BOOK REVIEW*

Thirty Up: The Story of the UNSW Law School 1971–2001
by MARION DIXON
(Australia: UNSW Law School, 2001) pp 179.
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This book tells a remarkable story: how the vision of one man succeeded in creating an institution, the Law School at the University of New South Wales ('UNSW'), which, within 16 years of its establishment, would be adjudged the finest of its kind in the country. The vision was that of Hal Wootten,[1] its Foundation Dean. The judgment was that of Professor Dennis Pearce,[2] who had just finished chairing a review of Australian Law Schools for the then Commonwealth Tertiary Education Commission.[3]

How did it happen? The essential ingredients seem to have been these. First, the 'Founding Fathers' – and they were all men – were committed to a style of legal education that would later be described as 'student-centred'.[4] The approach stressed student participation in learning[5] in an environment in which 'students matter'.[6] Classes were small and a culture of student preparation for, and discussion in, those classes developed. The advantages of this style of teaching, at least theoretically, include the acquisition by students of a deep knowledge of law,[7] which facilitates the development of a number of skills along the way[8] and leads to teacher satisfaction.[9] The theory seems to have borne fruit in practice, as is evidenced throughout this book. A number of staff and students of the Law School have gone on to distinguished careers in the judiciary, academia, legal practice, law reform, government and business.

Secondly, the Law School was not conceived as just an 'ivory tower' but as an institution with a broad commitment to social justice.[10] The Law School

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1 Marion Dixon, *Thirty Up: The Story of the UNSW Law School* (2001) 138–41.

2 Ibid 84.

3 Enid Campbell and Don Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987) vols 1–4.

4 See Marlene Le Brun and Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law* (1994) 89–97. For an English perspective, see Victoria Fisher, 'Developing Teaching and Learning in Law' in John P Grant, R Jagtenberg and K J Nijerk (eds), *Legal Education: 2000* (1998) 137.

5 Dixon, above n 1, 57.

6 Ibid 103.

7 See Paul Ramsden, *Learning to Teach in Higher Education* (1992) ch 4.

8 See Le Brun and Johnstone, above n 4, 169–72.

9 Ibid ch 3.

10 Dixon, above n 1, ch 10.

curriculum was located in its social context.[11] This contributed, through courses such as 'Law, Lawyers and Society', 'Criminology' and 'Penology', to the reforms of the legal profession and of the prisons in New South Wales in the 1980s.[12] Specialist legal centres and programs sharpened the curriculum in a number of areas of law. Amongst many others, staff in these programs and centres pioneered Indigenous legal studies in Australia,[13] and achieved the free access to legal sources (now embodied in AustLII) without which research in Australian law today seems unimaginable.[14] In addition, the intellectual life of the School has been complemented by its contact with the legal profession (not least through the provision of clinical legal education)[15] and through pioneering work in the development of community legal centres in Sydney.[16] This happy coalescence of matters of academic and public concern gave the new Law School a solid reputation and authority almost from its inception.

Thirdly, the commitment to social justice was balanced alongside the need for traditional academic accomplishment. Largely, this was achieved by the appointment of a body of enthusiastic young teachers and scholars (some of whom are now Australia's leading authorities in their chosen fields) with differing interests and backgrounds, but with a common dedication to 'excellence in legal education' in the broadest sense. The energy created by the mix of those interested primarily in traditional legal scholarship and those with a more overt political agenda fuelled the nascent Law School. Everything was up for debate, but especially questions of curriculum and assessment.[17] While the debates were often heated, in general the institution remained a truly collegiate one. In short, the 'mix' had worked marvellously because, whatever their immediate goals, the atmosphere of the new Law School was sufficiently inclusive for staff to retain their commitment to the academic enterprise. Much of the credit for this must go to Wootten's initial decision to devise a curriculum which consisted simply of broad subject headings, leaving it to the teachers to fill in the details.[18] Today, we would be tempted to say that the young staff members were given 'ownership' of their courses.

Fourthly, the time was ripe for a Law School with new ideas. If the new School had been founded earlier and with different personnel – and proposals for a second law school in Sydney, specifically at the University of New South Wales, go back to the early 1960s[19] – it would, in all probability, have been a copy of Sydney University's Law School. But Wootten would have none of this. He regarded his own legal education at Sydney as 'bad',[20] no more than a

11 Ibid 57.
12 Ibid ch 6.
13 Ibid especially 126–8.
14 Ibid 64–7.
15 Ibid 67–70.
16 Ibid 59–64.
17 Ibid 20–2, 40.
18 Ibid 15.
19 See Albert Henry Willis, *The University of New South Wales: The Baxter Years* (1983) 170.
20 Dixon, above n 1, 2.

'joke'.[21] In this he was joined by many of the new staff who were, if not refugees from Sydney, at least highly critical of the education with which it had provided them. Indeed, in the Law School's formative period, it often seemed to those staff who (like the present reviewer) lacked the 'Sydney experience' that the substance (or at least the balance) of argument about anything concerning legal education was that if it was done at Sydney it was necessarily wrong, and, if it was not done at Sydney, it was likely to be right! This was an unfortunate perception since it probably led to a lack of dialogue between the two schools which could only have been to their mutual benefit.

Fifthly, a number of miscellaneous, often fortuitous, factors helped to cement the establishment of a great law school. The first, undoubtedly, was the appointment of Rob Brian. A brilliant law librarian, Brian established what was (or is) Australia's best, and certainly most user-friendly, law library within a short space of time.[22] The second was the stature given to the new School by the presence of Professor Julius Stone in his retirement.[23] The third was the release of the School from its original obligation to undertake distance education.[24]

Of course, the early story was not one of unqualified success and there were some noted flops. Some of these were in the curriculum, the most spectacular example of which was the foundational 'Common Law' course, which collapsed aspects of tort, contract and criminal law into one subject, and which seems to have left a generation of students mystified and confused.[25] The reason for the failure is not immediately obvious. Today, leaving aside any consideration of the role of criminal law in such a course,[26] a proposal for a combined treatment of at least contract, tort and restitution in a 'Law of Obligations' course would be plausible.[27] A critical evaluation of any such course needs to learn from the experience of courses like the 'Common Law' course at UNSW. My guess is that such courses failed because they involved a simple collapse of ideas and concepts across the boundaries of contract, tort and criminal law without sufficient regard to their function. Whether this is so or not, it is to the great credit of the Law School that it was prepared at an early stage to abandon curricula innovations that simply did not work.[28]

While this book is primarily a story of triumph, it is also a commentary on the sorry state of law schools within the Australian university system. The UNSW

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21 Ibid 15.

22 Ibid 155–7.

23 Ibid 157–61.

24 Ibid 7.

25 Ibid 20.

26 But consider the implications of the view of Windeyer J in *Uren v John Fairfax & Sons Pty Ltd* (1966) 117 CLR 118, 149–50 (approved by Gleeson CJ, McHugh, Gummow and Hayne JJ in *Gray v Motor Accident Commission* (1998) 196 CLR 1, 4) of the intermingling of the roots of tort and crime.

27 Essentially, a unified 'Obligations' course is justified by the supposed weakening of the contractual obligation and its alleged similarities to obligations arising in tort. However, the decision of the High Court of Australia in *Astley v Austrust Ltd* (1999) 161 ALR 155 demonstrates that, at least at common law, the contractual obligation continues to flourish. However, it is worth noting that legislation in all Australian jurisdictions has now overruled the actual decision in this case: see, eg, *Law Reform (Miscellaneous Provisions) Act 1965* (NSW) s 9 (read with the definition of 'wrong' in s 8).

28 Dixon, above n 1, 19–20.

Law School emerged almost unscathed from the Pearce Report in 1987.[29] This was not the fate of most other law schools which had to endure more or less severe and sustained criticism. Such law schools reacted to the report by putting their houses in order[30] or by going into denial.[31] At least they reacted. By contrast, the UNSW Law School received no reward for its now manifest achievements. Rather, the immediate aftermath of Pearce was a funding crisis, from which the Law School, arguably the jewel in UNSW's crown, was not spared.[32] Indeed, to this day, the Law School is the only major law school in Australia that does not have its own building but resides in 'temporary accommodation' in a library tower![33] This may indicate no more than a critical failure in planning at central level within UNSW. More likely, it is indicative of the general reluctance of University administrations in Australia (and their political masters) to take seriously the need for substantial funding to support quality legal education. Any society ignores that need at its peril. More than a quarter of a century ago, Lord Scarman reminded us that: 'The key to the survival of the rule of law as a living and socially relevant force is legal education'.[34] In an era in which public issues are debated in ill-defined media grabs of a few seconds, the need for a legal education which imparts to students the necessity of clearly defining and analysing issues is more pressing (and more ignored) than it ever has been. Let us not forget that it was the revival of the study of civil and canon law that assisted Europe's emergence from the Dark Ages.[35]

Who should read this book? First, and most obviously, the book is a wonderful memoir for all those who participated in the creation and development of the UNSW Law School, whether as students, staff or in some other capacity. For this group, the book will deliver hours of happy, or at least stimulating, reading. Secondly, the book ought to be read by university administrators. For this group of readers, the book should serve as a testament to the importance of commonsense and common decency in achieving remarkable feats without the 'help' of contrived management plans and strategies with their 'ugly and barely intelligible jargon'.[36] Thirdly, the book will be of interest to anyone broadly interested in the development of legal education in Australia.

It is for this latter group of readers that the book is incomplete, as the author herself acknowledges.[37] Like the histories of other law schools in Australia,[38]

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29 Ibid ch 12.

30 Such as the University of Tasmania Law School: see Richard Davis, *100 Years: A Centenary History of the Faculty of Law University of Tasmania 1893–1993* (1993) 81–7.

31 Such as Sydney Law School: see John and Judy Mackinolty, *A Century Down Town: Sydney University Law School's First Hundred Years* (1991) 190–1.

32 Dixon, above n 1, chh 13, 14.

33 Ibid 129–31.

34 Leslie Scarman, *English Law – The New Dimension* (1974) 87.

35 See, eg, Frederick Maurice Powicke and Alfred Brotherstone Emden (eds), *Rashdall's the Universities of Europe in the Middle Ages* (New ed, 1936) vol 1, 87–141.

36 Viscount Simond's description of the language of scholastic theories of causation in *Overseas Tankship (UK) Ltd v Morts Docks & Engineering Co Ltd (The Wagon Mound)* [1961] AC 388, 419.

37 Dixon, above n 1, Preface.

this book is largely the history of personalities[39] and events, which the author captures very well indeed. But, of course, this is not the whole story. As is well known, the formative influence of legal education on later actors in the legal process is critically important in shaping any legal system. That is why the history of legal education is crucial to an understanding of the development of law generally. Yet, as John Hamilton Baker pointed out in 1990, the history of legal education is in 'urgent need of further investigation'.[40] That investigation has begun in England[41] and has, significantly, discredited the view that legal education in England began with the Inns of Court.[42] But beyond generalisation – such as Geoffrey Blainey's statement that the judicial reputation of the High Court in the mid-1950s was in some measure due to the influence of Sir William Harrison Moore (1893–1927)[43] on a small group of students at Melbourne[44] – the systematic study of the development of legal education in Australia has yet to be undertaken. The most important part of the history of the UNSW Law School, namely the institution's contribution to the general development of legal education in Australia and hence to the development of Australian law, remains to be told. This book supplies an excellent background to that story.

38 Slight exceptions occur in Sir Thomas Bavin (ed), *The Jubilee Book of the Law School of the University of Sydney 1890–1940* (1940), in which O'Martin and Davidson J attempt to assess the influence of the Sydney Law School more broadly: L O'Martin, 'The Law School and Parliament' in Sir Thomas Bavin (ed), *The Jubilee Book of the Law School of the University of Sydney 1890–1940* (1940) 114; Justice Davidson, 'The Law School and the Bench' in Sir Thomas Bavin (ed), *The Jubilee Book of the Law School of the University of Sydney 1890–1940* (1940) 125.

39 Dixon, above n 1, especially ch 16; cf Ruth Campbell, *A History of the Melbourne Law School 1857 to 1973* (1977), a book of 15 chapters, of which chapters 8–14 deal with the seven Deans of Melbourne to 1973.

40 John Hamilton Baker, *The Third University of England: Selden Society Lecture* (1990) 22.

41 For an outstanding recent collection of essays, see Jonathan A Bush and Alain Wijffels, *Learning the Law: Teaching and the Transmission of Law in England 1150 –1900* (1999).

42 See especially Paul Brand, 'Legal Education in England before the Inns of Court' in Jonathan A Bush and Alain Wijffels (eds), *Learning the Law: Teaching and the Transmission of Law in England 1150 – 1900* (1999) 51.

43 Moore was the third Dean of Melbourne Law School: see Loretta Re and Phillip Alston, 'William Harrison Moore, Third Dean, 1893 to 1927' in Ruth Campbell (ed), *A History of the Melbourne Law School 1857 to 1973* (1977) 105.

44 Geoffrey Blainey, *A Centenary History of the University of Melbourne* (1957) 156.