Australasian Universities Law Schools Association

The Honourable Sir Walter Campbell*

I am honoured to be asked to open this Annual Conference of the Australasian Universities Law Schools Association. If you will pardon a man of my years reminiscing, I well recall attending one of these useful conferences which was held at the University of Melbourne more than thirty years ago, either in 1949 or 1950. I had commenced as a part-time lecturer in Jurisprudence and in Equity in the Law School at Queensland University at the beginning of 1948. Jurisprudence was then a first year subject being a combination of what is now often described as "Elements of Law" or "Introduction to Law", and some socio-legal history along the lines of Maine's "Ancient Law" together with some analysis of legal concepts and norms in the Austinian mould. The study of jurisprudence proper, as a philosophical and societal approach to the understanding of law, was then, in the Queensland Law School, one of the options for the Honours student but having completed an honours course in jurisprudence, I was asked in about 1949 to plan and introduce such a course for the final year of the pass degree (was well as for honours). The course was labelled "Jurisprudence II". The then Dean and Head – the late Professor Harrison – thought that it would be a good thing for me to attend an Australian Law Schools' Conference in order to meet and have discussions with such erudite legal scholars as Professor Julius Stone and Professor Wilf Freedmann who were then writing about and teaching legal philosophy.

In those days copies of all the law lectures given in the University of Queensland were roneo'd for distribution among students; in a sense they were in the nature of mini text books. Anyhow, I embarked upon the task and fortunately the young barrister then had much more time available to him for such labours than it appears has a beginning practitioner at the Bar these days. Strange as it may seem, as a part-time teacher I even had to conduct, during some years, seminars for honours students although the latter were very few in number. I think I taught both courses in Jurisprudence (the first-year subject was soon renamed "Elements of Law") for about a dozen years. You will appreciate that, as my practice became more demanding and financially rewarding, time for scholarship, reading and reflection upon matters of legal philosophy became more and more limited, and I am sure it was of great benefit to the University and to the students when jurisprudence was taken over by my successor who then was, as I recall, Dr. Darryl Lumb. The emolument payable during all those years was

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Opening Address to the 39th Annual Conference, The Resort, Ferny Avenue, Surfers Paradise. 26th August, 1984.

£2 for one hour's lecture which covered preparation of the full text and the examination fees – 30/- – for an hour's seminar. In most years I lectured in my chambers at 8.00 a.m., an hour scarcely conducive to the right atmosphere for philosophical introspection or thoughtful analysis on the part of the lecturer or student. I well remember the discomfort of one eminent visiting jurist – Professor Montrose from Belfast – when I dug him out of his hotel bed to talk to students at that cheerless hour in the morning.

But those experiences have encouraged me to talk to you this morning about the changes which are confronting teachers of law. The matters I will raise are, I know, in the forefront of your minds and I believe they have to be addressed by the legal profession in a tolerant, rational and calm manner. When I was a student there were only two or three full-time members of the academic staff, most subjects being taught by busy practitioners. Now it is rare for a part-timer to be asked to teach any of the subjects in the Law School. I was taught Company Law, Conflicts, Evidence, Practice, Torts, Contract, Divorce, Admiralty, Bankruptcy, Criminal Law – and perhaps others – by members of the practising profession.

There are two aspects of change, it seems to me, which have implications for the teaching of law in the future. One is related to the changes which have taken place outside the law and the other stems from the changing patterns of organisations, structure and methodology within the profession itself. Whether some of you like it or not, traditionally Australian Law Schools have assumed and are responsible for the task of providing their graduates with the training to become practical lawyers, persons whom the courts will admit to practice on the basis of skills largely obtained by them from attending the Law School. In this present situation I think that the most vital role of an Australian law school is to provide its graduates with the training which will fit them to become useful lawyers of the future. Another important role, of course, is that the law schools should produce the highly specialized scholar who, through his writings and teachings, will exercise both a creative and balanced influence in the formulation, re-shaping and adaptation of the principles of the law, rules which need to be adapted to changing human values and to the new policies which are abroad.

I think that there is a need, and one which will become more pressing every year, to develop new courses or to introduce variations into basic courses. It is trite to refer to the significant, but often inadequately recognised, changes which have taken place in the professional and commercial world. The Supreme Courts are grappling with newly developed corporate practices and organisational structures as well as with legal problems which require a considerable knowledge of business practices and techniques. Is there not a need for law schools to change the emphasis of many subjects in order to take account of these factors? Perhaps students should be required to undertake some analysis of the comparisons of the operation of legal structures and legal institutions with the systems and organisations, both private and public, which have been set up in the business world.

I see from your programme that this Conference has several interest group discussions such as environmental law, intellectual

property and government law, and doubtless these will give impetus to the need for changes in curriculum content. These are among a number of critical areas with which law graduates should become familiar. But I think courses will have to be directed gradually to some extent towards specialisation. Lawyers cannot all be competent for all tasks in the complex society of today, so thought must be given to specialisation beginning right at law school level. An increasing number of graduates will not enter private practice as we know it now; many will become government lawyers, others will seek employment in business corporations, court administration, community justice centres and so on.

What I said earlier about the role of a law school must not be taken to mean that I think it should simply provide, in modern day jargon, competent legal technicians. A law graduate should possess a broad liberal education; but more than ever before, he also needs literacy in a scientific sense. Basic courses in constitutional law and constitutional history, for example, should be supplemented with similar courses in basic chemistry, physics, and biology. Most legal practitioners of the future must have an understanding of basic scientific principles in order to possess the necessary skills to deal with the demands of the scientific age. Should not the law student become familiar with the use of computers, although I imagine that most future students will possess this knowledge on leaving school and before entering the University? Whether such courses are to be conducted within the law school, or prior to the student entering it, are matters that need to be further thought out, but my own view is that they should be studied in another faculty. Certain prerequisites for entry to the law course should be mandatory.

Do we not need to introduce a system where a lawyer has to obtain a first degree in the social sciences – a general degree, if we can call it that, but one which should also encompass studies in science and technology to the extent that these areas relate to social and living conditions and human values? Care must be taken to ensure that this degree is not too generalised, does not contain too many soft options and does not provide a mere smattering of knowledge. And then, in the law course itself, as I have indicated, regard should be had to a degree of specialisation. In directing students into particular channels a dominant consideration should be that a specific legal subject has a sufficiently demanding intellectual content within its confines. Very often, I think, courses which deal with such fields as town-planning law, the law of the environment, legal aid, the law relating to so-called underprivileged groups, poverty law, social security law and so on become merely studies of scraps or fragments of legislative enactments or are concerned with certain transient reformist ideas which are fashionable for a time or which appeal to a particular lecturer. Optional courses should be carefully planned within the whole framework of the law course with the aim of encouraging and developing critical analysis of complex situations and total awareness of law as a social discipline. The traditional core subjects must continue to be studied so that the law graduate does not sail under false colours but is given an understanding of the essential nature of law in

society. A jurisprudential type course should be mandatory in all cases.

May I now refer with a little more particularity to changes which are taking place within the legal profession and in the patterns of legal practice? Legal firms in this country are now starting to merge with one another leading to the creation of very large organisations. It seems to me that the days are numbered, not only for the sole practitioner but also for the small partnership. Large city firms operate provincial and suburban practices and the partners and their qualified employees are becoming more specialised. I have always been and still am a believer in the existence of the separate, independent bar, those men and women who develop the skills of presentation or argument, in our adversary system, to the courts and tribunals who have to resolve the disputes which have survived the process of settlement by prior early negotiation. There are always exceptions but in general the arts of presentation and persuasion in the forensic market place are developed from the dexterity and familiarity of experience; courts at all levels depend to a large extent upon the arguments presented to them. Rules of law are adapted and applied by the courts to the new circumstances prevailing in a complex society and, whether you believe in so-called judicial activism or not, there is no substitute for the experienced specialist advocate, and those who wish to do away with a de facto divided profession should, first of all, get some court experience in our system or else – and they would be ill advised to do so – espouse the doing away with our system in favour of the continental or North American methods. Might I interpose here to say that academic lawyers play, and will increasingly play, a vital role in enabling better arguments to be submitted to the Courts.

In a paper entitled "The Role of Counsel and Appellate Advocacy" delivered by Sir Anthony Mason at the Inaugural Convention of the Australian Bar Association on 1st July, last, His Honour spoke of the increasing tendency on the part of the High Court, in common with other courts of appeal, to look at the development of the common law elsewhere than in Australia. But he hastened to point out that it is Australian law with which his Court is concerned, and if there is relevant Australian authority it should be cited in preference to English authority. In the context of the exposition of the statements of common law principle in law journals and the need for the Bar to have comprehensive library materials, Sir Anthony referred to the assistance of comprehensive Australian textbooks on a wide range of legal topics and the availability of a wealth of law journal material of high quality. He then went on to speak of academic lawyers undertaking research and producing materials for use in cases, mentioning that in the U.S.A. legal research work is sometimes contracted out by law firms to organisations whose business is the undertaking of such research.

The growth of the giant legal firm has major implications for the Bar as well as for the teaching of law. Specialising by members of the firm has meant that most of them have become more familiar with and interested in the several areas of law as apart from the running of a sort of general store. These firms now seek to obtain

the top law graduates as they emerge from law schools and compete with one another in this process – and they will be attracted to those who have the best academic results in special fields. I have not the time to consider any probable future restructuring of the legal profession, but might I say that the law schools will need to place less emphasis on the production of barristers or those who are oriented mainly towards advocacy by oral argument. More attention should be given to training persons in the written presentation of legal opinions and in the skills of negotiation.

This again leads me back to the desirability of a basic theoretical training for the law student, the need for practical training and of some degree of specialised instruction. In short, I think that law schools should accept entrants in general only from those who have had the benefit of a broadly based first degree with certain prerequisite subjects, and then be willing to give them a basic theoretical training in law as well as practical training together with a degree of specialised instruction.

What I have said points to the necessity for closer co-operation and contact between the law faculties on the one hand, and the practising profession, the judiciary and business and scientific organisations on the other. Those concerned with the planning of curricula have to become familiar with the developments taking place in the outside commercial and technological world as well as with the new directions of governmental and social philosophy.
I believe that the teachers in our law schools have to think hard about their techniques of teaching. They have to meet and talk more with those outside the cloisters of the university. I have never been one who has espoused the view that the university is an "ivory tower", although we all know that some members and sections of university communities have acted in a manner which attracts that label. In short, there have to be improved lines of communication between the profession and the business community and the law school. How will the law teacher acquire the necessary knowledge and experience? I have always supported the view that academics should be permitted, subject to certain guide-lines, to have certain rights of private practice. In reporting to the Federal Minister for Education on Academic salaries in 1973 I said:

> I agree that, provided the privilege is not abused, it is desirable from many points of view for university staff to be available to undertake special consultative work. Governments, semi-governmental bodies and outside industrial and business firms should be able to benefit by obtaining expert advice which may be available only from people and research groups within universities.

In my 1976 Report, at the Academic Salaries Tribunal, I said:

> Clearly, outside consulting work can be a fruitful method of establishing desirable relations between universities and the community and, by permitting university expertise to be available, all universities can make a valuable contribution to economic and social welfare. Further, consulting can also improve the knowledge and abilities of a member of staff and enhance his quality as a teacher.

Law teachers have an opportunity to gain outside experience from membership of Government committees and from member-

ship of professional associations and professional committees. They are also frequently members of or consultants to Law Reform agencies but little first-hand experience is gained from work on those reform bodies. A true law reformer must know well the practical effects which result from the application of existing law and to do this he must, like a judge, have skills in fact finding, a craftsmanship which in general is developed only by working in the field. Greater efforts must be made by the profession and by the law schools to meet on common ground both formally and informally. Members of the legal profession, as well as those in the commercial world, often look unkindly upon many of the suggestions and criticisms which emanate from academics because they consider that the latter have little experience of the real world. This attitude is not helped by a small minority of academics who are prepared to hold themselves out as experts on any topic and to launch often ill-informed attacks on the courts, the judicial system, the sentences imposed in criminal jurisdictions, the delays in litigation and so on. Lawyers understandably get upset when people with little or no experience of the law in action attract the attention of the media by remarks which challenge the very authority of the law and the existence of established procedures and institutions. I am not denying the right of anybody to criticise the legal system – indeed it is only through informed critical suggestions that the basic authority of the law and its values will be maintained, but such criticism should not be slanted for the sake of sensationalism. Personally, I think that legal academics have played a considerable part in preserving the values which are part of our legal system.

We are said by some to live in an age of reform, and there are a number of matters which need reform, but the rules of law should not be bent, nor the structure of legal institutions cast aside in order to cater for the short-lived fashions of vocal groups in society.

I hope that, in the planning of the curricula for law students, more attention will be paid to the real needs of a profession which essentially encompasses private practitioners, lawyers in the public arena and genuine academic scholars who should all be concerned with the efficient delivery of legal services to the several groups in the community. To this end, and having in mind the changes to which I have briefly referred, courses should be developed to assist government and semi-government lawyers, to help the young graduates to understand the working and administration of the courts, to explore the changing organisational structure of commercial institutions and to gain some insight into future relationships between the citizens and government. Students should be taught how to analyse the difficult situations in the business world and how to present such analyses and solutions in written form comprehensible by the non-lawyer.

Too much time and effort has in the past been required from academics in relation to the organisation and the running of the internal affairs of the university, academics in general are not trained as administrators and they need and should be ably to rely on administrative support staff for these tasks. Law courses have been planned relying, to some extent, on the wishes of the students themselves rather than on those of the outside community; not enough

attention has been given within academia to the teaching of technical skills, and law schools have tended to keep away from what is going on in the field of practice. Training in legal research is not incompatible with training in practical techniques because the technical developments in the working place can only give new directions and fresh impetus to scholarly analysis.

I hope that there will be an increased cross-flow between those who teach in university law schools and those who are applying the law in solicitors' offices, in government agencies, from the bar table and from the court bench. There must be ways of achieving this. One way at present is to encourage more conferences and seminars attended by all sections of the profession, and I hope also that law schools will continue to play an increasing part in continuing legal education. Thought should be given to bringing in teachers from outside the university on a part-time or fractional basis, and to encouraging the full-time academic to develop his skills in practice. This too is a way I am sure, in which recruitment and retention of able lawyers to the law schools will be assisted and the insularity surrounding both the profession and the law school will be pierced.

Australian law schools contain a wealth of talent, and practitioners and judges rely more and more upon the scholarly writings and re-statements of legal policy which emanate from them. I do not believe that other than a small minority of academics look down upon the practical skills which are necessary for the practising lawyer to develop, and I think that the law schools in general realise the need to continue, within their own curricula, with both theoretical and practical training. I think it is a sign of immaturity to suggest that a professional school cannot produce both scholars and efficient practitioners or that the one person cannot be a true academic as well as a skilled craftsman. The professional law schools in Australia now have more prestige and authority than they have hitherto had, and are more strongly manned than ever before. You are the people who are shaping the attitudes and motivations of the lawyers of tomorrow – it is a heavy responsibility. Law is a most ancient discipline, the style and content of your teaching will, I am sure, continue to give your students a love and respect for the legal institutions which have been progressively built through the centuries on foundations which must be repaired from time to time but not completely removed nor simply covered up with soft layers attractive to the passing crowd.

Most of the law-school graduates whom I meet on the narrow paths I tread are a tribute to those able men and women who have instructed them in legal doctrines and given them a critical and affectionate understanding of the legal system.

I have much pleasure in declaring open this 39th Conference of Australian Law Schools.