

University of New South Wales Law School 40th Anniversary

Chief Justice Robert French AC

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Chancellor, Dean, Attorney-General, Sir Gerard Brennan, Ladies and Gentlemen, there seems to be a fascination with '40' that requires human beings to celebrate or mourn anniversaries bearing that number. This may have something to do with its biblical significance and the seepage of that significance into popular culture.

According to the usual unreliable sources, '40' represents a period of waiting, preparation, testing or punishment. So the Old Testament recounts 40 days of life extinguishing global inundation,¹ 40 years of wandering in the desert² and the 40 days it took to embalm Jacob.³ On a more positive note the Gospel of Barnabas predicted that the end of the world would be followed by 40 years of darkness after which God would give life to his Messenger, his angels and the elect.

Looking up the meaning of '40' on the web, I came across a numerological calculator called the Gematria which will add up the values of the letters of a name yielding a number based on those letters which may or may not have symbolic significance. Having found no symbolic significance attaching to any variant of my own name, I keyed in 'Hal', the name of the Foundation Dean of the Law School. This yielded a positive result. According to the Gematria, 'Hal' equates to the number 39, which is said to be symbolic of 'the organisation and the solidarity of the

¹ Genesis 7, 4.

² Nb 32, 13.

³ Gn 50, 3.

cosmos'. Plainly I had seriously under-estimated the significance of the Foundation Deanship.

Driven by idle curiosity, which could well become addictive if one spent too long with this dubious online device, I ran the name of another of your distinguished former Deans and a former colleague of mine on the Federal Court, the Honourable Ronald Sackville QC. His preferred designation 'Ronald' turned up the number 232 which has no numerological significance at all. His less preferred designation 'Ron' yielded the figure 200, which reflects 'duality of tendencies, magnetic polarities and poles of homology'. Those who know him will recognise all of these characteristics.

While the symbolism of 39 seems to sit very comfortably with Hal Wootten, the symbolism of 40 seems a little harsh when applied to the Law School. Needless to say, I don't believe a word of this material, but it opens up the question: What is it that we are called to celebrate tonight? Before turning to institutional hagiography, I should observe that this celebration comes at a time when the objectives and content of legal education and how it should be delivered are the subject of considerable discussion in Australia. For many years there has been debate about the priorities which law schools should attach to the content of the positive law, its social and historical context, the dynamics of its change, the skills and ethical sensitivities necessary for legal practice and the role of the lawyer in society as an agent of the rule of law and of social justice. The University of New South Wales Law School, from its foundation, was at the leading edge of change in legal education.

The poles of the debate are reflected in two scholarly comments. In 1883, Dicey wrote that nothing can be taught to students of greater value, either intellectually or for the purposes of legal practice, than looking on the law as a series of rules.⁴ Max Radin, writing 50 years later in the *California Law Review* said that

⁴ AV Dicey, 'Can English Law be Taught at Universities?', (1883) cited by D Sugeran, 'Legal Theory, the Common Law Mind and the Making of the Textbook Tradition' in W Twining (ed) *Legal Theory and Common Law*, (Oxford, Blackwell, 1986) 26 at 30.

'the lawyers' task is ultimately concerned with justice and ... any legal teaching that ignores justice has missed most of the point'.⁵ Each of these propositions may be taken as a necessary condition of legal education. Neither should be regarded as sufficient. Lawyering is not just about rules. It is not just about a sense of justice. It is more than both those things. Current discussion in universities and the profession about what legal education should be seeking to achieve in transferable skills, ethical sensitivity and awareness of the role of lawyers in society generally, testifies to that. These questions were addressed early in its life by the University of New South Wales Law School.

The history of this Law School takes its place in the larger history of legal education in Australia. That history begins with the University of Sydney, which was established in 1850 without a law school. Indeed, the first principal of the University, John Woolley, said that 'the soundest lawyers come forth from schools in which law is never taught'.⁶ The Faculty of Law at Sydney University came into existence in 1855, but did not commence operation as a teaching institution until 1890. It was, until 40 years ago, the only law school in New South Wales.

Melbourne University's Law School was established in 1857 and the University of Adelaide Law School in 1883. Tasmania followed in 1892 and the University of Western Australia Law School commenced in 1927. The Faculty of Law at the University of Queensland was established in 1936. The Australian National University first enrolled law students in 1961. Monash University followed in 1964.

⁵ M Radin, 'The Education of a Lawyer', (1937) 25 *California Law Review* 676 at 688.

⁶ J Martin, 'From Apprenticeship to Law School: A Social History of Legal Education in Nineteenth Century New South Wales', (1986) 9(2) *University of New South Wales Law Journal* 111 at 122.

A former Dean of this Law School, Michael Chesterman (1990-1995), writing with David Weisbrot, said of the period of university legal education until the 1960s:

The law faculties, although situated in universities, were generally viewed as adjuncts to the legal profession rather than truly academic institutions dedicated to liberal educational aims. They had few full-time academic members: instead law teaching was chiefly a part-time activity for practitioners. They suffered from limited recurrent funding, low staff ceilings, small libraries, scant research funds and assistance, and poor infrastructural facilities. Little legal research was done and the general approach in the courses taught was fairly uniform.⁷

In 1964, the Martin Report recommended that a second university law school be established in New South Wales without delay as Sydney University was unable to cope with the rise in demand for legal education. In that year, the Council of the University of New South Wales voted to establish a Law School.

The University advertised for a Dean in January 1966. This move was courageous as there was apparently no university money to pay the successful candidate. Moreover, the Minister for Education, Sir Charles Cutler, said that there would be no government money available for the development of the Law School. However, in 1968 the State Government relented and invited the University to establish a Law School with government funding from 1970. Hal Wootten QC was appointed in 1970 as the Foundation Dean charged with the task of setting up the new Law School.

As Marion Dixon points out in her history of the first 30 years of the Law School, the appointment of a practising lawyer to the position of Dean may be explained by the vision of the then Vice-chancellor, Sir Phillip Baxter, who believed

⁷ M Chesterman and D Weisbrot, 'Legal Scholarship in Australia', (1987) 50 *Modern Law Review* 709 at 711.

that 'the University ... must endeavour to meet the needs of a changing society, not be afraid of innovation, and be radical rather than conservative in its attitude to its responsibilities.'⁸ For that vision Hal Wootten was the right person.

Wootten persuaded the University to defer the commencement of the Law School until 1971 to give him time to gather ideas from other law schools in Australia, Canada, the United Kingdom and the United States. He gathered good ideas and recruited well. The initial staff, which was all male, comprised a 'Magnificent Seven': Wootten, George Garbesi, Garth Nettheim, Richard Chisholm, Tony Blackshield, Robert Hayes and, a little later, Michael Coper. They were initially located in a building with the less than inspiring designation of 'Hut 12', a kind of academic men's shed.

The first classes began with 219 students in March 1971. All of the students were undertaking combined degrees. The typical student was described as a 'high achieving male with a Commonwealth scholarship from a relatively average, that is to say, not privileged background'.

Wootten's vision was that the Law School was to be a place where students mattered. He introduced small classes of about 30 students, with two hour seminars applying the Socratic Method of instruction – a particularly threatening technique for the unprepared student. Professor Garbesi was familiar with the casebook approach which had been developed by Dean Langdell at Harvard. The active involvement of the student was central to that approach.

The approach to legal education at the new Law School met the spirit of the time. An emphasis on social justice was apparent in Hal Wootten's letter to students in 1971:

⁸ M Dixon, *Thirty Up: The Story of the UNSW Law School 1971-2001*, (2002) at 2. I am grateful for the resource which that 30 year history has provided for this address.

[A] law school should have and communicate to its students a keen concern for those on whom the law may bear harshly, either because they cannot afford its services, or because it does not sufficiently recognise their needs, or because they are in some way alienated from the rest of society. The poor, the Aborigine, the handicapped, the deviants, all need their champions in the law as elsewhere.⁹

High aspirations and a commitment to social justice are not sufficient conditions for the achievement of excellence in legal education. That was achieved through the efforts of the staff who served at the Law School during its first 40 years, including Hal Wootten and his successors as Deans, many of whom are household names in the Australian legal community. When Hal Wootten was appointed to the Supreme Court in 1973 he was succeeded by Harry Whitmore, co-author of *Benjafield and Whitmore on Administrative Law*, which I studied at the University of Western Australia in the late 1960s. Whitmore was succeeded by Garth Nettheim from 1975 to 1979. Ronald Sackville followed from 1979 to 1981 and then came Don Harding, Ivan Shearer, Michael Chesterman, Paul Redman, Leon Trakman and David Dixon, the present Dean.

In 1987, the Pearce Report on Legal Education in Australia pointed to the University of New South Wales Law School as a model of what was possible in legal education. Professor Pearce himself spoke in glowing terms of the Law School at a graduation ceremony not long after. He did not use the usual diplomatic formula 'none finer than'. The Law School received the full Samaranch Sydney Olympic treatment when Professor Pearce said it was 'the finest law school in the country'.¹⁰

I will not use that formula, if only because I have to speak at the anniversary celebration of another law school later this year. There is no doubt, however, that

⁹ Ibid at 29-30.

¹⁰ Ibid at 84.

the Law School has met and exceeded its early promise. The significance of its emphasis on small group teaching requiring preparation and participation by students is not to be underestimated. Writing in the *Penn State International Law Review* last year, Michael Coper, one of the original Magnificent Seven and now Dean of Law at the Australian National University, said:

... legal education ... has shifted discernibly from the passive transmission of static knowledge to a much more active engagement with ideas.¹¹

And in relation to the Socratic Method adopted from the outset at the University of New South Wales he said:

That method, as we know, is capable of being as authoritarian and hierarchical as the straight lecture, but at least it is predicated on a mindset of questioning rather than unthinking acceptance. Like all things, that mindset was capable of excess, as has been said to have been illustrated by the critical legal-studies movement, but it undoubtedly made lawyers and lawyering more effective.¹² (footnotes omitted)

Forty years in the life of a law school comprises a lot of history, growth and development. The first 40 years in the life of this Law School has coincided with many significant changes in Australian society in higher education and in concepts of legal education.

Beyond its pioneering teaching methods, the Law School has established important centres of excellence in research and public advocacy – the Gilbert + Tobin Centre of Public Law, the Australian Human Rights Centre and the Indigenous Law Centre. Each year in February, I read with interest Andrew Lynch's and George Williams' analysis of the High Court's decisions in the preceding year

¹¹ M Coper, 'Educating Lawyers for What? Reshaping the Idea of Law School', (2010) 29 *Penn State Law Review* 25 at 29.

¹² *Ibid* at 29.

and their conclusions about the locus of power on the Court. It is handy to know these things.

Particularly noteworthy is the Law School's proud record in graduating Indigenous law students. On average, 20 Indigenous law students commence at the Law School each year. It has produced more than 60 Indigenous law graduates since 1991.

The Law School has also played a significant part in the development of clinical legal education, which is today an indispensable tool for equipping students with practical skills and for serving the wider community. The Kingsford Legal Centre opened in 1981 and, despite funding challenges which at one time threatened its existence, continues to operate today providing free legal advice and assistance to people in the Randwick and Botany local government areas. The *University of New South Wales Law Journal* which began in 1976, regularly publishes high quality academic legal writing and useful thematic forum issues. And that indispensable tool of the practicing lawyer, AustLII, which offers free access to primary legal materials, including the decisions of the High Court, had its origins in the Law School and is conducted by it as a joint venture with the University of Technology at Sydney.

The graduates of the Law School today include many leading figures in public life, in politics, the judiciary and the legal profession. The record is one of high achievement. The point of tonight's celebration, however, is not self-congratulation. It is to energise and inspire those who now make up the Law School and its community to continue to build on what has been done in the service of the whole community. The rule of law and the administration of justice according to law is an indispensable part of our social infrastructure. The Law School has given much and has much to give to its maintenance and enhancement.

To return to my inappropriate numerological metaphors, the first 40 years has been neither darkness, nor wandering in the desert, nor fatal immersion, nor protracted embalming. It has been a period of vital and energetic growth. What then can we expect of the next 40? One thing is certain – it will not be me speaking to

you in 2051. However, whoever is speaking to you then will, I expect, have much to talk about.