# THE CENTENARY OF THE FACULTY OF LAW 1873-1973

BY H. A. J. FORD*

The spirit of the present age does not encourage restrospection but we would belittle ourselves if we failed to notice that 1973 is the year of the one hundredth anniversary of the establishment of the Faculty of Law for we would be neglecting a basic duty to mark the efforts of the men and women who have gone before us.

In 1873 Melbourne was not forty years old as an outpost of European civilization yet a University had been established for twenty years and law had been taught for sixteen of them. But as the University's Annual Report of 1873-4 tells us the School of Law had been 'so blended with the School of Arts as hardly to possess a distinctive character'. The setting-up of a separate Faculty of Law, 'a project long in contemplation', was to be accompanied by a re-organization of law teaching which would ensure 'a more comprehensive and philosophical training than that which formerly obtained'. During the first two years of the four year course the classics, mathematics and general literature were to be pursued and the studies of the last two years were to be directed exclusively to the attainment of a 'thorough understanding of the great principles' of roman law, constitutional law, international law, common law, statute law and criminal law. In the one hundred years since that change there have been numerous revisions of the curriculum with ever increasing frequency so that we are now at the stage where the curriculum is under constant review. In the 1940s there were major changes which marked a swing in the philosophy of Victorian legal education. Up till then it had been thought that it was enough for a law student to study only a limited number of subjects having relevance in practice. Certain areas of the law had to be selected for their suitability to demonstrate the evolution and operation of basic principles in legal thinking. The law of wrongs, contract, property, constitutional law, private international law when studied in conjunction with legal history, equity, roman law and jurisprudence were the most suitable. This left many areas of legal knowledge which were not formally studied by a law student but the educational theory relied on the student encountering all major legal concepts in the subjects studied and being so intellectually resourceful as a graduate as to be able to develop an understanding of an

* S.J.D. (Harv.), LL.M. (Melb.), Barrister-at-Law, Professor of Commercial Law and Dean of the Law School, University of Melbourne.

unfamiliar field by an intensive effort of study in a manner broadly similar to that study of lay subjects by which a good barrister prepares himself to present a case involving some esoteric art or science.

In the 1940s the curriculum was revised so as to include taxation, domestic relations, conveyancing and industrial law. Company law was thereafter to be a separate subject instead of a segment of equity. Mercantile law ceased to be an appendage to the law of contract. These changes were asked for by the Law Institute of Victoria as the representative of the solicitors' side of the profession on the basis that they were essential to the equipment of a practising lawyer and in recognition that they could not be 'got up' after admission. A further general revision of the curriculum was undertaken in the period 1962-5 and since then there have been considerable changes. The ending of the Faculty's first century finds the curriculum still under review.

It is noteworthy that although the Faculty has continued to include representatives of the two branches of the practising profession neither branch has since the 1940s sought to promote the inclusion of any particular subject in the curriculum. The close association of the practising profession with the Faculty has been of mutual advantage. Certainly, the academic legal community and the profession here are in a closer relationship than their counterparts in England. This has engendered a greater degree of mutual trust than is found in England. One manifestation of this produces a seeming paradox. In England the students in University law schools are more conservative in matters of curriculum than Australian students. The English students have been mindful of the qualifying examinations set by the professional bodies which await the student after graduation and they have looked to the University to teach those subjects which will assist the student to qualify for the profession. In this way professional demands influence University curricula although the profession lacks a voice in Faculty affairs. This is in contrast to the present position in Victoria where the University degree provides a major qualification for admission and the Universities have been left free in recent decades to plan their degree courses.

For many years the standard method of teaching in the Law School was the lecture supported in some subjects by tutorials. In the 1950s a steady growth in the number of full-time teachers was accompanied by a developing acquaintance with methods of teaching employed in American law schools which methods reduced the degree of passivity involved in the traditional lecture and required preparation for class by students from specially compiled casebooks. The Law School experimented with these new methods of teaching long before the University set up formal research into University teaching methods. If the Law School had not tried these new methods it would have been ill-equipped to cater for the steadily rising numbers of enrolled students.

The reference in the University's Report of 1873-4 to the School of Law is not so much a reference to an institution susceptible of identification by separate buildings and other externals but rather a reference to an organized course of studies. Many years were to pass before the University of Melbourne could provide its Faculty of Law with a physical identity in the shape of a separate building. Such an outcome had to contend with a reputed dictum of a famous Australian judge that 'law could be taught under a gum tree', a sentiment all the more surprising since the same man would abhor 'palm-tree justice' and more than once expressed his belief that the true end of the law lay in a 'strict and complete legalism'. The project of a substantially separate building was not finally realized until 1969 and even then the provision fell short of perfection since the law library which generations of Deans have assiduously promoted as 'the laboratory of lawyers' had to be accommodated within existing structures not designed for the needs of a modern law library.

But despite the long delay in securing a physical identity the Faculty of Law flourished as an institution. From 1873, when the whole university had only 133 students and the Faculty's students numbered 15, the Faculty's enrolment grew to be the biggest in Australia and one of the largest in the common law world. It has not had less than 1200 students for the past twelve years. Until 1962 the University of Melbourne Law School was the only law school in the State of Victoria. Since then the Council of Legal Education's school and Monash University's Faculty of Law have been established and a limited programme of legal studies has been initiated at LaTrobe University.

Among former students of this Law School who achieved prominence in Australian public life were one Governor-General, three Prime Ministers, numerous State Premiers, several Chief Justices of the High Court of Australia, many other Judges, and several University Vice-Chancellors. However, before taking credit for their careers it is worth noting the explanation of Leslie Stephen, the philosopher, that when some great English school is said to have produced a famous man, the word 'produced' means 'failed to extinguish'.

The number of famous men who came from a law school is an inadequate measure of its success. It must not be forgotten that the Law School assisted in the training of a vast number of people who have served the community in many fields of endeavour which are not the less meritorious because they do not attract publicity.

As part of a University the law school has had a responsibility to foster the development of law by scholarly work. The school has discharged this responsibility in various fields. The late Professor Sir William Harrison Moore's work in constitutional and administrative law gave the school an especially high reputation in the area of federal constitutional law which reputation was more than maintained under later professors and lecturers,

notably Sir Kenneth Bailey, Associate Professor Geoffrey Sawer, Professor Zelman Cowen and Professor David Derham, to mention only past members of the Faculty. The Faculty's first Dean, Professor W. E. Hearn, identified the school with scholarship in jurisprudence by his writings, the most famous of which, *The Theory of Legal Rights and Duties*, evoked a continuing interest among legal philosophers here and overseas. In the late 1940s the school housed the authors of the two then current leading English texts on jurisprudence. Professor Sir George Paton's *Textbook on Jurisprudence*, first published in 1946, provided the reader with a most comprehensive and perceptive but detached treatment of all aspects of legal philosophy while *Legal Theory* by Professor Wolfgang Friedmann (whose life was lost in tragic circumstances in New York only last year), while equally stimulating, exhibited a concern for the legal philosophy underlying the welfare state. These two works were accorded wide recognition by being prescribed in many English-speaking law schools.

Since 1935 the school has published a learned journal named first *Res Judicatae* and latterly, since 1957, *Melbourne University Law Review*. This was the first of the Australian university law reviews and it has won respect in the international setting of legal research. That position has been maintained over the years by the magnificent contributions of effort by many student members of successive editorial boards.

I have touched on only some of the features of the Faculty's first century. A full treatment is being provided by Mrs E. R. Campbell in her history of the Faculty which is to be published later this year.

The Faculty's centenary celebrations which were held in April included the delivery by our centenary visitor, the Right Honourable Lord Gardiner P. C., Lord Chancellor from 1964 to 1970, of the Ninth Southey Memorial Lecture. His lecture is reproduced in this issue of the Law Review. It is fitting that this lecture, the centre piece of the Faculty's centenary celebrations, should prompt thoughts towards the future. May those responsible for the Faculty's concerns in its second century do as well as those whom we remember this year.