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# The Law Faculty over Twenty Years

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Over the past twenty years the Law Faculty has evolved from a very small localised Law School in a College of Advanced Education into a large complex and maturing Law Faculty in a significant Australian university. This special issue of the QUT Law Journal recognising the Faculty's 20th Anniversary is but one of a number of means by which this particular milestone has been recognised in 1997. As one of only two people on the Faculty staff who was involved over the whole 20 years, from foundation member of staff, first Professor of Law, and ultimately second Dean of the Faculty for eight years, I feel not only greatly privileged to have been part of the Faculty's development, but have gained enormous personal enjoyment in sharing the experience with some wonderful people.

This edition of the Journal includes contributions from a University perspective, contributions from some of the Law Faculty's close professional partners and supporters and articles from people with links to the Faculty and this anniversary year. The contributions include reflections from the Law Faculty's three Deans or former Deans comprising Dr Tom Cain's<sup>1</sup> reflections as Foundation Dean and Professor Malcolm Cope's reflections on the future, Malcolm having been appointed new Dean only in this anniversary year. The fact that there have been only three Deans over the 20 years is itself a little unusual in the Australian context where there is a significantly higher turn-over, although it is far more reminiscent of the North American experience. The history of continuity in the Deanship has provided significant stability in the development of the Faculty as in a sense each succeeding Dean has had an apprenticeship as deputy. Those who know Tom, Malcolm and myself would appreciate however that in personality, management style and vision there are significant differences.

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1 As part of the 20th Anniversary activities, Tom Cain had an honorary doctorate of the University conferred upon him.

That brings me to my contribution to this edition of the Journal, sandwiched as I am like a thin Steele Rudd volume between a couple of solid Oxford bookends. I have divided my brief reminiscences into three parts (as in the QUT way following Dennis Gibson's lead). The three portions I believe, each reflect a different era or phase in the Law Faculty's development. As it turns out the Law Faculty has also had three different homes or locations and I shall muse upon the first era under the headings of its physical homes.

## **A. The Beginnings of a Good Law Faculty**

### **1. The G-Spot**

The modest premises for a modest beginning to the Law School back in 1976 comprised the ground floor of what was then and remains today G-Block, which had formed part of the original Technical College quadrangle on the Gardens Point Campus. I was one of the foundation members of staff after Tom Cain. I had known Tom in Sydney as I had been lecturing part-time for the Barristers' and Solicitors' Admission Board courses in Sydney which Tom had administered through the Law Extension Committee, at the University of Sydney. I had most recently been lecturing in Equity in Sydney having "inherited" the position from Keith Mason (now Keith Mason QC, Solicitor-General for New South Wales). I had also been in practise working in the constitutional law field for Sir Maurice Byers QC, Solicitor-General for the Commonwealth, in defending a large number of challenges brought in the High Court in respect of legislation enacted during the 1972-1975 Whitlam period of office. My particular interest however had been Torts and I was at the time contemplating taking up an academic position in Sydney in order to teach Torts as a junior member of a team and in an existing Torts course dominated by what seemed to me to be luminaries in the field.

I found the invitation to join a new Law School with freedom to set up my own courses tempting and my decision was influenced to some extent by my respect for Tom's administrative capacity. Tom had had English naval experience and it showed. He was not just the chip off the old block, he was the old block and an ideal choice to set up QIT's fledgling undergraduate law course with emphasis upon good teaching, solid relations with the profession and its training needs, and a naval discipline brought to the administration of this new vessel.

Our accommodation in the 1920s-style G-Block, though modestly refurbished in garish orange with cheap green carpet which invited mowing in the wet season, housed Tom, his Secretary Norma Weir, myself and subsequently Ian Campbell who had also been enticed up from Sydney in due course, and initially four local Queenslanders – Carmel McDonald who is still with the Faculty, Jim Herlihy who came across from The University of Queensland and is now a Magistrate, Deborah Russell (nee Campbell) as administration officer and who brought considerably more vernacular colour to the early days than did the green and orange, and the Law Librarian. Our location in the G-spot was most apt. We were somewhat new and a

little exotic as the first Law School outside a traditional university and in a College of Advanced Education which was itself technologically dominated. We were also hard to find at the time.

Our first intake of some 110 full-time students for the 100 quota in 1977 all became known personally to the staff and to each other. The learning environment was intimate and uncomplicated, though competitive as the standards introduced from the beginning were rigorous as is reflected in the relatively small number of the first cohort who completed the four-year degree in minimum time at the end of 1980 (some 17 or 18).

The establishment of the first law course in a College of Advanced Education and outside a traditional university had come at the request of the local profession and the Solicitors' branch in particular and the Government which desired more direct support for the legal training of its in-house officers, particularly the Magistrates Court Service, so there were strong early links and an eye to practical needs as perceived by the profession. It also meant that QIT's senior administration provided solid initial support although there were sometimes differences of opinion in accommodating this new discipline within an institute of technology. On these occasions Tom Cain planned his campaigns with naval precision. I was unsure sometimes what the campaign engaged with central administration was about or whether we had "won", but we damn well knew we had been in a campaign or skirmish and were trained in keeping a weather eye on storms blowing in from the east which was where central administration was bunkered down relative to G-Block.

The School's administration staff in those early days were an important and integral part of the Law School's success and the many individuals who have given dedicated professional support to students and staff have remained a backbone for the frontline academic activities and do so today.

The first few years involved much hard work as part-time and external modes were grafted on to the original full-time course in successive years. My own experience was not novel or unusual. I set up and taught the Torts course to full-timers in 1977 and in the same year prepared for offering the Constitutional Law course to the 1978 full-time group while introducing and teaching Torts to the first part-time cohort in 1978 also. Whilst teaching Constitutional Law for the first time and Torts for a second time in 1978 I was also preparing the Equity course for delivery for 1979 to the by now third-year of the full-time group etc. It was bloody hard work but very rewarding.

In this initial phase of development all that was necessary to lay the foundations of a good law school was put in place rigorously and unambiguously. At first we offered the law degree as a BA in Law. This seemed to trouble a small minority who were comforted when permission was given to convert it to the LLB. It didn't seem to worry most of us and for Tom, whose qualifications were a BA in Law from Oxford, it was far more traditional than the LLB.

## 2. V-Block Didn't Mean 'V' for Victory

The full operationalisation of the full-time, part-time and external courses and the growth in our Law Library needs and to accommodate the Legal Practice course, which had also commenced in 1978 with 13 foundation students at the request of the Queensland Law Society to provide some alternative to Articles of Clerkship, placed great pressure on our capital comfort. We had also been preparing for combined or double degree courses which eventually commenced in 1985.

The Law collection had initially been housed in the basement of the then new main library building (V-Block) and we eventually moved into the top two floors of that building, bringing together for the first time all components of the school including the Law Library collection. The accommodation was certainly an improvement although the green carpet seemed to have migrated with us. At this time we remained only the second Law School in the State and our new premises must have occasioned some envy as a then Dean of another Law School had taken the trouble to come and photograph much of it without an invitation to do so and was caught in the act.

There were three problems with our new premises (apart from the leaking roof to which Tom will I am sure, refer in his contribution). The first was that it actually brought our physical location to a mooring immediately alongside central administration which I was given to believe was not a good thing. Second, we were not the sole occupier of the premises and our strata title neighbours were not necessarily ones we should have been seen 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. Thirdly, and more importantly, we simply outgrew this second temporary home and required purpose-designed premises which we moved into in Australia's bicentenary year and the year before Tom Cain retired as Dean.

Three particular factors stand out in my memory of this period. The first was the growing realisation of the significant contribution being made by law students to the broader governance and development of the University, which was not so clearly apparent in terms of staff involvement in the affairs of the institute except through the involvement of the Dean. In particular there were several law students who had become President of the student body and found a place on the governing body of the institution and various committees. Notable amongst these were James McCrae, Peter Stewart (now a banking partner at McCullough Robertson, a firm which has a strong association with the Faculty) and Vanessa Goss, younger sister of former Premier Wayne, who contributed amongst other things, a student code. In more recent times the Law School's own student body (QUOTALS<sup>2</sup>) has made an outstanding contribution beyond the merely social and extending to student

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2 The Queensland University of Technology Association of Law Students has Lord Denning as its Foundation Patron.

support, careers and employment activities.

A second factor which was brought home to me was the “awkwardness” being experienced by the Law School as it moved into adolescence. This was a product of evolution and growth in size, diversity of experience of staff, and changing environmental influences within the institute and the higher education sector as a whole. Not all staff had had the same foundation experiences and this resulted in existing practices, administrative rules, and culture coming up for constant questioning from new members of staff. Many staff who wished to progress more vigorously a research agenda found tensions with mandated obligations in teaching practices. Most staff had little or no background in the theory or practice of teaching and learning from an educational background and there were emerging tensions in reflecting upon existing practices and more flexible and diverse options which appeared to be unavailable in practice at QIT.

The third factor, an external review, probably brought into sharper focus some of the unarticulated domestic tensions to which I have referred which had been growing in the mid-1980s. In 1985 the then Commonwealth Agency (CTEC) established a new model for assessing the quality assurance of higher education endeavours. Law was chosen as the initial discipline for review and the Pearce Committee carried out a review in 1986 and published a report in 1987. The review was conducted by three Law Professors – Dennis Pearce from ANU, Enid Campbell from Monash and Don Harding from UNSW. They visited the Law School at QIT in 1986 and received a variety of different perspectives from different members of staff. What emerged from the review for me was that there were some excellent practices and achievements of the Law School which suffered nothing by comparison with some of the older law schools but that there was also a growing desire for change from many staff.

As I continued to be responsible for the external LLB Course, I was particularly pleased to note that the quality of the external course and services offered to our Queensland regional students was recognised as being of a high standard by the Pearce Review. I had formed a view then that many of the things being done for external students “in lieu” of attendance were more simply part of a broader range of options for learning by students, whether at a distance or otherwise, and the focus brought to the concept of “flexible learning” a decade later in the higher education sector generally seems to me to lack novelty and comes as no surprise.

But secondly, the review brought home to me the need for considerable further reflection about other and more diverse options for teaching and learning and research whilst not seeking to prejudice the good things which had been built up. Some limited reforms occurred in 1988 but these had not taken full account of some of the available options and many of those options had not been ventilated in the immediate post-Pearce review within the Law School.

In any event our attentions were squarely on a move to new premises and our first permanent home.

### 3. Blind Justice

Tom Cain had a good eye for the prevailing breezes when it came to embarking on our next physical voyage. A new C-Block was built adjacent to the Freeway. It had the advantages of being our first purpose-built premises, and of being away from Main Library and Central Administration. I am convinced Tom influenced the design concept as the building has a remarkable likeness to an aircraft carrier, the sighting of the Dean's Office resembling the bridge of a vessel and the level four bridge originally connecting us to the rest of the University closely resembled a gang-plank. We were duded on space in the building however and were obliged to share the building with the Optometry School and its clinic headed up by Ken Bowman, now Dean of Health.

The occupation of our third home and Tom's retirement brought to an end the first phase of the Law Faculty's evolution, played out in three sub-components. Tom was awarded the Australian Medal for his services to education and law just before his "retirement"<sup>3</sup> and I was delighted to have drafted the material upon which his commendation was based.

## B. Phase 2 – Further Development and the Law Faculty in a Broader Context

In 1989 the Faculty had grown under strong leadership to become a body with good quality students (1000 EFTSU) and teaching staff supporting strong undergraduate teaching programs with particularly strong connections with the profession.

In 1989, only four members of the academic staff were above senior lecturer level and there were only five senior lecturers. 55% of the academic staff were lecturers and 27.6% below lecturer level.

Under the parameters set by the binary system and institutional framework for a CAE it was an outstanding success. But the world was changing rapidly and the Faculty's resources had also deteriorated, manifested eg. by a staff-student ratio of less than 19 in 1980 to a figure of 23 in 1989. The Dwarkins revolution was in the midst of collapsing the number of Australian institutions from 63 to 36 and a doubling of student numbers across the sector. QIT had become a University in early 1989 bringing with it some expansion of institutional vision and subsequently amalgamated with BCAE from 1 May 1990 which brought with it significant challenges to the organisational independence of the Faculty. The Faculty now and then remains an independent Faculty with its own one line budget against a trend in the late '90s in Australian universities to incorporate Law Schools within larger organisational structures usually associated with Business and Arts disciplines as has recently occurred throughout Australia, including at The University of Queensland and Griffith University.

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3 In his so-called "retirement" Tom took up a Professorship in Law at Bond University and later taught at UTS when he returned to Sydney.

I took over the Deanship in 1989 and became the first Professor of Law, and although Dean for eight years, over the last two I had spent much of my time undertaking other University business outside the Faculty. In approaching the second phase, the strategic elements became a movement towards the inclusion of greater contextual influences within our courses including more critical and theoretical perspectives though not at the expense of the applied and vocational skills appropriate to practice; the development of a more mature place of learning; building further in the postgraduate area and legitimising research as a companion of teaching in particular. The aims included also, introduction of greater flexibility for staff and students; improvement of the Faculty's representative position within the University, and involvement in University affairs; and securing improved resources.

During this period the number of courses of the Faculty, including those offered by Justice Studies as a new discipline, tripled. Student numbers doubled, a major curriculum review revised the content of all LLB programs and the first graduates from these reforms are now emerging. It is particularly pleasing to see that the first Rhodes Scholar in Australia, outside a traditional University, has been Ben White, QUT Law graduate who is to take up doctoral studies at Oxford in 1998. When interviewed by the media in relation to the award, Ben said, he hoped "to explore the relationship between law and society, with a particular emphasis on maximising the effectiveness of law reforms and its use as a tool for change in society".

Crucial to reform of QUT's curriculum was revision of the admissions requirements to practice. QUT played a leading role locally and nationally in working in partnership with key elements of the professions to unfreeze the rigid curriculum requirements and these efforts were ultimately successful. To me they signified the appropriate relationship between a Law School and its strong professional partners – each has a role to play in influencing the other's perspectives.

One of the great pleasures I have taken over the past few years is watching the increasing presence and influence of Faculty staff in the affairs of the University, through such things as committee work and increasingly in the community not only at local but at national and international levels. These contributions have extended to such diverse areas as equity, intellectual property, teaching and learning and research ethics to name but a few. Two members of Faculty staff currently sit on the University Council and various of its committees. A number of staff sit on committees of the local professional bodies and the Law Council of Australia and there has been active involvement in the International Bar Association.

The Law School hosted the Australian Law Teachers' Association Conference in 1992 at a time when I acted as President of the Association and the significant involvement of staff added to the Law Faculty's maturing over this period.

In 1992 the University introduced a new quality assurance mechanism – an independent five-yearly review. The Faculty volunteered itself to be the initial area reviewed and this occurred during 1992 with a Report on the Faculty provided in September. The panel included Professor Dennis Pearce who had Chaired the Pearce Review in 1986 and Greg Vickery, former President of the Queensland Law Society. Amongst its findings and recommendations were the following:

- The Committee commends the Faculty's curriculum review of the Bachelor of Laws and recommends that the Faculty consider alternative models of teaching and course delivery, with the goal of providing an innovative and forward-looking approach to course content, organisation of material, practical and clinical skills training appropriate to an LLB degree, student learning and feedback to students from first year onwards;
- The Committee believes that the Faculty's postgraduate offerings are highly regarded by practitioners as are its undergraduate and legal practice graduates. The Faculty would be well advised to pace the introduction of further postgraduate research degrees until the relevant supervisory expertise has developed, as staff complete higher degrees. Staff should be encouraged to undertake higher degrees with a significant research component in order to enhance their capacity to publish, to apply successfully for grants, and to supervise postgraduate students;
- The traditional model of the lecture/tutorial combination should be appraised for its appropriateness and other modes of delivery trialled;
- The Committee believes that the Faculty is in a strong position to build on its demonstrated strengths, and has staff capable of performing well in a university environment. The zero-based structure proposed by the Committee is intended to enable the Dean of Faculty to take less of a "hands-on" role in the Faculty's day-to-day management, and to encourage senior staff to assist in the management of the Faculty through effective delegation of responsibility;
- The Review Committee believes that all staff can reasonably be expected to undertake a mixture of teaching, research and administration. The Committee has highlighted several issues in these three areas under all terms of reference, but specifically Term of Reference 2. The Committee feels that some staff within the Faculty were complacent when these issues were discussed, offering in some instances a variety of opinions on a subject but no solutions. The QUT Law School has enjoyed a good reputation but will need to improve continually to stay ahead of the new emerging law schools within the State. The Faculty can not afford to incur any loss in patronage from the profession and should not rely on its previous successes to sustain its reputation in the future.

During the late 1980s and early 1990s I was very struck by the 'student approaches to learning' work being undertaken by researchers in higher education including Biggs, Entwistle, Marten and Paul Ramsden closer to home. It coincided with increased activity in the Legal Education Review and increasingly sophisticated work being undertaken at the ALTA Teaching Workshop.<sup>4</sup> This period formed part of my own continuing learning journey and a number of significant grants and

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4 Perhaps the first book of its kind in the world aimed at improving the quality of student learning in law ie Discipline-specific to law, was the Australian work: *The Quite (R)evolution* by Marlene Le Brun and Richard Johnstone 1994, Law Book Co Ltd, Sydney.



studies were undertaken or supported. The presence of Gordon Joughin as an educational consultant within the Faculty formed part of this strategy and I found working with Gordon a highlight of this period particularly in relation to the development of a Framework for Teaching and Learning Law published by the Centre for Legal Education in Sydney. These activities were intended as part of the fundamental role of academic management in supporting and developing staff in their teaching role and in establishing a forward-looking ethos.

One of my few disappointments at the end of this period has been the lack of a culture and practices to attract and foster doctoral students in the Faculty. There is much productive research undertaken in the Faculty, particularly by the professoriate who on the whole, also retain consultancies with some of the larger firms who are also sponsors of the Faculty.

A greater number of staff have themselves obtained or are undertaking research to obtain doctorates. But on the whole, the attraction of doctoral candidates has been very low. The Faculty's first doctoral candidate did not enrol until 1991 and completed in 1997, although the degree will not be confirmed until 1998. I was both delighted and concerned to be the Principal Supervisor – concerned because management responsibilities are not always a sound basis for providing supervisory support. The first PhD award was in 1997 to Des Butler who had completed his LLB during the Law School's early phase and returned as a member of staff. The experience in working with Des and other doctoral candidates has been particularly rewarding and I would commend it to the Professoriate. Despite reactionary views that lawyers don't do doctorates in law, I believe every Professor without managerial responsibilities should have two or three research candidates at any one time. It has certainly been achieved at other Law Schools and some of them reasonably proximate to QUT.

Resources in the Faculty increased in relative terms during the second phase of development from 1989 but have deteriorated again in recent times. The Law Faculty secured the whole of 'C' block with the removal of Optometry to another campus. A further major refurbishment saw a doubling of the size of the Law Library and the inclusion of a dedicated computing laboratory. The best staff-student ratio in its twenty year history was achieved in 1993 with a ratio of 16.9:1. Significant upgrades to new technology, particularly in information technology has occurred and a range of existing experiments in learning environments is being undertaken by staff.

The Faculty played a leading role within the University in relation to the Commonwealth's Quality Audits in 1993, 1994 and 1995, particularly in the 1994 round devoted to the quality of teaching which I had little to do with from within the Faculty as I coordinated the exercise on behalf of the University.

In 1994 another external review was undertaken of Australian Law Schools and the extent to which these had been changed since the original 1986 Report. The 1994 Review was conducted by Craig McInnis and Simon Marginson from the Centre for the Study of Higher Education, University of Melbourne. The reviewers used 11 Law Schools as case studies, four of them from Queensland, including QUT. The review concluded that perhaps the most important aspect of the original Pearce

Review had been the generation of a climate of debate, discussions, critical thinking, self-evaluation and continuous improvement. Readers with realistic appraisal of the capacity of the extent to which the four local Law faculties have been willing to embrace these critically self-reflective practices, can form their own views of relative success.

In stepping down from the Deanship informally at the end of 1995 and formally at the beginning of 1997, I look back with fond memories of the people I have been privileged to work with and learn with and will look with pride at the Faculty's future achievements in what I believe will be a third and new era for the Faculty.

I saw my role as managing during a period of significant change and on the whole I believe the experience was mutually beneficial, it certainly was for me and from the comments which the 1992 review panel made, I trust it was for others:

“As a general comment, the Committee found only acclaim for the integrity, leadership and management capabilities of the Dean of Faculty, both within the Faculty of Law and the wider University community. The Committee would endorse this assessment and feels that the value of the Dean's contribution during the period of change associated with amalgamation has been significant. While the employability and reputation of the Faculty's graduates has been maintained, the Dean has created an environment in which staff have considerable scope for development and opportunity to contribute to the enhancement of the Faculty's reputation within the University, in the legal profession, and throughout the wider community”.

I believe I probably stayed on just a little too long in the role of Dean and was eventually drawn out of the role by the University more and more. There is a lesson there for all Deans!

I would like to record my gratitude to the Foundation Dean for the solid basis he provided which made my time as Dean a lot easier than it might otherwise have been and particularly for his mentoring.

### **C. The Future**

I now have little or no influence over the Faculty's future directions and successes and it would be inappropriate for me to provide advice to my successor. Nevertheless, some speculation about the future environment in which the Faculty will need to prosper are not unwarranted and not without association with my new role in contributing to the University's planning and resources (I trust Tom Cain will forgive me for having joined those central managers. I now reside in those premises in U block which we sought to avoid in the early days; those same premises which Professor Bill Duncan dubbed from earlier times “Fort Fumble”).

I start with a preliminary observation that no-one planning for some immediate future in Australian Higher Education should commence from the perspective of reduced resources. It is true that there will be changes to public resourcing patterns but these do not of themselves mean reduction. The context may mean reduced

direct government funding but it may mean an increase in funding if alternative sources of funding are planned for and achieved. This will largely be in the fee paying domain and eventually for undergraduate as well as postgraduate courses.

The future therefore throws up a context which gives greater emphasis to students paying for their educational experience in a freer market and expecting quality commensurate with their contribution. Students can and will expect quality in teaching and in non-academic services.

This will in itself demand greater flexibility in the modes, methods of delivery and timing of learning experiences to accommodate student choice in a much more competitive environment.

Studies going back to the Stollznow study at QUT in 1984 and elsewhere have confirmed what has been described as an “instrumental” view of undergraduate education – that students view their education as a means to employment and an income. Employment rates for graduates will necessarily be an indicator for the success of the Law courses and the learning environment in future.

The Law Faculty now has the highest academic tenure ratio in the University and a significantly high ratio of academics at the career level of senior lecturer. It may be a challenge to maintain the momentum of forward-looking change. All of these factors place a high premium on entrepreneurial management as a component of success.

Another contextual factor will involve the extent to which the potential of information technology is harnessed for learning and research efforts. Despite some experimentation there has been little fundamental change to the conventional activity of teaching and researching within the Law Faculty.

In concluding I quote briefly from Robert Louis Stevenson: *“to travel hopefully is a better thing than to arrive and the true success is to labour”*.

For a Law Faculty there is not a destination point. The journey to date has been varied, interesting and enjoyable and I am sure the next part of the journey will be equally so.