Zelman Cowen Address

Melbourne University Law Review Annual Dinner 2026

Stephen Gageler*

As a student editor of another unnamed law review of another unnamed university in another era, I count myself privileged to be invited to give the Zelman Cowen Address on the occasion of the celebration of the fiftieth volume of the Melbourne University Law Review. Through 50 volumes, published over nearly 70 years, the Melbourne University Law Review has made a positive contribution to legal scholarship in Australia. Part of that contribution has been in the substantive legal content of what it has published. At least an equal part of that contribution has been in the manner in which that content has been chosen and prepared for publication. The history of the Review, including the career trajectories of its student editors, has demonstrated the wisdom of the idea which underlay its founding: that law students, far from being passive recipients of legal instruction, can and do have a valuable role to play in acculturating and developing the law.

Nearing as I am the constitutionally prescribed age of retirement for a federal judge, the set of my current and future associates is now closed. When I retire in July 2028, I will have had a total of 34 associates. Ten of them will have been graduates of Melbourne Law School and six of those will have been a member of the editorial board of the Melbourne University Law Review. My last associate who will commence working with me next July is Deylan Kilic-Aidani, who was editor in 2022. He will replace my current associate James Gunn, who is present at this celebration. James was editor in 2021. Present also at this celebration is Judicial Registrar Natalie Burgess who was editor in 2012 and who I was fortunate to have as my associate in 2016-2017. Through them I have been and continue to be an indirect beneficiary of an excellent Melbourne Law School education.

The decision to establish the Melbourne University Law Review was taken in 1957 as part of a broader program of transformation at Melbourne Law School during the deanship of Sir Zelman Cowen in whose honour this address is named. Those transformations sought to modernise teaching and scholarship. They also sought to create new opportunities for students to participate in the academic life of the law school importantly including through student participation in the editorial processes of the Review. Many of the reforms were influenced by Sir Zelman's connection with the United States. Preparing for this occasion, I was struck by how extensive that connection was. Early in his career, he visited and taught at several prestigious American law schools, formed close friendships with leading American legal academics

* Chief Justice of Australia. My thanks to Matthew Traeger for his considerable assistance in researching and preparing this address.

and even came close to relocating there. The ideas and teaching methods he encountered there shaped his vision for Melbourne and form part of his legacy.

Sir Zelman Cowen's American connection seemed to me to be an interesting and especially fitting subject for this occasion, given its importance to his life and career and to the history of the Review.

Australian legal education before Cowen

At the time Zelman Cowen returned to Melbourne Law School as its Dean in 1951, the system of university legal education in Australia had changed little since its inception almost a century before. The faculties of the six law schools that then existed were small, with only 21 full-time law teachers across the country in 1950.[1] Much of the teaching was done by members of the profession and was directed to preparing students for legal practice. The almost-exclusive method of teaching was the tediously boring lecture: a comprehensive recital of legal principles expected to be transcribed by students as a set of notes in turn to be memorised and tested.[2] Zelman Cowen himself was well aware of the limitations of this approach. He later described the law lectures he sat through as an undergraduate at Melbourne Law School in the 1930s as "too often drab and lacking in stimulus".[3]

First encounters with the United States

In 1949, when he was living and teaching at Oxford, where he had originally gone as a Rhodes Scholar, Cowen spent the northern hemisphere summer teaching a course on private international law at the University of Chicago Law School. That opportunity had its origins in a friendship he had formed a decade earlier with an American doctor, Robert Lewy. They had met when the very youthful Zelman Cowen was stationed in Brisbane as an intelligence officer in the Royal Australian Navy. They formed what Sir Zelman later described as an "extraordinary friendship" which they maintained after the war by correspondence. After settling in Chicago, Lewy eventually helped to arrange an invitation for Cowen to teach there.[4]

The experience at Chicago was described by one of Sir Zelman's biographers as "profoundly disturbing" for him, in the sense that it was profoundly different from and superior to what he had experienced in Australia and at Oxford. He was "impressed by the intellectual vitality of the place".[5] He later recalled that, on returning to Oxford, he "was ready to tell about it to all who would listen". He told his colleagues "of what I had seen and experienced. I spoke of the power, drive and enthusiasm of the New

---

1 David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) at 122.

2 David Barker, *A History of Australian Legal Education* (The Federation Press, 2017) at 4; John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 176.

3 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 228.

4 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 106-107, 162-163.

5 Colin McDonald, 'Professor Zelman Cowen' in Ruth Campbell, *A History of the Melbourne Law School* (University of Melbourne, 1977) at 145. See also Harold AJ Ford, 'Re-creating Australian Legal Education' in Charles Sampford and Carol-Anne Bois (eds), *Sir Zelman Cowen: A Life in the Law* (Prospect Media Pty Ltd, 1997) 62 at 72.

World, which compared so favourably with the tired and cocooned old world of which they were part".[6] The visit had been brief but it left him eager to return.

Two years later, soon after returning to Australia and joining Melbourne Law School, Cowen met Erwin Griswold, the Dean of Harvard Law School who was visiting Australia to present a paper at the Australian Legal Convention in Sydney. This marked the start of another long friendship. Griswold invited Cowen to spend the 1953-1954 academic year at Harvard Law School. Despite having been at Melbourne for only a short time and not yet being entitled to take an extended period of leave, Cowen regarded the invitation as a "special case" and believed the experience would benefit both him and Melbourne Law School. The University took the enlightened position of granting him leave to accept the appointment.[7] In the post-war environment, many of the major American philanthropic organisations were supporting international academic exchange, and Cowen was able to obtain financial assistance for the visit from the Carnegie foundation.

Harvard Law School in those days was a different world from law schools in Australia. It had a large student body, a vibrant community of full-time academics, a substantial library with holdings from across the world, and offered both undergraduate and postgraduate programs as well as a wide range of subjects.[8] Sir Zelman would later describe it as "a pre-eminent law school in the common law world".[9]

What particularly stood out to him was the approach to teaching. Rather than lecturing, professors used the 'case method', which had been pioneered at Harvard by the wonderfully named Professor Christopher Columbus Langdell in the 1870s. According to that method, students were assigned cases to read before class and then asked to analyse and discuss them in response to questioning by the teacher. Instead of being told what the applicable legal rules were, students were expected to identify and test the law for themselves.[10] The educative process was a demanding but engaging exercise for students and teacher alike. Sir Zelman later recalled a Harvard class, "with the argument flying backwards and forwards across the room", as "a wonderful experience at its best".[11] He recalled that "as a teacher my Harvard classes were the great experience of my life".[12]

When at Harvard, Cowen received an offer that almost changed the course of his own life and with it the course of the corporate life of Melbourne Law School. He had come to know Edward Levi, who was then the Dean of the University of Chicago Law School, who two decades later would serve as the United States Attorney-General during the presidency of Gerald Ford, and whose son David Levi would in due

---

6 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 166.

7 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 180, 184.

8 Harold AJ Ford, 'Re-creating Australian Legal Education' in Charles Sampford and Carol-Anne Bois (eds), *Sir Zelman Cowen: A Life in the Law* (Prospect Media Pty Ltd, 1997) 62 at 71.

9 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 184.

10 John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 178. See also Harold AJ Ford, 'Re-creating Australian Legal Education' in Charles Sampford and Carol-Anne Bois (eds), *Sir Zelman Cowen: A Life in the Law* (Prospect Media Pty Ltd, 1997) 62 at 73-75.

11 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 188.

12 John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 188.

course go on to serve as a judge, a judicial educator and eventually as President of the American Law Institute. Edward Levi offered him a permanent professorship. Sir Zelman later recalled "many sessions of difficult talk, at times anguished", with his wife and friends over what to do. The prospect of teaching at a first-class American law school was attractive, although it would involve a major change for his young family and his work at Melbourne had only just begun. He wrote back to Levi accepting the offer, only to follow it with another letter withdrawing his acceptance.[13] His decision kept him at Melbourne, to which he would devote himself with renewed energy and a strong sense of the law school he wanted to create.

The American influence at Melbourne Law School

Zelman Cowen's early years at Melbourne Law School were an exciting time: he and his colleagues saw themselves as "in a very real sense, establishing new horizons for Australian law schools".[14] Drawing directly on his American experience, and with the support of colleagues whom he had also encouraged to spend time there, he set out to make the law school a more vibrant and stimulating place for both students and academics.

Dean Cowen declared in 1954: "I am now the sworn foe of the teaching method in which the student can come into class knowing that the worst that can be expected or desired is silent comprehension". He believed that "a class hour in which there is debate between student and instructor and also a measure of analysis and co-ordination by the instructor has everything to commend it".[15] Experiments with the case method were introduced for a range of subjects and teachers were encouraged to build greater class participation into lectures.[16] This was assisted by the publication of the first Australian 'casebooks' compiling the key decisions across particular areas of law. By the early 1960s, casebooks had been published by current or former Melbourne Law School staff in subjects such as trusts, contracts, criminal law, constitutional law, administrative law, and torts.[17] In an article published in 1956 explaining the changes being introduced, Cowen and his colleague David Derham, who had also visited Harvard, reflected that they were not "attempting to ape any particular American method of instruction"; instead, they described themselves as "bending our efforts towards making our students more critical participants in the process of legal instruction".[18]

Consistent with these efforts was the establishment of the Melbourne University Law Review. The Review built on its admirable student-led predecessor, *Res Judicatae*. But it was designed to emulate the

---

13 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 195.
14 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 226.
15 John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 178.
16 John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 178-179; Zelman Cowen and David Derham, 'Australian Legal Education: A Dissent' (1956) 9 *Journal of Legal Education* 53 at 54.
17 John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 179.
18 Zelman Cowen and David Derham, 'Australian Legal Education: A Dissent' (1956) 9 *Journal of Legal Education* 53 at 54.

Harvard Law Review, which was one of the first student-edited law reviews and was then its preeminent example.

Modelled on the Harvard Law Review, the Melbourne University Law Review was to be entirely student-run. Its editing and managing staff were to be appointed by invitation to the top students. It was a manifestation of Zelman Cowen's belief, shaped by his experience overseas, in the value of students engaging actively and critically with the law and contributing to its scholarship. Its first issue was published in July 1957, with learned contributions to the first volume by Sir Wilfred Fullagar, who was then a Justice of the High Court, Professor Geoffrey Sawer and Cowen himself, together with a book review by Sir John Latham, the former Chief Justice of Australia. The Review's inaugural annual dinner was held that year with Sir Owen Dixon as guest speaker.[19]

The American influence extended to the working life of the faculty. Dean Cowen fostered working conditions comparable to those afforded to American scholars to ensure that his staff could devote meaningful time to their own academic projects.[20] Furthermore, the connections which he and his colleagues had established generated more opportunities for staff to spend time at American law schools, for visits to Melbourne from American scholars, and for postgraduate study overseas by Melbourne students. This culture of exchange did a great deal to establish Melbourne Law School's international reputation.[21]

Interestingly, the American experiences of Melbourne academics also informed a push in the late 1960s under Cowen's successor, Harold Ford, who too had spent time at Harvard, to replace the undergraduate law degree with a postgraduate model. The proposal was endorsed by the faculty but did not proceed due to funding difficulties.[22] As we know, debate about the structure of Melbourne's law degree would continue over the following decades, eventually culminating in the adoption of a model owing much to the American example.

By 1965, Cowen was ready for a new challenge but was not sure what he wanted to do next. He seriously considered another offer from the United States, this time for a permanent professorship at Duke University in North Carolina. Writing to the Dean of Duke University with his decision, he said that his "mind [had] changed many times". He reflected: "I... have a very deep feeling for the United States: I find myself very much involved in its problems and part of me has become American".[23] Nevertheless, he decided it would be best for his family to remain in Australia. Only a few months later he was approached about the Vice-Chancellorship of the University of New England, an appointment which he would take up

---

19 Tania de Jong, 'A History of the Melbourne University Law Review' (University of Melbourne, 1988) at 26-29, 39; 'Sir Zelman Cowen: 7 October 1919–8 December 2011' (2011) 35 *Melbourne University Law Review* 735 at 736

20 Harold AJ Ford, 'Re-creating Australian Legal Education' in Charles Sampford and Carol-Anne Bois (eds), *Sir Zelman Cowen: A Life in the Law* (Prospect Media Pty Ltd, 1997) 62 at 75-76.

21 Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 226.

22 John Waugh, *First Principles: The Melbourne Law School 1857-2007* (The Miegunyah Press, 2007) at 201-203.

23 Letter from Zelman Cowen to E R Latty, 28 July 1965.

at the start of 1967 and which would begin the next phase of his professional life.[24] There is no doubt that he could have had a successful and distinguished career in the United States. In light of his public contributions which we now know were to come, the Australian people are fortunate that he chose to stay.

Conclusion

Sixty years since Sir Zelman Cowen's departure from Melbourne, much of his modernising influence endures, and the ideas which he adapted from his American encounters have continued to shape legal education in Australia.

The content and methods of teaching have, of course, continued to evolve since the time of Dean Cowen, but the expectation that students will be active participants in their education and active members of the legal community has been firmly embedded. The Melbourne University Law Review remains one of the clearest expressions of that idea. I congratulate the Review on reaching the milestone of its fiftieth volume and pay tribute to the many generations of students whose dedication and talent have enabled it to flourish.

---

[24] Sir Zelman Cowen, *A Public Life: The Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) at 229-230.