Inauguration of the Faculty of Law at the University of Wollongong

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The establishment of a Faculty of Law marks a notable advance in the life of any university. Even in the distant days when a university was a community of scholars, law occupied a prominent part in the curriculum of the great universities - and that tradition dates back a very long way. But there was a difference between the study of law as an intellectual discipline and the study of law as a subject of professional practice. Instruction in law as a subject of professional practice was undertaken, to a substantial extent, by institutions outside the universities such as the Inns of Court in England and the Admission Boards in New South Wales, to mention well-known examples.

Over many years that picture has changed. Universities, casting aside their character as communities of scholars, became tertiary institutions offering, amongst other things, courses in professional disciplines. Of these disciplines, law, by virtue of its historic university association, has been pre-eminent. Its continuing pre-eminence, so the cynics say, is due to the fact that a law school is not nearly as costly to establish and administer as a school of medicine or a school of engineering. Without taking issue with the cynics, one can say that the elevation of law as a professional discipline to the level of academic study was a recognition of the ever-increasing complexity of the law and its expansion into every aspect of community life. In addition, it enhanced the status of lawyers. It played a part in banishing from the legal stage such eccentric personalities as Serjeant Buzfuzz and the attorneys who inhabited Bleak House.

For very many years - for as long as I can remember - debate has waxed and waned about the content and purpose of academic legal education. Generally it has been considered that a university should aim to equip its law graduates with a broad and liberal education rather than concentrate on a narrow technical competence. With this end in view, combined degree courses have been encouraged, on the footing that other degree courses will provide an element of broad and liberal education. How a modern economics course achieves this object I do not know. Be that as it may, reliance on another degree course as a means of providing the broad and liberal components of a tertiary education seems to entail a concession that it is not possible for a law degree to encourage breadth of thought or to stimulate liberal thinking. That is a concession which, in my view, should not be made, for to treat the law as a discrete set of principles in a vacuum and without a context is to misconceive its dynamic and ubiquitous nature and, more importantly, to undervalue or even to overlook the manner in which it contributes to the fundamental fabric of modern society.

It is, of course, desirable for university graduates to take with them from their tertiary education a range of interests not confined to their specific areas of study and a related breadth of vision. But such a breadth of vision must also be generated within their chosen discipline, in the case of this Faculty, the Law. What we want is a law course that offers a broad and liberal education. So, I am glad to see that the Faculty of Law at Wollongong aims to provide at undergraduate level, first, a broad general education; secondly, the foundation for a career in a broad range of legal work; and, thirdly, the study in depth of an academic discipline.

I doubt that all the rhetoric in the past about the importance of providing law students with the benefits of a broad and liberal education has been matched by the results achieved. The New South Wales legal profession is noted for its specialised technical competence rather that for its contribution to the development of the law or for its constructive capacity to mould the law to the needs of society in association with other disciplines. Mind you, technical and professional competence is what you expect above all else from a practising lawyer but the community is, I think, entitled to expect something more from the profession. Unfortunately, the practice of the law has tended to contract the horizons of many professional lawyers. Professional practice is demanding and can become all consuming.

The emergence of the national megafirms of solicitors has strengthened this tendency. The emphasis on billable hours and the setting of individual targets in terms of billable hours is scarcely calculated to encourage meditation on issues not chargeable to a client. Indeed, it is an approach that threatens to transform what was a profession into something that more closely resembles a business. The law schools must resist the temptation to become business schools, deferring to the demands of large commercial practices and ignoring consideration of intellectually demanding questions posed by the traditional subjects as well as the larger and enduring jurisprudential issues relating both to the structure of legal systems and to the law's role in society.

Of course, not all law graduates who proceed to practice ignore consideration of these questions. We have produced some experienced lawyers with a keen interest in fundamental issues who, having the ability to bring to bear a profound understanding of human affairs, can make a strong contribution to the solution of public interest problems. If the Chancellor will excuse me for saying so, he is a notable example. No Australian lawyer in recent times has presided over as many important public inquiries as he has. What is even more important, he has done so with conspicuous success. And, if I may say so, I am delighted that the University has conferred this great honour upon him today.

Notwithstanding such examples, there is an unfortunate and growing perception in the broader community that lawyers do not produce tangible benefits for society. This perception flows partly from ignorance of the role the law plays in our society, as an integral and integrating aspect of its fabric, whether commercial, social or domestic. It is of the first importance, especially in these times when the legal profession is so publicly and constantly being called upon to justify its existence, or at least its existence in its current form, that graduates of the law schools are able to recognise the significance of the legal system in our society and to articulate the importance of maintaining its integrity. Thus, a law school must ensure that its charges consider not only the specifics of legal principle but also the larger questions with which the law is inevitably concerned: whether our laws are responsive to the needs of society; whether our legal system and our legal services are adequate, accessible and efficient. These issues are now so much a matter of public debate that no university can afford to ignore them.

Within the law itself, a law school should aim to be a constructive participant in the dynamic life of the common law. It has been said from time to time that in Australia, in contrast to the United States, in the field of judge-made law, it is the judges rather than counsel or academic lawyers who have taken the initiative in constructively developing the law. Unquestionably that statement is true. In Australia, academic lawyers over many years failed to match the contribution made by their counterparts in the United States and, to a lesser extent, the United Kingdom. That position is changing perceptibly as a result of the enterprise of law publishers in this country. There is now available a vast range of textbooks and monographs on almost every conceivable topic and, in addition, many university and specialist law journals which provide many opportunities for constructive examination of Australian law with a view to promoting its principled development.

We should aim to follow the United States example in this respect. But we will succeed in doing so only if we give greater emphasis to the study of law as an intellectual discipline which is responsive to the needs of society. That entails greater emphasis on jurisprudence and the philosophy of law so that graduates emerge from a university with a panoramic view of the law as an entire discipline rather than as a series of discrete and unrelated pigeon-holes, concentrating on one or more of those pigeon-holes to the exclusion of others. And it requires active cultivation of that spirit of inquiry which has been the touchstone of academic life.

Recent experience in New South Wales is that not less than fifty per cent of law graduates find employment outside the practising profession. That percentage is likely to rise for two reasons. There is a limit to the number of employment opportunities in the profession and there is a distinct upsurge in the number of students wanting to study law. Just why law has become so popular is by no means clear. But it is not an Australian phenomenon. It has also occurred in the United States. One commentator has suggested that it is all due to the popularity of *LA Law*. If you know anything of *LA Law*, that seems to be an unlikely explanation. That is by the way. The point is that an increasing percentage of law graduates will be working outside the profession.

And that has consequences for a law school curriculum. Courses must be so structured as to offer freedom of choice. That is not easy to achieve. By a strange paradox, just as the universities are confronted with a rising tide of law students so there appears to be a shortage of law teachers. The shortfall is due to the failure - and it is a serious failure - to maintain academic salaries at an adequate level. It has resulted in a steady drift, some say a flood, of academic teachers into other occupations; in particular, it has resulted in the desertion of academic lawyers into the professional ranks. Making every allowance for this problem, it is inevitable that some law schools will find it necessary to devote more resources to subjects other than the major professional subjects.

Indeed, the expansion in the number of Australian law schools already planned, as well as the expansion in some existing law schools, calls for constructive and sensible specialization and optimum use of resources. There is no sense in duplicating throughout Australia standard form law courses. There is a depressing tendency towards uniformity of education in Australian tertiary institutions. In a country which has limited resources it makes no sense to insist on uniformity. What we should aim at is an expansion in the range of choice of courses so that, in the shaping of a particular course, regard is had to courses available elsewhere. And, in terms of using available resources, it may be possible to promote a greater exchange of lecturers and teachers between universities than has taken place hitherto.

There are, of course, obstacles to be overcome. The major professional subjects necessarily form the core of a law school curriculum designed to qualify graduates for entry into the profession. And that means teaching the existing principles, whether based on judge-made law or statute, as they have been or may be stated. Without an accurate understanding of the law as it is, one is scarcely equipped to participate in a debate about what the law ought to be. But, as a number of High Court decisions has shown in recent years, there is vast scope for debate about what the existing law is, without moving on to the contentious second stage, what it ought to be. Even if one does not move on to that second stage, it is essential to view the existing principles critically.

I congratulate the new Faculty on its initiative in establishing a course in Judicial Administration, the first course of its kind in Australia. Already administrators from a number of courts, State and Federal, have enrolled. The course will bring about continuing contact between the Faculty and the court system to the mutual benefit of both, as well as an association with the Australian Institute of Judicial Administration which is affiliated with the University of Melbourne.

The criticism made of law, both as a discipline and as a profession, is that it is too removed from other aspects of society. This criticism takes many forms and not all of them are intelligible or sensible. But it is true to say that in Australia we have not yet succeeded in building suitable bridgeheads with other disciplines. Until we do so, as lawyers we cannot hope for better understanding of the role of the law in society.

In this area there is much that can be done within universities with a view to promoting inter-disciplinary studies. No doubt this activity lies in the field of postgraduate studies. Now that it has been clearly recognised that postgraduate studies are the proper province of every Australian university, and not the exclusive or preferred prerogative of the Institute of Advanced Studies at the Australian National University, there is every reason to promote joint studies with other elements within the University. By way of illustration I should point out that studies commissioned by the Australian Institute of Judicial Administration into various aspects of our legal system in the form of reports made by academic researchers (who are non-lawyers) after consultation with judges and lawyers have proved extremely illuminating.

In conclusion, I congratulate the University on its initiative in establishing the Faculty of Law and I applaud the University on its perception in identifying what are the appropriate goals of legal education in a university. I trust that the Faculty achieves the success which its initial efforts so obviously deserve.