

# THE SWINGING SIXTIES AND BEYOND – THE INFLUENCE OF THE SECOND WAVE UNIVERSITY LAW SCHOOLS IN THE DEVELOPMENT OF AUSTRALIAN LEGAL EDUCATION

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## I INTRODUCTION

During the three decades after the establishment in 1960 of the Australian National University (ANU) Faculty of Law there was an impetus to expand Australian law schools. Perhaps the expanding economy at the time increased the demand for additional lawyers. There was also a view '[t]hat any course at a university should be open to all who were qualified for it and wished to undertake it'<sup>1</sup> which was supported by various government reports on tertiary education at the time. This perception also reflected a change of attitude in the school leavers of the 1960s who were the initial post-war generation (the 'baby boomers'). Increasingly, the majority stayed at school until Year 12 (then sixth form) and were the first members of their families to go to university. This was partly due to the creation of fee-free tertiary education after the election of the Whitlam Government on 5 December 1972, which led to the expansion of Australian law schools.

There was also a noticeable change during this period in law teaching in Australia. Not only was this reflected in the increased number of tertiary law teachers (due to the increase of law students and an expansion of law schools), but also in the calibre of law teachers. Up and until that time there had been a trend of law teachers being engaged part-time, balancing teaching with practising law—the latter being their primary focus. However, from 1960 onwards there was a greater focus on learning skills incorporating a more conceptual approach to the study of law. These changes in the nature and quality of law teaching required a shift in the qualities and approach of those appointed as law teachers. The majority were now required to serve full-time with little or no time to devote to legal practice. As Michael Coper has observed, up until this time the focus of legal teaching 'was strongly professional and vocational.'<sup>2</sup>

The increased emphasis on conceptual learning replicated what had occurred in the United States in 1870 when Christopher Langdell introduced the 'Casebook' method of teaching into Harvard Law School. This led to the appointment of what was described by Robert Stevens as 'the first of a new breed of academic lawyer, a law graduate with limited experience of practice who was appointed for his scholarly and teaching potential.'<sup>3</sup> There was a similar pattern in the previous composition of North American law teachers: 'law professors had been either practitioners taking a few hours away from the office to conduct classes, or full-time teachers who had had extensive experience as practitioners before appointment.'<sup>4</sup>

This shift in the experience of law teachers led to differences in the approach to teaching law in the law schools established during this period, which in this paper will be called the

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1 Peter Balmford, 'The Foundation of Monash Law School' (1989) 15 *Monash University Law Review* 139, 155.

2 Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (Federation Press, 2005) 388, 391.

3 Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (University of North Carolina Press, 1983) 38.

4 Ibid.

‘Second-Wave’ law schools. These were the first moves away from what were regarded as the prevailing forms of legal education, which emphasised:

that studying law is mainly a matter of acquiring knowledge; that coverage is more important than depth; that what legal subjects one covers in primary legal education is more important than whether they are good vehicles for intellectual training; and that one is finished with academic study, critical analysis and even reading as soon as one graduates.<sup>5</sup>

These views would be gradually replaced by what has been described as the ‘truisms’ of legal education transformed into practical working principles.<sup>6</sup> This new thinking advocated:

that education is a life-long enterprise; that most higher education should be self-education; that the main role of undergraduate education is learning how to learn; that standard distinctions between academic and practical, theory and practical, theory and practice, liberal and vocational are false dichotomies that are mischievous as well as misleading; and that any body of lawyers worth preserving must take seriously its claims to be a learned profession.<sup>7</sup>

However, it would be a mistake to suppose each of the ‘Second-Wave’ schools was established with the same objectives. Nevertheless, the law schools under scrutiny in this paper illustrate the statement made in 1978 by Michael Kirby in his then role as the first Chair of the Australian Law Reform Commission (ALRC) that: ‘there is not a shadow of doubt that legal education both in content and method will change rapidly in the last quarter of this century.’<sup>8</sup> In support of his view, Kirby quoted Professor Derham, the foundation Dean of Monash University (Monash) Law School who had told a conference in 1976:

We are now ... in a period of profound and rapid change in our society ... The work of bringing our ‘black letter law’ into tune with the needs of the time is arduous and exacting work calling for high scholarship and developed legal skills ... If it is not done, not only lawyers but the law itself will fall into disrepute.<sup>9</sup>

## II MONASH UNIVERSITY LAW SCHOOL

An extra law school in Victoria outside the University of Melbourne, was established in 1963 because Melbourne’s original law school was unable to satisfy the demand for an expansion in legal education within the State.<sup>10</sup> When Monash was founded in 1958,<sup>11</sup> becoming the first university in Victoria since the University of Melbourne was established in 1853, it was intended that the teaching of law would commence in 1965.

However the opening of the Monash Law School was brought forward from 1965 to 1963 following a letter from Professor Zelman Cowen, the Dean of the Law Faculty at the University of Melbourne, to the Vice-Chancellor of Monash, Dr Matheson. The letter stated that Melbourne Law School had received in excess of 600 applications from potential law students but that it would only be able to accept half this number in accordance with a quota set by the University of Melbourne for first-year entry in 1961.<sup>12</sup> Zelman Cowen expressed a preference for a second law school in Victoria, which was supported by Vernon Wilcox, a senior partner in a leading firm of city solicitors in Melbourne; GC Wyatt, the President of the Victorian Law Institute; and

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5 William Twining, ‘Preparing Lawyers for the Twenty-first Century’ (1992) 3(1) *Legal Education Review* 1, 2.

6 *Ibid* 9.

7 *Ibid* 2.

8 Roman Tomasic (ed), *Understanding Lawyers* (Law Foundation of New South Wales, 1978) 9.

9 *Ibid*.

10 Balmford, above n 1, 146.

11 *The Monash University Act 1958* (Vic).

12 Balmford, above n 1, 146.

Sir Edmund Herring, the Chief Justice of Victoria, who was also the President of the Victorian Council of Legal Education.<sup>13</sup>

There was another interesting development when the opening of Monash Law School was being discussed. This was the unprecedented action by the Victorian Council of Legal Education in establishing a temporary law course in 1962 under the aegis of the Council of the Royal Melbourne Institute of Technology (RMIT), with participating students allowed to use the libraries of the Supreme Court of Victoria and the Law Institute of Victoria. Although temporary, the course operated for 21 years. During this time, 545 students completed the course and qualified for admission, while others subsequently transferred to Monash Law School where they completed their academic requirements for admission.<sup>14</sup> The Council of Legal Education's qualifying course from the 1960s to the 1980s allowed RMIT (now a university) to claim that it was the legitimate successor to the legal practitioners' course formerly taught at its institution.

Monash's Professorial Board recommended: 'That a Dean of the Faculty of Law be appointed as soon as possible, with the first duty of making recommendations 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>15</sup> Monash was in the process of making a submission on finance to the Australian Universities Commission, the main governmental body at that time, so that it was able to amend its application to request financing for the staff and buildings of the new law school. While the Australian Universities Commission was able to fund the staffing of the law faculty, it was unable to support a new building to accommodate the new law school during the 1964–66 triennium. Although no funds were available for the construction of a new law school building, the funding for the staffing of a law program encouraged Monash to proceed to establish the law school.

The selection of a dean of high standing and eminence was axiomatic in enabling the new law school to set high standards in education and to attract well qualified and experienced law academics. In this respect, the appointment of Professor (later Sir) David Derham, the then Professor of Jurisprudence at the University of Melbourne, was an inspired choice. Having accepted the position in October 1963, Professor Derham was required to remain at the Melbourne Law Faculty until 1964, but this did not prevent him from immediately developing a curriculum for the new Monash Law School.

#### *A Alternative Approach to the Law Curriculum*

The focus of the new law program at Monash was on transferable legal skills, incorporating small group teaching. The new Dean proposed the following four subjects for the introductory first year of the law school program: 'An introductory legal subject; Criminal Law—to introduce students to a case law subject; British History; and one subject to be chosen from Economics 1, Politics 1, and Philosophy 1, or a Language subject or a Literature subject.'<sup>16</sup> This innovative first-year program led to a three-year degree entitled BA (Law), which subsequently became a degree of Bachelor of Jurisprudence, as Professor Derham had envisaged. In addition, the Dean envisaged that these first-year candidates might also proceed to a Bachelor of Laws (LLB) (Pass degree), taken over four years, or an LLB (Honours) over five years. This meant that Monash students could be awarded a combined BA/LLB based on four years of study. The philosophy underlining this proposed law program was contained in a statement by Professor Derham that: 'All lawyers should be pounded with advanced law and educated.'<sup>17</sup>

13 Ibid 148.

14 Ibid 150.

15 Ibid 152.

16 Ibid 165.

17 Ibid 167.

### B *The Law Library*

Professor Derham characterised the approach and qualities of other foundation deans of this era in that he had a highly individualistic and innovative approach to teaching law, which was far removed from that of traditional law schools. The establishment of the new library at Monash was an excellent example of this approach.

Professor Derham sought the approval of the Monash Professorial Board for the appointment of Professor Frank Beasley, who was retiring from a Chair of Law which he had held at the University of Western Australia since 1927. Professor Derham informed the Board that not only did Professor Beasley have contacts with: 'Every law library in the world' but also that: 'Few men knew more than [him] about the sources and the techniques of building up a collection of law books.'<sup>18</sup> The Board approved, appointing Professor Beasley to a special lectureship involving the law library.

To stock the library, Professor Derham arranged the acquisition of law libraries from two former judges of the Supreme Court of Victoria, Sir Charles Gavan Duffy, deceased, and Sir Charles Lowe, who had retired. By the end of its first year in 1964, Monash Law School possessed a substantial library of 10,000 volumes, which increased to 138,000 volumes by 1989.<sup>19</sup>

### C *The Commencement of Teaching*

One of the major problems faced by Monash in attracting staff and students was its relative remoteness, 24 kilometres by road, from the centre of Melbourne. This was exacerbated by the need to involve legal practitioners, who obviously were based near the courts, and students who needed to develop connections with the legal profession mainly situated in the central business district (CBD). Professor Derham highlighted his approach to solving the 'Topography' problem in his 'Plan for a New Law School':

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.<sup>20</sup>

In appointing staff to the new law school, the foundation Dean took care to balance the need for full-time staff with the benefit of involving practitioners, who could only teach part-time. Because of his previous involvement with the University of Melbourne, Professor Derham was able to attract both full-time staff and current members of Melbourne Law School who were able to teach part-time, together with a limited number of barristers and solicitors, who were willing to fit in part-time teaching with the demands of a legal practice.<sup>21</sup>

There was some anticipated instability regarding the admission of students because most students applying to Monash Law School preferred an offer from Melbourne Law School. In the first week of the first year of enrolments at Monash, after 150 applicants had accepted offers and enrolled, many withdrew once they received a late offer from Melbourne. This had a knock-on effect at Monash Law School as it had to make further offers to maintain its target number of 150 first-year law students. The students who had been selected for the first-year course were

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18 Ibid.

19 Ibid 168.

20 Ibid 170.

21 Ibid 172.

interviewed by a member of full-time staff so that they would be fully aware of the nature of the proposed law program, particularly the first-year courses.<sup>22</sup>

Despite these setbacks there was a feeling of optimism within the new law school which was reflected by Professor Derham in his introduction to the first edition of *In Gremio Legis* [‘In the bosom of the law’], the new Monash student law society publication.

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 have 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.<sup>23</sup>

#### D Subsequent History

The optimism shown by Derham for the future of Monash Law School was, as its subsequent history indicates, well founded.<sup>24</sup> Like most law schools the type and nature of its improvements depended on the character of the law dean.

The two Deans who immediately followed on from Derham only served for a comparatively short period of time. Louis Waller, the direct successor to Derham, had a term of only two years whilst Enid Campbell’s was even shorter; one year (1971). However she was unique in that she was the first woman to be appointed as the Dean of any Australian law school.

David Allan, the first to serve a full term as Dean after Derham, was described as ‘a dynamic and innovative dean’, responsible for inaugurating: ‘Australia’s first LLM [Master of Laws] by coursework, a Centre for Japanese Law, a continuing legal education program and the clinical education program.’<sup>25</sup> The latter incorporated community law centres where law students could give supervised legal advice to clients as part of their law degree. Patrick Nash, his successor as Dean from 1977 to 1980, was recognised for developing the law school’s focus on Asia.

The opening year of Robert Baxt’s appointment as Dean in 1980 was marked by the Law School being recognised as the largest in Australasia, with 1673 undergraduates and 52 full-time academic staff. Baxt, who completed two terms from 1980 and 1988, stamped his authority both within Monash Law School and externally as an authority on commercial law. He set up a multidisciplinary course in competition law, and later cooperated with Harold Ford of the Melbourne Law School and Bob Officer of the Faculty of Economics, in establishing a new course in securities regulation.

Charles Williams presided over the expansion of Monash Law School. Williams did this by internationalising the law program, incorporating exchanges with overseas university law schools in Malaysia and Italy.

Stephen Parker, a former Chair of the Council of Law Deans, was appointed in 1999 from Griffith University Law School to rejuvenate legal studies at Monash Law School, an exercise which he completed successfully, leading to his appointment as Deputy Vice-Chancellor of Monash, followed by him becoming Vice-Chancellor of the University of Canberra. His successor in 2004 was Arie Freiberg, another professor to complete two terms as Dean, who again not only raised the standard of Monash Law School by the active promotion of a research culture but also established a substantial surplus with respect to its finances.

The current Dean of Monash Law School is Bryan Horrigan who commenced his term in 2012, and is a corporate law specialist. On his appointment to Monash Law School in 2008 as Louis Waller Professor and Associate Dean, Research, he focused on further developing

22 Ibid 173.

23 David Derham, ‘Introduction’ in *Gremio Legis* (1964).

24 Peter Yule and Fay Woodhouse, *Pericleans, Plumbers and Practitioners: The First Fifty Years of the Monash University Law School* (Monash University Publishing, 2014).

25 Ibid 91.

commercial law within the faculty, which led to the establishment in 2010 of a Commercial Law Group.

In speaking at a function to celebrate the fiftieth anniversary of the founding of Monash Law School, Chief Justice Robert French commented on its success, stating that: ‘The history of the Monash University Law School over the past fifty years is worthy of celebration, not just by the Law School itself, but also by the community it serves.’<sup>26</sup>

### III UNIVERSITY OF NEW SOUTH WALES LAW SCHOOL

There was an interesting parallel with the establishment of the second law school in Victoria when another school was created, in similar circumstances, in New South Wales (NSW) a few years later. Just as the University of Melbourne Law School had not been able to accept all qualified applicants for entrance, in 1964 the University of Sydney Law School found itself in an identical situation. A report by the Martin Committee, which was then reviewing the future of tertiary education in Australia, stated that: ‘Lawyers seeking admission to independent practice should, wherever possible, have an education founded upon full-time studies at university level.’<sup>27</sup> Following this, representations were made to Professor (later Sir) Philip Baxter, the Vice-Chancellor of the University of New South Wales (UNSW), for it to establish a second law school in NSW.

#### *A Laying The Foundations*

Compared with the establishment of other law schools—where often there had been opposition or even hostility to such a proposal—there was support, even enthusiasm, from both the NSW Bar Association and the NSW Law Society for the creation of a law school at UNSW. As always with the setting up of a new university faculty, funding was problematical. Although the proposed UNSW Law School received support from the Australian Universities Commission, initially the NSW government was not supportive, with C B Cutler, the Deputy Premier and Minister for Education, informing the UNSW Vice-Chancellor in March 1966 that no state funds would be available at that time for such a proposal.<sup>28</sup> However, there was subsequently a change of attitude on the part of the NSW government with an undertaking that such funding would commence in 1970.<sup>29</sup>

#### *B Selecting a New Dean of Law*

The appointment of the inaugural Dean of Law at UNSW involved a change of approach in the profile for the position and the manner of selection. Part of this has been attributed to the attitude of Sir Philip Baxter the UNSW Vice-Chancellor, who was of the view that such positions should be occupied, where appropriate, by members of the practising profession and not necessarily by university academics. One of the persons consulted was Professor David Derham, the Foundation Dean of Monash Law School, to whom Sir Philip explained that UNSW wished to appoint as the Foundation UNSW Dean of Law a ‘senior member of the profession who could spend some time planning the course and the Faculty.’<sup>30</sup> The selection process also involved wide consultation with all the holders of leading judicial positions in NSW. The consensus view of those consulted was that the most appropriate person for the position was J H (Hal) Wootten QC. However, it was thought that he would not accept the position because of his current

26 Chief Justice Robert French, ‘Pericleans, Plumbers and Practitioners Book Launch’ (Speech Delivered at the Monash University Law School 50th Anniversary, Melbourne, 28 June 2014).

27 Commonwealth of Australia, ‘Report of the Committee on the Future of Tertiary Education in Australia to the Universities Commission (The Martin Report)’ (1964) Volume II 49.

28 Marion Dixon, *Thirty Up: The Story of the UNSW Law School 1971-2001* (University of New South Wales, 2001) 2.

29 Ibid.

30 Ibid

financial needs with a family of four children to educate. This supposition was reinforced by the fact that in 1969 it was common knowledge that he had already turned down two offers of a judicial position.

Nevertheless, the newly appointed Vice-Chancellor of UNSW, Professor Rupert Myers, decided that it would be worth approaching Hal Wootten with the offer of Foundation Dean. Wootten's response to the offer was: 'The only thing I knew about legal education was how bad my own was,'<sup>31</sup> to which Professor Myers responded: 'That might be a pretty good start.'<sup>32</sup> Wootten accepted the invitation, later stating that he found the offer 'irresistible'.<sup>33</sup>

### *C Creating a New and Different Law School*

Hal Wootten's appointment proved another inspired choice for a dean to lead a new Australian law faculty in the post-World War II years. Because of his background as a prominent member of the legal profession he was able to approach, and make demands of UNSW in a way that might not have been acceptable from a conventional law academic. First, he resisted demands for UNSW Law School to commence operating in 1970, which had been the expectation of most of those involved with its formation. Secondly, he persuaded the Vice-Chancellor to permit him to use the year of 1970 to plan the new law school. These arrangements incorporated travel through Australia visiting other law schools and obtaining ideas on the best ways to operate a modern law school. It also offered him the chance to seek out law academics willing to accept the challenges of working in a law school that incorporated new concepts relating to legal education, and to put these into operation. Wootten also extended this study tour to law schools in England, Canada and the United States. He also attended the Annual Conference of the Association of American Law Schools, which took place in San Francisco in January 1970.

The new Dean also used the year's delay as a chance to appoint academic staff who supported his vision. UNSW Law School's records indicate that he selected his original academic staff from an eclectic variety of backgrounds. Robert Hayes, for example, was currently employed at Monash Law School, and brought with him the experience of having taught the innovative common law program at Monash. Whilst in the United States, Wootten had met with George Garbesi of Loyola University, Los Angeles, who had previously established a colourful reputation when teaching for a limited period at the University of Sydney Law School (Sydney Law School) and who then became the first professorial appointment to the UNSW Law School.

Other initial appointments were Richard Chisholm, who had just completed a BCL at the University of Oxford and who subsequently became a Family Court Judge; Tony Blackshield, a specialist in Constitutional Law; Michael Coper, another specialist in Constitutional Law; and Garth Nettheim, then at Sydney Law School, who was appointed as Professor at UNSW and who would eventually become the third Dean of the UNSW Faculty of Law.<sup>34</sup>

Wootten approached fashioning the Law Faculty in a way that would satisfy his vision for a law school embodying modern law teaching methods, whilst creating a stimulating atmosphere for all involved with developing its reputation, whether as staff or students. The UNSW Law School's history contains a description by Rob Brian, its first law librarian, as to how he worked closely with Wootten in employing unorthodox methods to build up the law collection. In its first five years the collection reached 50 000 volumes, and it would currently be regarded as among the best law libraries in Australia.<sup>35</sup>

The influence of Monash Law School was seen not only in the development of the law library collection but in the original curriculum for the law program. Wootten devised a curriculum that envisaged a five-year combined degree in either Arts/Law or Commerce/Law. The program was

31 Ibid 2.

32 Ibid 3.

33 Ibid.

34 Ibid 5.

35 Ibid 10.

divided into two semesters each year, including among its first-year subjects, legal research and writing, and incorporating an interactive approach to the teaching of all law subjects.<sup>36</sup>

#### *D Developing the Law School Ethos*

In its early history, UNSW Law School injected dramatic change in the traditional attitudes of most other Australian law schools towards the teaching of law. An illustration of this was the view expressed by Wootten that ‘discussion’<sup>37</sup> could play an important part in stimulating participation of law students, aided by the insistence on small classes. With his American background, this approach was interpreted by Garbesi as incorporating the Socratic method of law teaching whereby the teacher involved him or herself in a dialogue with the student. In this development of an interactive method of teaching Wootten sought the advice of Fred Katz, the Head of the UNSW Teaching and Education Research Centre (TERC).<sup>38</sup> This cooperation led to the videotaping of some of the early classes in order to assist staff in developing their teaching technique. At this stage of the school’s development there was a radical view prevalent among early staff members, so much so that Garth Nettheim recollects some colleagues even posing the question: ‘What are classes for?’<sup>39</sup>

This approach of questioning the conventional norms of legal education is also illustrated by UNSW Law School’s introduction of continuous class assessment. A study by TERC indicated that there was a wide discrepancy as to how this assessment scheme was administered by participating academics. Nevertheless, a majority of the students responding to a survey by TERC opted for the scheme to continue.<sup>40</sup>

#### *E Questioning the Law School Ethos*

One of the advantages of UNSW Law School was that its early group of academics had been recruited or had applied because they shared similar views about the core focus of the new law school. Inevitably, later additions to the academic staff did not necessarily subscribe to these views. In the opinion of Tony Blackshield, a foundation member of the law school, part of this could be attributed to the original staff ignoring the importance of inculcating these newcomers into the virtues of the original vision for the law school.<sup>41</sup>

One of the proponents for change was Ronald Sackville, recruited from the University of Melbourne, who had been appointed as a UNSW Professor at the unusually early age of 28.<sup>42</sup> As soon as he commenced teaching at UNSW Law School in 1972 he challenged many of the basic concepts of the UNSW curriculum stating it was overcrowded with units and incorporated excessive compulsory content.<sup>43</sup> Wootten, the Dean, appears to have been unaffected by these criticisms, regarding them as representing vitality in UNSW Law School:

It is due less to changes in the law than to the continual quest of active scholars and teachers to find new meanings in their studies, new ways of looking at them, and fresh ways of presenting them. Show me a law school that does not have a bristling Curriculum Review Committee and I won’t bother to look at it.<sup>44</sup>

This relaxed attitude of the Dean towards these types of academic controversy would stand him in good stead as the increasing size of the academic staff led to a development of two loose factions. One group favoured the retention of the original progressive forms of curriculum and

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36 Ibid 14.

37 Ibid 15.

38 Ibid 17.

39 Ibid.

40 Ibid.

41 Ibid 19.

42 Ibid.

43 Ibid 20.

44 Ibid.



assessment, and the other supported the development of a more traditional approach to legal education. This division of opinion led to mass meetings of both staff and students debating the merits of the various forms of assessments. The students voted in favour of the more traditional forms of assessment. Many members of staff considered that this decision was reached because a majority of the students regarded the alternative methods of assessment as likely to affect the standing of the degree, with a consequent ill-effect on their future employment prospects.<sup>45</sup>

While the progressive element of the law staff regarded this adverse vote as a defeat, they decided to do something positive to promote their radical views. Consequently, the idea of promoting a community legal centre was conceived, which eventually resulted in the establishment of the Redfern Legal Centre.<sup>46</sup>

### *F Assessing the Law School in the 1970s*

Research still indicates that 45 years on since the first undergraduate students enrolled at UNSW Law School, they are still differently motivated than those joining more conventional law schools. This viewpoint is supported by the results of a 2015 survey of 219 new undergraduate students carried out by TERC. The survey indicated that at least half the students had a state high school background and that there were very few who had parents with either a tertiary education or a background as lawyers. The survey also revealed that the motivating factor for most students enrolling at UNSW was their interest in law and legal work, with little emphasis on the financial rewards that they might enjoy as qualified lawyers. Another factor had been the opportunity to study the combined degree course in Commerce and Law, a program unique at that time to UNSW.<sup>47</sup>

In the 1970s, the inclusive nature and informality of the teaching combined to create an atmosphere of social consciousness. The fact that UNSW Law School was located in huts on the UNSW campus, with some teaching taking place on fine days outside on the lawns surrounding the law school buildings and even continuing in a nearby public house, somehow created a sense of social consciousness. This contributed to UNSW Law School quickly gaining a reputation for the promotion of social justice, which manifested itself in the establishment of numerous organisations committed to social change such as a Prisoners Action Group, NSW Society of Labour Lawyers and the Feminist Legal Action Group.<sup>48</sup>

The end of the visionary period for UNSW Law School was signalled when, after four years in the position, Wootten resigned as Dean on 28 June 1973, formally handing over the position to Harry Whitmore. Two months later, Wootten was appointed as a Justice of the Supreme Court of NSW.<sup>49</sup>

Whitmore, as successor, was faced with the challenge of introducing a more managerial approach to a rapidly expanding law school, both with regard to the dramatic increase in student numbers and, consequently, in academic staff, which by 1974 needed to be augmented by at least another twenty academics.<sup>50</sup> At the same time, he needed to balance the requirement for a more structured organisation of UNSW Law School's activities, while endeavouring to retain its pioneering approach to the progressive development of its curriculum and assessment. However, he remained Dean for only a short time, resigning with effect from 31 October 1975 when he was replaced by Garth Nettheim.<sup>51</sup>

Both Whitmore and Nettheim oversaw UNSW Law School during a time of social and political upheaval, which had an effect on the activities of the School. The most significant of these was the dismissal, on 11 November 1975, of Prime Minister Gough Whitlam by the

45 Ibid 21.

46 Ibid.

47 Ibid 23.

48 Ibid 33.

49 Ibid 39.

50 Ibid.

51 Ibid 46.

Governor-General Sir John Kerr. Both of these notable personalities were well-known to many of the staff, especially those like Tony Blackshield who had a background in constitutional law. One outcome of the dismissal was a student demonstration against Sir John Kerr when he visited the UNSW campus in 1976. This led to the arrest of several students, including at least one staff member.<sup>52</sup>

### *G Recruiting Prominent Law Academic Staff Members*

During this period of political unrest, both Whitmore and Nettheim were recruiting more academic staff. A number of staff, such as Mark Weinberg, Mark Aronson and Michael Chesterman, were appointed. They were exceptionally well-qualified and were to have a profound effect on UNSW Law School and Australian legal education.

Balanced against these appointees were more experienced arrivals, such as Ivan Shearer who had worked as an adviser to the Lesotho Government and subsequently served two terms as Dean of the Law School. Another was David Weisbrot, a United States law graduate who had previously been Dean of the University of Papua New Guinea Law Faculty, and later became President of the ALRC. He has explained how it was a unique time to be involved in Australian legal education and what a great experience being a member of the UNSW Law Faculty proved to be.<sup>53</sup>

Finally there was Michael Coper, first appointed as a teaching fellow, then lecturer at UNSW, then Commissioner of the Inter-state Commission and, more recently, as Dean of the ANU College of Law—a role in which he was highly successful and long-serving. These examples are a microcosm of the quality of the earlier staff of UNSW Law School.

However, an ever-increasing staff meant that deans also had to deal with the consequential problem of acquiring more and better accommodation. The effect was a move by UNSW Law School in February 1976 from the huddled accommodation and other buildings to more permanent accommodation in the UNSW Library Tower.<sup>54</sup>

### *H Launching Co-curricular Activities*

Two events that epitomise the early radical approach of UNSW Law School are the publication of the first edition of the UNSW Law Journal and the founding of the Redfern Legal Centre.

The publication of the Law Journal had been envisaged when Whitmore was Dean; a sum of \$2000 had been earmarked for its production and an editorial committee established. However the first edition was not published until early 1976 when Nettheim became Dean. At that time, it had a special quality which made it stand out among other Australian law school journals and reviews; it was a student-edited publication similar to that of American law school reviews. The first edition had a foreword by Sir Laurence Street, the Chief Justice of the Supreme Court of NSW and an article by Sir Garfield Barwick, the Chief Justice of the High Court of Australia.<sup>55</sup> It continues the Law School's focus on social issues and it has established a high reputation for the quality of its articles and book reviews.<sup>56</sup>

The other event was the founding in March 1977 by some UNSW legal staff of the Redfern Legal Centre, which was described as a 'shopfront' legal service for the local community.<sup>57</sup>

52 Ibid 48.

53 Interview with David Weisbrot, Chair of the Australian Press Council (Sydney, 8 November 2013).

54 Dixon, above n 28, 48.

55 Sir Laurence Street, 'Foreword' (1975) 1 *University of New South Wales Law Journal* 1; Sir Garfield Barwick, 'Problems in Conservation' (1975) 1 *University of New South Wales Law Journal* 3.

56 Dixon, above n 28, 54.

57 Ibid 62.

### *I Assessing the Later Years*

The motivation to improve the quality of teaching and research at UNSW Law School has continued. During the three decades since the first Deanship of Nettheim, UNSW Law School has been led by a galaxy of talented law academics including Professors Ronald Sackville, Donald Harding, Ivan Shearer, Michael Chesterman and Paul Redmond. Each of these Deans left their mark, enhancing the Law School's reputation.

To Sackville may be attributed the introduction of the Socratic form of teaching. With Harding it was the creation of a clinical teaching facility, the Kingsford Legal Centre, which came into operation on 27 June 1981 and also served as a community legal centre. Ivan Shearer used his reputation as a leading international lawyer to enhance the standing of the Law School within the area of international law. Michael Chesterman was recognised for his expertise in developing the law of contempt, including defamation and free speech, which became a major topic in new courses at UNSW Law School. Finally, Paul Redmond's influence can be measured in his expertise in business associations and corporate law, together with the co-authorship of the text *Lawyers*, which was associated with a compulsory course taught at the Law School entitled *Law, Lawyers and Society*.

Interviews with Andrew Mowbray,<sup>58</sup> who was at UNSW Law School during Sackville's Deanship, and Sophie York,<sup>59</sup> who was a student when Shearer was Dean, confirmed that small group teaching was still being used and that the high quality legal training provided at the Law School provided a solid foundation for legal practice. The Hon Sir Gerard Brennan, the then Chief Justice of the High Court of Australia, at the 25<sup>th</sup> Anniversary of the Law Faculty Dinner, 18 July 1996, paid this tribute to the Law School:

I congratulate not only the University, the Deans, the Faculty and the visiting lecturers, but also the students who have together made the Law School an integral part of a community of learning. The repute stands high. The prospects of the future are higher yet.<sup>60</sup>

The most recent former Dean, Professor David Dixon, presided over a law school that had 2675 students and 82 permanent staff<sup>61</sup> which in 2006 relocated to a new purpose-built building on the main university campus. In addition, it now has a campus in the Sydney CBD which is mainly utilised for teaching postgraduate and senior undergraduate students. In comparison to other Australian law schools, UNSW Law School has maintained its dedication to small group teaching and also its unique Socratic approach to learning.

The current Dean is Professor George Williams AO who is a well-known media commentator on legal issues who has written and edited 34 books on a variety of legal topics. He has also appeared as a barrister in the High Court of Australia in many cases over the past two decades.

Excluding the Kingsford Legal Centre, UNSW Law School has twelve other research schools<sup>62</sup> of which the most prominent would be the Gilbert and Tobin Centre of Public Law.<sup>63</sup> It claims to play 'a prominent, independent role in public debate on issues vital to Australia's future, including Charters of rights, federal reform, reconciliation and native title, refugees' rights and migration law and the challenges of responding to terrorism'.<sup>64</sup>

58 Interview with Andrew Mowbray (Sydney, 16 September 2014).

59 Interview with Sophie York (Sydney, 1 August 2013).

60 Gerard Sir Brennan, '25th Anniversary of the University of New South Wales Law School' (1997) 20(1) *University of New South Wales Law Journal* 210, 212–13.

61 University of New South Wales, *Law: Facts in Brief* <<http://law.unsw.edu.au/about-us/facts-brief>>.

62 University of New South Wales, *Law: Centres* <<http://www.law.unsw.edu.au/centres>>.

63 University of New South Wales, *Law: Gilbert + Tobin Centre of Public Law* <[www.gtcentre.unsw.edu.au/](http://www.gtcentre.unsw.edu.au/)>.

64 Ibid.

The Kingsford Legal Centre is also recognised as the authority for charting the annual record of judges' dissenting judgments in the High Court of Australia.

#### IV MACQUARIE UNIVERSITY LAW SCHOOL

Macquarie University (Macquarie) was formally established in 1964 when the *Macquarie University Act 1964* (NSW) was enacted. The first Vice-Chancellor was Alexander George Mitchell who served in this position until 1975. Macquarie Law School was established in 1972, during his term of office.

Reportedly 'Ern Wetherell, [NSW] Minister for Education in 1964 stated Law was to be the glamour faculty at the new Macquarie University.'<sup>65</sup> Just as with the earlier founding of UNSW Law School it was stated that other law schools in NSW could not satisfy the demand by those wishing to study law. The other reason for the establishment of this Law School was the need for a distance law program.

In accordance with the general teaching philosophy of Macquarie it was intended that—like all other studies offered—law would be interdisciplinary. As with other new law schools at this time the emphasis was to be on small group teaching because '[m]uch depends on students having ample opportunity ... to participate in lively exchanges of ideas and points of view.'<sup>66</sup>

##### *A Early Academic Staff Appointments*

In 1973, Peter Nygh was appointed both a Professor and the Foundation Head of Macquarie Law School. His was one of the first appointments. With a Doctor of Laws (LLD) from the University of Sydney and a Doctor of Juridical Science (SJD) from the University of Michigan he was a highly regarded lawyer in the traditional mould.<sup>67</sup> His expertise was family law, comparative law and private international law, being the author of the leading textbook on the latter subject, *Conflict of Laws in Australia*.<sup>68</sup>

The following year John Peden, the grandson of Sir John Peden, the former long serving Dean of the University of Sydney Law Faculty, was appointed also as a Professor of the Law School.

Both Nygh and Peden brought to Macquarie Law School a firm intention to create an alternative law school in Sydney, as had happened earlier at UNSW. This was exemplified by Peter Nygh in his public lecture delivered in 1975 entitled 'Lawyers for 1975': 'Lawyers are not at the moment equipped by training to enquire into the operation of the law in the real world and to weigh the various policy options which might be available.'<sup>69</sup>

Unconsciously, Macquarie Law School replicated much of what had taken place at the UNSW Law School in its earlier years. The staff came from either the more traditional Australian law schools or from overseas. Gill Boehringer, an American academic, came from Queen's University Belfast, although he had previously taught at the University of East Africa in Tanzania. Two other academics, Peter Kincaid and Michael Noone, had formerly been teaching at the University of Papua New Guinea whilst another, Michael Sassella, came from the University of Birmingham, United Kingdom.<sup>70</sup>

65 Bruce Mansfield and Mark Hutchinson, *Liberality of Opportunity: A History of Macquarie University 1964-1989* (Macquarie University, Hale and Ironmonger, 1992) 276.

66 Ibid.

67 Margaret Herd (ed), *Who's Who in Australia* (Information Australia Group, 1999) 1280.

68 Peter Nygh, *Conflict of Laws in Australia* (Butterworths, 1<sup>st</sup> ed, 1971).

69 Rosalind Croucher and Jennifer Shedden, *Retro 30: Thirty Years of Macquarie Law School* (Macquarie University, 2005) 14.

70 Ibid.

### B *The Formative Years*

Teaching of the first cohort of law students began in 1975. This included the provision in February of the first residential summer school for external (distance) students whilst the teaching of internal students commenced in March. Soon after, a group of students formed the Macquarie University Law Society (MULS) and, in September 1978, a combined group of academics, students and lawyers established a community legal centre for low income earners located in Macquarie Street, Parramatta—‘Macquarie Legal Centre’.<sup>71</sup> Again, as with UNSW Law School, there was an emphasis on tutorial-based seminar teaching to the complete exclusion of lectures, with 30 per cent of the total mark being based on class performance.<sup>72</sup>

In the early eighties there was deliberate attempt to reconstruct the Macquarie law curriculum. This resulted in a new full-year course entitled ‘History and Philosophy of Law’, with the Torts course being replaced by a new subject — ‘Standards of Legal Responsibility’ and Criminal Law by ‘Personal Injury’. These changes to the curriculum could be largely attributed to the influence of two early appointments to the Law School, Gill Boerhinger and Drew Fraser both from North America. This shift in emphasis on the nature of law teaching at Macquarie created more than the normal tensions which arise with the advent of any change in the curriculum of a degree program.

At the same time there had been a change in the leadership of the Law School. Peden replaced Nygh as Dean in 1979, and was himself replaced by Professor John Goldring in 1981, who served as Dean until 1987. This combination of events led to considerable discord among the academic law staff, which attracted a great deal of publicity within the media particularly in *The Australian*. Its education reporter Christopher Dawson subsequently took it upon himself to run a regular weekly series following the events in the Law School in great detail. It also had unfortunate consequences for the Law School because in 1986 the Pearce Committee was conducting a review as part of a national assessment of legal education undertaken by the Commonwealth Tertiary Education Commission (CTEC). In its recommendations the Committee stated that Macquarie Law School ‘[s]hould be closed, phased out or divided due to irreconcilable differences.’<sup>73</sup>

It is crucial to analyse the reasons for these disputes and why they attracted such strong criticism from the Pearce Committee. Problems at Macquarie arose on the appointment of Gill Boerhinger and Drew Fraser, who considered that it was detrimental for Australian law schools to deliver a doctrinal and vocational form of legal education based on legal positivism. They based their teaching philosophy on a pre-World War II curriculum pioneered by the Legal Realists at Columbia and Yale universities who ‘sought to integrate law and the social sciences.’<sup>74</sup> A further movement, based on the work of the Legal Realists, known as Critical Legal Studies (CLS) developed in the United States after World War II.<sup>75</sup> As described by Frank Carrigan, an ongoing law academic at Macquarie and supporter of CLS, ‘a major theme of CLS was hostility to legal positivism.’<sup>76</sup> Thus the division between two competing philosophies created incompatible differences between the protagonists representing the opposing views. Professor Bruce Kercher, who was at Macquarie Law School at this time, has described these events and their eventual outcome.

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71 Ibid.

72 Ibid 37.

73 Ibid 76.

74 Frank Carrigan, ‘They Make a Desert and Call it Peace’ (2013) 23 *Legal Education Review* 313, 316.

75 Ibid 317.

76 Ibid.

There was a lot of exaggeration in the press too. Eventually it broke into two factions and in the middle sat the majority of staff who watched the bombs fly overhead. Most of us ducked and tried to avoid the flak and got on with teaching and research.<sup>77</sup>

As the Law School History recounts: ‘The irreconcilable differences were reconciled, or at least a truce was in place by the late eighties. The school survived the battering of the press and weathered the storm.’<sup>78</sup>

### *C Renewal and Consolidation*

The subsequent history of the Law School indicates that following Macquarie’s restructuring in 1999 the Law School became a ‘Division of Law’ which incorporated the Departments of Law, Environment Law and Business Law. There was a further re-organisation in 2009 when the Division of Law was replaced by ‘Macquarie Law School’ with Business Law being transferred to the Faculty of Business and Economics.

Whilst there was a rapid change of deans in the 1990s including Tony Blackshield and Gill Boehringer, Rosalind Croucher’s appointment as Dean from 1999 to 2008 led to the Law School returning to some form of normality in the relationships between its various academic staff members. It is appropriate to recognise that the supporters of CLS at the Law School felt that they had been marginalised by structural changes, and that this was detrimental to the future academic standard of the Law School. These views have been articulated by Gill Boehringer<sup>79</sup> and two other members of the Law School, John Touchie and Scott Veitch.<sup>80</sup>

The current Dean of the Law School is Natalie Klein who was appointed in 2011, following on from Peter Radan (2009–2010). She is a highly regarded international law academic who presides over a Law School which has recorded a dramatic expansion in the area of legal research and publications.<sup>81</sup>

## V UNIVERSITY OF TECHNOLOGY SYDNEY LAW SCHOOL

The UTS Faculty of Law was originally established at the NSW Institute of Technology (NSWIT) in January 1975.<sup>82</sup> It was intended to replace the law extension course which was taught under the auspices of the Legal Practitioners Admission Board. However, for various reasons the law extension course has remained in operation.

Law had already been a component of the current Bachelor of Business degree at NSWIT and Dr R L Werner, its President, was asked to develop a course for a law degree. For this he sought the cooperation of Dick Godfrey-Smith, a Principal Lecturer in Law in the Business Faculty, together with David Flint, a Lecturer in Law and Pamela Neville, an Administrative Officer in the Registrar’s Division.<sup>83</sup> The outcome was a practice-oriented course with a substantive core complemented by a number of parallel skills subjects. It was originally intended that the law degree would be offered on a part-time basis with a full-time component becoming operational at some future time.

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77 Croucher and Shedden, above n 69, 76.

78 Ibid.

79 Gill Boehringer, ‘Infamy at Macquarie: Economic Rationalism and the New McCarthyism’ (1999) 24(1) *Alternative Law Journal* 31.

80 John Touchie and Scott Veitch, ‘The Decline of Academic Reason’ (1999) 24(1) *Alternative Law Journal* 26.

81 Luke Salem, ‘40 Years of Macquarie Law’ (2012) 18(4) *The Brief, Macquarie Law Society* 22.

82 George Marsh (ed), *A History of the UTS Law Faculty 1977-1997* (Faculty of Law, UTS, 1997) 1.

83 Ibid.

### *A The Early Years*

Following an international search, Geoffrey Bartholomew, an eminent academic lawyer, then a Professor of Law at the University of Singapore was appointed as the Foundation Dean in 1976.<sup>84</sup> Unlike the recruitment experience on the founding of UNSW Law School and Macquarie Law School, many of the academics who were to become the initial members of the NSWIT Law School were already lecturing in law in NSWIT's Faculty of Business, although there were a few such as Colin Ying (University of Singapore) and Douglas Glass (UNSW) who were recruited from other tertiary institutions.<sup>85</sup>

There were two features of the NSWIT law degree that distinguished it from the other Sydney metropolitan law schools. First, its course structure incorporated both core and skills subjects. Secondly, the composition of its student body was different, being composed mostly of mature age students, particularly women, because of the part-time nature of the course.<sup>86</sup> Although the course was structured as part-time over six years, some students were able to accelerate their studies by taking additional subjects or claiming exemptions, so that the first NSWIT LLB degrees were awarded on 15 May 1981. Coincidentally, the NSWIT Chancellor awarding the degrees was the former Foundation Dean of the UNSW Law School, the Hon Justice Hal Wootten.<sup>87</sup>

An early innovation of the Law School was the introduction of the Summer Program in 1983–84. This meant that students could undertake elective subjects during the long summer recess. The NSWIT Law School appears to have been the first faculty of any Australian university to introduce such a program. This has now become a regular feature of most university programs, being replicated in the form of a third semester during the academic year.<sup>88</sup>

### *B Subsequent Developments*

The UTS Law School has become recognised for its innovative approach to teaching and learning. This has partly arisen because of its location within a university of technology enabling it to offer 'practice-oriented education with a focus on integrated exposure to professional practice.'<sup>89</sup> When the Faculty disaffiliated from the College of Law in 1996 this led to the phasing out of the Skills Program and the incorporation of practical legal training (PLT) as an integral part of the undergraduate LLB program.<sup>90</sup> Another innovation was the introduction of the Masters of Law and Legal Practice (MLLP) degree in 1997. One outcome of this initiative was that the Law School became the first in Sydney to offer in 2009, the Juris Doctor (JD) graduate-level law qualification based upon the United States graduate degree.<sup>91</sup>

Two other postgraduate coursework programs reflected its innovative approach. The first was the introduction of a Masters of Intellectual Property which was the 'first (and until 2012 the only) university course to satisfy all the "board exam" requirements of the Professional Standards Board of Patent and Trade Mark Attorney.'<sup>92</sup> The second was the introduction in 1997 of the first Australian Masters course in Dispute Resolution which adopts both an interactive and a theoretical approach to its teaching.<sup>93</sup> Intellectual property has been reflected as an area of

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84 Ibid.

85 Ibid 2.

86 Ibid 1.

87 Ibid 3.

88 Ibid 4.

89 Jill McKeogh, 'The Faculty of Law: Engage, Educate, Empower' in Debra Adelaide, Paul Ashton and Annette Salt (eds), *Stories From the Tower; UTS 1988-2013* (Xoun and University of Technology, Sydney, 2013), 54.

90 Ibid 55.

91 Ibid 56.

92 Ibid.

93 Ibid.

expertise in respect of the two recent deans of the Law School, Jill McKeogh (2005–2012) and Lesley Hitchens, the current Dean.

One of the most highly recognised activities of the UTS Law Faculty is its collaboration with the UNSW Law Faculty in supporting the Australasian Legal Information Institute (AustLII), which is located at UTS. This is claimed to be the largest free legal information database in the world.<sup>94</sup>

## VI QUEENSLAND UNIVERSITY OF TECHNOLOGY LAW SCHOOL

The Queensland Institute of Technology (QIT) as the Queensland University of Technology (QUT) was then known, opened in 1977.<sup>95</sup> Like UTS, QIT owed its eventual university status to the outcome of the Dawkins Reforms. QIT and NSWIT were the first non-university tertiary institutions in Australia to offer Bachelor of Laws courses. Because the titles of both these institutions embrace the term ‘technology’ there has been an attempt to explain the relevance of this description in connection with the teaching of law. Professor Dennis Gibson, a former QUT Vice-Chancellor explained it in these terms:

A recent meeting of vice-chancellors of the five Australian Technology Network universities (all descended from former state institutes of technology) came up with the following working definition of technology in an attempt to encompass the extraordinary complexity of activity at these institutions: the application of creative thinking and ingenuity to the solution of definable and practical problems in all fields of human endeavour. In its commitment to creativity and practical problem solving, law at QIT/QUT—first the school and then the faculty—has exemplified this broad ‘technological’ tradition.<sup>96</sup>

The original premises for the Law School were located on the ground floor of a building which formed part of the Technical College quadrangle on the Gardens Point Campus of QUT. It had been described as ‘modestly refurbished in garish orange with cheap green carpet which invited mowing in the wet season.’<sup>97</sup>

The initial academic members of the Law School were the newly appointed Head, Tom Cain, who had previously been responsible for administering the Law Extension course at the University of Sydney; David Gardiner who had also been teaching on the extension course; Ian Campbell (also from Sydney); and two local Queenslanders—Carmel McDonald and Jim Herlihy. This small group was recruited to undertake the teaching of the first intake of 110 full-time students who commenced their studies at the beginning of the 1977 academic year.<sup>98</sup> In addition to accommodating students studying for what was originally designated as a Bachelor of Arts (BA) in Law degree (subsequently converted to an LLB) at the request of the Queensland Law Society, the Law School commenced a Legal Practice course in 1978 to accommodate 13 foundation students. This was provided as an alternative to articles of clerkship and laid the foundation for a future practical legal training course at the Law School.<sup>99</sup>

The practical legal training course was originally founded on the Ormrod continuum of legal education and training.<sup>100</sup> This refers to the English and Welsh-based criteria for legal education established in 1974 by a Committee chaired by Sir Roger Ormrod, an English High

94 Ibid 57.

95 Dennis Gibson, ‘The University and the Law School’ (1997) 13 *Queensland University of Technology Law Journal* 1.

96 Ibid 1.

97 David Gardiner, ‘The Law Faculty over Twenty Years’ (1997) 13 *Queensland University of Technology Law Journal* 15, 15.

98 Ibid 16.

99 Ibid 17.

100 Allan Chay, ‘Wal’s Legacy: QUT’S Practical Legal Training Course’ (1997) 13 *Queensland University of Technology Law Journal* 36.



Court Judge.<sup>101</sup> Besides establishing a group of seven core subjects (later increased to eight by the addition of the subject European Union Law) for any law degree leading to a qualification as a legal practitioner, it provided a practical training stage in the first part of this continuum, with the second part incorporating a year of supervised practice in legal employment. The Law School acknowledged its ongoing influence on the QUT PLT course as follows:

Although the Ormrod model has been superseded in the discussion of legal education at a theoretical level, it still provides an accurate depiction of what actually occurs in mainstream practice in legal education and training in Australia.<sup>102</sup>

‘[T]he original objectives of the Course were those adopted at the Australian Professional Legal Conference in 1974.’<sup>103</sup> These objectives were to:

Stress the development of professional values, skills, and technical and procedural competence in designated practice areas [and] to prepare students as general practitioners rather than as specialists.<sup>104</sup>

Forty years later such a statement would be regarded as indicating an extremely narrow view of the objectives of legal education.

#### *A Developing the Part-Time Student Intake*

Reflecting on Tom Cain’s background as the original director of the NSW Law Extension Course it is not surprising that QUT made early provision for the teaching of part-time law courses. As Cain states: ‘We had a separate set of lectures and seminars, mostly in the evening, to suit the convenience of the part-time internal students, which was uncommon in 1977.’<sup>105</sup>

Apart from the part-time internal course there was a part-time external course, which was illustrative of Cain’s forward-looking attention to detail and planning. Whilst the external students were taught by the same lecturers and tutors as the internal students, their teaching was supplemented by local coordinators and tutors. The students were supplied with individual subject study guides prepared by the lecturer in charge of the course and they were also given written exercises. In addition, they were supported by the establishment of basic law libraries in various parts of the state and by a number of weekend study schools in Brisbane. First and second-year students were assisted by telephone tutorials conducted by a tutor located in Brisbane. From 1983 a photocopying service was provided and in 1985 the quarterly student newsletter commenced.

Such was the success of the QIT/QUT external part-time course that the Pearce Committee commented in its Report: ‘QIT’s efforts in its external course were commendable and we think that it should take over sole responsibility for external legal studies in Queensland.’<sup>106</sup>

This commendation was to cause problems for the Law School when in 1987 there was a recommendation by the CTEC that QIT should take responsibility for the conduct of all external law studies throughout Australia. Tom Cain gave this proposition a great deal of thought but turned it down on the basis that it would upset the balance of the courses in the Law School. His reasons for refusal are interesting, considering that today most tertiary institutions would be tempted to adopt an expansionist role to such a proposition. These were that, a Law School of a reasonable size can run a good external LLB course when the number of external students is about 15 per cent of the total number of LLB students, without upsetting the balance of courses

101 United Kingdom, ‘Report of the Committee on Legal Education’ (1974).

102 Chay, above n 100, 36.

103 Ibid 37.

104 Ibid.

105 Tom Cain, ‘Reflections as Foundation Dean’ (1997) 13 *Queensland University of Technology Law Journal* 3, 7.

106 Ibid.

and losing staff.<sup>107</sup> This is when the number of external and part-time internal students is not more than 35–40 per cent of the total number of students.

### B *QIT/QUT Law Library*

Tom Cain's influence as Foundation Head of the Law School is illustrated by the manner in which the Law School gained control over the new law library at QIT. This is commented upon by David Gardiner in his reminiscences of the early days of the Law School. When describing the problems of the move by the Law School into the new main library building at QIT he states:

We were not the sole occupier of the premises and our strata title neighbours were not necessarily ones we should have been associating with and what was more they were the dominant occupants and controlled the body corporate. This was of course the University Librarian and the rest of Main Library and there was many a campaign and skirmish associated with the Law Library's operations being in conflict with those of Main Library.<sup>108</sup>

To Cain there was obviously no questioning as to whether the law library should come under the control of the Law School. In many tertiary institutions control of the law library has been a contentious issue for the Head of the Law School and the University Librarian, often requiring intervention and arbitration by the Vice-Chancellor or the Academic Board. Cain did not become embroiled in such discussions or arguments and said that:

The Law School Library was the heart of the Law School. There were several reasons for it being part of the Law School and for the Law Librarians being members of my staff. I wanted to determine the content of the Library and the classification of books used. I also decided that we would acquire books rather than audio-visual material and that, in general, it would be a reference and not a lending library. I also decided that we would adopt the Moys classification, a feature of which is its separation of primary (statutes and law reports) and secondary (other) materials. Most of all, I wanted the Law Librarians to have a teaching as well as a librarian role and to conduct courses for the students on how to use a law library.<sup>109</sup>

### C *Evolution and Growth*

This heading is adapted from an article by David Gardiner, which describes the development of the Law School after Tom Cain had retired as Foundation Dean in 1989 and when he was appointed as his successor. Despite the Pearce Report complimenting the QUT Law School on some of its practices when it was published in 1987, Gardiner was of the view that there was feeling for change among the majority of the Law School staff. This was reflected in the tripling in the number of the courses available, which included those offered by a new School of Justice within the Faculty together with a doubling in student numbers. The Law Faculty was also involved in a crucial curriculum review which incorporated a number of key changes to some former rigid curriculum requirements for admission to practice in Queensland and nationally. In 1992, the Law Faculty for the first time hosted the Australasian Law Teachers' Association (ALTA) Conference.

On his appointment in 1997 as Pro-Vice-Chancellor (Planning and Resources) of QUT Gardiner was replaced as Dean by Professor Malcolm Cope. The new Dean was faced with further increased student enrolment with dwindling resources due to cuts in QUT's operating grants and the consequent reduction in the operating grant to the Faculty. In 2004, Michael Lavarch was appointed as Dean and Professor of the Faculty. He had been Attorney-General of Australia from 1993 to 1996 and Secretary-General of the Law Council of Australia from 2001 to 2004. During his term as Dean, which ended in 2012, he presided over an ongoing increase in students studying law at QUT, which totalled 3500 in 2011. The Law Faculty, in 2009, also hosted its

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107 Ibid 8.

108 Gardiner, above n 97, 17.

109 Cain, above n 105, 8.

second ALTA Conference. But Lavarch's chief role within legal education was to initiate a major development in the promotion of continuing legal education and legal profession reform. For his replacement as Executive Dean in 2013, QUT again appointed someone outside the law academic mainstream—John Humphrey, a Senior Partner in King & Wood, a leading Brisbane law firm.

## VI CONCLUSION

The period covered by this paper marked some significant landmarks in the development of legal education, much of it brought about by the establishment of five new law schools. There was a change in the type of law academic now being attracted to teaching law. Many law students were graduating without the intention to practise law and yet the legal profession wished law schools to continue to focus on training for professional practice.

The two decades between 1960 and 1980 encompassed a period of steady growth for Australian legal education although it was principally focused within NSW, with three new law schools, and Victoria and Queensland, with one each. Monash and UNSW law schools were established because the original law schools of Melbourne and Sydney were unable to deal with the unexpected expansion of students seeking to undertake law studies in Victoria and NSW. There was an equally strong reason for the founding of Macquarie Law School, which was required to incorporate a distance degree course for rural NSW law students. The quota for these students was 100 in 1975, and 125 in 1976.<sup>110</sup>

NSWIT/UTS received its enhanced status as a degree-awarding law school because of the perception of the Bowen Committee that its law degree, with its focus on part-time law courses, would eventually replace the Legal Practitioners Admission Board University of Sydney Law Extension Course. On a similar basis, QIT/QUT, apart from its intake of full-time law students, made provision for internal and external part-time law students.

Compared with the later established law schools throughout Australia, these five 'Second-Wave' law schools, as they became known, had the advantage of being able to develop in a sequential manner with targeted groups of students awaiting enrolment in their programs.

A further more significant development with which the Second-Wave law schools should be associated has been described by Michael Coper as: 'The emergence of the idea of legal education as the study of law as an intellectual discipline in its own right.'<sup>111</sup> This development brought about a changing attitude in some law students who, in comparison to those graduating from the more traditional law schools, have:

little or no desire, at least initially, to engage in mainstream legal practice. These students come to law as an intellectual discipline rather than as vocational training, or are seeking the broad generic skills that a good legal education has such strong potential to impart and that are widely deployable across a range of occupations.<sup>112</sup>

There was a further paradox during this period as described by Paul Redmond:

Arguably, the most significant development in legal training during the last decade has been the abolition of the apprenticeship system of articles of clerkship in favour of formal, institutionalized academic and skills training ... The recent creation in New South Wales of three further tertiary institutions conferring law degrees has hastened the movement there towards a higher proportion of graduate entrants.<sup>113</sup>

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110 Committee of Inquiry into Legal Education in New South Wales, *'Legal Education in New South Wales (The Bowen Report)'* (Government Printer, 1979) 160.

111 Coper, above n 2, 392.

112 Ibid.

113 Paul Redmond, 'Some Objectives in the Academic Study of the Legal Profession' in Roman Tomasic (ed), *Understanding Lawyers* (Law Foundation of New South Wales, 1978), 199.

The challenge for legal educators was to create a law school ethos that, in Coper's words, 'combined the study of law as an intellectual discipline with the idea of legal training for professional practice.'<sup>114</sup> That challenge was addressed in the enormous growth of law schools during the 'Third-Wave' period which followed from 1989 onwards and provided for the establishment of a further unprecedented number of law schools.

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114 Coper, above n 2, 392.