

OCCASIONAL ADDRESS GIVEN BY THE HONOURABLE JUSTICE WOOTTEN*, FOUNDATION PROFESSOR AND DEAN OF THE FACULTY OF LAW, UNIVERSITY OF NEW SOUTH WALES, AT THE FIRST CONFERRING OF DEGREES FOR THE FACULTY, APRIL 1976.

Mr Chancellor, I thank you for the kind things you have said about the Law School. I thank you not just on my own behalf, but on behalf of all who have taken part in shaping it—academic staff, administrative staff and students. This is the last time so many of us will be gathered together, and I am quite incapable of treating it as a formal occasion. To me it is as much a personal occasion as it is to each of you who have received your degrees today, and I share with each of you the joy and pride of the day. For me, as for each of you, today marks the culmination of an important part of my life. For many of you it began in 1971, for some in 1972 or 1973. For me it began towards the end of 1969, when Professor Myers asked me to come to the University and establish the Law Faculty.

For Professor Myers and Professor Vowels it had begun earlier still, and probably no one except myself knows how much the early success of the Law School was due to their understanding of the needs of a new Law Faculty, and their determination to do their best to meet them. I would like to give one small illustration. Shortly after my appointment in October, 1969, the University was, for now forgotten reasons, under strong pressure to start a Law course in 1970. It would have meant throwing away the chance to design a programme attuned to the needs of the day, to bring together a first-class staff, and to develop adequate library and other facilities. Nevertheless, the pressure was there from those who thought that all a new Law Faculty needed was a hire-car allowance to bring barristers out after court to read out the Sydney University Law School notes. I have always treasured Professor Myers' reaction: "In ten years' time", he said, "no one will ask what year we started the Law School. They will ask what sort of Law School we have". Less than seven years have passed, but he is long since vindicated.

In the ensuing year we gathered that happy band of misty-eyed idealists who were the foundation staff. With the exception of Professor Garbesi,¹ they all remain, still recognizable to the familiar eye beneath the burden of years, new titles, degrees, letters to the editor and other less well known publications.

In that year we developed the basic programme of the Law Faculty, and had it accepted by the professional bodies. Everyone agreed that it was a good programme, shaking off a lot of dead wood and finding new ways of looking at the law and developing professional skills. But, alas, to the making of curricula there is no end. An American Dean once maintained to me that there is a predictable ten-year cycle in curricula, staff turnover being sufficient to ensure that few remain to recognize the return of old patterns. That the curriculum continues to change is a healthy sign. It is

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¹ Presently at Loyola University, School of Law, Los Angeles, California.

due less to changes in the law, than to the continual quest of active scholars and teachers to find new meanings in their studies, new ways of looking at them, and fresh ways of presenting them. Show me a Law School that does not have a bristling Curriculum Review Committee, and I won't bother to look at it.

In 1970 the foundations of a good Law Library were laid, a first-class Law Librarian recruited and the administrative staff that did so much to give a warm and human touch to the Law School. The much-loved huts were reclaimed to house the School for two years. I am glad to see that the horrors that followed the huts have been left behind this year with a move to more adequate accommodation. Those who bemoan the lack of a Law School building should ponder the Parkinson's law which states that an institution obtains a building worthy of it only at the point of its decline.

When I was appointed, I said that all that I knew about legal education was how bad my own had been. Fortunately, other members of the Faculty were more experienced, but TERC² and Professor Katz opened to all of us new understandings of educational processes. Professor Freund of Harvard on his recent visit told the story of a boy doing his homework. "Dad", asked the boy, "what is the population of Paris?" "I've no idea", was the reply. A few minutes later: "Which is farther north—Venice or Vladivostock?" "I'm afraid I don't know, son." Silence. "I hope you don't mind me asking you these questions, dad." "Of course not, son. How are you ever going to learn if you don't ask?" I suspect many of you felt a bit like that boy after your first few weeks at the Law School. At all events, I hope you did, because the teachers were not there to tell you the answers to questions, but to stimulate you to ask questions and help you to learn how to answer them for yourself.

One gets the feeling that parts of some universities could go on functioning happily for years after the last student had disappeared, scarcely noticing their absence. The frustration of students who felt virtually ignored as passive counters in the educational process had, I am sure, something to do with the widespread student unrest of a few years ago. From the beginning the Law School stated and practised a very different policy, and the students responded enthusiastically to the discovery that they had a major role to play in shaping the Law School. Ivan Illich had not published *Deschooling Society*, or we might have adapted his words and said that we were seeking to create not an "educational funnel", but an "educational web" which would "heighten the opportunity for each one to transform each moment of his living into one of learning, sharing and caring". Growth in numbers—that great subverter of human values—has made it harder to maintain this atmosphere, but I sense that there is still a lot of it around in the Law School. I was interested to hear that one staff member is spending some of his sabbatical leave with Illich.

Many of these things have been recalled to me by re-reading the first Dean's letter to new students, which endeavoured to state the common attitudes of the foundation staff. Among other things, it sought to link the

² The Tertiary Education Research Centre at the University of N.S.W.

Law School not only with the profession and the rest of the university, but with other worlds outside—not only with business, industry, trade unions, and governments, which supplied most of the income of the legal profession, but with those on whom the law might bear harshly—the poor, the aborigines, the handicapped, the deviants. That these were not empty phrases is shown by the great contribution this Law School has already made, in a few short years, to the study of law and poverty, to legal aid, civil liberties, the welfare of children, and aboriginal rights. It is no accident that among to-day's graduates is the first aboriginal lawyer in Australia.

All this has not been done without making mistakes, or without raising a few hackles in the profession and elsewhere. As in every profession, there are lawyers who are smug and conservative, and some who are exceptionally sensitive and defensive. A Law School which displeased nobody would be doing very little.

In that first letter we said:

We admire the social concern that so many of to-day's students bring to the University. We hope that when these students emerge from the Law School these qualities will have been sharpened, not blunted. We hope they will feel not frustrated, but better equipped, through soundly developed professional knowledge and skills, to express their concern in constructive contributions and lead satisfying lives.

It is too early to ask whether this hope has been realized. You have not had time to test yourselves on the world, and you graduate in a time of widespread disillusionment. Hopes of a continuing concerted attack on social problems have been raised in recent years only to be disappointed. Many feel frustrated, and the pursuit of scapegoats has not yet given place to the hard work of understanding what went wrong, and the re-building of new bases from which to attack the old problems, most of which still remain. There is emerging, I believe, a realization that many problems will be solved only by much more fundamental social change than has yet been attempted, and that the ever-increasing application of old remedies often becomes counter-productive.

I referred earlier to *Deschooling Society* in which Illich makes this point about institutionalized education, and in *Medical Nemesis* he develops the same argument about institutionalized medicine. Soon Illich or someone else will write a parallel book about law—if indeed they have not already done so. There are two major points to be made about each of these areas. One is a simple economic point—education, medical treatment, and litigation are each potentially bottomless pits into which community resources can be poured, so as to become a crushing financial burden, with minimal useful return. After a certain point people will learn less in schools and universities, however well equipped, than they would outside. After a certain level of health care is reached, the elaborate investigation and treatment of every symptom may do more harm than good. Resort to law over an ever-increasing range of disputes does nothing for social harmony. More importantly, the ever-increasing dependence on institutions prevents the development of self-reliance and mutual community reliance.

People no longer think of educating themselves and each other, as they once did so fruitfully. Care of one's own health, or mutual care in a family or community context, is disdained. The social fabric that once enabled much disputation to be settled by the mediation of friends, relatives, neighbours or respected citizens, has been destroyed, and turning the other cheek to a minor wrong is no longer regarded as a virtue.

I think that, on my record, I need not fear an accusation of hostility to legal aid or of insensitiveness to the need for the underprivileged to have equal access to the law. But when one finds legal aid invoked for the purpose of financing an inquiry over several days by two barristers and two solicitors before a Supreme Court Judge to decide whether someone in a country town has turned his radio up to annoy his neighbour, something is wrong. It is not a condemnation of legal aid, any more than excessive pathological tests are a condemnation of Medibank. But it does show a neurotic reliance on institutionalized dispute settlement to the exclusion of the natural processes that should operate within neighbourhood and community. With all its faults, it would be a pity to see the affluent society disappear into the maw of the hypochondriac and litigious society, and to see individual and community self-reliance quite displaced by institutional dependence.

Like lawyers of every generation you will face the dual challenge of keeping the substantive law responsive to changes in other areas of society, and of preventing the institutions of the law itself from being exploitative, burdensome, and destructive of the social fabric. I have some hope that this Law School may have prepared you well. One present staff member told his selection committee that the object of the Law School should be to work for the ultimate obsolescence of all lawyers—a very constructive alternative to the Shakespearean proposal to kill us all. Even more constructively, one of its students has published a comparative study of the role of mediation, and of the objective of restoring social harmony, in the legal systems of the world.³

Former students now fellow lawyers, the reputation of this Law School is now in your hands. But whatever happens, it was a great privilege to have worked with you.

³ N. Yeomans (with J. Carlson), "Whither Goeth Law—Humanity or Barbarity?" in M. Smith and D. Crossley (eds), *The Way Out: Radical Alternatives in Australia* (1975).