



**Launch of the Australian Legal Philosophy Students'
Association's 2005 Program of Events
Monday, 14 March 2005, 6:15pm
Sir Samuel Griffith Room, TC Beirne School of Law**

**The Hon P de Jersey AC,
Chief Justice**

I am very pleased to have the opportunity this evening to launch our host Association's program for the year 2005, and in doing so, to acknowledge its worthwhile initiative.

The Australian Legal Philosophy Students' Association, established in mid-2003, late last year became the national student branch of the Australian Society of Legal Philosophy. The noble aim of the Association is to encourage and reward study of legal philosophy in Australian law schools. The Association has a facilitative role: it will have succeeded in its goal, if the extent of critical reflection on the law – among students, practitioners and academics – is enhanced.

There is a rather hackneyed sentiment that a lawyer does not need to know the law, just where to find it. This no doubt reassures lawyers with deficient memories. But there is an unspoken premise, which is that having located the law, you will have the understanding to apply it. It is more beneficial to understand the principle underlying a legal proposition, than to be able to recite the proposition itself. Developing that understanding is the essential challenge of our law schools.

Appellate judgments in difficult cases, especially at the level of the High Court, ordinarily include discussion of matters of legal principle. That demonstrates how the common law develops, as it is said, incrementally, with principle informing its accommodating of established contemporary conditions. But at all levels of the legal system, it is the capacity to reason which distinguishes the fulfilled and productive lawyer, and critical to the capacity to reason, is an appreciation of fundamental legal principle.

There is another aspect to this. While a lawyer is duty-bound to uphold the law, that does not preclude criticism and agitation for change where a law, statutory or otherwise, is



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considered inappropriate. The effectiveness of such criticism depends however on its being informed, that is, offered from a base of proper understanding.

The President of the Association, Max Leskiewicz, has referred me to an article by Professor Cotterrell from the University of London ("Pandora's Box: Jurisprudence in Legal Education" (2000) 7(3) *International Journal of the Legal Profession*, 179, 183), arguing that jurisprudence should be "constructively subversive", that is, "it should question general assumptions that underlie received professional wisdom about the nature of law...it should do this in a way that enriches professional understanding by broadening it. It should require students to understand that the current view out of the window in the professional house of law is not the only available view of the social world that the law inhabits." It was not jurisprudential subversiveness, but political subversiveness, which was said to characterize the atmosphere of this campus in my student days. But note the reference to constructively subversive. I think this is another way of saying we should think laterally.

Legal jurisprudence aside, that lateral analysis should take place within a matrix of broad life experience. There is a wonderful line in Sir Walter Scott's "Guy Mannering" where the Scot lawyer Pleydell offers Mannering this advice: "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

Max Leskiewicz has also referred me to a similar image, drawn from the legal theorist William Twining's 1994 Hamlyn Lectures. Twining provides an arresting image of two contrasting characters: on the one hand, Pericles, the wise judge, the law-giver, the enlightened policy-maker; and on the other, a plumber, who quite rightly has no use for a history or theory of plumbing but who needs no-nonsense specialized training to ensure he is a competent technician.

Plumbers and masons fulfil most useful roles, and most of us are envious of their talents. The capacity to ensure a tap doesn't leak is one I covet: the work of the mason finds a



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current apogee nearby in the splendour of the rising St John's Cathedral. But the talent of the lawyer can obviously benefit society at a different level. Yet that cannot be fed adequately by a law student's mere consumption of packaged pills of legal knowledge.

Your President has suggested to me there should be more focus in legal education on "the philosophical curiosities and social responsibilities of legal practice", and he reasonably concedes that in tune with the contemporary approach, that needs to be marketable to those inclined to look more to financial outcomes than the public service which true professionalism assumes. I do not wish to enter the debate about tertiary curricula, save for endorsing his suggestion these aspects be appropriately emphasized.

The Association deserves commendation for its enterprise in drawing attention to these matters, and through diverting programs, fostering the interest of our community's lawyers to be. The Association moves into the year 2005 from an impressive range of activities last year, and this year's program is formidable. High level speakers, for example, distinguish the calendar, extending to Sir Anthony Mason, and I am confident no dragooning was necessary, for the Association has over its short life to date established its credentials as a thrust deserving support and encouragement.

I am very pleased formally to launch the 2005 Program of Events of the Australian Legal Philosophy Students' Association.