

IN MEMORIAM

Professor Emeritus SIR DAVID PLUMLEY DERHAM, K.B.E.; C.M.G.; B.A.; L.L.M. (Melb.); Hon. L.L.D. (Monash and Melb.); F.A.S.A. (1920-1985.)

I was on my Outside Studies Program at Osgoode Hall Law School, York University in Toronto when I learned the news of the death of David Derham, foundation Dean of the Monash University Law School. Condolences were passed on to me, as Dean of the Law School, by members of the Faculty at Osgoode Hall Law School, some of whom had taught at Monash and from members of other Faculties throughout Canada. When the news became known in the United States, I again received condolences on behalf of the Monash Faculty from a number of United States law teachers who had met David Derham or who had previously had close connections with Monash Law School.

One of the major features of the Monash Law School lies in the fact that it is a recipient of distinguished overseas scholars in Law and in related disciplines. The late David Derham was largely responsible for developing this feature. Monash has been able to attract, and continues to attract, some of the most outstanding legal scholars in the world, who are anxious to obtain overseas travelling scholarships and to spend time as Visiting Professors and Scholars at this Law School. This is a testament to the reputation of the Law School which David Derham founded.

We all regretted the fact that David Derham was too ill to attend the magnificent celebration that was arranged by the Monash University Law Alumni on the occasion of the 21st Anniversary of the Law School in 1985. The Governor General of the Commonwealth of Australia, Sir Ninian Stephen, paid tribute to David Derham, a tribute that was passed on to him by his wife, Lady Derham, and his children who attended the function.

The Law School has achieved a great deal in its very short existence. So many of its successes are attributable in a large part to the planning that went into the founding of the Law School and its curriculum by David Derham. We will all miss him very much.

In this issue of the Monash University Law Review, two tributes are presented by members of the Monash University Law School to the late Sir David Derham.

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DAVID DERHAM REMEMBERED

David Derham was appointed foundation Dean of Law in the University in October 1963. By March 1984, the first students for a degree in law in the University were enrolled, and teaching in *The Legal System, Criminal Law and History 115* had been successfully established.

In his four years as Dean, David Derham proposed, planned and developed ideas and programmes which have lasted till today. He wrote "A Plan for a New Law School" which the University accepted. The Plan encompassed the degree structure for studies in law at Monash. The double degree, the B. Juris./LL.B., remains the standard programme for many undergraduate students with no prior tertiary studies (though many now enrol for combined degrees, also canvassed in the Plan, in Arts/Law, Economics/Law and Science/Law). It embodied the idea of core studies coupled with choices in the latter years of the course, drawn from a number of subjects (though the early restrictions on choice by the division of later-year subjects into groups have long been removed). It made provision for a staff of law teachers, with a distribution of academic ranks commensurate with what had already been accepted in the University for non-laboratory faculties, and large enough to provide both classroom and tutorial teaching for the students admitted to the Law School. It spelled out the dimensions of the Law Library and portrayed it as the heart of the building he saw as the home of the Law School. It postulated the forging of close relations between the legal profession and the Faculty.

He took a leading role in the recruitment of the staff, in those first four years. When David Derham left to become Vice-Chancellor of the University of Melbourne, there were three Professors of Law in the Law School, and a substantial group of senior lecturers and lecturers, senior teaching fellows and teaching fellows. There was a Senior Law Library Adviser with the rank of Associate Professor. The first Reader in Law, the late P. F. P. Higgins, was appointed and took up his duties a few weeks before David Derham left.

The planning and construction of the law building occupied much of 1966 and 1967. David Derham saw what he had expressed in his Plan given firm expression in the concrete, glass, brick and wood of the Law School. At the heart of the building is the Law Library, surrounded by staff studies and readily accessible at any time by each teacher. The Moot Court, the lecture theatres planned for discussion as well as exposition, the seminar and tutorial rooms were all created as a result of ideas to which he had contributed or to which he had responded in the exciting, sometimes disconcerting, hours of planning. Unhappily, the Law School was not quite ready for occupation when he left Monash on 29 February, 1968. So he never moved into that room built for the Dean of Law.

His colleagues in the Law School proposed that it should be named in his honour. The University agreed. It also agreed that David Derham should

be awarded its degree of Doctor of Laws *honoris causa* to mark the great work he had done in establishing the teaching of the discipline of law in the University.

David was a greatly respected and also a much loved Dean. Perhaps the best evidence of that was the spontaneous decision of his colleagues to buy for him the robes of the degree of the University in which they and he had become friends as well as fellow teachers.

David Derham had clear, definite ideals which he hoped would be attained in the Monash Law School. He saw law as "not fixed and static. It moves and grows", he wrote in *An Introduction to Law* first published in 1966, "with the needs of the community it serves." He saw legal education as a course of study in which the competing forces for stability and for change were discerned and appreciated, and the balance understood. He saw the Law School encompassing a great undergraduate programme, and becoming a centre of first-class graduate scholarship, as a place to which members of the legal profession would be drawn, and as a major focus for legal research and law reform. For most of the 17 years, short years, between his leaving the Law School and his untimely death he was a busy Vice-Chancellor enmeshed in the day-to-day life of the University of Melbourne and in the concerns of university education in Australia and beyond. But he always remembered the Law School. He wanted to know what was happening at Monash and his pride in it and affection for it grew as it did.

The David Derham School of Law is his memorial.

LOUIS WALLER*

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A PERSONAL TRIBUTE

I first met David Derham in 1957. I had come over from New Zealand to attend the 1957 conference of the Association of Australian Law Schools (as it was in those days) and had come down to Melbourne a day or two before the conference to visit the Melbourne Faculty. There was not much contact between Australian and New Zealand law schools in those days (I was only the second visitor to an AALS conference) and, though the news of his appointment to the Chair of Jurisprudence at Melbourne had filtered across the Tasman, little was known of the man himself. I was enormously impressed by his warmth, charm, and obvious ability when I met him, and conceived an admiration for him which remained and still remains with me. In those days he was relaxed and full of youthful energy and high spirits; I remember that on the evening of my visit I was invited to a Faculty staff party at someone's private home (could it have been the Derham's? I never found out) and was very amused at a late stage of the evening when he introduced, for the more energetic of the group, what he called 'barrack-room

games'. The professors I knew in New Zealand seemed to me to be more sedate and, perhaps, less approachable!

From then on, though our contacts were brief, (I had accepted an appointment at the Law School in Western Australia, in those days more remote from the rest of the Commonwealth than it is now) I saw him pretty regularly at the annual conferences of the AALS, to whose general discussions he always made an important contribution. He cared deeply about legal education as a proper preparation for the practising profession, and was at times scornful — though always, as I remember, in a good-humoured way — in his references to the 'mixed' system of legal education which then obtained (and still does) in New South Wales. I recall particularly his fervent advocacy of what he called a 'staff college' operation for introducing the graduate in law to the routine practices of the profession; this, he would constantly assert, would lay a much better foundation for future practice than the haphazard training which was too often the lot of articled clerks, for the would-be lawyer would be introduced to the best standard practice in a variety of areas and kept up to the mark by constant exercises and constant criticism of those which fell short of the ideal. In due course his ideal was realized in such operations as those run by the Leo Cussen Institute and the College of Law in Sydney, but, alas! as many think, for the wrong reasons. We did not see eye to eye on the teaching of Jurisprudence — I remember that, after I had exposed some of my no doubt jejune thoughts on that topic at an ALSA conference in Tasmania, David, who had to rush off to catch a plane, called out cheerfully from the back of the room, with an attractive smile: 'I disagree with everything you've said. I must rush off'. But I greatly admired his approach to the subject, all the same: it was the approach of a thorough lawyer (which he was) concerned to make of the subject (compulsory in those days) an important part of the total training of lawyers.

In due course we heard of his acceptance of the deanship of the new Law School at Monash. Others will no doubt say something of his work here. I shall always remember what I have often described as his 'stroke of genius' in inviting the late Frank Beasley, on his retirement from Western Australia, to accept appointment at Monash as a Special Lecturer with responsibility for building up the library holdings. It was good for Beasley, who still had a good deal to contribute to the field of legal education, to which he had devoted most of his life, and it was good for Monash, because few men knew more than Beasley about the sources and the techniques of building up a collection of law books.

A few years after Derham had moved on from the Deanship of Monash to the Vice-Chancellorship of Melbourne University I moved from Western Australia to La Trobe University, and soon became involved (as new professors must) in University administration. Within this field my path crossed his again, in the Victorian Universities and Colleges Committee and, occasionally, at meetings of the Australian Vice-Chancellors' Committee. He was older then, and perhaps showing a little of the strain of high office; but there was

the same brisk warmth of manner, the same charming smile, the same crisp efficiency. Zelman Cowen had also moved into the company of Vice-Chancellors; for one who had seen them working together in earlier years it was a pleasure to see the same association renewed at another level.

I cannot claim to have known David Derham well. For much of our joint lives I admired him from a distance. That admiration grew as I saw him working in different spheres of activity. It was always a pleasure to meet him again. Whenever we met he was unfailingly warm and welcoming. He was a man who obeyed to the full the Scriptural injunction: 'Whatsoever thy hand findeth to do, do it with all thy might.' Two great Universities, and the Australian University community as a whole, owe much to his untiring efforts. It is an honour to be able to offer this small, and, I fear, inadequate, tribute to a great man.

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SIR DAVID DERHAM: LEGAL PUBLICATIONS IN CHRONOLOGICAL ORDER

- "Dialogue on natural law", (1947) 3 *Res Judicatae* 208
- "Further thoughts on *Minister of Works (W.A.) v. Gulson*", (with J. Gough) (1947) 3 *Res Judicatae* 92
- "Tort: libel-privilege-official communications. Note on *Szalatnay-Stacho v. Fink* [1946] 2 All ER 231", (1947) 3 *Res Judicatae* 100
- "Constitutional development in Australia", (with Z. Cowen) (1951) 33 *Journal of Comparative Legislation* 82
- "Conversion by wrongful disposal as between co-owners", (1952) 68 *Law Quarterly Review* 507
- "Independence of judges", (with Z. Cowen) (1953) 26 *Australian Law Journal* 462
- "With all my worldly goods I thee endow", (1953) 6 *Res Judicatae* 173 (Inaugural lecture as Professor of Jurisprudence in the University of Melbourne)
- "Section 92 and the transport cases", (1955) 7 *Res Judicatae* 180
- "A first course in law", (1956) 2 *Sydney Law Review* 103
- "Book Review: Hood-Phillips, *First Book of English Law*", (1956) 2 *Sydney Law Review* 103
- "Constitutional position of the Australian judges", (with Z. Cowen) (1956) 29 *Australian Law Journal* 705
- "Australian Legal Education — a dissent", (with Z. Cowen) (1956) 9 *Journal of Legal Education* 53
- "Second Hughes and Vale case", (1956) 29 *Australian Law Journal* 476

- "Unauthorised cheques drawn on joint account", (1956) 72 *Law Quarterly Review* 338
- "The Boilermaker's case", (1957) 1 *Melbourne University Law Review* 243
- "Book Review: Snyder, *Preface to jurisprudence: text and cases*", (1957) 1 *Melbourne University Law Review* 127
- "Judge Jerome Frank: An Australian Note of Appreciation", (1957) 24 *University of Chicago Law Review* 625
- "Legal education in Victoria", (with H. A. J. Ford) (1957) 31 *Law Institute Journal* 81
- "Inter se questions and commonwealth exclusive powers", (1957) 4 *University of Western Australia Annual Law Review* 19
- "Interference with surface waters by lower landholders", (1958) 74 *Law Quarterly Review* 361
- "Theories of Legal Personality" in *Legal Personality and Pluralism* (Melbourne University Press, 1958; ed. L. C. Wells)
- "Book Review: *Salmond on Jurisprudence*", (1958) 1 *Melbourne University Law Review* 415
- "*Boilermaker's case: The question inter se*", (1958) 1 *Melbourne University Law Review* 393
- "Some constitutional problems arising under Part XIII of the Indian Constitution", (1959) 1 *Journal of the Indian Law Institute*
- "Book Review: Denis Lloyd, *Introduction to jurisprudence, with selected text*", (1960) 2 *Melbourne University Law Review* 571
- "Law school and its examinations", (1960) 34 *Law Institute Journal* 134
- Victorian Town and Country Planning Symposium. Contribution by David Derham.
- "Interim development appeals", (1960) 2 *Melbourne University Law Review* 283
- Report on the system for the administration of justice in the Territory of Papua and New Guinea* (1960)
- "Where's *Constitutional Structure of the Commonwealth*", (1961) *Law Quarterly Review* 443
- "The Defence Power", in *Essays On The Australian Constitution* (2nd Edition, Law Book Company, 1961; ed. The Hon. Mr Justice Else-Mitchell).
- "Legal education — university education and professional training", (1962) 36 *Australian Law Journal* 59
- "Law and custom in the Australian Territory of Papua and New Guinea", (1963) 30 *University of Chicago Law Review* 495
- "Legal education in Australia", (1963) 1 *The Australian University*
- "Absolute liability" (with D. Mendes da Costa), (1963) 1 *New Zealand Universities Law Review* 37
- "Truth and the common law judicial process", (1963) 5 *Malaya Law Review* 338

- “Precedent and the decision of particular questions”, (1963) 79 *Law Quarterly Review* 49
- “Legal education in Victoria”, (1964) 4 *The Australian Bar Gazette* 6.
- “Legal education and training for practice”, (1966) 40 *Law Institute Journal* 487.
- “Beginning a Law School at Monash”, (1966) 3 *Monash University Gazette* 1
- “Legal education”, (1966) 2 *New Zealand Universities Law Review* 130
- Cases and Materials on the Legal Process* (with F. K. H. Maher and P. L. Waller) Melbourne; Law Book Company; 1966 and later editions
- An Introduction to Law* (with F. K. H. Maher and P. L. Waller) Sydney; Law Book Company; 1966 and later editions
- “The nature of the university and its requirements as affecting education for the professions”, (1967) *The Role of University in Preparation for the Professions*, The University of New South Wales, 10.
- G. W. Paton, *Textbook on Jurisprudence* (3rd edition, Oxford; 1964 ed. D. P. Derham) (4th edition, Oxford; 1972 ed. D. P. Derham with G. W. Paton)
- “Legal education – a challenge to the profession”, (1969) 43 *Australian Law Journal* 530
- Legal Education in New Zealand: a symposium.*
- The Ormrod Report and legal education in New Zealand.* Commentary by D. P. Derham et. al. (1973) 3 *Otago Law Review* 96
- “Overview of legal education in Australia”, (1976) 50 *Australian Law Journal* 577
- “Conversation with Sir David Derham: Part One”, (1982) 56 *Law Institute Journal* 1024
- “Conversation with Sir David Derham: Part Two”, (1983) 57 *Law Institute Journal* 79
- “Mere surface reflections: The Commonwealth of Australia against the State of Tasmania”, (1984) 58 *Law Institute Journal* 771
- “The Dismissal of the Prime Minister on 11 November 1975”, (1985) 59 *Law Institute Journal* 1174