup>124</sup>

The news release announcing the appointment,<sup>125</sup> issued on the same day, included the following paragraphs:

“The Vice-Chancellor, Dr. J.A.L. Matheson, said that from the very beginning of its search for a Dean of Law the Council had realized the importance of securing the services of a distinguished and experienced legal scholar, preferably one already holding a chair. After considering applications submitted in response to an advertisement and pursuing enquiries all over the world, the Council was satisfied that in Professor Derham they had appointed a man who was not only the best available but was probably one of the very few men in the world capable of doing what was required.”<sup>126</sup>

“Professor Derham’s intention was to establish at Monash a Law School on somewhat different lines from those which had developed at the long-established and famous School at the University of Melbourne. Changing situations in the legal profession made the present a particularly favourable time for such a move and the geographical position of Monash also compelled an original approach.

“Professor Derham has many responsibilities to his present students at Melbourne University, especially as Professor Zelman Cowen is abroad at present, and he will therefore not be able to come to Monash on a full-time basis until well into 1964 at the earliest. However, it will be possible to offer the first year of the law course at Monash in 1964, although the details of the second and subsequent years cannot be settled for some time. Students

<sup>121</sup> Council minutes, 14th October 1963.

<sup>122</sup> *Ibid.*

<sup>123</sup> Matheson, *Still Learning*, 16–17.

<sup>124</sup> See p. 159 *supra*. Matheson, *Still Learning*, 16–18.

<sup>125</sup> A copy of the news release, dated 14th October 1963, is in a scrap-book compiled by Miss Hilary Feltham, held in the Staff Library, Faculty of Law, Monash University.

<sup>126</sup> A short memoir by Professor Louis Waller, dealing with Derham’s contribution to the Monash Law School, appears at (1986) 12 *Mon. L.R.* 2.

entering in 1964 can be confident that their first year's work will be thoroughly appropriate for the later years of the course."

In 1982, Derham was asked what ideas were uppermost in his mind, when he went to Monash. He replied that the dominating one

"was to tackle the task of founding a law school thirteen miles away from the city which would have the co-operation, support and respect of the profession. *That* was the dominating thought."

And on then being asked how he had tackled that task, he said:

"By having a series of committees with the branches of the profession, by asking for, and getting, the interest and support of senior and respected members of the profession, and by having members of the profession involved in the teaching of every subject. The senior members of the profession really behaved extraordinarily well in helping. Judges, solicitors, barristers, all of them."<sup>127</sup>

#### THE GOVERNANCE OF THE LAW SCHOOL, 1963-65

Sir Robert Blackwood, speaking of the year 1963, says: "Important academic decisions taken early in the year were the establishment of Faculties of Education and Law."<sup>128</sup> Clearly, the Council had in mind to do this, but whether it actually did so is another matter. There does not seem to have been any resolution of Council in 1963 dealing with the question, other than a resolution for the making of a new Faculties Statute; and that statute did not explicitly establish the Faculty of Law or any other Faculty.

A set of statutes had been made by the Interim Council, in pursuance of s. 28 of the *Monash University Act* 1958, early in 1959.<sup>129</sup> One of them was *No. V. The Faculties*, s. 1 (a) of Division I of which read: "The Council may constitute such Faculties as it may deem fit." This Division was followed by eight other Divisions, numbered II to IX, each making provision for a different Faculty but otherwise all in similar terms. Division IV began "There shall be a Faculty of Law consisting of . . .": and dealt in some detail with the composition of the Faculty, but not with anything else.

In April 1963, the Council revoked all the statutes of the University then in force (with one exception, not material here) and made a set of revised statutes.<sup>130</sup> Among the new statutes was a "Faculties Statute" which again included a provision reading: "The Council may constitute such Faculties as it may deem fit". This statute did not however contain any provisions corresponding to Divisions II to IX of the 1959 statute. Nor did any other of the new statutes purport to establish any faculties.

Under s. 29 of the *Monash University Act*, statutes made by the Council have to be submitted to the Governor in Council for approval and do not

<sup>127</sup> David Wilken, "Conversation with Sir David Derham" (1982) 56 L.I.J. 1024, 1030.

<sup>128</sup> Blackwood, *op. cit.* 110.

<sup>129</sup> *Victoria Government Gazette*, No. 32, 7th April 1959, 1079.

<sup>130</sup> Council minutes, 18th March & 8th April 1963.

come into force until the approval has been given. When the new 1963 statutes came to be considered in the Victorian Education Department, the Minister took the view that the Council did not, and ought not to, have the power to decide by itself what Faculties there should be at the University. He thought that the Council should only be able to establish a Faculty by a statute, which would require approval under s. 29; and so in effect the decision would be subject to the approval of the government of the day.<sup>131</sup> Not unnaturally, some members of the Council were inclined to resist what they saw as an attempt to take the power away from the Council.<sup>132</sup>

Section 27 (1) (a) of the Act read:

“(1) Subject to this Act —

(a) there shall be such faculties with such powers and duties as are respectively conferred or imposed upon them by this Act and the Statutes and regulations of the University.”

There was no specific provision in the Act as to how a faculty was to be established, although the Council did have power, under s. 28 (1) (o) of the Act, to “make Statutes . . . generally prescribing or providing for any matter or thing . . . necessary or expedient to be prescribed or provided for for the good government of the University”. Certainly, a number of faculties were provided for, if not established, under the revoked statutes. The provision in the *Monash University Act* had been based on the corresponding provision in s. 29 of the *University Act 1958 (Vic.)*, under which the University of Melbourne operated.

The matter was complicated by a difference of opinion which arose between the Crown Solicitor and the Parliamentary Draftsman. The Solicitor pointed to what he saw as a lacuna in s. 27 (1): there was no correlative for the word “such” (first occasion), and consequently “no indication whatever is given as to how the number and nature of the faculties is to be determined”. He thought the matter could only be resolved by the legislature.<sup>133</sup> The Draftsman agreed that there was a verbal and grammatical hiatus in s. 27 (1) but thought that a faculty could be validly constituted by university statute. However, he did not think that it could be done through a general provision in a statute, purporting to enable the Council to establish, otherwise than by statute, such faculties as it deemed fit.<sup>134</sup>

The matter dragged on for more than twelve months, but ultimately the advice of the Crown Solicitor was followed and amending legislation was prepared.<sup>135</sup> Section 5 (1) of the *Monash University (Amendment) Act 1964* inserted in s. 27 (1) (a) the words emphasised below:

<sup>131</sup> J.A.L. Matheson to Sir Robert Blackwood, 5th September 1963: Monash University Archives, file AO/2/2.3 Monash University Statutes — Faculties Statute.

<sup>132</sup> Council minutes, 17th June, 12th August, 14th October & 9th December 1963.

<sup>133</sup> Opinion dated 11th October 1963, addressed to the Secretary, Education Department: Monash University Archives, file AO/2/0 Monash University Statutes — General.

<sup>134</sup> Memorandum from Parliamentary Draftsman to Crown Solicitor, 17th October 1963: file AO/2/0.

<sup>135</sup> Council minutes, 16th March 1964; Blackwood, op. cit. 110.

“there shall be such faculties as are from time to time established by the Statutes with such powers and duties” etc..

A similar alteration was made to the *University Act* by the *University (Faculties) Act 1964*.

The *Monash University (Amendment) Act 1964* also provided, by s. 5 (2), that those faculties which purported to have been established already should be deemed always to have been validly established. So, if the statute of 1959 established the Faculty of Law (or if the Council did purport to establish the Faculty in 1963, as Blackwood says it did<sup>136</sup>), the legitimacy of the Faculty may well only exist retrospectively from 5th May 1964, the day on which the 1964 Act received the royal assent.

However, it seems that Blackwood must have erred in what he says, whether he meant, by the expression “a faculty”, the teachers in a particular branch of learning or a body with specified powers and duties. There were no law teachers until the Dean was appointed in October 1963 and none took up office until January 1964.<sup>137</sup> Once the 1959 Faculties Statute had been revoked, there was nothing in the university legislation providing for a Faculty of Law or specifying its powers and duties. Furthermore, the evidence which follows shows that in late 1963, and in 1964, it was recognised within the University that the Faculty of Law had not been established.

The minutes of a meeting of the Professorial Board, held on 27th November 1963, record that “the Board’s attention was drawn to the necessity for it to act on behalf of the Faculty of Law *since that Faculty was non-existent*” (emphasis added); and that it proceeded to nominate members of the selection committee for a second chair of Law. By a provision in *Statute 2.2 — The Professorial Board* (then s. 8 (f), now s. 8.6), the Board is to “perform the duties of a faculty for all subjects not pertaining to any established faculty. . . .”<sup>138</sup> Similarly, on 30th September 1964, some months after the *Monash University (Amendment) Act 1964* had come into operation, the Professorial Board recommended to Council that, “until such time as a faculty is established for Law”, the Board should delegate, to the Dean of Law and others, certain powers conferred on the Faculty of Law by regulation.<sup>139</sup>

Moreover, the Council had, in November 1963, approved “an interim committee to advise the Dean of Law on his advice to Council in the establishment of the Faculty of Law”.<sup>140</sup> A committee of this kind would not have been appointed in terms of that sort, if it was thought that a Faculty of Law had already been established.

The members of the committee were to be: the Vice-Chancellor; the Deans of the Faculties of Law, Arts, and Economics and Politics; the legally qualified members of Council (Professor Paton and Messrs Feltham and Forrest<sup>141</sup>); the

<sup>136</sup> Fn. 128 supra.

<sup>137</sup> See p. 171 infra.

<sup>138</sup> *Calendar of Monash University 1964*, 88; Monash University, *Calendar Volume Two 1989*, 5/4.

<sup>139</sup> Report of the Professorial Board, approved by Council at its meeting on 12th October 1964.

<sup>140</sup> Council minutes, 11th November 1963.

<sup>141</sup> See p. 160 supra.

President of the Law Institute; the Chairman of the Victorian Bar Council; and the Hon. Mr Justice [T.W.] Smith, of the Supreme Court of Victoria, who was chairman of the Legal Education Committee of the Council of Legal Education, which operated the Council's course.<sup>142</sup> The Professorial Board was to add a representative to the committee (it added Professor Legge<sup>143</sup>); and the committee was given power to co-opt.<sup>144</sup> Subsequently, professors and senior lecturers on the teaching staff of the law school were co-opted to the committee.<sup>145</sup>

The advisory committee held its first meeting in December 1963 and, down to the later months of 1964 at any rate, it "discussed and advised upon all the developments towards establishment of a faculty of Law since that time."<sup>146</sup> Among the matters discussed, at its first meeting on 19th December 1963 and at several meetings during 1964,<sup>147</sup> was a proposed statute governing the constitution of the faculty. For the reasons explained earlier,<sup>148</sup> effective legislation on this subject was not passed until after s. 27 (1) of the *Monash University Act* 1958 had been amended.<sup>149</sup>

#### THE TEACHING PROGRAMME FOR 1964

Although Professor Derham did not take up his appointment until the beginning of March 1964, he was able to give some attention immediately to planning the new law school. His appointment was announced on a Monday: and on the following Friday (18th October 1963), he was outlining his proposals for first year law subjects in 1964 to a meeting in the Vice-Chancellor's room.<sup>150</sup> Those present, apart from Derham himself, were the Vice-Chancellor, one professor from the Faculty of Economics and Politics, two professors from the Faculty of Arts, the Registrar and the Deputy Registrar. Derham proposed four subjects:

- an introductory legal subject;
- Criminal Law "(to introduce the students to a Case-Law subject)";
- British History;
- One subject to be chosen from Economics I, Politics I, and Philosophy I, or a Language subject or a Literature subject.

According to the minutes of the meeting,

"Professor Derham indicated that although his plans for the full development of the Faculty of Law were not yet completely settled in his mind, he had given sufficient thought to the matter, and had conducted sufficient

<sup>142</sup> Fn. 57 supra.

<sup>143</sup> Professorial Board minutes, 27th November 1963.

<sup>144</sup> Council minutes, 11th November 1963.

<sup>145</sup> Monash University, *Faculty of Law 1965 Handbook*, 8.

<sup>146</sup> *Faculty of Law 1965 Handbook*, 40. Monash University Archives, file CF/230/0.1 Advisory Committee — Faculty of Law — Agenda and Minutes.

<sup>147</sup> Advisory Committee, Faculty of Law, minutes 8th May, 19th June, 13th October & 16th November 1964.

<sup>148</sup> See p. 163 supra.

<sup>149</sup> See Statute 2.3 — The Faculties: *Calendar of Monash University 1966*, 106.

<sup>150</sup> Appendix H to minutes of Professorial Board meeting, 30th October 1963.

explorations with his colleagues in the profession to be quite sure that the proposed first-year would form a satisfactory preliminary to any later years that were at all likely to eventuate.”

He thought that the staff required for the second year (1965) would be: two full-time tutors, four part-time staff “principally from the ranks of practising barristers”, and two permanent Senior Lecturers. He thought that a second chair should be advertised immediately without any field of interest being specified.<sup>151</sup>

Following this meeting, and before the proposals were considered by the Professorial Board, Dr Matheson noted:<sup>152</sup>

“Professor Derham has indicated to me that he would like early notice to be given to potential students of his Faculty that he envisages a three-year course, conducted in conjunction with the Faculty of Arts and [the Faculty of] Economics and Politics, leading to a degree which might be called B.A. (Law). This is really an Arts degree in which some legal subjects are taken, such as Jurisprudence.”

This was the first official reference to what ultimately became the degree of Bachelor of Jurisprudence. Derham evidently had in mind that

“a course of this kind would be of interest to those contemplating entering the Public Service, commerce or other avenues where some legal training is beneficial without certain aspects required of practising lawyers.”<sup>153</sup>

Dr Matheson’s note continues:

“Professor Derham also envisages the possibility of candidates proceeding to the pass degree of LL.B. in four years and to the honours degree of LL.B. in five years.”

All these proposals were discussed by the Professorial Board on 30th October 1963. Some members of the Board were averse to the suggestion that the degrees of B.A. and LL.B. might both be awarded for a combined course extending over four years. The Board however agreed to the proposals in principle as a basis for further planning and resolved to report to Council that it supported the establishment of a second chair in Law.<sup>154</sup> The Council subsequently approved the proposals,<sup>155</sup> and appointed a selection committee for the second chair.<sup>156</sup> Regulations to establish and control the courses and degrees in law were being considered by the Advisory Committee in May and June of 1964.<sup>157</sup> The Regulations were passed in July and amended in November.<sup>158</sup>

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> Report of the Professorial Board to Council: Council minutes, 11th November 1963.

<sup>154</sup> Professorial Board minutes, 30th October 1963.

<sup>155</sup> Council minutes, 11th November 1963.

<sup>156</sup> Council minutes, 9th December 1963.

<sup>157</sup> Advisory Committee, Faculty of Law, minutes 8th May & 19th June 1964.

<sup>158</sup> Council minutes, 13 July & 9 November 1964; Faculty of Law Regulations *Calendar of Monash University 1965*, 362–70.

“My aim,” Professor Derham is reported to have said on a later occasion, “is that all lawyers should be both pounded with advanced law and EDUCATED.”<sup>159</sup>

### STARTING A NEW LIBRARY

Derham naturally regarded a good library as essential for the success of the new law school. By a “stroke of genius”,<sup>160</sup> he invited Professor Frank Beasley, in December 1963, to accept an appointment at Monash as special lecturer and to look after the development of the Law Library. Beasley was retiring at the end of the year from the Chair of Law at the University of Western Australia, which he had held since 1927, and was therefore available. “He had contacts with every law library in the world”, said Derham.<sup>161</sup> “Few men knew more than Beasley about the sources and the techniques of building up a collection of law books”, wrote Braybrooke.<sup>162</sup>

In seeking approval of the Professorial Board to Beasley’s appointment, it was explained (no doubt by Derham, who was attending his first meeting of the Board) that

“One of the difficulties facing Australian University Faculties of Law, as they become properly staffed with full-time teachers, is to attract men with wide professional experience and senior men distinguished in the legal profession to be concerned with teaching and to be part of the School’s life. Placed as it is at Clayton this difficulty is likely to be greater at Monash than at a University nearer the centre of legal activities.”<sup>163</sup>

The Professorial Board approved the proposal on 28th February 1964 and the Council in March.<sup>164</sup> Beasley had actually started work in early February.<sup>165</sup>

According to Professor Beasley, in an article he wrote for the student magazine *In Gremio Legis*,<sup>166</sup> Professor Derham obtained assurances, before he accepted the invitation to come to Monash, “that he would not be merely encouraged but assisted to plan and build up a teaching law school according to his heart’s desire.”<sup>167</sup> Sir Louis Matheson records that Derham bargained with him “for a guaranteed annual grant for a number of years to build up the bookstock [of the Law Library] to a respectable level.”<sup>168</sup>

<sup>159</sup> [J. Keith Dunstan], “Keeping Them Down on the Farm: Melbourne’s ‘other’ university”, *Bulletin*, 2nd May 1964, 19, 26. Dunstan wrote under the nom-de-plume “Batman”.

<sup>160</sup> E.K. Braybrooke, “A Personal Tribute” [to Derham], (1986) 12 *Mon. L. R.* 3, 4.

<sup>161</sup> David Wilken, “Conversation with Sir David Derham” (1982) 56 *L.I.J.* 1024, 1030.

<sup>162</sup> Braybrooke, *op. cit.* 4.

<sup>163</sup> Appendix ‘C’ to Professorial Board minutes, 28th February 1964.

<sup>164</sup> Professorial Board minutes, 28th February 1964; Council minutes, 16th March 1964.

<sup>165</sup> F.R. Beasley, “Founding a New Law School” *In Gremio Legis*, vol. 1, no. 1, 1964, 2, 6.

<sup>166</sup> *In Gremio Legis* (“in the bosom of the law”) appeared once in 1964 and once in each of the three years 1968–1970.

<sup>167</sup> Beasley, *op. cit.* 5.

<sup>168</sup> Matheson, *Still Learning*, 17.

Derham had arranged to acquire the law libraries of two former judges of the Supreme Court: Sir Charles Gavan Duffy, who had died in 1961, and Sir Charles Lowe, who had been on retirement leave since early in 1963. These two acquisitions between them made up most of the Monash holdings in law at the beginning of 1964.<sup>169</sup> Some of the volumes have been heavily used in the meantime, but many are still identifiable in 1989.

In 1964, the Law Library was housed on the first floor of the Hargrave Library, near the premises in which the law school staff were accommodated at that time. When the 1965 Faculty Handbook went to press, some time towards the end of 1964, the Law Library consisted of "roughly 1000 monographs, and some 6000 law reports and periodical volumes".<sup>170</sup> By the end of 1964, a collection of 10,000 volumes had been accumulated.<sup>171</sup> There were about 138,000 volumes at the beginning of 1989.<sup>172</sup>

Beasley's article in *In Gremio Legis*, already referred to, emphasises that, although Monash had ample funds available, the law reports, statutes, journals and monographs needed for the Library were not easily found. This, he explains, was because of destruction in air raids on London, the demands of law schools in the United States and the distance of the Australian buyer from the English and American markets.<sup>173</sup> Nowadays, of course, legal materials are much more readily available, due to reprinting on an unprecedented scale and the use of microfiche and microfilm. It is the funds which are in short supply. Moreover, the growth in the corpus of Australian case law, and the growth in state and Commonwealth legislation, are steadily rendering English decisions of less importance in Victoria than they were in 1964.

Something of the excitement of 1964 can be recaptured from Beasley's final sentence:

"I hope that my colleagues here, and all those students who are sharing with us the great adventure of starting a new school, will in the future look back with undiminished exhilaration and satisfaction to the formative years of this school."<sup>174</sup>

#### THE CONCERN ABOUT THE RELATIVE REMOTENESS OF THE MONASH SITE

Well before Derham's appointment as Dean of Law, the University administration was aware of difficulties that might arise, in the teaching of law at Monash, through the relative remoteness of the university site from those parts of the City of Melbourne frequented by the legal profession.

It must be remembered that, in the early 1960s, the suburb of Clayton, where the University was being established, was on the outer south-eastern

<sup>169</sup> Beasley, op. cit. 5; P.L. Waller, "The Monash Law School" 2 *The Australian Bar Gazette*, No. 2 (December, 1966) 5.

<sup>170</sup> Monash University, *Faculty of Law 1965 Handbook*, 28.

<sup>171</sup> Report of the Council for 1964, *Calendar of Monash University 1966*, 622.

<sup>172</sup> Monash University *Calendar Volume One 1989*, 10/21.

<sup>173</sup> Beasley, op. cit. 5.

<sup>174</sup> *Ibid.*

fringe of the Melbourne metropolitan area.<sup>175</sup> It is true that the metropolitan area was expanding in that direction and, as Blackwood explains, this was a major reason for choosing the Clayton site.<sup>176</sup> Now, thirty years later, the expected expansion, and more, has taken place; Clayton is no longer an outer suburb; and a freeway facilitates travel to Monash from the City of Melbourne. Consequently, the university no longer seems as remote as it did, at any rate to those who do not have to rely on public transport. Moreover, people have become accustomed to the university being where it is. But in 1964, for many people, Monash was a very long way from anywhere, especially when contrasted with the University of Melbourne. That was particularly so for those whose working lives were spent in one corner of the central business district, which was the case for most of the leaders of the legal profession.

Reference was made earlier to the statement by the Vice-Chancellor, in July 1962, as to the possible necessity of running “‘pre-clinical’ courses in subjects such as jurisprudence at Monash and ‘clinical’ courses in the professional subjects at some centre near the Law Courts”.<sup>177</sup> In fact, undergraduate teaching in the Monash law course has never been divided in that way. In the early years of the law school, some tutorials in undergraduate subjects and, in later years, occasionally a graduate subject and quite often a continuing education class, have been taught in the city: sometimes for the convenience of a practitioner engaged to teach part-time, sometimes for the convenience of the audience.

Professor Zelman Cowen, Dean of the law school at the University of Melbourne, had warned Dr Matheson of the problem, in December 1962, when offering advice for the purposes of the Deanship selection committee:

“My recommendation is that you should plan to have a School staffed primarily with full-time teachers. In any case you will find it hard to get part-time teachers because of your geographical situation.”<sup>178</sup>

At the first meeting of the Deanship selection committee, it had been agreed that

“because of Monash University’s location, it would be unlikely that the services of members of the profession could be obtained as part-time lecturers to deal with the more narrowly professional subjects, and it might in the end prove necessary to leave these to be undertaken elsewhere after graduation as a condition precedent to admission to practise”.<sup>179</sup>

The concern about the relative remoteness of the Monash site, and the importance attached to the contribution of practitioners to legal education, surely stem from the system by which law had been taught at Australian law schools for so long. University lectures had always been largely in the hands of

<sup>175</sup> This is shown very clearly by the plan in Blackwood, *op. cit.* 18.

<sup>176</sup> Blackwood, *op. cit.* ch. 3.

<sup>177</sup> See p. 152 *supra*.

<sup>178</sup> Z. Cowen to Vice-Chancellor, 19th December 1962: Monash University Archives, file CF/230/0.

<sup>179</sup> Selection committee minutes, 31st May 1962: file CF/230/0.

members of the practising profession, whose teaching was fitted into the intervals of busy legal practice in the city.

This is not the place to examine the history of that system of teaching.<sup>180</sup> It is sufficient to note that, at the time preparations were being made for the teaching of law at Monash, the change in other law schools to a system of teaching by full-time academics was well under way. At 1st May 1962, for example, the teaching of law at the University of Melbourne was in the hands of 25 officers of the rank of lecturer or above (16 full-time, 9 part-time) and 32 senior tutors or tutors (7 full-time, 25 part-time).<sup>181</sup>

Reference has also been made above to the passage, in the press release announcing Derham's appointment, to the effect that the geographical position of Monash compelled an original approach to legal education.<sup>182</sup> Professor Derham dealt more fully with the question of remoteness in his "A Plan for a New Law School",<sup>183</sup> under the heading "Topology":

"Monash University is so far away from the centre of legal activities in Melbourne that it is not possible for a law school primarily concerned with full-time university students, and established in the Monash grounds, to meet the need in teaching for continuous influence from those engaged in the actual practice of the law by making practitioners responsible for much of the teaching in the school, as has been done in other Australian Law Schools. It is clear that full-time academic members of the profession will have to be responsible for all courses conducted at Monash, and that new methods for meeting the need for close contact with actual practice will have to be devised."

He reiterated this view, in summarised form, in two similar articles published a few years later.<sup>184</sup>

This is not to say that Derham had moved away from his proposal of October 1963, which called for "part-time staff, principally from the ranks of practising barristers".<sup>185</sup> The more senior of them became the Consultants and the more junior the part-time Teaching Fellows, groups which both figure in some numbers, during the period 1965-73, in the lists of staff published year by year in the *Calendar* and the *Faculty Handbook*. Certainly, it seems that Blackwood went too far, in referring to "the need to provide for the continuous influence of those engaged in the actual practise [sic] of the law by making practitioners responsible for much of the teaching in the school".<sup>186</sup> Matheson correctly says that, because it was not possible, for reasons of distance, for Monash to rely on part time help from practising barristers,

<sup>180</sup> For further references, and some discussion of the matter, see Dennis Pearce, Enid Campbell and Don Harding, *Australian Law Schools: a discipline assessment for the Commonwealth Tertiary Education Commission* (Canberra, Australian Government Publishing Service, 1987) paras 1.9, 3.4, 15.5-15.7.

<sup>181</sup> *The University of Melbourne Calendar 1962*, 54, 60-1.

<sup>182</sup> See p. 161 *supra*.

<sup>183</sup> "A Plan for a New Law School", dated 7th August 1964: Professorial Board minutes, 26th November 1964.

<sup>184</sup> "Beginning a Law School at Monash", *Monash University Gazette*, vol. 3, no. 1, September 1966, 1; "Beginning a Law School at Monash", (1968) 42 L.I.J. 127.

<sup>185</sup> Fn. 151 *supra*.

<sup>186</sup> Blackwood, *op. cit.* 166.

Derham "set to work to build up a fulltime staff on the same conditions as in other faculties".<sup>187</sup>

As has been mentioned, one of the reasons for the creation of the Special Lectureship, to which Professor Beasley was appointed, was the need, as Derham saw it, to attract teachers with wide professional experience; and the difficulty of doing so. "Placed as it is at Clayton this difficulty is likely to be greater at Monash than at a University nearer the centre of legal activities".<sup>188</sup>

Twenty years later, Derham still thought it very important to maintain the links with the practitioners:

"It's terribly easy when you have a full-time law school, to start to think you don't need the part-timers any more. I think it's very important to keep them involved, and that they have a great deal to offer. It doesn't mean that they are the best people to do all the teaching."<sup>189</sup>

#### APPOINTING STAFF

Professor Derham is said to have resigned from Melbourne University on Saturday, 29th February, and started at Monash on Monday, 2nd March.<sup>190</sup> Although 1st March 1964 was the date on which he formally took up his appointment, he had devoted a good deal of time to Monash before then.

By the beginning of the 1964 academic year, in addition to the appointments of Derham and Beasley, two junior academic appointments had been made, following advertisement.<sup>191</sup> In the early weeks of December 1963, Mrs Ann Lahore (Dufty) was appointed a senior teaching fellow from 31st January; later, Mr Norman Reaburn was appointed a teaching fellow from 1st March.<sup>192</sup> Those positions correspond to the positions known since 1974 as senior tutor and tutor. Mrs Lahore had been a senior tutor in law at the University of Melbourne and Mr Reaburn had graduated there in the previous year.

Mrs Lahore has the distinction of being the first member of the law school staff to take up duty full time. She started in January, getting together furniture, stationery and so on for herself and the other staff who were still to come, and carrying out various tasks on behalf of the absent Dean. She spent much of her time, until first term began, interviewing and selecting students.<sup>193</sup>

<sup>187</sup> Matheson, *Still Learning*, 17-18.

<sup>188</sup> Fn. 163 *supra*.

<sup>189</sup> David Wilken, "Conversation with Sir David Derham" (1982) 56 L.I.J. 1024, 1026, 1030.

<sup>190</sup> Fn. 159 *supra*.

<sup>191</sup> The advertisement appeared in (1963) 37 L.I.J. 476 and no doubt elsewhere.

<sup>192</sup> Advisory Committee, Faculty of Law, minutes 19th December 1963. Council minutes, 16th March 1964 & 10th August 1964.

<sup>193</sup> Information from A.H. Dufty.

Early in February 1964, Miss Hilary Feltham was appointed Secretary to the Faculty from 8th February.<sup>194</sup> She had practised as a solicitor and had also been a senior tutor in law at the University of Melbourne. Miss Feltham's duties included arranging a timetable and finding rooms in which lectures could be given and tutorials conducted. For want of ordinary typing assistance, much of the early outwards correspondence of the Faculty, including letters to students with offers of places, was in her handwriting. Queues of students and their parents, waiting to be interviewed, formed constantly outside her door. At first there were no telephones: but when they arrived, they rang all day — or so it seemed.<sup>195</sup>

The four subjects which law students were required to take in 1964 have already been listed.<sup>196</sup> One of them was to be chosen from subjects taught in the Faculty of Arts or in the Faculty of Economics and Politics. A second was "History IC", a British History subject "with an emphasis on constitutional developments".<sup>197</sup> The lectures in this subject were given by Mr John Morgan of the Monash Department of History, who had taught a similar subject to law students at the University of Melbourne; tutorials in the subject were conducted by a teaching fellow from that Department, Mr Peter Corris.

The introductory subject "The Legal System" was taught by Professor Derham in two classes a week and Professor Beasley, who was concerned with legal history, in one class a week. Professor Derham continued during 1964 to teach the subject "Constitutional Law II" at the University of Melbourne.<sup>198</sup> The remaining subject, Criminal Law, was taught at Monash by two members of staff in the Faculty of Law at the University of Melbourne: Professor Peter Brett, who gave the lectures, and Mr Louis Waller, a senior lecturer, who conducted a two-hour honours seminar each week.<sup>199</sup>

Mrs Lahore was in charge of tutorial administration generally and tutored in The Legal System. Mr Reaburn tutored in Criminal Law, as did Professor Beasley. In addition there were a number of part-time teaching fellows from the profession. Two barristers, Messrs F.G. Fitzgerald and J.G. Meagher, tutored in Criminal Law. Tutorials in The Legal System were conducted by three solicitors, Messrs Geoffrey Chambers, Peter Faris and James Lahore: and by three barristers, Messrs Bruce Coles, Malcolm Evans and David Henshall.<sup>200</sup>

<sup>194</sup> Advisory Committee, Faculty of Law, minutes 5th February 1964. Council minutes, 16th March 1964.

<sup>195</sup> Information from H.B. Feltham.

<sup>196</sup> See p. 165 *supra*. Details are set out in *Calendar of Monash University 1964*, 281–5.

<sup>197</sup> *Calendar of Monash University 1964*, 284.

<sup>198</sup> Information from P.L. Waller, correcting Advisory Committee, Faculty of Law, minutes 19th December 1963.

<sup>199</sup> Monash University, *Faculty of Law 1965 Handbook*, 41.

<sup>200</sup> See agenda for the meeting of the Advisory Committee, Faculty of Law, held on 14th April 1964: Monash University Archives, file CF/230/0.1.

### THE ARRIVAL OF STUDENTS IN 1964

Early in October 1964, Professor Derham wrote an introduction to the first number of the student publication *In Gremio Legis*.<sup>201</sup> He said

“The Monash Law School began in a tremendous hurry. Students were enrolled at the beginning of 1964 before even the natures of their degree courses were fixed for the future. They had no place of their own in the University. They still face years of ‘camping’ in other faculties’ buildings before proper facilities can be provided for them. In such circumstances it has been very pleasing indeed to see the growth of a vigorous and ambitious law students’ society constituted by the energy and interest of the students themselves.”

The decision of the Australian Universities Commission, not to recommend financial support for a law school building in the 1964–66 triennium, meant that student numbers in the early years of the law school were more limited than had been hoped. The staff of the law school were accommodated in restricted quarters: “the four full-time teachers who had been appointed were housed in one room and some inadequately partitioned areas in the Hargrave Library.”<sup>202</sup> The law faculty office was opened in February in temporary accommodation in the Hargrave Library. Later in the year, the office moved to the north end of the central science block.<sup>203</sup> Lectures were held in theatres made available by the Faculty of Science. Tutorials were conducted in rooms in the Hargrave Library and in rooms in the city made available by the Law Institute, the Bar Council and the Law Council of Australia.<sup>204</sup>

The task of selecting students was not an easy one. There were 591 applicants for admission to the Monash law school, most of them naturally applying also for a place at the Melbourne law school. The number of applicants actually rejected by Monash was 161. Initially, 150 applicants accepted offers and were enrolled. Another 281 applicants had refused a Monash offer or withdrew after receiving one, in most cases because they had accepted an offer from Melbourne. Further withdrawals took place, in the first week of term, of students who had enrolled at Monash and then subsequently received late offers from Melbourne. Consequently, Monash had to make further offers at that stage, in an attempt to fill the places of those who had just withdrawn.<sup>205</sup> In the end, one hundred and fifty students (including one postgraduate student) were enrolled,<sup>206</sup> at least thirty-eight qualified applicants having been unable to obtain places.<sup>207</sup> Of the 149 undergraduates enrolled, seventeen

<sup>201</sup> David P. Derham, “Introduction” *In Gremio Legis*, vol. 1, no. 1, 1964, 1.

<sup>202</sup> P.L. Waller, “The Monash Law School” 2 *The Australian Bar Gazette*, No. 1. (December, 1966) 5; Blackwood op. cit. 106.

<sup>203</sup> *Faculty of Law 1965 Handbook*, 41.

<sup>204</sup> *Ibid.*

<sup>205</sup> This paragraph and the last are based on the Report on Selection of Students, prepared for the Advisory Committee, Faculty of Law. See fn. 200 *supra*.

<sup>206</sup> Report of the Council for 1964, *Calendar of Monash University 1966*, 622.

<sup>207</sup> Sir Robert Blackwood, in his speech at the conferring of degrees on 8th April 1964, mentions the figure of 38: *Monash University Gazette*, vol. 1, no. 1, July 1964, 2. Derham writes of 47 individuals being unable to find a place at Monash: David P. Derham,

were women (11.4%). Four of the men and one woman were enrolled as part-time students.<sup>208</sup> It was reported that the number enrolled had fallen away to 144 by 26th May,<sup>209</sup> but the reporter may have overlooked five full-time male students enrolled in combined courses (including law) who, for some statistical purposes, were “included in the other faculty to avoid double counting”.<sup>210</sup>

The percentage of those enrolled who were women (11.4%) may be compared with the corresponding percentage, in 1989, of those enrolled for an undergraduate law course at Monash: 51.54%. This is the first year in which the women have outnumbered the men, though the trend in that direction has been apparent for many years.<sup>211</sup>

All those finally selected in 1964 were interviewed, after enrolment forms had been sent to them, by Mrs Lahore or Miss Feltham. The interviews were designed to acquaint each student with a general outline of the proposed law courses, with special emphasis on the courses taught in the first year.

Teaching began on Monday, 9th March 1964. At the first lecture in The Legal System, with other members of staff sitting in the front row, Professor Derham welcomed and harangued the students. He assured them that arrangements would be made for the Monash Bachelor of Laws degree to be recognised by the Council of Legal Education, for the purposes of admission to practise: “accept my word, we won’t leave you in the lurch”.<sup>212</sup> He also said “Look at the student on your right and at the one on your left, for one of the three of you will fail”.<sup>213</sup>

R.W.T. Cowan, “who was in a real sense one of the founders of the University”,<sup>214</sup> had pointed out in his Sir Richard Stawell Oration in 1962 that

“at present about 40 out of every 100 who enrol in our universities fail to graduate. . . . If we build a third ‘normal’ university of the same order as Melbourne and Monash we shall in effect have the equivalent of at least one whole university in this State producing nothing but failures. . . .”<sup>215</sup>

“Legal Education in Victoria” 1 *The Australian Bar Gazette*, no. 4, December 1964, 6.

<sup>208</sup> Report of the Council for 1964, *Calendar of Monash University 1966*, 624.

<sup>209</sup> *Monash Reporter*, June 1964, 5. Similarly Blackwood, *op. cit.* 165.

<sup>210</sup> Fn. 208 *supra*.

<sup>211</sup> Peter Balmford, “Changing Patterns in Enrolments at Victorian Law Schools and their Consequences for the Profession” (1981) 55 *L.I.J.* 507, 511–3.

<sup>212</sup> Information from H.B. Feltham.

<sup>213</sup> Information from C.R. Williams, one of the students, who was sitting at the end of a row and so had only one person next to him. He did not fail, and is now himself the Dean.

<sup>214</sup> Report of the Council for 1964, *Calendar of Monash University 1966*, 607. Cowan was Warden of Trinity College, University of Melbourne, from 1946, and an original member of the Monash Interim Council and then a member of the Council, until his death in June 1964.

<sup>215</sup> R.W.T. Cowan, “Some Problems of Our Expanding Universities” *The Medical Journal of Australia*, 10 February 1962, 189, 192. See also R.W.T. Cowan, “Conclusions”, in R.W.T. Cowan (ed), *Education for Australians* (Melbourne, F.W. Cheshire, 1964), 281–2.

The pass rate (as defined<sup>216</sup>) for first year full-time law students in 1964 was 60%, so both Cowan and Derham were right. However, that rate has never subsequently been below 71% and in the years 1974–87 was always above 90%.<sup>217</sup> Figures since 1987 are not available. The improvement in the pass rate is no doubt largely a reflection of the increasing number of applicants year by year — and of course hard work on the part of those who are successful in their application.

### CONCLUSION

Thus, the preparations for teaching law at Monash were completed in five months: between the appointment of the Dean of the Faculty in October 1963 and the beginning of the academic year in March 1964. This was accomplished by or under the direction of a dean who was still teaching and examining in another law school. Admittedly, some of the matters which had been thought would take so long had been deferred: details of the law course had only been worked out for the first year and negotiations with the Council of Legal Education were still to take place. But the nucleus of a library had been gathered together, arrangements had been made to ensure an appropriate staff and 150 students had been selected and interviewed. It was an astonishing achievement.

<sup>216</sup> A note to the published tables of pass rates explains that students are regarded as having passed, if they have passed more than half the subjects or units taken, except that those taking three subjects are regarded as having passed the year only if they have passed all three subjects.

<sup>217</sup> Report of the Council for 1973, *Monash University Calendar 1975*, 509; Report of the Council for 1976, *Monash University Calendar 1978*, 364; Monash University, *Annual Report 1987*, 9.