

# Seeking Higher Things in Higher Education — The Case of the Lawyers

## Campion Lecture St Aloysius College, Kirribilli

Chief Justice Robert French AC  
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The Latin motto of St Louis Jesuit School which I attended in Perth in the late 1950s and early 1960s was '*Altiora Peto*'—I seek higher things. As students, however, we didn't spend a lot of time thinking about 'higher things'. Outside the demands of study and sport, our emerging social lives and the seemingly endless distractions of popular music, there was little time devoted to reflection upon the meaning and purpose of life. The Jesuits did their best to inspire such reflection. They alerted us at an early age to mortality and the transience of worldly success. I have a recollection, in 1957 at 10 years of age, hearing from one of our teachers the epitaph of a man who had been killed by lightning:

Here lies a man who was struck by lightning  
Just when his prospects seemed to be brightening  
He could have cut a flash in this world of trouble  
But the flash cut him and he lies in the stubble.

A time-honoured version of the same sentiment emerged from our Latin studies with the saying '*sic transit gloria mundi*'—'so passes the glory of the world'.

If I were to deconstruct our school motto, I would not try to set out a list of the higher things we were to pursue. The motto was designed, I think, to encourage us to chart our courses in life informed by the Christian faith or at least a moral and ethical perspective, not confined by narrow self-interest, but offering a larger view of our society, our world and the universe in which we find ourselves.

Perhaps our teachers hoped that we might be inspired by examples such as that of St Edmund Campion in whose name this lecture is given. There were, however, pedagogical

difficulties in the use of such an exemplar. His heroic virtues would have seemed well beyond the reach of us lesser mortals. And his extraordinary natural abilities suggested that he had begun life with a major windfall in a genetic talent lottery.

Born in 1540, he was an academic prodigy at an early age. At 17 he became a Fellow of St John's College at Oxford University. Evelyn Waugh's biography said that at St John's he:

almost immediately attracted round him a group of pupils over whom he exerted an effortless and comprehensive influence; they crowded to his lectures, imitated his habits of speech, his mannerisms and his clothes, and were proud to style themselves 'Campionists'.<sup>1</sup>

He was chosen, while still a teenager, to deliver an oration before Queen Mary at her accession and another at age 26 when Queen Elizabeth I visited Oxford in 1566. At a time of high religious tension he sensibly selected the rather uncontroversial topic of 'the movements of the tides'. Waugh said of his oration:

The speech was the success of the afternoon. The Queen warmly applauded ...<sup>2</sup>

Campion was a talented writer. In effusive praise of his history of Ireland Evelyn Waugh spoke of:

the lovely cadence of the opening sentences ... the balanced, Ciceronian speeches at the end ... manifestly the work of a stylist for whom form and matter were never in conflict; there is no shadow of the effort and ostentation which clouds all but the brightest genius of the period.<sup>3</sup>

In 1568, Campion was ordained into the Anglican Church. However, he held serious doubts about Protestantism. He resisted openly declaring his allegiance to the established Church and ultimately fled England. He recanted Anglicanism, studied divinity, took his Bachelor of Theology and taught as a Professor of Rhetoric at Douai in France. He walked to Rome in 1573 to become a Jesuit and was appointed as a teacher of Philosophy and Rhetoric

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<sup>1</sup> Evelyn Waugh, *Edmund Campion: A Life* (Ignatius Press, first published 1935, (2012 ed) 10.

<sup>2</sup> Ibid 12.

<sup>3</sup> Ibid 38.

at the Society of Jesus in Prague.<sup>4</sup> He was then selected by the Pope to join an undercover Jesuit mission to England together with Robert Parsons and Rolf Emmerson. Disguised as a travelling jewellery salesman from Dublin he crossed into England and spent 13 months preaching clandestinely to English Catholics.<sup>5</sup>

In 1580, forsaking caution, Campion published a document which became known as 'Campion's Brag'. It was an address by way of challenge to the Privy Council offering to debate religion with its members, with scholars from 'both Universities' and with lawyers, 'spiritual and temporal'. No one took him up on the challenge. The following year he published a document called 'Ten Reasons' setting out the ten points he would have used to make his case for Catholicism if his challenge had been taken up.

In July 1581 he was charged with treason. He was tortured at the Tower of London for a period of three months. During this time the government staged a disputation along the lines of the request in his Brag. It was meant to demonstrate the government's fairness and to discredit Campion. In four sessions held in the Tower in August and September 1581, he debated with a team of Protestant divines. Their case and their books were on hand during the debates. Campion had only his Bible. The government cancelled the fifth session because it appeared he was exploiting the opportunity and getting the better of the argument.

In the event, Campion was tried with a number of other priests in the Court of Kings Bench at Westminster, presided over by Lord Chief Justice Sir Christopher Wray.<sup>6</sup> The historian Michael Graves described his conduct at his trial:

Campion bore the brunt both of his own defence and that of his fellow prisoners as he criticised trial by 'conjectural surmises, without proof of the crime, sufficient evidence and substantial witness' and as he reminded the court that 'probabilities, aggravations, invectives, are not the balance where injustice must be weighed, but witnesses, oaths, and apparent guiltiness'. His performance was such that, when the jury retired after three hours, their acquittal was widely expected. However, they were all found guilty and condemned to be hanged, drawn, and quartered.<sup>7</sup>

Campion was executed on 1 December 1581. He was canonised in 1970.

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<sup>4</sup> Michael A R Graves, 'Campion, Edmund [St Edmund Campion] (1540-1581)' in Oxford Dictionary of National Biography (Oxford University Press, online ed, 2008).

<sup>5</sup> Thomas M McCoog, "'The Flower of Oxford': The Role of Edmund Campion in Early Recusant Polemics', (1993) 24 *Sixteenth Century Journal* 899.

<sup>6</sup> John Hostettler, 'At the Mercy of the State: A Study in Judicial Tyranny' (Barry Rose Law Publishers, 1998) 27.

<sup>7</sup> Graves, above n 4.

Nearly half a century earlier, another Catholic saint, the outstanding jurist of his time, Thomas More, was also convicted of treason under a law called the *Statute of Treasons*. It was one of three statutes enacted in 1534. The first, directed against More personally, required subjects to affirm the right of the children of King Henry VIII and Anne Boleyn to succeed to the throne. The second recognised King Henry as the supreme head of the Church of England. The third statute, which commenced operation in February 1535, made it treason to oppose any royal title by act or deed. Within six months nine persons including Thomas More and Bishop Fisher had been convicted and executed for offending against it. More was convicted on 1 July and executed on 6 July. Those presiding over the trial included Anne Boleyn's father, her brother and her uncle, who was the Duke of Norfolk, and the Duke of Suffolk who was married to Henry VIII's sister. More, the jurist, defended himself elegantly and ingeniously but it was to no avail. He appeared before what Australians today would call a 'kangaroo court'. Even by the standards of the time, it looked like a rigged process with 'judges' who had vested interests in the outcome.<sup>8</sup> Of course the standards of the time are not our standards. More himself had been fierce in his persecution of heretics. He was a man of his time with a world view not completely accessible at this historical remove even through his writings. One thing is clear: Thomas More and Edmond Campion, one a great jurist<sup>9</sup> and the other a great advocate, had a generous portion of the best of the lawyer's skills in their abilities to communicate ideas persuasively, orally and in writing. They used their talents in the service of things higher than their self-interest and were prepared to forfeit their lives in that service.

Their trials took place in a different constitutional and legal universe from that which we now inhabit. The legal processes to which they were subjected and the outcomes which those processes produced did not accord with what anybody today would think of as justice. We wonder at the crudity and brutality of the legal system of the past which is part of our own legal history. That does not warrant satisfaction with the present. There are continuing shortcomings in our justice system in terms of the difficulty of gaining access to it and the financial and emotional burdens it can impose on people. Unease about those shortcomings is necessary. It inspires continuing scrutiny and reform of the system by those within it and

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<sup>8</sup> See generally Henry Ansgar Kelly, Louis W Karlin and Gerald B Wegemer (eds), *Thomas More's Trial by Jury* (Boydell Press, 2011).

<sup>9</sup> Garrard Glenn, 'St Thomas More as Judge and Lawyer' (1941) 10 *Fordham Law Review* 187.

from those outside it and justifies legal education with a large perspective for those who are about to join the system.

There always have been conflicting ideas about justice in general and in particular classes of case. Much has been written on theories of justice. As an abstract concept it is hard to reduce to words. At its core, for many, is an idea of fairness, substantive and procedural. It imports a principle of equality which requires that similar cases be treated alike and different cases differently. In the context of criminal law, for example, mandatory minimum sentencing is seen by many as capable of inflicting great injustice because it treats different cases in the same way regardless of moral culpability.

Justice in the abstract is a many-tongued flame which burns well beyond the boundaries which contain what we call justice according to law. It can illuminate societal and personal choices. It can heal grievances and, if not heal, then at least cauterise injuries wrongly inflicted. And what can illuminate, heal and cauterise can also harm when a particular vision of justice takes hold of hearts and minds to the exclusion of all else and fuels inhumanity to others.

Given the flickering character of justice as an idea, it is not surprising that the decisions of courts and judges are praised or criticised depending upon whether the outcome is consistent with the commentator's view of what is just. The ethical judge will not be deflected from his or her task by hope of such praise or fear of such criticism. By the ancient judicial oath a judge swears or promises and declares that he or she will 'do right to all manner of people according to law without fear or favour, affection or ill will'. In these words we see the idea of 'justice according to law', a limiting but protective idea. Former Chief Justice of the High Court, Sir Gerard Brennan, upon his swearing in as Chief Justice, said of the oath in 1995:

It precludes partisanship for a cause, however worthy to the eyes of a protagonist that cause may be. It forbids any judge to regard himself or herself as a representative of a section of society.<sup>10</sup>

Thomas More's son-in-law, William Roper, encapsulated More's understanding of the requirement of the oath, a foreshadowing of the idea of the rule of law and its difficult

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<sup>10</sup> The Hon Sir Gerard Brennan, 'Speech on Swearing in as Chief Justice', (Canberra, 21 April 1995).

relationship with concepts of justice beyond those for which the law provides, when he wrote in often quoted words:

were it my father stood on the one side, and the devil on the other, his cause being good, the devil should have right.<sup>11</sup>

In the play '*A Man for All Seasons*' Robert Bolt depicted More as rebuking Roper who railed against the injustice of the laws under which More was charged. More said to him:

This country's planted thick with laws from coast to coast ... and if you cut them down ... d'you really think you could stand upright in the winds that would blow then?<sup>12</sup>

In those statements may be seen a view of the rule of law as societal infrastructure. It provides a framework within which members of society, the just and the unjust alike in the scriptural sense, can live their lives, develop their talents, exploit opportunities, enjoy their rights and freedoms and pursue higher things, including seeking by constitutional means to change the framework itself and to revise and enrich the content of justice according to law. It gives effect to certain basic moral and ethical principles—many of a utilitarian kind necessary to the proper functioning of society. Don't kill, don't assault, don't steal, don't deceive, don't be careless or reckless where injury to others may result. Pay your taxes. It gives effect to ideas of allocative or distributive justice which inevitably change from time to time. It includes laws defining the subjects and levels of taxation and of social security benefits and social services and governing the allocation of rights to undertake certain activities or to use public resources seen as requiring regulation or rationing. Then there are laws over and above the criminal law which have the purpose of protecting social harmony and vulnerable minorities—including an array of anti-discrimination laws, both Commonwealth and State.

Oliver Wendell Holmes in his essay 'The Path of the Law', published in 1897 with that touch of hyperbole which was his style, described the law as: 'the witness and external deposit of our moral life'.<sup>13</sup>

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<sup>11</sup> William Roper, *The Life of Sir Thomas More* (Cosimo Classics, first published 1822, 2009 ed) 33.

<sup>12</sup> Robert Bolt, *A Man for All Seasons* (Bloomsbury, first published 1960, 1995 ed) 42.

<sup>13</sup> Oliver Wendell Holmes Jr, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457, 462.

The practice of it, in spite of popular jests, tended he said to make 'good citizens and good men'—a gendered reference reflecting his times. That remark directs attention to the men and women who are closely engaged in the working of the system—the lawyers.

Within the legal system, the great bulk of the work of the legal professional seems to have little to do with justice however conceived. Most of it has to do with mundane practicalities. It is found in myriad dealings large and small involving individuals, corporations and governments at various levels. The innumerable quotidian transactions of sale and purchase, hiring and leasing, contracting and employing, setting up and operating businesses, creating partnerships and joint ventures, obtaining licences, permits and authorities, giving effect to new ideas, developing new products and services, protecting the fruits of creativity as intellectual property—all happen within the framework of the law and frequently, although not always, involve the work of lawyers. When things go wrong and disputes emerge, as they inevitably do, the parties to those disputes may require legal advice and the assistance of lawyers in negotiation, mediation, conciliation, arbitration or litigation. The prosecution of crime and its punishment are by definition conducted within a framework created by law where typically lawyers prosecute and lawyers defend.

Because of the diversity and inherent conflicts between the interests of the just and unjust alike that lawyers are asked to represent in so many different ways, and because of the limited concept of justice according to law, lawyers are sometimes depicted as ethical minimalists—serving their clients' interests and blind to higher orders of justice. That depiction would be confirmed for some by a story out of the Northern Territory in 1911 when the profession consisted of two lawyers. One of them, Ross Mallam, had a client who told him he must have justice. Mallam famously replied: 'We will probably do better. I think we can win your case'.<sup>14</sup> The implication seems to have been that he did not think his client's cause was just according to his own view of the case, but did think his client's claim would succeed.

The perception of the lawyer as not only indifferent to 'real' justice but also making a living from misfortune and conflict has been with us for a long time. It underlies lawyer jokes most of which most lawyers have heard. And there are a lot of them. Google 'lawyer jokes' and you will find a long list that goes back centuries. I will quote only one, because it

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<sup>14</sup> Douglas Lockwood, *The Front Door: Darwin 1869-1969* (Rigby, 1968) 234.

exemplifies the idea that the training and occupation of lawyers leaves them as essentially amoral professionals. Its author was Winston Churchill, who was said to have remarked that:

Lawyers occasionally stumble across the truth, but most of them pick themselves up and hurry off as if nothing had happened.

Like most jokes, it is not entirely original. It points us back to the opening words of Francis Bacon's essay 'Of Truth': '*WHAT is truth?* said jesting Pilate, and would not stay for an answer'.<sup>15</sup> It is fair to say that Pilate was not a lawyer but a rather conflicted Roman bureaucrat.

The caricature of the lawyer as indifferent to truth and thus to justice emerges most sharply in the litigious field and particularly in the field of criminal law. It is a commonplace experience for criminal lawyers to be asked how they can, consistently with their conscience, defend a person they believe to be guilty. The answer is obvious enough but the question is repeatedly asked. No person in our system can be convicted of a criminal offence without a judicial process which, if the crime is not admitted, requires that the prosecution prove it beyond reasonable doubt. The lawyer is not the judge and jury. The client who the lawyer thinks will be convicted may be advised that a timely plea of guilty will lead to a lesser sentence. If, however, the client wishes to go to trial, the lawyer's duty, whatever his or her beliefs about the case, is to ensure that the client gets a fair trial according to law. Thus the rule of law is affirmed. Thus the authority of the law is maintained.

On the same principle, Thomas More would give the Devil his rights. Yet it remains the case that the lawyer representing the wicked or deeply unpopular person is sometimes tarred with the same brush as the client. In high-profile criminal cases there is not infrequently a public assumption of guilt on the basis of the laying of a charge despite formal disclaimers in media reports. Where lawyers represent clients who challenge the legality of official decisions, it not unusual for the lawyers to be called 'activists' and sometimes accused of pursuing their own social and political goals at the expense of good public policy. The identification of the lawyer with the client's case is strikingly illustrated in some other countries where lawyers acting for persons in conflict with powerful vested interests, the established order or authoritarian regimes are harassed, intimidated, detained or even harmed

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<sup>15</sup> Francis Bacon, 'Of Truth', *Essays Civil and Moral*, Vol III, *The Harvard Classics*, (1909-14).



for doing their professional duty. In such cases, a lawyer just doing his or her job does it at a high personal cost. Then it can be said that service of the limited concept of 'justice according to law' can itself constitute the pursuit of 'higher things'.

Lawyers are not ethical neuters. All are required to operate according to high standards of honesty and diligence in the service of the client's interests and in dealing with others whether on behalf of the client or personally. They must put their client's interests before their own. They cannot act for a client if there is a conflict between their client's interests and their own or between their duty to their client and their duty to another client. They are officers of the courts in which they are admitted. They owe a duty to the court, which transcends the duty to their clients. When acting for any client they cannot knowingly put a false case. Inculcation of these ethical standards is an important part of legal education and training. In 1980, Chief Justice Warren Burger of the Supreme Court of the United States said:

Every law school has a profound duty—and a unique opportunity—to inculcate principles of professional ethics and standards in its students. This duty should permeate the entire educational experience beginning with the first hour of the first day in law school.<sup>16</sup>

Within the framework of professional ethics, the lawyer owes a duty to the client and to the legal system to be competent. A gaze fixed steadily on higher things and a deep commitment to seeking justice for the client mean nothing if the lawyer lacks the requisite legal skills. The point was made in 2006 at a church service which I attended at Gray's Inn in London. I listened to a wonderful sermon on the life of St Paul by an erudite and worldly-wise Anglican Minister, who in another life had been an international wine buyer. He summed up his sermon by saying:

What the life of St Paul teaches us is that God helps the meek and the humble but also the articulate and the pushy and particularly the competent.

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<sup>16</sup> Warren E Burger, 'The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility' (1980) 29 *Cleveland State Law Review* 377, 377.

Competence is not ethically neutral. A lawyer who offers services in an area in which he or she is not competent acts unethically and brings the profession and the legal system into disrepute.

The model of the legal profession serving the limited ideal of justice according to law attracts the criticism that in so doing the profession offers little of lasting value to society. The American poet, Carl Sandburg wrote a famous poem praising the lasting works of bricklayers, masons, plasterers, farmers, poets and playwrights and concluded:

Singers of songs and dreamers of plays

Build a house no wind blows over

The lawyers—tell me why a hearse horse snickers hauling a lawyer's bones.<sup>17</sup>

The legal realist Karl Llewellyn, speaking to students at Columbia Law School in the 1930s, took issue with Sandburg's poem. In the rhetorical style of a great law teacher he told his students:

To produce out of raw facts a theory of a case is prophecy. To produce it persuasively, and to get it over, is prophecy fulfilled. Singers of songs and dreamers of plays—though they be lawyers—build a house no wind blows over.<sup>18</sup>

It might be said that Champion's lawyerly defence of himself and his fellow priests in 1581 quoted earlier in this lecture built a house which no wind blew over. In invoking justice according to the law of the day, he demonstrated the limitations of the Court before whom he appeared. Advocacy does not have to be of Champion's stellar quality to resonate in the public sphere in a way that matters for society as a whole in the long term. Every legal proceeding however small, however apparently routine, whether it be in a magistrates court or the highest court of the land, is a public acting out of the proposition that ours is a society governed by the rule of law and aspiring to justice according to law with all its shortcomings. Every contending argument in every case is a statement about where the justice of the case, according to law, is to be found. Every judicial decision made independently, impartially and with care declares the answer, as best the judge can give it, to the question: What does the

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<sup>17</sup> Carl Sandburg, 'The Lawyers Know Too Much' (1920).

<sup>18</sup> K N Llewellyn, *The Bramble Bush — Some Lectures on Law and its Study*, (Columbia University School of Law, 1930) 153.

doing of justice according to law require of me in this case? The question and the answer may be narrower than a large vision of justice would embrace. But the availability, stability and integrity of that minimalist function should not be taken for granted nor its importance underestimated. There are too many places in the world in which the narrow but fundamental concept of justice according to law is displaced by justice according to popular prejudice or the interests of the powerful, of self-perpetuating governments, corrupt leaders and old-fashioned tyrants.

Competence and professional ethics are necessary objectives of any legal education and practical legal training. However, as we all know necessary does not mean sufficient. The question has long been debated: Are those things enough? Are there higher things which law students should be told about? It might seem that the answer is an obvious 'yes', but the question has been the subject of long-running debate.

One pole of the debate which can be called the positivist view was that of Professor Albert Venn Dicey, who wrote in 1883 that:

nothing can be taught to students of greater value, either intellectually or for the purpose of legal practice, than the habit of looking upon law as a series of rules.<sup>19</sup>

In a similar vein, the influential Dean of Harvard Law School in the late 19th century, Christopher Langdell, described law as a science consisting of certain principles or doctrines. The true lawyer would have such a mastery of those principles or doctrines 'as to be able to apply them with consistent facility and certainty to the ever-tangled skein of human affairs'.<sup>20</sup> Law, he said, should have the status of a science:

If law be not a science, it is a species of handicraft, and may best be learned by serving an apprenticeship to one who practises it.

Langdell's approach in relation to the role of values in legal education was not so different from that of Oliver Wendell Holmes who, as we have seen, was prepared to describe the law as 'the witness and external deposit of our moral life'. Nevertheless, he also emphasised the

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<sup>19</sup> A V Dicey, *Can English Law be Taught at Universities?* (Macmillan, 1883) 21-22.

<sup>20</sup> C C Langdell, *A Selection of Cases on the Law of Contracts* (Little, Brown & Co, first published 1871, 1879 ed) viii.

difference between law and morals. The single end of legal education was the learning and understanding of the law. He said in his famous essay:

For that purpose you must definitely master its specific marks and it is for that that I ask you for the moment to imagine yourselves indifferent to other and greater things.<sup>21</sup>

Even Karl Llewellyn told his first year students at Columbia in the 1930s that they had to begin their legal education by lopping off their common sense and knocking their ethics into temporary anaesthesia. They had to knock out of themselves their view of social policy, their sense of justice along with woozy thinking and ideas 'all fuzzed along their edges'.<sup>22</sup> That reflected the way in which legal education was approached in the 19th and early 20th centuries. The model of legal education had its influence in Australia in the development of law courses concerned primarily with the transmission of content, knowledge and the teaching of legal rules, particularly by reference to material drawn from judgments—the case book method.<sup>23</sup> The traditional positivist approach, however, faced serious challenges in the second half of the 20th century. Early opposition was foreshadowed in the writing of Max Radin who said in an article published in the *California Law Review* in 1937:

The lawyer's task is ultimately concerned with justice and ... any legal teaching that ignores justice has missed most of its point.<sup>24</sup>

That strand in the debate was taken up persuasively by Professor James Elkins in the 1980s. He attacked as 'legalism' what he called 'legal thinking' invested with too much meaning. Of the traditional view, he adopted the view expressed by Professor Stuart Scheingold:

The legal system takes on the trappings of a kind of overall regulator in that it assures us of a single authoritative rule for each dispute as well as an internally consistent system of rules.<sup>25</sup>

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<sup>21</sup> Holmes Jr, above n 13, 459.

<sup>22</sup> K N Llewellyn, *The Bramble Bush — Some Lectures on Law and its Study*, (Columbia University School of Law, 1930), 102.

<sup>23</sup> Mary Keyes and Richard Johnstone, 'Changing Legal Education Rhetoric, Reality and Prospects for the Future', (2004) 26 *Sydney Law Review* 537, 540.

<sup>24</sup> Max Radin, 'The Education of a Lawyer' (1937) 25 *California Law Review* 676, 688.

<sup>25</sup> James R Elkins, 'Moral Discourse and Legalism in Legal Education' (1982) 32 *Journal of Legal Education* 11, 16, quoting Stuart A Scheingold, *The Politics of Rights* (Yale University Press, 1974) 159.

He spoke of legal education as fostering a morality of rule veneration resulting in the channelling of social disputes into law offices and the judicial system. Legal discourse treated as divorced from economics, politics, history, sociology, psychology and morality transformed legal thinking into legalism.

There is, fortunately, ample evidence that legal education in Australia today does endeavour to open its students' minds to larger ideas than the important but limited idea, of justice according to law. In addition, most students now undertake double degrees or do law after graduating in some other field. Many students who undertake law courses today are engaged in clinical legal education through arrangements with community law centres which seek to serve the public interest in a variety of ways and expose them to the workings of the justice system at a practical level, demonstrating its shortcomings as well as its benefits.

In determining the emphasis it gives to positivist or legalist approaches to legal education and the imparting of an informed awareness of higher things, the academy is not required to choose between ethical neutrality and moral engineering. There is no neutrality in a purely positivist or legalist approach. Such an approach rests upon premises about existing social orders. Unchallenged, those premises limit the ability to critically evaluate the legal system from an external perspective.

A higher education which exposes the student to perceptions larger than those offered by the positivists exposes him or her not just to higher things but to larger things. It takes the student outside the system which is being studied and invites him or her to look back at it and judge it to observe where it is lacking, to accept that change is possible, and that lawyers can help bring it about. The student thus informed may also be empowered to better understand the significance of the choices which he or she may make about what to do with the skills acquired in legal education. That requires a law school which does not measure its standing by the percentage of its graduates who are employed by top tier law firms. It requires a consciousness of higher things.

It is an encouraging feature of our times that peak professional bodies frequently espouse public positions concerning the justice system extending well beyond those positions which merely serve the material interests of their members. By way of recent example, the Law Council of Australia has pressed for the abolition of mandatory sentencing, the setting of targets to cut rates of indigenous imprisonment, constitutional recognition for indigenous

Australians, the amendment of anti-terror and money laundering laws and mechanisms to address the problem of access to legal services in rural, regional and remote areas. The Australian Bar Association in a similar vein has recently addressed questions of family violence and indigenous incarceration rates. In addition there are a very substantial number of lawyers and law firms throughout Australia who routinely undertake major commitments for no fee or reduced fees in public interest and other litigation. The provision of that kind of service has been particularly prevalent in the representation of asylum seekers and not just in a few high-profile cases.

A few years ago Professor Harold Koh, formerly the Dean of Yale Law School, said this about the functions of law schools:

I do not believe it is our job to simply bless the status quo. We stand for principles about what the rule of law ought to be. As a Law Dean, I think that law schools are not just professional schools. They are institutions of moral purpose. We must speak up for the rule of law when someone is threatening it because if we don't, who will?<sup>26</sup>

Fortunately, there are many examples, available to law schools and their students, of lawyers who have sought higher things by the honest discharge of their professional duties against stringent opposition. There are others who as reformers have had a lasting impact on society's concepts of justice and thus enriched and extended the notion of justice according to law. Edmund Campion, in whose honour this lecture is given, in speaking for himself and his fellow priests demonstrated that even when facing litigious failure in the shadow of the executioner, the words of the advocate can speak of justice according to law in the service of higher things.

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<sup>26</sup> Quoted in Michael Coper, 'Legal Knowledge, the Responsibility of Lawyers and the Task of Law Schools' (2008) 39 *University of Toledo Law Review* 251, 260.