

Preface
Occasional Address
Law Graduation Ceremony
University of Tasmania
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The centenary of this University's Faculty of Law - the fourth of its kind to be established in an Australian university, after the Universities of Melbourne, Sydney and Adelaide¹ - is an occasion on which it is appropriate to say something about the founding of the law school of the University of Tasmania, about the man who was chosen to be its first full-time lecturer in law (and later its first Professor of Law), William Jethro Brown, and about his ideas on legal education.

The University of Tasmania came into being, officially, at the beginning of 1890. Its charter was contained in a statute of the Tasmanian Parliament enacted in December 1889.² That statute was the culmination of years of debate about whether Tasmania needed and should have a university, funded largely or solely from government funds.³

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1 The University of Melbourne offered instruction to articled clerks from 1857, but the degree of LLB was not established until 1860. The University's Faculty of Law was established in 1873. Lectures in law at the University of Sydney were offered from 1859, but the Faculty of Law was not established as a separate faculty until 1890. The University of Adelaide's Faculty of Law was established in 1883. For histories of these law schools, see Campbell, R, *A History of the Melbourne Law School 1857-1973* (1977); Mackinolty, J and J, *A Century Down Town: Sydney University Law School: First Hundred Years* (1991); Edgeloe, VA, "The Adelaide Law School 1883-1983" (1983) 9 *Adelaide Law Review* 1; Castles, A, Ligertwood, A and Kelly, P (eds), *Law on North Terrace 1883-1983* (1983).

2 53 Vic No 41.

3 See Davis, R, *Open to Talent: The Centenary History of the University of Tasmania 1890-1990* (1990), Chapter 1 (hereafter "Davis").

The discipline of law was clearly envisaged as one of the disciplines which might, at some stage in the future, be embraced within the teaching and examining functions of the new University. The degrees which the University was expressly authorised, by its statute, to award included the LLB and the LL.D.

The Faculty of Law in the University of Tasmania was one of the University's three original faculties, the others being Letters (later Arts) and Science.

The task of advising on whether the University should become a provider of legal education was assigned to a committee of the Council, the governing body of the University. On 20 July, 1891 the Council appointed a committee of three of its members "to consider whether arrangements should be made to establish law lectures in connection with the University".⁴ The members of that committee were all lawyers, though none of them possessed a university degree of any kind. They were:

- Sir William Lambert Dobson, Chief Justice and also Chancellor of the University. He had read for the English Bar.⁵
- Justice John Dodds, who was to succeed Dobson as Chief Justice in 1898.⁶
- James Backhouse Walker, a Hobart solicitor and historian, who had played a prominent role in the establishment of the University, and who in 1898 was to become its second Vice-Chancellor.⁷

On 15 February, 1892 the committee recommended to the Council that a program of law teaching within the University be established. There were, the committee advised, adequate funds for that purpose and there were 32 articled clerks in Hobart who would probably attend a "properly arranged course of lectures".⁸ The Council approved the establishment of a Faculty of Law (taking in studies in modern history) and the establishment of a lectureship in law.

4 Faculty of Law, University of Tasmania, *Handbook* (1985) at 6.

5 5 ADB 78.

6 4 ADB 80.

7 6 ADB 340. Walker is commemorated by the annual prizes still awarded in the Law School to the best all-round performers in several years of the law course.

8 See footnote 4; see also, Davis, at 24.

The lectureship was advertised, within Australia only, at an annual salary of £500. There were seven applicants for the position.⁹ The man selected for the post, in September 1892, was William Jethro Brown, then only 24 years of age. He was to be Tasmania's only full-time lecturer in law. He was to be promoted to the rank of Professor in Law in early 1896 but vacated that chair in mid 1900 to take up a chair in constitutional law and history at University College, London. He resigned the London chair in 1901 to become Professor of Constitutional and Comparative Law in the University College of Wales, Aberystwyth, a post he held until 1906. In that year, he succeeded John Salmond - the original author of the books known as *Salmond on Torts* and *Salmond on Jurisprudence* - as Professor of Law in the University of Adelaide. From 1916 until 1927 Brown was president of the Industrial Court of South Australia. He died in 1930.¹⁰

Who was William Jethro Brown, and what qualifications did he bring to the position of lecturer in law in the University of Tasmania? What was he to make of his office as a teacher of law?

Brown was born on 29 March, 1868 at Mintaro, South Australia. His father had emigrated from Devon in 1847 and had become a prosperous farmer. Young "Willie" Brown received his schooling at the Stanley Grammar School, Watervale, and later, as a pupil-teacher at the Moonta Mines School. As a boy, Brown had helped his father on the farm, and later, at the age of 14, he undertook several month's service as a cabin boy.

In 1886 Brown, then 18 years of age, proceeded to Oxford, as a non-collegiate scholar, to further his knowledge of the classics, and in October 1887 he entered St John's College, Cambridge. In 1889 he completed Part I of the Cambridge Law Tripos with first class honours. He was placed third in the order of merit. In 1890 he completed Part II of the Cambridge Law Tripos, thus earning the degrees of BA and LLB. This he did with first class honours. On this occasion he was placed second in the order of merit.¹¹ In December 1890 Brown presented himself for examination for the degree of LLD

⁹ Davis, at 25.

¹⁰ Biographical details about Brown have been drawn from the following sources: Roe, M, *William Jethro Brown 1868-1930: An Australian Progressive*, University of Tasmania, Occasional Paper No 7, 1977; Roe, M, "William Jethro Brown" 7 ADB at 447-8; Roe, M, *Nine Australian Progressives*, 1984, at 22-56; Edgeloe, VA, work cited at footnote 1, at 21-56; Mackinolty, J and J, work cited at footnote 1, at 37, 42, 45, 50. The work by Cyril Maitland Ash Brown (WJ Brown's son), *William Jethro Brown: A Personal Biography and a Bibliography*, Perth, Frank Daniels, 1983, was not available to me at the time I was preparing this address.

¹¹ Tanner, JR (ed), *The Historical Register of the University of Cambridge*, 1917, at 873, 874.

at Trinity College, Dublin. Once again, the examiners were well satisfied.

Brown then proceeded to read in barristers' chambers in London, preparatory to his call to the English Bar, by the Middle Temple, in 1891. He returned to Australia in early 1892 and later that year applied for a chair of law at the University of Melbourne. The Melbourne selection committee, by seven votes to five, adjudged William Harrison Moore, Brown's senior by one year, to be the better candidate.¹²

Brown's consolation prize was the lectureship in law at the University of Tasmania, on a three-year contract, at an annual salary of £500.

Brown arrived in Hobart in time for the beginning of the 1893 academic year. His immediate task was to design a curriculum for a three-year LLB course which, it was assumed, would be undertaken mainly by part-time students serving articles of clerkship in solicitors' offices.

Brown's initial curriculum for the Tasmania LLB resembled that for the Cambridge Law Tripos, but it was to be substantially revised.¹³ Under the initial curriculum the subjects of the first year were Roman Law, and a subject called Jurisprudence and Principles of Legislation; in year two the subjects were Constitutional Law and History and the Law of Property; in year three, the Law of Contracts, the Law of Wrongs (Civil and Criminal) and International Law.¹⁴

12 Re, L and Alston, P, "William Harrison Moore ..." in Campbell, R, work cited at footnote 1, at 105.

13 New regulations governing the Cambridge Law Tripos were adopted in June 1887. Brown, presumably, undertook his Bachelor's degree studies at Cambridge under these regulations. He described the Cambridge course, as he remembered it, in (1908) 6 *Commonwealth Law Review* 1 at 8. Part I of the Law Tripos, which occupied the first two years, involved completion of three examination papers on Roman Law; completion of one paper on Public International Law; one on Jurisprudence; and one on English Constitutional Law and History. Part II, in the third and final year, on Brown's account, involved examinations under the following rubrics: Property, Equity, Contracts, Torts, and Crimes. Other accounts indicate that Part II of the Cambridge Law Tripos, under the 1887 regulations, adopted a somewhat different ordering of subjects, eg, Real and Personal Property (with Equity built in); Contract and Tort (again with Equity built in); a single subject which covered Criminal Law and Procedure, and Evidence; and a component called Essays. See Fifoot, CHS, *William Frederic Maitland: A Life*, 1971, at 71. The Cambridge syllabus adopted in 1887 was, apparently, not changed until 1922 (see [1922] *Cambridge Law Journal* 193).

14 University of Tasmania, *Calendar 1894*, at 66-8. Only one student enrolled for the LLB course in the 1893 academic year. He was James

The subsequent revision of the curriculum owed something to the ideas of Brown's friend and mentor at Cambridge, the eminent legal historian, Professor FW Maitland.¹⁵ Maitland was critical of the Cambridge course. In his opinion, it placed insufficient emphasis on study of the living law of England. Cambridge students were not introduced to that law until their third and final year.¹⁶ Brown was, no doubt, aware of Maitland's views and appears to have sought his advice about the Tasmanian curriculum.¹⁷ In 1894 that curriculum was revised, and in a way which met the kinds of criticisms Maitland had made of the Cambridge course. The new Tasmanian curriculum required that the first two years be devoted to the study of the living law: of property, wrongs (civil and criminal), contracts and constitutional law. The third year was to be devoted to principles of equity and comparative law, the latter including jurisprudence, principles of legislation and Roman law. At some stage, students had to complete further subjects - Conflict of Laws, Constitutional and Legal History and Political Science - and at least one paper of essays and problems on the law subjects of years one, two and three.¹⁸

Maitland's influence upon Brown's thinking about legal education is evident also in the importance Brown attached to the learning of law through study of reports of judicial decisions, rather than at second hand through the reading of textbooks.¹⁹ Maitland was firmly committed to the idea that English law should be learned primarily through the reading and analysis of the law reports.²⁰ Brown agreed. The reports, Brown pointed out, "are the most

Roland Rule. Rule graduated in 1896. He was later appointed to the office of parliamentary draftsman.

- 15 Maitland (b 1850) was appointed Reader in Law in Cambridge University in 1884. He was appointed Downing Professor of Law in that University in 1888, a position he occupied until 1898.
- 16 Maitland's criticisms of the Cambridge system of legal education are recorded in the following publications: Fifoot, CHS (ed), *The Letters of Frederic William Maitland*, 1965, Letters Nos 27 and 32 to MM Bigelow (dated 13 May, 1887; 11 August, 1887); Fifoot, CHS, *Frederic William Maitland: A Life*, 1971, at 66, 71; Maitland, FW, "Two Lectures Delivered by FW Maitland ... Easter Term, 1889" [1966] *Cambridge Law Journal* 54.
- 17 Roe, M, *William Jethro Brown 1868-1930: An Australian Progressive*, 1977, at 4. The correspondence recording the advice sought by Brown and the advice tendered by Maitland (and also by F Pollock) is held in the South Australian State Archives.
- 18 University of Tasmania, *Calendar 1894*, at 43-4.
- 19 Brown's earliest published views on legal education appeared in his inaugural lecture at the University College of Wales, Aberystwyth, delivered on 19 October, 1901. The lecture was published under the title "The Purpose and Method of a Law School" (1902) 18 *Law Quarterly Review* 78-91, 192-210. The lecture was republished as *The Study of Law*, London, 1902.
- 20 Fifoot, CHS (ed), *The Letters of Frederic William Maitland*, 1965, Letter No 32, 11 August, 1887.

important of the original sources of the law".²¹ Study of the reports also promoted the development of critical abilities. In reading cases, Brown said,²²

[the] student, instead of having his legal principles formulated by proxy, must discover them for himself. He must fight his own way to them by the light of the facts of the case, the argument of the counsel, the language of the judge, and the decision of the Court. At each step in the process the independence of judgment is exercised. He learns to trust no authority. He acquires, perhaps, that rarest possession, a just confidence in his own opinion.

Brown's views on teaching and learning methods in law schools, and also on methods of assessment, were progressive. Students should not, he thought, be spoon-fed by their lecturers. They should come to the classroom prepared to engage in discussion, with the lecturer and fellow students - discussion of cases and other materials they had been asked to read beforehand:²³

The student, accustomed to have his private reading submitted to the ordeal of examination in class [Brown observed], learns how to get out of a book what is in it. He enjoys, moreover, an opportunity of exercising himself in the art of replying to objections before an audience.

"The responsibilities of the student in the matter of successful class work", Brown continued,²⁴

... are fully as great as those of his lecturer. He must know how and when to speak; he must sometimes be patient with his fellow-student, and sometimes mayhap with his lecturer; he must work out of lecture hours as well as within them; he must be active, and to some degree original, and must know how to draw intellectual nutriment from the active processes of criticism as well as the passive processes of listening.

Brown, in short, favoured active learning, not passive teaching!

Brown also had little time for the traditional system of examination. He thought that it disposed the student to lose "sight of educational ends" and allowed "his ambition to run in the direction of accumulating formulae which he can reproduce with easy grace and facility when called upon".²⁵ Brown considered that an examination should test a "student's capacity rather than the mere

21 (1902) 18 *Law Quarterly Review*, at 85.

22 See footnote 21.

23 See work cited at footnote 21, at 207.

24 See work cited at footnote 21, at 207-8.

25 See work cited at footnote 21, at 206.

amount of his information".²⁶ An examination paper should therefore include "a certain number of problems which test a student's power of diagnosis".²⁷ Formal examinations should not, however, be the only method of assessing students' performance. Account should also be taken of a student's contribution to class discussion and of essay work.²⁸ The Tasmanian faculty was not, however, sympathetic to the idea of what is now called "continuous assessment".²⁹

Brown's views about a university legal education were predicated on an assumption that most law students wished to become practitioners of the law. "The object of the study of law", he declared, "is to help students to become lawyers ..."³⁰ But of what was a lawyer made? An obvious requirement was "a knowledge of the law", a knowledge which embraced "a power to know where and how to seek a rule of law", an understanding of "the principles which legal rules embody", "the consequences which are involved in particular rules", and of the interrelationships between the rules.³¹ But "knowledge of the law", Brown stressed, "is but an instrument with which the mind of the lawyer works".³² A lawyer needs also to have a capacity to use the knowledge he has acquired. The mental characteristics which Brown identified as ones which exemplified this capacity were "common sense",³³

... a ready and retentive memory; a capacity for close, accurate and sustained thinking; a judgment which sees to the heart of things; a resourcefulness quick to see and appreciate main issues, and strong in the power ... which enables a man to make others see the truth as it appears to him; and crowning all, the quality of mind, moral rather than intellectual, which leads a man on towards the ideal of justice.

A central mission of a university law school was to help students develop these abilities.

During his years in Hobart, Brown was the only full-time lecturer in law, but he was assisted by part-time lecturers drawn from the legal profession. (It was not until after World War II that the Professor of Law could look to full-time lecturers for assistance.) Brown's university duties included not only lecturing and examining

26 "Law Schools and the Legal Profession" (1908) 6 *Commonwealth Law Review* 1 at 13.

27 See footnote 26.

28 See footnote 26.

29 Roe, M, work cited at footnote 17, at 4.

30 See work cited at footnote 21.

31 See work cited at footnote 21, at 79, 81.

32 See work cited at footnote 21, at 81.

33 See work cited at footnote 21, at 81-2.

in law subjects, but also the marking of the scripts of students sitting school certificate examinations, and the giving of some lectures to interested members of the public. The lectures Brown gave in Launceston on the topical subject of federation proved especially popular. These lectures were to be the basis of Brown's book *Why Federate?* published in Sydney in 1898 and republished in London at the end of 1899 under the title *The New Democracy*. This work earned Brown the Cambridge LLD and also a DLitt from Trinity College, Dublin.

Brown firmly believed that university law schools should be places of research as well as of teaching and learning. He often quoted a dictum of President Eliot of Harvard University "that a university which is not a place of research cannot long continue to be a good place of teaching".³⁴

In 1908 Brown contributed an article to the *Commonwealth Law Review*, in which he pleaded for better resources for the Australian university law schools, mainly to enable them to employ a number of full-time teachers who could devote some of their time to research.³⁵ In 1908 Brown was the sole full-time teacher of law in the University of Adelaide and he lectured in no less than seven subjects. In each of those subjects, the teacher "must", said Brown, "be doing research work". Brown elaborated as follows:³⁶

Only by constantly learning himself can a teacher hope to make true learners of others. Only by remaining a devoted student, can he retain his interest in his subject, or gain that inspiration and influence without which his work will lack all elements of vitality. However carefully he may have prepared a course of lectures, he must be constantly revising it, if he would not sink to the level of a lifeless machine.

A professor who strove conscientiously to do his work as chief administrator of a law school, as lecturer in a wide range of subjects, and as a researcher, would "find that he is doing many things ill, even if he luckily succeeds in doing some things well".³⁷

From all accounts, Brown performed the office of a teacher of law very well. The Challis Professor of Law at the University of Sydney, William Pitt Cobbett, for whom Brown deputised for two

34 See work cited at footnote 21, at 209; see also (1908) 6 *Commonwealth Law Review* at 12.

35 "Law Schools and the Legal Profession" (1908) 6 *Commonwealth Law Review* 1-15. The article was solicited by Professor Pitt Cobbett, the consulting editor of the journal (Mackinolty, J and J, work cited at footnote 1, at 37).

36 6 *Commonwealth Law Review* at 13.

37 See work cited at footnote 36, at 13-14.

terms in 1898, described him as a fine teacher who had a capacity "for arousing in his students an interest in the historical and philosophical aspects of their subject".³⁸ The Sydney law students' magazine, *Hermes*, spoke of his "never failing courtesy, and a deep sympathy with the interests of those under his charge". Brown's lectures had "been scholarly and interesting".³⁹ The Principal of the University College in Wales was later to describe him as "an able and gifted teacher".⁴⁰

Brown's students in Hobart had been few. By 1900 only twelve had completed the LLB course, but among them were a future Chief Justice of the State's Supreme Court, Herbert Nicholls;⁴¹ a future Premier of the State and also the first Tasmanian law graduate to be awarded Honours, Albert Edgar Solomon;⁴² a future Senator and Minister under Alfred Deakin, John Henry Keating;⁴³ and a future Vice-Chancellor and Chancellor of the University, William Joshua Tilley Stops.⁴⁴

It is difficult to assess the long-term effects of the work done by a foundation teacher in a university law school, particularly when the best witnesses are now, wholly or largely, silent. In the case of William Jethro Brown, some inferences can, however, be drawn. His seven years' service in the University of Tasmania began the life of a law school which has continued to today, despite two world wars in which Australia was involved, and despite some more local cataclysms.

38 Quoted in Mackinolty, J and J, work cited at footnote 1, at 42.

39 See footnote 38.

40 Quoted in Ellis, EL, *The University College of Wales, Aberystwyth 1872-1927*.

41 11 ADB 22.

42 12 ADB 11; Davis, work cited at footnote 3, at 56.

43 9 ADB 541.

44 Davis, work cited at footnote 3, at 72-3. Nicholls, Keating and Stops graduated LLB in 1896, Solomon in 1897. Nicholls, Keating and Stops had been admitted as Tasmanian legal practitioners prior to graduation. Presumably, they had served the requisite five years' articles of clerkship required under the *Legal Practitioners Act 1888* (52 Vic No 35). In 1895 the Act was amended (59 Vic No 28) to allow for the admission of: "any person of the age of Twenty-one years and upwards who has taken the Degree of Bachelor of Laws in the University of Tasmania, or in any University recognised by the University of Tasmania, and has been bound by contract in writing to serve for not less than Three years to a practitioner carrying on business as a practitioner in the ... [Supreme] Court, and has duly serviced under such contract for no less than Three years, and has passed the prescribed examination or examinations ...".

On the occasion of its centenary this University's law school, and those who have passed through it, can, I think, take pride in the fact that a law school of the kind envisaged by William Jethro Brown became a reality. Today this law school stands firmly and proudly as one of the oldest group in the now very large company of Australian university law schools.