OCCASIONAL ADDRESS AT THE OPENING OF THE DEAKIN UNIVERSITY LAW PROGRAM

The Honourable Sir Anthony Mason, A.C., K.B.E.,*

The nation-wide expansion in the provision of Law courses will result this year in the commencement of two new Law courses in Victoria: one here at Deakin University and the other at La Trobe University. This expansion comes at a time when the exponential expansion in the demand for legal services, which has continued for so long, has come to a halt, even if it be only temporary. So the challenging world of competition confronts the architects and teachers of Law courses, as well as university administrators, perhaps for the first time in the history of this country, just as it confronts so many other sections of the community.

That statement requires some explanation. The present shortage consists of University places, not of students. But, if the employment market for Law graduates contracts or does not expand, as presently may seem to be the case, then each university which offers a Law course comes under pressure to design a course which better equips its graduates for professional practice or endows its graduates with particular skills to meet new or special demands. The traditional image of the university - a community of scholars - an image beloved of, and promoted by, academics, has given way in modern times to the more mundane, unflattering, popular conception of the university as an institution which imparts to students knowledge and skills which will qualify them for employment, professional and otherwise. Consequently, a university has some responsibility to ensure that its teaching programmes are oriented towards satisfying those demands that reflect employment prospects. Employment prospects entail a demand not only for academic qualifications but also for professional skills. And that raises a serious critical question: whose responsibility is it to ensure that the future generations of Law graduates receive adequate training in professional skills? Is it the profession or the universities or, perhaps, a combination of both? I ask the question because the output of Law graduates from the universities seeking to enter professional practice in future years may well exceed the present capacity of the profession and the professional institutions to provide professional training for them. In this respect, I am heartened to hear that the Director of the Law Program, Professor Clarke,[1] proposes to integrate some practical skills

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* Chief Justice of Australia. The address was made at the Inauguration of the Deakin University Law Program on 17 February 1992.

1. Now, the Head of the Law School at Deakin University.

into the academic courses.

In speaking of the modern role of the university as I have done, I am not suggesting that the university should desert its historic role. Far from it. A university must conserve, extend and transmit knowledge; it must also encourage and stimulate a spirit of inquiry. Indeed, a strong criticism of legal education in Australia is that we have focussed on professional knowledge and skills instead of relating Law as a subject of study to the context in which it exists as a discipline. That deficiency, it is said, is now evident at a time when our legal system is being subjected to ever-increasing scrutiny by critics who see it as non-responsive to the legitimate demands of society.

The Law course introduced by this University has obviously been crafted with a view to meeting some, if not all, of the objectives which I have mentioned. The course is specialist in nature and is designed to produce graduates who are commercial lawyers. It will be administered not by a Faculty of Law but by a Department of Commercial Law[2] in the Faculty of Commerce. And it will require students who have not previously undertaken commercial study to undertake such studies in association with their legal studies. The course is available on- and off-campus and may be undertaken on a full-time or part-time basis. Although the course is offered primarily as a means of qualification for entry into the legal profession, it is also offered as a means of developing and enhancing a career already established in a law-related occupation.

A Law course specialising in commercial law should succeed in avoiding some of the more difficult problems which face courses more general in their scope. The principles of commercial law are largely settled and it is not suggested, as it has been in other areas of the Law, that the principles of commercial law are in need of comprehensive renovation. There are those who say that the pristine clarity of commercial law has been obscured by the advance of the doctrine of estoppel and the expansion of equitable principles into the mercantile area. But these developments are perhaps no more than gentle undulations on what is a settled landscape. There are, of course, areas of contract law which need judicial elucidation or legislative renovation in order to ensure just and sensible outcomes. The law relating to acts done under heads of agreement which turn out not to be a binding contract is one such area. But, generally speaking, the principles of commercial law give more satisfaction than the principles prevailing in most other branches of the Law.

Commercial law has another advantage which is not insubstantial in times of recession. It does not depend upon government subsidy and legal aid to the same extent as do other branches of our law. It can pay its own way or, to put it more accurately, commercial clients are more

2. Now, the School of Law within the Faculty of Management.

likely to be able to pay their own way, notwithstanding the spate of corporate collapses that have occurred in recent times. Commercial law may be better able to withstand an application of the 'user pays' principle. That is not to say that the level of legal costs is not a problem in the commercial field. Business people as much as ordinary citizens are seriously concerned with the level of costs and with the inefficiencies and delays associated with recourse to the law.

Although some traditional lawyers may look quizzically upon a commercial law course which is designed and administered under the aegis of a Faculty of Commerce, it is an interesting development. Faculties of Law at Australian universities have not been particularly successful in building enduring bridgeheads between Law and other academic disciplines. That is one of the challenging tasks, perhaps the most challenging, confronting academic lawyers and its accomplishment is of major importance to the development of the Law and related disciplines. One possible reason for past lack of success in this field is that a Faculty of Law naturally treats Law and legal interests as paramount and may not take sufficiently bold steps to encourage or stimulate input from other disciplines.

A Faculty of Commerce, not being inhibited in quite the same way, may be in a better position to stimulate and maintain interaction between lawyers, economists and accountants and other business and financial experts. The corporate collapses to which I have referred, the complexity of the Corporations legislation, the inability of our regulatory system to cope with the widening array of problems and the difficulties attending major criminal prosecutions for corporate and commercial offences all underline the urgent need for co-operative dialogue between lawyers, economists and accountants on a broad range of issues of contemporary significance. The promotion of such a dialogue is essential not only to the solution of national problems but also to effective academic research and the instructive teaching of students. Commercial law students, like other law students, must have a perceptive understanding of the entire context in which the relevant law operates.

I notice that Professor Clarke, in an article in the *Law Institute Journal*[3] on 'The Deakin Law Program' said:

> Unfortunately, the Deakin law program can permit only a small student enrolment. On the positive side, however, this will allow lectures and tutorials to be conducted in small groups, facilitating those close working relationships between students and teachers and among students themselves.

I agree with the second sentence in the passage I have just quoted. But I do not see a limited enrolment necessarily as a disadvantage in the early

3. Clarke, P.H. 'The Deakin Law Program' (1991) 65 *LIJ* 910.

stages of the Program's development, though obviously it presents a problem to the University in funding a comprehensive law library and an array of specialist teachers. In the case of a specialist Law course, it may perhaps be desirable to limit enrolment and avoid the transition to a 'Big Law School' with all the complications attendant upon that transition. If that transition is to take place, then it would be accompanied by the setting-up of a fully-fledged Faculty of Law which would, presumably, administer the Commercial Law Program. In passing, I note from the brochure which was handed to you this evening that arrangements have been made for building up a comprehensive law library over five years.

Being small, at least in the field of education, has some advantages. It enables a concentration of resources and effort for maximum effect on a special area to the exclusion of other distractions. It enables those who are teaching to pursue the goal of excellence, a goal which is much more difficult to achieve in the context of large classes.

In conclusion, I should say that it was inevitable that a University which bears the name of Australia's first Attorney-General, and who was one of our most distinguished Prime Ministers, should establish its own Law course. I congratulate the University on its initiative in establishing a specialist Commercial Law course in an appropriate commercial environment and I trust that the initiative has the success which it so obviously merits.