# Legal Education: Pulling its Weight in the Nineteen Nineties and Beyond*

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## THEME

This article propounds two propositions. That the legal education which should now be planned is one which will serve the needs of democratic society in the nineteen nineties and beyond; and that those needs will be met only if those who provide education in law apply fully the basic principles and precepts of a modern university.

Consequences of adherence to those propositions would be that legal education would widen and deepen the areas it covers and would cost more to provide than at present.

I concentrate mainly on legal education in universities. Those who will provide most of the leadership and influence within the legal system will usually have learnt their law in universities.

The legal education community will not pull its weight within society unless it effectively plans ahead. A forward plan requires broadly supported ultimate objectives and generally accepted notions of practical ways of achieving them.

## OBJECTIVES AND MODE OF ACHIEVEMENT

It is not essential that legal education have ultimate objectives but it is desirable and justifiable that it should. Legal educationalists can, of course, limit themselves to the immediate objective of teaching students what are the existing rules of law. Examples of such education are not hard to find.

Kenneth Clark stated a profound truth when he said that a civilisation

> 'requires confidence — confidence in the society in which one lives, belief in its philosophy, belief in its laws and confidence in one's own mental powers.'[1]

If a legal education is fully to serve the needs of a civilised society and to produce educated citizens it must open up for objective consideration the question of whether society, its philosophy and its laws justify the confidence of citizens.

Law may serve other needs than those of a democratic society. The law that serves the needs of an absolute monarchy, a dictatorship or a one party state is

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[1] *Civilisation*, BBC and John Murray, London, 1969, 4.

very different in function, operation, content and objective from that of a democracy.

I do not debate which form of society is preferable. I take it as an accepted premise that legal education in Australia should serve the purposes of a parliamentary democracy.

Because of its fundamental importance and its required dimensions in a successful democratic society, an adequate education in the law of a democracy can be neither simple nor cheap.

In our system of parliamentary democracy, only limited grants of power are made, strictly bounded by the law. They are made to the legislature (parliament), the political executive (cabinet), the administrative executive (public service) and the judiciary (court system). The law is superior to and binds them all. It is the mortar that holds the components of government together and keeps them in their proper places. Parliament can alter law but the altered law binds it.

Continuance of a system of democratic government in practice depends on its citizens having confidence in it and supporting it. As law is the lifeblood of a democracy, citizens will not have confidence in their democracy unless they have confidence in its law. That confidence will not exist unless they have confidence in the fairness and effectiveness of both the content and the application of the law. Confidence in its application requires confidence that the courts and tribunals which apply the law do so efficiently and fairly. To be seen to be fair, those constituting the courts and tribunals must act with obvious impartiality. That in turn requires judicial independence. In this context judicial independence means, and only means, that the decisions which decide cases should be made by persons free of pressures which might influence them to decide other than impartially; free, that is, of any pressures which might lead to a decision other than that indicated by intellect and conscience, based on the honest assessment of the evidence, application of the law and exercise of any judicial discretion.

It is widely accepted that the basic responsibilities of a modern university are to create, preserve and transmit knowledge and to uphold those values in society which contribute to those purposes. Knowledge is created by research, preserved by scholarship and recording, and transmitted by teaching and through writing and other forms of information transfer. It had the ring of novelty about it when Professor David Derham said in 1976 that universities are entitled to require that its academic lawyers should be engaged in the achievement of those primary aims.[2] The years since have shown the wisdom of his words. Legal educators whose academic work fulfils each of those university responsibilities will increase the prospects that members of the community will have justified confidence in the law and its application.

There is no suggestion that academic lawyers should set out to indoctrinate the community into a belief in the law. An apologia for the law would be of no

[2] Keynote address, 'An Overview of Legal Education in Australia', in *Legal Education in Australia*, Proceedings of National Conference 1976, Australian Law Council Foundation, Melbourne, 1978, 14–5.

use to anyone. Rather they should expose to student and public view its actual operation. Insofar as that shows strengths it would boost community confidence. The public is seldom told of the strengths of its legal system. The practical weaknesses of the law and its structures should be identified by research and placed before students and the public. Just as importantly, researchers should identify and pass on to students, those operating the legal system and to the community generally, practical ways in which the law and its structures could be changed to make them fair and efficient in the areas of weakness. A law or legal structure which does not warrant public confidence is one which should be changed or replaced. As with urban renewal, input is needed both by way of identifying for repair or wrecking the structures which are defective or have become obsolete, and by way of designing repairs or replacement structures fit for the proper needs of the modern community. An imbalance between these inputs is not in the community interest.

Of course, everything that academic lawyers do has a multiplier effect, through the transmission to students of knowledge and skills which they can use themselves.

The citizens of a democracy are not well served, nor is confidence in the law engendered, unless the legal practitioners on whom they rely when involved with the law are competent. The Australian tradition is that the academic part of the training of legal practitioners is done by the universities. There is real advantage to the community in its lawyers receiving what is in the full sense a university education. In Victoria the areas of legal knowledge which, within a law course, give a basic understanding of the law are substantially the same as those in which a basic understanding and competence is required before admission to practise. In insisting on those standards, the admission authorities, like those who license electricians, airline pilots and doctors, are protecting members of the public from the harm that can flow from reliance on a member of a skilled occupation who is ignorant or incompetent. The harm which a legal practitioner, incompetent through ignorance of the law, can inflict on a client is immense. It should never be forgotten that the citizens who suffer from practitioner incompetence are almost always those economically and socially in the weakest position and least able to protect themselves.

A good legal education with its concentration on reaching decisions through logical reasoning is, like philosophy, mathematics or engineering, one of the hard disciplines. That is, it provides skills in clear thinking, analysis and decision-making of great use in areas unconnected with the law. It produces confidence in one's own mental powers.

The legal education which will serve the needs of democratic society in the nineteen nineties and beyond cannot limit its horizons to Australia's boundaries. In this and the following decades a relatively free, wholesome and satisfactory life, and perhaps even survival, for members of the Australian and other world communities will depend on the effective and fair application of world law. This is the greatest challenge law has ever faced. It cannot be ignored or minimised in legal education.

## THE PROFESSIONAL TEACHERS OF LAW

In the fifties and sixties I was one of those who supported the development of the profession of full-time teachers of law. It has achieved a great deal. The suggestion of this paper is that it could and should, in the interests of the community, now broaden and deepen its role.

The teaching of the principles and rules of law and of the process of legal reasoning in the typical Australian law school today is superb. It is important that these be well taught. However, the main area of concentration in the typical law school has not changed much from the area to which part-time practitioners directed their teaching attention forty years ago. The concentration is still primarily upon the principles and rules of the existing law. There has been some change, as the subjects now taught commonly include a component on desirable reform of the law in the area. More subjects are taught. There is much good writing on the principles and rules and some on the practice and operation of law.

## NATURE AND PHILOSOPHY OF LAW

One of the most fundamental and demanding challenges to academic lawyers is the development of a science and philosophy of law appropriate to these changing times. Professor Peter Brett concisely stated the task in 1975:

> 'To put the point bluntly, jurisprudence has, I think, run itself into the ground and badly needs a fresh start. My object is to give it an initial push.'[3]

> 'It is unable, as I see it, to give any reasonable account of the many important matters which concern both lawyers and, more widely, all members of the societies in which legal systems operate . . . [A]s jurisprudents we must perforce rely on both philosophy and science; but let it be the philosophy and science which takes account of the advances of the recent past.'[4]

> '[T]he role of a contemporary jurisprudence is to survey the knowledge which has been accumulated in other fields (particularly those of the life and behavioural sciences); and to reconsider in its light our existing legal theory and legal doctrines. Only thus can legal reform be successfully accomplished and the law thereby be kept in touch with the life of the community which it serves.'[5]

It is difficult to regard an institution as providing a legal education of quality if it produces graduates who have not given ordered and deliberate consideration to the nature of law, its potentials and limitations, the overall structure and functioning of the whole legal system, and the ends that the law and legal system should serve. Just as medicine can serve the ends of health and healing or of genocide or other human destruction, the law can be di-

[3] P Brett, *An Essay on a Contemporary Jurisprudence*, (Sydney, Butterworths, 1975) 2.
[4] Id 25–6.
[5] Id 87.

rected to the general preservation of life or to the destruction of particular lives; to the achievement of justice and fairness or to the perpetration of rank injustice.

Despite the pressing need for it, the fact is that, with significant exceptions, the recent decades have seen a wholesale departure by the majority of university law schools from research, teaching and scholarship in jurisprudence.[6]

That has led to a shallowing of legal education and a diminution in its quality. A partial vacuum in Australian legal philosophy has been created. This is a serious retreat towards the trade school concept of legal education.

The vacation of the field of jurisprudence by most universities has left it readily available for occupation by any vigorously propounded legal philosphy. That explains the very great influence which the legal philosophy centred in Macquarie Law School is having. In much of the Australian scene that philosophy has been left almost without institutional competitors.

A distinct philosophy of the law is vigorously advanced in Australia by those in what the press, somewhat unkindly, describes as the 'social theory group' (as distinct from the 'substantive lawyers') of the Law School at Macquarie University.[7] The philosophy is one of those approaches to law generally treated as within the legal theories of the Critical Legal Studies Movement.

> 'Its value lies in its radical questioning of legal orders accepted as natural and its introduction of interdisciplinary perspectives into legal theory.'[8]

It has adherents in other Australian law schools.

This philosophy, and conflicts of legal theory and approach within Macquarie Law School, were the subject of the recent legal education issue of the Australian Journal of Law and Society.[9] Articles and memoranda written by leading proponents of the philosophy are included there. The predominant idea expounded is one which advocates the deconstruction of the existing law. The law, its institutions and most of those who inhabit them are regarded as so dominated by class interest as to be beyond reform. Little attention is given to the reconstruction of the law once the process of deconstruction has run its course. The expectation appears to be that such law as is necessary should be the product of individual scholars and teams of academic lawyers.

The majority of universities, in their silent retreat from jurisprudence, are not introducing to public consideration and debate any other philosophies of the law. Thus they are leaving teachers and students at primary, secondary

[6] There is individual writing of high quality. See, for example, Charles Sampford, *The Disorder of Law: A Critique of Legal Theory* (Oxford, Basil Blackwell, 1989); Margaret Thornton, *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Melbourne, OUP, 1990) and articles in the Bulletin of the Australian Society of Legal Philosophy.

[7] *The Australian*, 26 June 1991, 11.

[8] Hilary Charlesworth, 'New Directions in Legal Theory: Critical Legal Studies' (1989) 63 LIJ 248, 249.

[9] Vol 5, 1988–89.

and tertiary level, media commentators, and members of the public of an inquiring cast of mind, to be influenced mainly by a philosophy which tells them that the law and its institutions are worthless or worse and that attempts at reform are futile. There could be no more effective way of depriving this civilised community of confidence in its law.

## HISTORICAL NAVIGATIONAL AIDS

The virtual abandonment of jurisprudence leaves the navigators of the legal system uncertain of the destination towards which they should seek to steer: at the same time their legal education fails to introduce them to the navigational aids of history and does not enable them to acquire those provided by modern science. In addition, the builders and commanders of the vessel learn practically nothing of the best methods of construction, repair, maintenance and protection of the ship.

For the ship of law to stay afloat and progress successfully into the twenty-first century, extensive changes in legal education are necessary.

The main historical guidance to a ship's navigator comes from the maps and charts, all prepared from past experience. They show which courses can be taken with safety and those attended by risk. The main guidance available to the law and its institutions from past experience comes from the study of constitutional and legal history.

Teaching, research and scholarship in constitutional and legal history has been abandoned as part of legal education by almost all Australian law schools.

While the experience of the past cannot be applied directly as the solution to present and impending problems, much can be learnt from it. The potential leaders within the legal system who are being produced today have learnt practically nothing from the past and have little notion of the risks to be averted in the future. Without a knowledge of history, how are they to become aware of the community risks involved in a loss of judicial independence, curtailment of the writ of habeas corpus or the abolition of juries for criminal trials? A knowledge of legal history is essential to a full understanding of the legal system and its institutions. Only this can provide the capacity to make effective reforms to the law and its institutions which will bring about their fairer operation in practice.

An attempt to steer the law into the twenty-first century, without utilising the navigational aids of history, necessarily qualifies as reckless navigation.

## CONTEMPORARY NAVIGATIONAL AIDS

It is also foolhardy for those who have influence and leadership within the legal system to attempt to find the way without relying on the navigational aids which modern science provides. No responsible mariner would attempt

to do so. A navigator in law needs much more than a knowledge of law alone. Reliance on the guidance provided by the skills and knowledge of the contemporary social sciences is essential.

There is an unreadiness in law to move from assumptions deeply ingrained long before Newton and modern science. Much law, like the Ten Commandments, was regarded as having a divine origin. Neither it nor its application was to be questioned or criticised. The law shared with the other two original professions, the army and the church, an uncritical acceptance of its basic principle and practice. There is an inherent impulse in lawyers to apply the concept of precedent, useful in its limited role, to the law generally and to assume without question that what was laid down in the past provides the superior solution for today and tomorrow.

Citizens of a civilised society desire and expect justice. Indeed it has been suggested that people are born with that expectation.[10] Citizens will not have confidence in their laws unless they regard them as just. The justice of a law is not tested by what it says it is doing or what its framers intended it to do. It is judged by what it actually does in the real world when it is applied.

If the law and legal education are to serve the needs of a democratic society and to contribute to confidence in its laws there must be a fundamental change in the university role. Effort should not be concentrated only on researching and teaching the law as it is and as it ought to be. It should extend to research and teaching directed to the law *and the legal system* as they are and as they ought to be if they are to achieve applied justice.

This does not involve a change in university orientation. As I said once before:

> 'Law schools are not value neutral. Any well-functioning law school inculcates in its students the belief that the attainment of applied justice is a desirable end. I consider that the basic attitudes towards the judicial system of most of those who will be influential in the judicial and professional groups and many of those in the government group, are influenced more by their law school experience than by anything else. Students tend to regard as important, principles their law teachers regard as important.
>
> The law schools have a commitment to the attainment of applied justice.'[11]

The change is not in orientation but in ambit. Research and teaching must extend much wider than seeking and transmitting the content of the law. It must extend beyond analysis of a legal world of the authoritative statements of legislatures, judges and legal writers. Those are only the immediate sources of the rules and principles of law. It must go to the primary sources of the world of the community and investigate and teach the way the law is operating and its actual effect on people and their conduct. This calls for a familiarity with the social sciences.

If the law in these changing times is to operate to attain social justice there

[10] Brett, op cit 36–7.

[11] Justice Administration Oration, 1985, *Challenges and Directions in Australian Court Administration*, Elton Mayo School of Management, South Australian Institute of Technology and others, Adelaide, 1985, 11.

must be extensive and continuing reform of the law and of legal institutions and practices. That task is so extensive that it can only be effective if its mainsprings are the investigations and recommendations of commissions or committees of reform, and consequent legislation.

It is unacceptable that such reform should proceed, as it often did in the past, on the predilections of the members of a reform committee, on hunches and anecdotal evidence. To be effective both the methods and the skills of the social sciences must be employed.

The method must be as scientific as human affairs permit. This usually involves a study and analysis of the existing system so as to identify its deficiencies and understand how and why they have come into being. Then feasible ways of altering the system to eliminate the defects are collected or devised. They are critically tested in the light of available data, experience elsewhere, expert opinion and experience of commission or committee members, to assess the likelihood of them actually producing the change desired. The body then develops and adopts the reforms considered most viable. A report is written to persuade those whose co-operation is needed to make the change that the change is necessary and that the recommended reforms will actually achieve it.[12]

The skills required for this process of reform extend beyond the ordinary skills of a lawyer to the skills of social scientists. Techniques such as statistical method are necessary to produce the data to be used to identify existing deficiencies and test the likely operation of proposals for change.

It follows that lawyers, who are likely to continue to be most influential in reform of the legal system, need to be guided by, and preferably to have, the knowledge and skills of the social sciences.[13]

Under our system, judicial decisions have a degree of input into the process of reform of the law and legal system.[14] Where what is meant or established by legislation or judge-made principle is left doubtful, the judge who has to decide what is the law on the point has to make a choice. In doing so it is proper to look at the consequences of a decision one way or the other on how the law will work in practice and to adopt a solution which is just and adapted to the circumstances.[15] This process of judicial reform is better performed if the judge and the lawyers presenting their arguments have a familiarity with the social sciences.

[12] See Shorter Trials Committee, *Report on Criminal Trials*, written for the Committee by Peter A Sallmann, Australian Institute of Judicial Administration, Melbourne, 1985, iv–vi.

[13] Compare Brett, op cit 43–9.

[14] Id 55–6.

[15] *Hargrave* v *Goldman* (1963) 110 CLR 40, 67; *Viro* v *The Queen* (1978–9) 141 CLR 88, 135–6; *Yango Pastoral Company Pty Ltd* v *First Chicago Australia Ltd* (1978) 139 CLR 410, 426.

## SUSTAINING THE SYSTEM

In a changing environment the legal system will only sustain itself and survive if it constantly adapts itself to satisfy its community's current legal needs and develops a capacity to protect itself against forces or maladies which would distort, injure or eliminate it. The democratic civilisation which we know, is unlikely to carry through the twenty-first century the characteristics that entitle it to that description, unless the universities are prepared to turn their attention and skills to the ways in which the legal and judicial structures of the community may sustain themselves and survive.

In their engineering schools universities do not concentrate only on engineering principles. Their students gain as well the knowledge and skills to plan, create, modify and protect the engineering structures the community needs.

A democracy cannot work without its law and the law cannot work without the courts. This democracy is remarkable for the paucity of its knowledge, research, analysis and writing regarding its judicial system. In the United States this is typically done by the university schools of political science. Australian schools of political science have not shown much interest in the judicial arm of government and neither have the law schools.

Judicial independence, in the sense mentioned earlier, is an essential component of a democracy. There is little appreciation in this country of the additional safeguards which must be put in place if judicial independence is to be preserved in the conditions of today. As was observed recently in the United States:

> 'The perceived threats to judicial independence in 1988 are much more complicated than they were in 1787, and the means to secure judicial independence are correspondingly more complicated today than the late eighteenth-century constitution writers imagined.'[16]

Durable judicial independence today requires that the judges exercise responsibility for the well-being of their court and for controlling its administration and operation; and that the court have an effective system of internal government and administration which enables the judges to do so.

Those who turn their minds to it, are made aware of the developing climate which tempts the executive to act in ways which curtail judicial independence. In a system with growing features of the corporate state, government and public service can control or reach accommodation with representatives of most community groups. The judiciary stands outside that network. Judicial decisions often frustrate the policies of government and public service and produce deep resentment. An increasingly powerful executive, dependent to a very large extent on the guidance of the public service, usually controls the legislature. Many of the safeguards to judicial independence rest on no more than convention. The strength of conventions has waned in our time.

[16] Russell Wheeler, *Judicial Administration: Its Relation to Judicial Independence*, National Center for State Courts, Williamsburg, 1988, 6.

At present, there is great need to call upon a storehouse of knowledge of the ways of securing judicial indepencence in a modern democracy. This storehouse the Americans would find in their universities, but the Australian university cupboard is practically bare. Such knowledge as there is has mainly been generated by the judiciary, the legal profession, the AIJA (Australian Institute of Judicial Administration Incorporated), and academics from overseas.

Graduates emerging from law schools with a potential for legal system leadership have little knowledge and have given little thought to the practical ways of ensuring that judges will continue to have the independence that produces impartial decisions.

In Australian universities the obvious discipline to concern itself with research and teaching in respect of the court system is law.

The other aspect of the community's legal structures which deserves priority in the concern and attention of all who value democracy is the cost of litigation to parties. A law of excellence is of little comfort to a citizen who cannot afford to rely on it. Such a situation is consistent with formal equality but not substantive equality. A university input into this threatening contradiction of social justice is essential.

The development of judicial administration in Australia in the last decade has shown that the knowledge and skills of academic lawyers are indispensable in difficult and extensive projects to alter the judicial system to meet contemporary needs. The point is made by mentioning that it was Professor Ian Scott whose work was central to the project and report of the Civil Justice Committee,[17] Professor Ross Cranston to *Delays and Efficiency in Civil Litigation*,[18] Professor Peter Sallmann to the Shorter Trials Committee's *Report on Criminal Trials*[19] and that of Mr Judd Epstein and Mr Ted Wright to the Case Transfer Committee's *Report on Case Transfer*.[20]

In my opinion the contribution of academic lawyers, in their functions of scholarship, research and teaching, is indispensable if the structures of the legal system are to be kept abreast of the demands of a changing society.

## PROVISION OF INFORMATION

The community cannot be expected to have confidence in its law and legal system unless it knows what they do. Apart from lawyers, most people's knowledge of this comes from what they learn at school and what they learn from the media. The quality of the information which is received in these ways depends on the extent and reliability of the data available to school teachers and the media. One of the by-products of universities treating their educational responsibilities as comprehending not only the law itself but the

[17] Civil Justice Committee Report, Vic Govt Printer, 1984.
[18] AIJA, Canberra, 1985.
[19] Ibid.
[20] Courts Advisory Council and Victoria Law Foundation, Melbourne, 1990.

actual operation of the law and legal system, would be the generation of reliable data. Inevitably a diversity of views about the efficacy and fairness of some aspects of this actual operation would come into existence.

One of the most important impressions of the legal system, influencing the community's assessment of its law, is that absorbed by secondary students studying legal studies. That subject is one of the optional subjects being studied by the highest number of Victorian students in years 11 and 12. It is in the interest of all that they should receive a fair and balanced view of what the law does. On some aspects this view would be likely to be favourable and on other aspects not.

A brief acquaintance at various times over the years with what was being taught in legal studies has prompted some concern that the concentration on the down side of the law outweighed the attention given to its positive side. For example, it is my impression that over the years the view of the jury system put to legal studies students has generally been an unfavourable one. If this is so, it would have predisposed a generation of very influential citizens against the use of juries to try serious criminal charges.

If secondary school teachers of legal studies are unduly critical of the operation of the law, that attitude is understandable. Most have had no direct experience of the way the law is applied in practice. They, and the writers of legal studies texts, are highly dependent on the available sources of information. There is a natural tendency to compare our system with the characteristics that would be expected of an ideal system run by infallible people in a perfect community; rather than with other systems actually operated by fallible people in the real world. Teachers aim to make their classes interesting. As every journalist knows, the interest and attention of people, whether students or adults, is aroused by that which shocks them. The defects of the legal system would have more appeal because of its authority role.

The total change in the attitude of a teacher of legal studies towards juries, brought about by her service as forewoman of a jury in a murder trial in 1988, is instructive. In her article, *In Defence of the Jury — A Teacher's Verdict*, Mrs Helen Marotta, tells of her conversion when experience was substituted for theory.[21] As she put it:

> 'Prior to May 1988, I had always been a firm believer that there had to be a better method of trying cases than the jury system. I argued strongly for reforms and alternatives, such as a panel of experts or a judge alone. I taught my students that juries were not representative of one's "peers", that they were incapable of understanding expert witnesses and complicated evidence, that they were full of their own prejudices, that the concept of "beyond reasonable doubt" was too broad, and even perhaps that they should give reasons for their decisions. Now I feel very hypocritical — today I strongly believe that the present jury system is the best and fairest method of trial.'[22]

[21] (1988) 2 *Compak, Journal of the VCTA*, 60.
[22] Ibid.

When we consider legal education in the nineteen nineties we should not look at tertiary education alone.

For similar reasons, the confidence of the community in its law depends on the media having access to reliable data and a diversity of opinions. The courts and legal profession have not yet come to accept this need or given adequate attention to ways of meeting it. It is not suggested that the universities bear a primary responsibility in this area, but the effect of their extending their operation, as suggested in this paper, would make a significant contribution.

## WORLD DIMENSION

As mentioned earlier, it seems incontrovertible that the greatest challenge in the next decade or so is to introduce an effective system of world law. The world is becoming one community at an exponential rate. Modern systems of mass annihilation render international war virtually obsolete as an acceptable method of dispute resolution. No national community alone can solve the deepening problems of environmental pollution, ecosystem destruction, resource depletion, population explosion, poverty, illness and deprivation which exist on a global scale. They can only be solved satisfactorily by a rapidly constructed system of world order. To solve them lawyers must work with and utilise the knowledge of the physical and other scientists.[23]

It has taken Australians the best part of 200 years to concern themselves with the Australian community as distinct from their local state communities. Can the lawyers of this and other national communities turn their skills in systems of legal order, regulation and dispute resolution, to the building of such systems on a world scale in a matter of decades?

Can the universities and their academic lawyers give a lead in directing their activities to these areas of human need and attract students to them rather than waiting to respond to a market or student demand for them?

## THE MECHANICS OF CHANGE

I have suggested that the continuance of democracy demands that the universities through their academic lawyers fulfil a much more responsible and demanding community role than hitherto. In none of the proposed extended functions of scholarship, research and teaching would the law programs of universities stand alone. Other community institutions in their various ways also contribute. Because universities perform those functions in combination

[23] I discussed some of these issues in an address to Monash law students published as 'Responsibilities as Lawyers' in *Oracle* (1989) *Monash Law Students Society and Legal Action Group* 45. See: Sir Ninian Stephen, 'The International Protection of the Environment' [1990] *Australian International Law News* 209; Sir Anthony Mason, 'The Relationship between International Law and National Law and its Application in National Courts' [1990] *Australian International Law News* 214.

and perform them as part of the process of educating the community's future lawyers, it is desirable that the universities should occupy and extend the intellectual frontiers of each of the functions.

Is that expanded university role a feasible and achievable one? I think that it is and is worthy of a great deal of consideration.

It would first be necesary to consider why the typical law schools have moved away from jurisprudence and constitutional and legal history; and why they have not made the social sciences and the actual operation of the structures of the law their province. I suspect that a basic cause is the prevalence of the notion that the function of academic lawyers hardly extends beyond teaching, and that law can be taught 'under a eucalyptus tree'. There has followed an insufficiency of funds and staff for even the present tasks. Perhaps a cast of mind affected by attitudes influenced by precedent has had influence. Lack of time to teach all that should be taught would have been a factor: but most universities now require a double degree from those receiving a legal education. No doubt other causes would be revealed on investigation.

Attitudinal changes would be necessary. More money would need to be spent on university legal education. As there is a limited prospect of squeezing more into the law slice from the rest of the university cake, the community would have to be persuaded that law is sufficiently important to be funded on the same scale as engineering and comparable disciplines.

It should not be left solely to the academic lawyers to bring about this attitudinal change. The judiciary and legal profession should pull their weight. The bane of isolation is the greatest obstacle to this occurring. Over the years I have been struck by the baseless suspicion and misinformation mutually generated when the practising and academic parts of the legal profession have become remote from each other, do not know each other as people and are each ignorant of the other's problems and aspirations.

I am confident that it is possible for legal education to pull its weight so as to serve the needs of this democracy in the coming decades.

Observation shows that universities have the capacity to make the necessary changes outlined in this article. In almost all the areas discussed, some Australian university is giving, or about to give, leadership in putting into effect in the way I have proposed, the basic principles and precepts of a modern university.