FROM APPRENTICESHIP TO LAW SCHOOL: A SOCIAL HISTORY OF LEGAL EDUCATION IN NINETEENTH CENTURY NEW SOUTH WALES

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I. INTRODUCTION

The historical writing which has so far emerged from within Australian legal quarters has, with some notable exceptions, largely dismissed legal education as a pre-ordained and unilluminating aspect of our local legal history.[1] Despite evidence that vital structural and intellectual components of our legal tradition were firmly entrenched during the nineteenth century, historians of the New South Wales legal profession have hitherto failed to examine the historical antecedents of legal education with any degree of seriousness. The purpose of this paper is to remedy that lack by questioning the reasons for increased standards of entry to the profession and the onset of formal legal education.

The research in the paper was precipitated by comparative study which revealed a body of writing interested in the historical development of legal education. American sociologists and legal historians, for example, have treated the nineteenth century transition from apprenticeship to university law school as a moment of some historical significance. They discern increasing public dissatisfaction with the legal profession and the desire to treat law as a "science" as only the most obvious stimuli for moves to

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I would like to thank David Neal and Professor John Goldring for their comments on an earlier version of this paper, Dr Ursula Bygott for assisting me at the University of Sydney Archives, and Andrew Fraser for being an unremitting source of inspiration on historical matters. Responsibility for this final version of the paper is entirely my own.

1 Stewart J. Woodman, "The Legal Profession in New South Wales, 1887-1906" in R. Tomasic (ed.), *Understanding Lawyers*. Sydney: Law Foundation of N.S.W., 1978; RJD Legg "Training for the Bar", in J.M.Bennett (ed.), *A History of the New South Wales Bar*. J.M. Bennett (ed.), *A History of Solicitors in New South Wales*, Sydney, 1984.

systematise and formalise the training and recruitment of lawyers.[2] Other writers have seen the institutionalisation of legal training, the standardisation and consolidation of legal doctrine and the process of university credentialling as but one more dimension of the "rationalisation" or professionalisation of cognitive phenomena during the period of industrial capitalism, a project in which most occupational groups engaged so as to retain their position or to justify their emergence within a rapidly expanding market for expertise.[3]

On this view, legal men under industrial capitalism had to renounce their former reliance on aristocratic patronage and accommodate their privileges to a market pattern, where services were given for remuneration. In order to maintain the authority which had traditionally been theirs for the taking, legal professionals are depicted as seeking to "constitute and control a market for legal services".[4] Economic initiatives were parallelled by related projects which ensured the profession's cohesion as a group and the continued ascription to it of high social status. As far as its significance for legal education was concerned, "professional" status afforded legitimacy to the profession's claim to market dominance by ensuring that it had control over a standardised body of knowledge superior to and different from that appreciation of lawyers' work which a layman could obtain.

Proponents of the professionalism thesis describe this process as a move toward a new cognitive paradigm which constituted formal education as a vital component of professional socialisation. Where once the delivery of individual recruits through apprenticeship had been sufficient to guarantee both market control and social status, the new economic order demanded a higher degree of "cognitive commonality" and universality in the educational "products" who would later become "producers" of professional services.[5] Legal education was therefore formalised and rationalised by the introduction of practical training and certificates of occupational competence.

The theoretical validity of this thesis has been challenged elsewhere and is

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2 *E.g.* Robert Stevens, "Two Cheers for 1870: the American Law School" (1971) 5 *Perspectives in American History* 405; *Law School: Legal Education in America from the 1850's to the 1980's*, Chapel Hill, 1983; Gerard W. Gawalt, "Massachusetts Legal Education in Transition, 1766-1840" (1973) 17 *Am J of Legal History* 27; Anthony Chase, "The Birth of the Modern Law School" (1979) 23 *Am J of Legal History* 329. A more cautious appraisal of this transition at the University of Wisconsin can be found in William R.Johnson, *Schooled Lawyers: A Study in the Clash of Professional Cultures*. New York, 1978.

3 The most comprehensive exposé of this process is that of Margali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis*. Berkeley, 1977. For an analysis which conveniently locates legal professionals amongst a host of other professional men striving to maintain their authority see Thomas L. Haskell, *The Emergence of Professional Social Science: the American Social Science Association and The Nineteenth Century Crisis of Authority*. Urbana, 1977. See also Max Weber, in M. Rheinstein (ed), *Max Weber on Law in Economy and Society*. Camb., Mass, 1954. The following summary is extracted from Larson.

4 Larson, note 3 *supra*, xvi.

5 *Id.*, 15.

not the main concern of this paper.[6] Rather it is seen as an appropriate analytical tool against which specific developments in legal education and admissions requirements in colonial New South Wales can be judged. Consistently with this thesis, any evidence shedding light on the existence or otherwise of external pressures on the profession to modify educational structures will be examined.

The paper falls broadly into three parts. Part II details the background to the establishment, in 1848, of a local examining body — the Barristers Admissions Board — which was the first professional institution concerned with standards of entry to the colonial profession. Part III covers early debates about whether to incorporate law into the curriculum at the University of Sydney, established in 1850, including those on the desirability of locating professional legal studies in a university setting. Part IV documents more systematic attempts to establish a Law School in 1890. For all sections of the paper, primary and secondary sources on the history of the legal profession were consulted and, in parts III and IV, recourse was also had to university history from the University of Sydney Archives.

Resort to the latter materials presented some difficulties. Early institutional historians asserted that, far from being a response to moves from within the legal profession, the decision to introduce legal studies into the university curriculum was never questioned. They suggested that University authorities had accepted the appropriateness of establishing a Law School and cited financial constraints as the main reason why this wish was so long in being actualised.[7] It was only by reading these materials carefully, in combination with other sources, that it became clear that something more was at stake than the mere happenstance of funding decisions.

II. APPRENTICESHIP IN THE COLONIAL PROFESSION

1. *The English Monopoly*

Legal education in the early colonial period was not merely a technical device for satisfying the recruitment needs of the evolving legal profession. It also reflected the concern of leading members of the profession and some members of the public to regulate the quality and composition of the body of professional men increasingly taking up residence on New South Wales' shores. Changes in the law of admission to practice and debates surrounding them articulate the profession's developing self-conception and the image

6 See Daniel Duman, *The English and Colonial Bars in the Nineteenth Century.* London, 1983; Andrew Fraser, *Legal Education and the Culture of Critical Discourse.* Unpublished LLM paper, Harvard University, 1981-82; "Legal Amnesia: the Decline of the Republican Tradition in American Legal Thought" (1984) 60 *Telos* 15, 31-38; Terence C. Halliday, "Professions, Class and Capitalism" (1983) 24 *European Journal of Sociology* 321; Wilfred Prest, "Why the History of the Professions is Not Yet Written" in G.R. Rubin and David Sugarman (eds), *Law, Economy and Society, 1750-1914: Essays in the History of English Law.* London, 1984.

7 Sir Thomas Bavin, (ed.), *The Jubilee Book of the Law School of the University of Sydney, 1890-1940.* Sydney, 1940, 6.

which its members wished to present to a public which was even less disposed than that in England to hold them in high esteem.[8]

Indeed, the competence and skill of lawyers was an item on the colonists' agenda well before responsible government dominated social and political issues in the 1840's. Demands for the expulsion of ex-convicts practising as attorneys and for their replacement by English practitioners merged with agitation for jury trial and constitutional reform as some of the dissatisfactions to the civilian population presented by this authoritarian regime.

Both the legislative efforts of the British Parliament and the rule-making powers of the colonial judiciary were devoted as much to regularising professional arrangements as to re-establishing the other incidents of the rule of law. Qualified practitioners began to be admitted to the courts in 1815 when the Supreme Court of Judicature commenced operations under the so-called "Second Charter of Justice."[9] The law relating to the profession derived from a British statute of 1729 (2 Geo.II, c.23) which required applicants for admission to have been admitted as solicitors in England, Scotland or Ireland and to have qualified by serving a clerkship of five years with a New South Wales practitioner, subject, perhaps, to an examination as to fitness.[10] It was not until 1823, however, that provision was specifically made for the promulgation of local admission rules. The "Third Charter of Justice", made pursuant to the New South Wales Act, 1823 (4 Geo. IV, c.96), authorised the establishment of our present Supreme Court of New South Wales, complete with powers to approve and admit qualified practitioners from Great Britain and Ireland and to make rules for the admission of "so many fit and proper persons...as may be necessary".[11] The Charter provided for a "fused" profession where a practitioner could act either as a barrister or as an attorney.

Rules of 1825 provided that those aspiring to enter the profession as attorneys be required to serve a period of five years as an articled clerk in the practice of a qualified practitioner, whether in New South Wales or in Great Britain or Ireland.[12] It may be more than a technical point to note that no parallel provision was made for the admission of local barristers by apprenticeship. On one view, this could indicate an initial unease on the part of the judges in accepting this departure from English practice.[13] If some

8 For a documentation of the ridicule which greeted lawyers in nineteenth century England one hardly needs to go beyond Charles Dickens' classic, *Bleak House* (London, 1953). Less literary but equally illuminating are Michael Birks, *Gentlemen of the Law.* London, 1960; Daniel Duman, "The Creation and Diffusion of Professional Ideology in Nineteenth Century England" (1979) 27 *Sociological Review* 113.

9 New South Wales, Committee of Enquiry into Legal Education in New South Wales, *Legal Education in New South Wales: Report of Committee of Enquiry* (Bowen Report). Sydney, 1979, 6.

10 Ibid.

11 By Clause 10. *Cf.* Bennett (1969), note 1 *supra*, 31-33.

12 Bennett (1984), *Id*, 49.

13 For evidence that Chief Justice Forbes, the only sitting member of the court was equivocal in upholding fusion see Bennett (1969) *Ibid*, 40. See also J.R.S. Forbes *The Divided Legal Profession in Australia: History, Rationalisation and Rationale.* Sydney, 1979, 37.

structural modifications were to be made to accommodate the extra-ordinary conditions in the colony, then the least that could be hoped for would be that some of the advocates practising in the courts — those who could be expected to rise to the top of the professional hierarchy and to enter public life — would continue to be drawn from the bar at Home. The traditionalism of the Inns of Court would provide a brake on the erosion of standards.

2. The Divided Profession and its Critics

This is borne out by a rule of 1829, approved in 1834, which saw a divided profession imposed.[14] This entailed the keeping of separate rolls for barristers and attorneys, and a division of labour which prevented the lower branch from appearing before the courts.

For attorneys, the rule at 1829 continued admission requirements similar to those passed in 1825: a system of apprenticeship which remained until 1877. While it seems that no formal educational qualifications were necessary, the judges were empowered to test the "fitness" of applicants in their character and legal knowledge.[15] Local men aspiring to the Bar fared less well. The court provided that no-one was to be admitted as a barrister other than those already admitted as advocates or barristers in Great Britain or Ireland, effectively excluding from entry all who could not afford an extensive stay abroad.[16]

This strategy enhanced the structural division of the profession by vesting control of the barristers' profession in the hands of a predominantly English-educated elite. Understandably, it was a prime object for attack as moves to rationalise the structure of the profession escalated throughout the 1830s and 40s and as a groundswell of colonial nationalism began to emerge.

Others have documented the history of how a divided profession was reimposed and consolidated, describing the challenges from liberal elements within the profession which ultimately led to the establishment, in 1846, of a committee to enquire into the matter.[17] This is not the place to consider those deliberations in detail, except in so far as they relate to changes in legal education.[18]

Most important was the fact that the committee, chaired by W.C. Wentworth (the man widely held to be responsible for the initial division in

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14 Bowen Report, note 9 *supra*, 7. The Australian Courts Act 1828 (9. Geo. IV, c. 83) continued the Charter of Justice and, by s.16, gave the Supreme Court a right to make rules for the admission of Attorneys, Solicitors and Barristers.

15 *Id*, 8.

16 *Id*, 7.

17 On 15 September 1846, Edward Brewster, an Irish barrister and member of the Legislative Council,moved a "Division of the Legal Profession Bill", which passed at first reading (Forbes note 13 *supra*, 50) Forbes notes that the opposition in the Council recommended the establishment of a Select Committee to "sidetrack" the debates (*Ibid*).

18 See especially Forbes, note 13 *supra*. Less comprehensive accounts may be found in J.M.Bennett and J.R.S.Forbes, "Tradition and Experiment: Some Australian Legal Attitudes of the Nineteenth Century" (1970-72) 7 *UQLJ* 172; and in Bennett (1969) and (1984), note 1 *supra*.

1829[19]) made its recommendations against abolition on the grounds of preserving "standards".[20] The committee members decided that abolition would impair the skill, efficiency and integrity of those practising as advocates as well as the judiciary and the profession generally. Moreover, the rhetoric of standards which accompanied debates on the structural question had important political and ideological overtones and direct practical implications for legal education.

For those who wished to retain division, it implied a natural distribution of authority between the advocate, on the one hand, who helped to preserve the integrity and independence of the Bench, and the more vulgar, avaricious attorney on the other, who merely ministered to clients. Barristers, they believed, were inclined to lend an aristocratical air to the profession, not by virtue of any hereditary status but because they worked only for disinterested and noble purposes.[21] The existence of the honorarium — the official rule requiring barristers to accept a brief regardless of whether payment would ensue — was brought forward to show material gain as a secondary and incidental advantage of a lifetime spent in the pursuit of honour, dignity and service to the public.[22] For some, too, even to consider the favourable impact of fusion on professional fees was degrading: arguments for efficiency only too easily attracted the derogatory connotation of "cheapness".[23] Fusion was conceived as likely to reduce an otherwise honourable profession to a lowly trade.

But the higher status and remuneration of barristers and the social exclusiveness of the Bar could not be justified solely by reference to honourable intentions. Others linked these privileges to the ability and qualifications of barristers as experienced advocates distinguished by their possession of a liberal education. One committee member had to acknowledge that this was not universally the case in the colony: few colonial barristers had been educated at university and the Inns of Court had for some time dispensed with formal educational requirements, requiring only the eating of a number of dinners at an Inn as a qualification for the Bar.[24]

Interestingly, the main concern of the abolitionists also seemed to be how best an able and independent body of advocates might be produced, differing only in their conclusions as to how this end might be achieved. James Martin,

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19 See Forbes, note 13 *supra*, 35. Although not himself a practitioner at this time, Wentworth had considerable influence within the Council (*Id*, 51.)

20 New South Wales, Legislative Council, *Votes and Proceedings* (1847), Vol.II, 415, 420. (Hereafter *V and P*). See generally on the main arguments for and against division, Forbes note 13 *supra*, Division 3.

21 A proponent of the conservative view was Mr Justice Dickinson, *V and P* (1847), 451.

22 Duman (1979), note 8 *supra*, documents the pervasiveness of such concepts as professional ideologies in nineteenth century England.

23 Chief Justice Stephen, *V and P* (1847), 468.

24 S.P.Milford: New South Wales, Legislative Council, Select Committee on the Division of the Legal Profession Abolition Bill, Progress Report, *V and P* (1846), Vol. II, 383, 399. For a discussion of the history of legal education in England see Brian Abel-Smith and Robert Stevens, *Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965*. London, 1920.

a solicitor and journalist who would later reap the benefits of the professional hierarchy as Chief Justice of the Supreme Court, remarked upon the discriminatory effect of the rules of 1829, which left the way open for uneducated barristers from the United Kingdom to monopolise work at the Bar whilst imposing stringent barriers to entry for attorneys. He accused the judges and their barrister cohorts of having neglected the matter completely, only showing some "decent liberality" when the skirmish over division forced them to confront the issue.[25]

Martin's suspicions are borne out by the Committee's terms of reference. It was framed to include an alternative means of placating those of his persuasion, even as it posited the outcome of the inquiry as a foregone conclusion. Their brief was:

> to enquire into and report upon the best means of reducing the expenses of the law in all its branches and in the event of the Report being against the amalgamation of the profession by the said Bill contemplated that it be a further instruction to such Committee to enquire into and report upon the best means of providing for the admission of youth educated in the colony.[26]

But even for Martin there was more at stake in the now remote prospect of amalgamation than mere personal advantage or parity of consideration for colonial youth. It is worth quoting part of his speech at length, for he seemed to regard the very nature of the Bench and judicial independence to be threatened because the colony was not yet on a firm constitutional basis:

> (When) it is considered how large an amount of legal patronage there is in the hands of the Colonial Executive, as compared with the number of our Barristers, and how much more likely it is for servility to be preferred to independence by a Government which has no responsibility to dread, it cannot be expected that the Bar, as a body, will be likely to prove very efficient in watching the proceedings of Judges... This is an evil which ought to be immediately remedied, for if in England where the Judges are so greatly superior to the Judges in the colony, where they hold their offices during good behaviour, they have a people, the most jealous of their liberty and a press, the most intelligent, most fearless and most honest in the world, constantly watching their proceedings, the control of an able and independent Bar is found necessary for the due administration of justice, how much more is such a control required in New South Wales?[27]

The venality which Martin perceived could not, in his view, be remedied merely by prescribing a course of education. What was needed was a healthy, adventurous group of advocates drawn from both branches of the profession who "cared but little either for the frowns of the Bench or the smiles of the Government". The transfer of some of the Bar's business to the attorneys would increase their competence and, by extension, that of men moving into

25 *V and P* (1847), 451. For a discussion of Martin's later career see Bennett (1969), note 1 *supra*, 91-94.
26 *V and P* Tuesday 18 May 1847.
27 *V and P* (1847), 452.

high public office. He scoffed at the notion that division in this instance would uphold judicial dignity:

> Little respect will, I trust, be shown to that spurious dignity which is derived neither from learning nor from talent but which dreads a wholesome and fair competition with both.[28]

Of similar persuasion was Randolph Want, who tended to prefer division ("to get a good Bench, you must have a good Bar"), but believed that the small size of the colonial Bar gave it a tendency toward monopoly. It was an "irresponsible body" over which the judges had little control. Moreover:

> the number of Barristers here is too limited to exercise that control over itself which is necessary, and which is exercised in England, and this would probably be remedied by the infusion into it of more Barristers or of Attorneys acting as Barristers.[29]

Although the committee recommended against any structural changes to the profession, they did allow those who then aspired to the higher branch to elect to do so, on condition that their decision was irreversible.[30] Nor was the outcome of the enquiry without consequence for legal education. It was clear that the standards of the profession had been brought into high relief, although the directions which change would take were were not readily apparent.

3. The Introduction of Bar Exams

Each of the witnesses before the committee were questioned, earnestly enough regarding their views as to the most appropriate means of allowing the youth of the colony to become barristers. Failing his first preference of amalgamation, Martin considered that any person admitted as an attorney ought to be able to apply to be admitted as a barrister before a board of five or six barristers, something like the "Benchers" of the Inns of Court in London, after obtaining a certificate of character from two members of the board. All the applicants should, he believed, be required to undergo a period of articles similar to that required for an attorney.[31]

Chief Justice Stephen, later responsible for procedural and substantive law reform in the colony,[32] also believed that educational qualifications should be introduced in order to improve the reputation of the Bar. As things then stood, there was:

> not sufficient... to reward a man of greater talent and higher station in society for undergoing severe study and acquiring the many accomplishments which adorn the Bar of Britain.[33]

Stephen believed that training should be handed over to the judges as a power "naturally incident to them".[34] He would also have wished for a period of residence at a college for the study of mathematics and classics, but

28 *Ibid.*
29 *Id*, 407.
30 *Id*, 420.
31 *Id*, 451-452.
32 Bennett and Forbes, note 18 *supra* 175; Bennett (1969), note 1 *supra*, 83-84.
33 *V and P* (1847), 468.
34 *Id*, 469.

the colony had none. There could be great advantages gained from young men going to England to associate with others whom they "might make their models in witnessing the tone of English society". But there were two problems with this — the financial obstacle and the threat to moral virtue entailed by taking these young men away from their families. Without classical instruction, however, Stephen believed there would be:

> a Bar sadly uneducated, instead of a body of gentlemen accomplished and learned as their English brethren and fitted to adorn the Senate [of the Inns of Court] and the Bench.[35]

The committee was referred by Stephen to Mr Justice Dickinson, whom he believed to be more knowledgeable on educational matters. Dickinson, in giving evidence, proposed a course of study in classics, mathematics and divinity, and also in ethics and moral philosophy.[36] In law, there was to be reading for four or five years in Real Property, Equity, Common Law, Evidence, and Pleading and Practice, amongst other things.[37]

A bill was introduced to implement some of these proposals even before the Committee's report was published.[38] The Barristers Admission Act, 1848, (11 Vic. No. 57) provided for education of local youth along the lines suggested. It established a Barristers Admission Board which was to comprise the three judges of the Supreme Court and two practising barristers with power to make rules for the examination and admission of barristers.[39] The Board was required to make rules for examination of candidates in Greek, Latin, Mathematics and Law. By section 2, however, it continued to allow barristers from the United Kingdom to be admitted without further regard to formal qualifications.[40]

By Supreme Court Rules of 1849, applicants were to apply to the Court giving notice of their intention to be admitted and paying a prescribed fee. The rules prescribed reading and examination in humanities and law, a situation which would obtain, with amendments, until 1891, when the Board finally determined to make attendance at the newly established Law School at Sydney University a sufficient formal qualification for admission.[41]

The successful imposition of division and the rule which supported it, by inaugurating a new era of local admissions, allowed the profession to begin functioning on colonial ground much like its English predecessor. Roger Therry, former barrister, judge and Member of the Legislative Council,

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35 *Ibid.*

36 *Id.*, 494.

37 *Id.*, 490.

38 Forbes, note 13 *supra*, 54.

39 Bowen Report, note 9 *supra*, 8.

40 *Ibid.*

41 *Ibid.* Legg, note 1 *supra*, 221, outlines the specific course of study, which included the second and third books of Stephen's *Commentaries*, Phillips on *Evidence*, Stephen on *Pleading*, the fourth book of Archbold's *Practice* and Selwyn's *Nisi Prius*. In Classics it included Cicero's *De Officius*, Virgil's *Aeneid*, the Iliad and St John's Gospel. In Mathematics the course included the first four books of Euclid, and some Algebra. In History a reading of Stephen's *Commentaries* and Hallam's *Constitutional History* was necessary.

writing from England in the 1860's, would confidently claim that the colonial Bar was at that time:

> a faithful reflex of the Bar in England — as high minded in its tone and character and as deservedly respected in its relative position of general society.[42]

But this position had not been achieved without some struggle on the part of conservative reformers, and in some respects the rules of 1849 reflected a marked dissimilarity between the colonial and British legal professions. The decision not to allow solicitors who had elected to become barristers to return to the lower branch — showed the very real concern to restore the "tone" of the colonial bar.[43] Moreover, the decision to introduce examinations in legal subjects for the colonially-born may have pertained to a real fear of incompetence in a Bar which was small and non-competitive by comparison with its English counterpart.[44]

III. LAW AS LIBERAL EDUCATION

1. The Early University

The absence of a university and the profession's reluctance to countenance the establishment of separate Inns of Court constituted the Barristers Admission Board, with its provision for legal and liberal education, as a significant pedagogical force in the colony. It must be remembered that the English Inns of Court were by comparison performing no training functions in this period.[45]

It is perhaps unsurprising then that, two years later, lawyers should have been concerned in the establishment of a university. Various experiments with higher education had been attempted, including the establishment of a Mechanics Institute and the Sydney College, but none had been successful. Indeed, the first Principal of the University of Sydney and Professor of Classics, John Woolley, diagnosed a spiritual and cultural "anomie" in the colony which seemed both to inspire prominent men to remedy this absence by establishing such institutions, and to ensure their failure through lack of interest.[46]

This time, it was hoped, it would be different. A committee of the Legislative Council in 1849, chaired by Wentworth, had recommended the establishment of a University, under permanent endowment from the legislature, to provide "a regular and liberal course of education" to all

42 *Reminiscences of Thirty Years Residence in the Colony of New South Wales.* Sydney, 1974, 348.

43 Forbes (note 13 *supra*, 8) documents a similar hesitation on the part of the English Courts, who refused to allow Barristers to return to the lower branch until 1860. In Australia, local Barristers would not be allowed to do so until 1890: *Id*, 60.

44 Duman (1983), note 6 *supra*, 21 notes that in England in 1845 the Inner Temple began to require all new members to pass an examination in classics and other liberal arts subjects. Examinations in legal subjects were not in progress at this time.

45 Abel-Smith and Stevens, note 24 *supra*, 25-27.

46 George Nadel, *Australia's Colonial Culture: Ideas, Men and Institutions in Mid-Nineteenth Century Eastern Australia.* Melbourne, 1957, 266.

classes in the colony.[47] An act of 1850 incorporated the University and provided an initial endowment of 5000 Pounds, to be managed by a self-perpetuating board of governors — the University Senate.[48]

The Senate originally comprised twelve men nominated by the Council, including Wentworth and most of his conservative supporters, some of whom were also barristers or judges.[49] Indeed, from the first lawyers would be a decisive element in the governance of the University. At one time four out of five judges of the Supreme Court would be fellows of the Senate.[50]

But despite their influence in the University's management, the study of law itself remained relatively neglected until the 1880's. The first chairs instituted in the University were in Greek or Latin, Mathematics, Chemistry and Experimental Philosophy, subjects chosen, it seems, because they were assumed to be an integral part of the education of gentlemen scholars everywhere, and an indispensable first step in improving the moral and intellectual tenor of the colony.[51]

2. The Law Degree

The act of incorporation had provided for the granting of degrees in Law as well as in Medicine and Arts.[52] But these first references to law did not contemplate legal training of a technical kind but law in the "general or classical sense in which it had been customarily included in Literature or Arts".[53] This was the first expression of a widely held desire to distinguish law as a practical, vocational subject from jurisprudence as a theoretical discipline worthy of incorporation into the University curriculum.

In his Inaugural Address to the University in 1852, Charles Nicholson, Vice-Provost of the University, made it clear that the initial structure of the curriculum was only temporary, and that "the early introduction of Lectures on Jurisprudence" was envisaged as soon as the University could attract sufficient students to justify appointments in those subjects. In the meantime the Arts course would be sufficient to enable the citizens of the colony to become "enlightened statesmen, useful magistrates, learned and able lawyers ..."[54]

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47 New South Wales, Legislative Council, Select Committee on the University of Sydney, *Report from the Select Committee on the University of Sydney V and P* (1849), Vol II, 537.

48 An Act to Incorporate and Endow the University of Sydney, (14 Vic. No.31).

49 David S. MacMillan, "The University of Sydney: the Pattern and the Public Reaction, 1850-1870" (1963) *The Australian University* 27, 28-29. The legal members of the first Senate included Wentworth, Roger Therry, John Hubert Plunkett, John Bayley Darvall, Edward Hamilton and Edward Broadhurst.

50 In 1885, with the appointment of Sir James Martin in somewhat controversial circumstances. A letter to the *Daily Telegraph* on Saturday, 29 August 1885, amongst others, commented on the abundance of lawyers on the Senate.

51 Robert A. Dallen, "Early Days of the University of Sydney" (1926) 12 *R Aust Hist Soc J* 271, 275. See also Sir Charles Nicholson, *Inaugural Addresses delivered on the Occasion of the Opening of the University of Sydney, 1852*, University of Sydney Archives. All Chancellor's Addresses cited hereafter can be found in the Archives.

52 14 Vic. No.31, Chapter XIII.

53 Sir William Montague Manning, *Chancellor's Address*, 14th April, 1894.

54 Note 51 *supra*.

John Woolley shared Nicholson's views on higher education but was, if anything, even less concerned to introduce practical studies into the curriculum. A measure of the strength of Woolley's commitment to liberal education, and to the academic rigour which was its assumed by-product, can be found in his much-quoted dictum:

> The soundest lawyers come forth from schools in which law is never taught, the most accomplished physicians are nurtured where medicine is but a name.[55]

Both Nicholson and Woolley themselves had legal qualifications. But despite Nicholson's promise (or perhaps more in keeping with Woolley's dictum) no lectures would be held either in law or jurisprudence until 1859 when John Fletcher Hargrave, then Solicitor-General, Member of the Legislative Council and later to be Attorney-General and a Judge of the Supreme Court, began a course of lectures as an "experiment" to see what kind of legal education might be suitable in the colony.[56] In fact he had also delivered a lecture to the Mechanics School of Arts which he later published together with the introduction to his second course of lectures at the University.[57]

In the preface to the first of his books, Hargrave describes his initial endeavour as one to make law "Popular, Accessible, Intelligible and Interesting" to his "fellow colonists of New South Wales".[58] His lectures spanned a wide range of subjects, including Constitutional Law, the Judicial and Legal System, the Nature of the Common Law, Real and Personal Property, and Commercial Law. The introductory lectures were, however, specifically directed to the study of Jurisprudence or "abstract law" as "a high and noble science", referring to the works of Burke, Blackstone, Bacon and others.[59]

One of the lectures was prefaced by a quote from Bolingbroke remarking on a perceived decline in legal standards and exhorting lawyers to take a liberal education. Where once there had been lawyers who were "Orators, Philosophers, Historians", the passage read, the profession had lately fallen prey to greed and avarice. Lawyers could only escape this fate

> by climbing up to the 'vantage ground' of science ... instead of grovelling all their lives below in a mean but gainful appreciation of all the little arts of chicane. Till this happen, the profession of the law will scarce deserve to be marked among the learned professions.[60]

3. *The Necessity of a Liberal Education*

But even before Hargrave commenced his lectures, it seems that the

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55 Manning, note 53 *supra*.

56 H.E. Barff, *A Short Historical Account of the University of Sydney*. Sydney: 1902, 98. The experimental character of the lectures is described by Hargrave himself, in the New South Wales Legislative Assembly, Select Committee on Sydney University, *Report, with Minutes of Evidence*, *V and P* (1859-60) Vol. IV, 165, 323 (hereafter cited as the Report on Sydney University).

57 J.F. Hargrave, *Lectures on Law*. Sydney, 1861; *Law Lectures*. Sydney, 1878. Copies are held in Mitchell Library, and also in Rare Book Library, University of Sydney.

58 *Lectures on Law*, *ibid*.

59 *Law Lectures*, *id*, p.VII.

60 *Id*, IX.

intention to further the learning of law remained on the University agenda. The Senate approved by-laws, in 1855 and 1858 respectively, to provide for a separate Faculty of Law with power to grant degrees and to facilitate the establishment of a board of examiners to deal with candidates for degrees in law.[61]

Two anonymous articles appearing in the *Sydney University Magazine* of 1855 also reflected a feeling that law should take its proper place within the University curriculum. The author of the first expressed amazement that law, as "the highest branch of ethics", should ever have been excluded from university teaching. Paraphrasing Blackstone, the article stated:

> That a science which distinguishes the criterion of right and wrong, which teaches to establish the one and to punish or redress the other, which employs in its theory the noblest faculties of the soul and exerts in its practice the cardinal virtues of the heart, a science which is universal in its use and extent, accommodated to each individual yet comprehending the whole community, that a science like this should ever have been deemed unnecessary to be studied in a university is a matter of astonishment and concern.[62]

The author could not understand how the English people "so jealous of the slightest infraction of liberty and indignant at the slightest injustice" could have allowed law to remain entirely in the hands of "one practical profession".[63] The historical reasons for law's exclusion from the university were acknowledged, with the civil legal systems cited as exemplifying the advantages of situating a rigorous mental training in law within the highest seats of learning. While the law of England was "universally admitted to be excellent in theory", an excess of control by the profession had rendered it inaccessible, riddled with technicalities and open to abuse.[64]

The solution to the last of these inconveniences best testifies to the breadth of the "reforms" envisaged. The study of law was to be open to all "citizens", but citizenship comprehended only the relatively small community of legislators, jurymen, magistrates, clergymen, medical men and men of property. So while the author hastened to add that local lawyers were above average in their knowledge of the law, if only certain simplifications could be achieved and the law's scope broadened to include these few relevant others, the participating public would be better able to "do their business" without the assistance of lawyers.[65]

The author concluded with a recommendation that law lectures should be instituted as part of the liberal curriculum. It seems that the recommendation was heeded, because a note was appended to the article stating that the Senate had commenced enquiries into the establishment of a Faculty of Law.

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61 Barff, note 56 *supra*, and see *Brief notes on the Establishment of the Faculty of Law*, Research File 248, University of Sydney Archives.

62 "The Study of Law as a Branch of Education", January 1855, *Sydney University Magazine* 72, 75.

63 *Id*, 72.

64 *Id*, 73.

65 *Id*, 73-75.

The other article appearing in this issue of the magazine, entitled "The University and the Bar" seemed to have something more in mind than the mere amelioration of the affairs of businessmen. Indeed it confirmed the very necessity of the law's exclusiveness. The author referred to two "imminent" changes in legal practice — proposals for reciprocal admission between the colonies and for amalgamation of the profession — which meant that it was no longer enough for lawyers to be "skilled in the lore of the profession". On the contrary:

> If the Bar is hereafter to be not as at present a body concerned with the more abstruse studies but its members are also to be disturbed by collision with their clients, and in speeding the progress of their business through all the stages of an action, it becomes momentous to the dignity of the profession that barristers should be scientifically educated as lawyers and learnedly instructed as gentlemen, and also essential to the public welfare that the ranks of the Bar should not be overthronged by the too easy admission of aspirants to its emoluments and advantages. Nothing will so secure efficiency at the Bar and the proper limitation of its members as making the exercise of its calling dependent on ascertained proficiency in the learning of the schools and in the scientific departments of jurisprudence.[66]

Thus the public was deemed to have an interest in the competence of practitioners. More than this, however, the education of barristers had "even a political significance". The colony had reached "an epoch" in its history. It had "demanded of its parent the portion of goods which falleth to it" and was about to be granted "that great Anglo-Saxon right of managing itself". The author proceeded to argue that lawyers were naturally suited to play a leading role in the new polity:

> It has somewhere been affirmed that the true principle and essence of every mixed and constitutional government or even republic, is that there should be an independent aristocracy to guide, and a limited democracy to control, the governing power. It is therefore an interesting speculation, at the present crisis, to consider who will most probably be among the foremost men in the social and political circles in this colony when self-governed without hereditary legislation in its polity or discernible precedence in its society. In answering this question experience will in this, as in other cases, be our surest guide. The thing that hath been it is that which shall be...[67]

Evidence was brought forward showing that the English peerage had often been recruited from the Bar and that in America and the ancient republics "where legal or ceremonial aristocracies had either been subverted or never yet existed" it was the legal profession which had ascended to the highest positions in the state. Gibbon is quoted as stating that, in the early Roman empire where a nobility as such was unthinkable, the emperor Constantine had nevertheless "revived the title of patrician, but he revived it as a personal, not as an hereditary distinction". This new patriciate was to be one based on learning, merit and reputation.[68]

The reader is also referred to a passage in Edmund Burke's *On France* in which Burke spoke scathingly of the new French national assembly as "a

66 January, 1855 *Sydney University Magazine* 315. The author of the article may have been Wentworth, or one of his persuasion.

67 *Id*, 316.

68 *Id*, 317-318.

dominion of chicane" because it consisted merely of "law practitioners...not of distinguished magistrates who had given pledges to their country of their science, prudence and integrity, not of leading advocates — the glory of the bar, not of renowned professors in universities ... ". Burke believed that it was only members of the highest branch of the profession who had ever been "much regarded" and who could take their rightful place within government.[69]

For the author of this article too, the best barristers were the obvious candidates for public distinction in New South Wales because "none but men of real ability can obtain that continual practice at the Bar which, according to Lord Brougham, forms the 'preternatural power of suddenly producing all the mind's resources at the call of the moment'". As men of learning, eloquence and independent means, barristers were most likely to be members of the legislature and to be appointed to executive authority.[70]

Given that it was in the interests of the public that barristers were well educated, the author went on to consider whether law could or should be studied in a university. Certainly, he argued, if law were only a "collection of positive laws ... it should not be dignified with the name of learning". But this was not the case. He appealed to "the testimony of Aristotle and Blackstone" as showing that law was a branch of ethics, reducible from the laws of natural justice to certain immutable principles which extended beyond the bounds of a single state.[71]

If, therefore, law had ever been thought a subject unworthy of university teaching "it was high time to make it one".[72] Theoretical instruction in deductive logic and in law should be instituted to increase the barristers' abilities and their watch-dog role which prevented the judges from making mistakes. As well as having a broad knowledge of statutes and legal principles, the barrister should have the ability to apply these principles to concrete factual instances with all due speed. While it was still imperative to have practical instruction in an office and in court the author concluded that"the rudiments of law should be synthetically taught in a due course of academical education".[73]

4. Practical Impediments to Law Teaching: Some Early Difficulties

But, at the same time as these reforms were proposed, the University was having difficulty attracting students. Serious criticisms had been directed towards the Senate's policies, stemming in large part from the vocal "radical" press.[74] Men such as Henry Parkes reacted strongly to the control

69 *Id*, 317, Edmund Burke, "Reflections on the Revolution in France" in *Essays*, Melbourne, 1876, 26-27.
70 Note 66 *supra*, 318.
71 *Id*, 318-319.
72 *Id*, 318.
73 *Id*, 325.
74 David S. MacMillan, note 49 *supra*, 27-29.

of the University by "the exclusives" — the name given to the political faction then lead by Wentworth. In the critics' eyes the early choice of curriculum revealed "a preference for antiquated absurdities" and, despite the pledge to open the university to all classes and religious denominations, the opportunities it offered were in reality confined to the sons of rich families.[75]

This reaction and the University's early difficulties prompted the establishment, in 1859, of a Select Committee of the Legislative Assembly to report on its progress.[76] The Committee interviewed university professors and other scholars and enquired of them what directions they believed the University should be taking. The enquiries often touched on the vexed question of whether it was appropriate to institute professional schools in the University as a means of increasing its practical usefulness to the community.

Hargrave, who had delivered his first course of lectures in the year preceding the inquiry, was the last of the scholars to be interviewed by the Committee and was asked about attendance at lectures. While, according to Hargrave, the lectures had commanded some interest at first (he mentioned a figure of thirty students), this had dropped in the final stages of the year to only five or six students. He attributed the fall-off to the placement of the lectures in the last two terms of the year, which clashed with the examinations of those studying for the Arts degree. Another difficulty, presumably more pressing for those students who were articled clerks, was the distance of the campus from the city. Hargrave felt certain that, had his lectures been given in the vicinity of the Supreme Court building, he would have secured a larger attendance. Nevertheless, he assured the Committee that he had tried to make his lectures "as popular as lectures on Jurisprudence were likely to be, without making them unworthy of a university".[77]

Hargrave had set an examination in the first year of teaching but, for reasons which are not clear the Barristers Admission Board refused to recognise the results. As another commentator has noted, the attainment of any distinctions under the university's auspices remained almost an entirely "academic achievement".[78] Ironically, the failure of the Admission Board to recognise the examination came at a time when it had been prepared to exempt university graduates from the preliminary humanities section of the bar exams. In 1857 and 1859, "*Graduates Acts*" had been passed to facilitate this.[79] Hargrave notes that the Legislative Council, which presumably boasted a significant legal contingent, had considered the question of whether attendance at lectures should be compulsory but decided that it was

75 *Id*, 29.
76 Report on Sydney University, note 56 *supra*.
77 *Id*, 322.
78 Legg, note 1 *supra*, 225.
79 20 Vic. No.14; 20 Vic. No.23.

> not advisable for either branch of the profession to have more impediments thrown in the way of the admission of candidates until the whole system of legal education is placed on a more permanent footing.[80]

But of course it was already becoming clear that moves to formalise legal education were unlikely to occur while lectures failed to attract sufficient attendance. Paradoxically, students were unlikely to forego other more lucrative pursuits in the legal work-world until compelled to do so. Hargrave admitted that the lectures were not designed for practical instruction and that he would have to make quite radical alterations to his program if change were to occur. When he was appointed, he was expressly told that they were to be lectures on jurisprudence, and that law lectures were outside the scope of the university. A change to "law" lectures would mean teaching not only book learning but also the intricacies of professional practice. He referred to the marked divergence between his lectures and those which had been run by the Inns of Court and which could be used as a passport to the Bar. While it may have been possible to regard the Inns as "legal universities", the same lectures would not have been given at other universities because such technical information would have been "literally useless to nearly all the students".[81]

Hargrave appears to have had major doubts about the propriety of situating professional courses in a university. While he had endeavoured to fit his lectures into the general scope of university education, such as was fitting for "the education of a gentleman", he believed that the classics and mathematics were more suited to the purpose. This belief amounted to a deep commitment to "first principles". He confessed that when reading Blackstone's *Commentaries* to the class he often deleted whole passages containing mere "professional details". Even the study of case law was considered unworthy of serious treatment.[82]

In fact, Hargrave was so unsure of the validity of his teaching that he willingly relegated it to the status of introductory material in the learning of the law. A knowledge of the law was to be obtained, he thought, not from a desultory course of lectures, but from "really hard study", presumably in a law office or barrister's chambers. He was asked whether a course of lectures might be advantageously conducted in Sydney itself. Again he expressed doubts:

> If it is to be a professional education, then it must be done by the profession itself, uniting and supplying other means of education. The first step ... would be the establishment of a proper library, and the members of the Bar meeting together either once a month or at other intervals and, through this association with each other, meeting gentlemen who wish to be admitted to the Bar.[83]

But these views did not lead Hargrave to conclude that it would be appropriate to establish an English style Inn of Court in the colony. While

80 Report on Sydney University, note 56 *supra*.
81 *Ibid*.
82 *Id*, 324.
83 *Id*, 325.

there was nothing to prevent an Inn being established if the barristers chose to do so, the main difficulty to be surmounted was the "apathy" of the colony.[84]

Without the stimulus even of recognition by the profession, let alone compulsion to attend lectures, these experiments were destined to failure. From the first, Hargrave had grave misgivings as to whether they would "produce any sensible effect on education".[85] Moreover, Hargrave's difficulties with securing attendance continued in succeeding years despite the fact that the lectures were transferred to a more opportune time in the first and second terms of the academic year. While he was quoted in 1864 as being "extremely gratified" at the attendance of 28 students,[86] the lectures do not appear to have excited sufficient interest to prevent him from resigning in 1865. His successor, Judge Alfred MacFarlane, had similar difficulties until 1869, when the lectures were discontinued.[87]

Further administrative arrangements were being made for the establishment of a Faculty of Law.[88] A Board of Examiners was appointed in 1863, consisting of William Manning, John Woolley and Hargrave, and the first law degrees were given in 1864 (LLB) and in 1866 (LLD). The degree was open to graduates in Arts who sat for examinations in civil and international law, the constitutional history and constitutional law of England and the general law of England. But these examinations were conducted after private reading, and the Faculty remained almost entirely an examining body.[89]

5. More Reform Proposals: Fusion Reconsidered

Further moves to reform legal education occurred outside the university setting in the 1860's and 1870's, both from within the Barristers Admission Board and from critics of the system of admission to practice within Parliament. The latter comprised both moderate and more extreme proposals and were often accompanied by demands for law reform and amalgamation of the profession.[90]

The moves from within included, by rules of July 1861, a revised basis of admission to practice. Two barristers had been appointed by the Board in 1858 to advise them on admission requirements and, after some hesitation, proposals were accepted which extended the examination in law, especially in Property and Equity. The rules also acknowledged exemptions from preliminary examinations for graduates under the Acts of 1857 and 1859 and stipulated that the Board's Examiners were to be graduates within the

84 *Ibid.*
85 *Ibid.*
86 Legg, note 1 *supra*, 224.
87 Barff, note 56 *supra.*
88 The following discussion is from "Brief notes on the Establishment of the Faculty of Law", note 61 *supra.*
89 Sir John Peden, "The Law School" in Bavin (ed.), note 7 *supra*, 5.
90 See generally as to the following two paragraphs Legg, note 1 *supra*, 222-225 and Woodman, *ibid.*

meaning of those acts. Beyond this, it seems that the Board remained jealous of its control over admissions and was not too concerned with academic rigour.[91]

Parliamentary reform proposals were even less successful.[92] Also in 1861, Robert Johnson moved in the Legislative Assembly for a committee to investigate the training of lawyers, intending a more complete period of education, with three year's notice of admission and one year as a pupil with a barrister. David Buchanan proposed a bill in 1862 to repeal the Admission Rules and to replace them with more difficult examinations, excluding classics and mathematics. He also proposed an amalgamated legal profession which would give laymen a right of appearance in court. Both bills eventually failed.

After the defeat of Buchanan's bills, Thomas John Fisher put forward a somewhat more adventurous proposal for amalgamation and legal education.[93] He believed that the efficiency of the profession had to be promoted so as to provide scope for the employment of junior barristers who, it seems, were lagging far behind their English-educated seniors. He believed these conditions demanded the introduction of a system of admission to practice which would leave "no uneasy apprehension as to the qualifications of those who in a few years will be required to take the place of the present judges".[94]

His pleas led him to acknowledge the superiority of the fused American profession "which had long stood the test of experience".[95] Fusion would bring together "a large body of young men upon common ground with common aspirations and common pursuits"[96] and would provide intellectual and professional competition to clear both branches of incompetents.[97]

Fisher proposed the establishment of a "Lyceum of Justice" which would incorporate barristers and attorneys to act as a combined body of practitioners with power to select a number of themselves to act as "Benchers" regulating admissions and instituting law lectures and examinations. The Lyceum would be a forum for debating societies as well as for education, and attendance was to be compulsory not only for barristers and solicitors, but for many other legal functionaries, including police magistrates, clerks of Petty Sessions, and so on.[98]

The profession took little notice of Fisher's proposal, but a similar cause was taken up in the legislature by layman John Stewart.[99] The result was a Law Reform Commission consisting of William Montague Manning and

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91 Legg, *id*, 224.
92 *Id*, 223-224
93 *Colonial Law Reform*. Sydney, 1869.
94 *Id*, 21.
95 *Id*, 22.
96 *Ibid*.
97 *Id*, 23.
98 *Id*, 23-26.
99 Bennett (1969), note 1 *supra*, 88-89.

three others which, however, failed to assuage demands for revision of professional structures.[100]

Another bill, The Law and Equity Bill, 1871, proposed amongst other things that litigants be represented by "agents" rather than by barristers or solicitors. The Legal Practitioners Relief Bill of the same year advocated amalgamation and the admission of barristers only on condition that they undergo the same period of instruction as solicitors. While neither of these bills became law, another proposal in 1874 by R. B. Smith, including the replacement of classical Greek by French or Logic, was eventually adopted by Parliament in 1876.[101] The relevant Act also exempted candidates from the preliminary mathematics and classical examinations if they had passed two exams at the University. The more salient feature of Smith's proposal, so far as admission was concerned, proposing that solicitors of twelve years standing be entitled to automatic entry to the Bar, was rejected in the process.

The parliamentary reform proposals seem to have prompted the establishment, in 1877, of a committee to enquire into the basis of admission to practice. The committee consisted of Hargrave, Manning, and two others.[102] The result was major change in the qualifications required for practice, but again, it was change very much on the barristers' terms.[103] Prospective articled clerks were now required to matriculate to the University and articles were reduced to three years if the clerk was a graduate. These rules also established what would later be known as the Solicitors Admission Board, comprising two barristers and four solicitors who began to conduct examinations. A reciprocal basis of admission was also arranged for solicitors of England, Ireland, Scotland and other Australasian colonies.

Further concessions were also made for barristers who were graduates of the University. They were entitled to immediate admission as students-at-law and the exemption pertaining to those having passed two exams at the University was retained. Educational requirements were updated and a significant further restriction imposed in that the final examinations were not to be undertaken until the candidate had been a student-at-law for one year. During that time the candidate was not to undertake any business except studying for the Bar or some "literary pursuit" — which effectively excluded those who were not of independent means.

IV. TOWARD SYSTEMATIC INSTRUCTION IN LAW

1. The Emergence of Direct Legal Training

By the late 1870's conditions had changed sufficiently to enable a School of Law to be contemplated as an inevitable, but by no means a compelling addition to the university curriculum. It was in this climate that Manning,

100 *Id.*, 88. Manning was to play a leading role in the government of the University.
101 Legg, *id.*, 225-226. (39 Vic. No. 32)
102 *Id.*, 227.
103 *Ibid.*

then a judge of the Supreme Court, a member of the Barristers Admission Board and a former Attorney General, was appointed as Chancellor of Sydney University. In his first address to the University on 22nd June 1878, he referred to the new Supreme Court rules and how they signified a greater role for the University. The University curriculum was "peculiarly adapted" to fulfilling the requirements of the preliminary examinations for barristers. Even the final examination now demanded "such legal proficiency as would find its best help in a School of Law". He believed that it was now "the general wish of both branches of the profession not only that the University should be more commonly resorted to for liberal education by candidates for either branch but that the University should take a prominent part in direct legal training".

Manning's views demonstrate a noticeable retreat from the position of those such as Woolley and Nicholson when the University was established. He also contemplated a further general expansion to the University curriculum which would include scientific and medical education and was in the process of asking the government for an increased endowment. As "trustees for the public good", the Senate now felt that the University's influence could best be extended by opening the University to these more utilitarian pursuits.

In the case of the Law School, it seems that the prospect of reciprocal admissions between the colonies – and particularly knowledge of the Melbourne experience (where a course for articled clerks had been in progress for some time and where even an Arts-Law course for barristers had been commenced[104]), may have had some influence on the decision to reconsider former views about the value of professional education in a university.

At the same time, the University was still finding it hard to justify its existence. Enrolments were quite low and criticism from some sectors was even more vehement. In response to this, Manning devoted a whole section of his address to "the Extension of University Advantages to merit in the Poorer Ranks of the People".[105] If the University was to keep its pledge for "the better advancement of religion and morality", if it was "to enable superior intellectual capacity to work its way upwards", then now was the time for the more liberal bestowal of scholarships.

By 1880 the University had registered increased enrolments, which Manning attributed to the public's anticipation of an expanded curriculum.[106] It may well have been, as George Knox would later point out, that the increase reflected the number of articled clerks now required to matriculate to the University who had little further need for its beneficence:

104 Melbourne commenced a course for articled clerks in 1857 and an Arts/Law course for barristers in 1860: Ruth Campbell, *A History of the Melbourne Law School 1857-1973.* Parkville: Faculty of Law, University of Melbourne 1977, 2-10.

105 *Chancellor's Address*, 22nd June 1878, 6.

106 *Chancellor's Address*, 10th July 1880. The figure rose from 24 in 1878 to 39 in 1879, then to 72 in 1880.

> The numbers have increased simply because the Judges of the Supreme Court have driven a number of strange sheep into the fold to be earmarked, and then let go again.[107]

Still Manning believed that "the spirit of the age" demanded a greater emphasis on technical instruction.[108] What had previously been an indispensable education for a gentleman was now regarded as "better suited to a leisured class than to such a busy working world as ours". The thrust of the address acknowledged that the ideals of higher education might have to be compromised if the University was to sustain its credibility in the eyes of the public:

> Our plans should therefore be laid to suit our fellow men as we find them and to make the best we can of the materials to our hand, and if we want our University to flourish we must supply to our students access to advancements in life and not stand too exclusively upon the higher ground.

It was a comforting thought for Manning that "even the Universities at Home ... have of late been modernized", and that a good number of the students attracted by the new utilitarian scheme could not fail to appreciate the value of learning for its own sake. For the undergraduates — now to be more openly entitled to such material rewards — there was a warning against complacency, which seems to demonstrate that Manning only grudgingly acceded to these demands.

The year 1880 was, however, most memorable for the announcement of a bequest to the University by John Henry Challis, an English born merchant with no very clear connection with the University.[109] Later estimated at 250,000 Pounds, this "one princely bequest" was "unparalleled in the history of Universities" and certainly enabled the expansion of the University to be more readily conceived.[110] It could have also spared Manning the indignity of asking for too large a public endowment, but he persisted in the belief that the University's present financial needs were unmet.

2. More Criticism of "Vulgar" Professionalism

In a pamphlet entitled *Vitality or Endowment: the present Needs of the University of Sydney*, published soon after Manning's speech, George Knox, later to be a fellow of the Senate and Lecturer in Law, criticised Manning for swaying before the demands of an "unappreciative" public opinion, which he saw as apt to compromise the true and noble purpose of education.[111] He accused the University of lacking vitality, not endowments. He expressed surprise that Manning, as an acknowledged man of principle, should be countenancing "the vulgar test of the utility of education".[112]

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107 *Vitality or Endowments; the Present Needs of the University of Sydney*. Sydney 1880, 13.
108 Note 105 *supra*.
109 Dr Ursula Bygott, "A Question of Domicile: John Henry Challis (1806 — 1880) and his Bequest to the University of Sydney" (1980) 8 *University of Sydney Archives Record* 1, 3-4.
110 The phraseology is Manning's — *Chancellor's Address*, 10th July, 1880, 1,9.
111 Note 107 *supra*, 2
112 *Id*, 8.

While the proposed fields of instruction were not specified, Knox was sure that they would not go toward improving the general Arts course. Instead of filling the gaps still extant, the new studies were bound to be "practical, special, technical and money" and would "raise upon these deficient foundations an imposing and top-heavy super structure".[113]

According to Knox, after twenty eight years of existence, the University had received a good sum in private endowments (40,000 Pounds), a grant of land and an adequate government vote, and should have been "looking to the future with courage and hope instead of confessing its failure".[114] He believed it was wrong to appeal to the public in this case, when the founders of the colony were not (as in America) puritans in search of utopia, but all Europe's surplussage, out for material gain.[115] He was convinced that all the University needed was sustenance from within, with the Senate, teachers and graduates acting in "unanimous earnestness".[116] It was only under these conditions that the University, as a body corporate, deserved to survive:

> Its constituting, animating principle is the moral attraction of one class of persons to another. (Where) this is wanting, a University is alive only in name, and has lost its true essence, whatever be the advantages, whether of position or affluence, with which the civil power or private benefactors contrive to encircle it.[117]

3. Senate Commitment to Vocational Training

Despite these criticisms, the Chancellor's address of 16th July 1881 was devoted to a further assurance to the public that the expansion of the university along vocational lines was never far from the thoughts of the Senate. A letter had been received from the Minister for Public Instruction, which stated that further endowment would soon be available. Manning spent some time recapitulating on the Senate's efforts in securing public funding so as

> to guard ... against any impression that we have grown luke-warm in our desire to make the University thoroughly more serviceable.

Manning proposed to submit for public consideration two alternatives — whether to wait for the Challis Bequest or to ask the government for the interim provision already mooted. The first alternative, although it implied immediate restraints in the proposed scheme of expansion, would eventually ensure complete autonomy for the university. The second alternative would, if given the public sanction, see the Senate willing to acquiesce dutifully in the educational policies of Parliament. This evidently less favourable alternative would defer, yet again, the Senate's stated desire

> to stand aloof as an independent, self-governing corporation, untinctured within by politics in relation to education and free from political control or influence from without.

The mounting concern with such assurances may well have been justified, if an article appearing in *The Bulletin* the following month is any indication of

113 *Id*, 6.
114 *Id*, 4.
115 *Id*, 9-10.
116 *Id*, 14.
117 *Id*, 12.

the pressures the University was facing.[118] Entitled "The People's University", it again accused the University of allegiance to aristocratic models, criticizing the emphasis on a classical education at the expense of demands of "imperious necessity". By continuing its outmoded curriculum, and failing to do anything substantial in the way of opening its doors to all classes, the University remained "little more than an applanage of the privileged professions and the wealthy orders". Instead, what were needed were practical skills, and the University ought to assume the function of providing them so as to successfully expel amateurs and smooth the way for economic progress.[119]

Interestingly, the University was seen as having neglected to give "the stamp of accomplishment" to nearly all professions except that of law:

> At the present time the University education is a mere article de luxe, except to sucking lawyers — and even to those it is little else. It has given us, Heaven forgive it, a Supreme Court Judge and sundry lawyers...[120]

The moves to institute professional and scientific education continued throughout the 1880's, and the demands of economic development no doubt lent credence to the cries of the University's critics that "the University must yet awhile be utilitarian, or perish".[121] The conflict between classical and scientific or professional education would eventually recede when the money from the Challis Bequest became available. In the meantime both schools of thought could resort to the image of newness and vulnerability to base their claims to priority.

4. Law School: A Case of Pedagogical Priorities

(a). The Senate Committee

The question of a Law School did not loom large in these proposed reforms. The competence of lawyers seemed either to be assumed, or to be beyond contemplation by the majority of observers and was consigned at an early stage to the "experts" of Bench and Bar on the Senate.[122] Although the University continued examinations in jurisprudence, law teaching remained neglected until 1883, when Knox, as sole lecturer, was appointed.[123] Knox

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118 Saturday, 20th August, 1881.

119 *Ibid.* An address given to the Australian Academy for the Advancement of Science by Professor W.H. Warren, cited in the *Sydney Morning Herald*, 10th January, 1890, is also informative on this point. Warren believed:

The circumstances of a new country are peculiar. Men's lives do not run in deep grooves as they do in the old world. A man may at his will (except in the case of the lawyer) take up almost any occupation he may choose and call himself what he likes, and empiricism, when backed by assurance and tact, and aided by a certain familiarity with professional practice and technical terms, may win its way to success. Besides that, there is generally an ingrained preference for the practical man. Within certain limits, the practical man has it all his own way, and science is at a discount.

120 *The Bulletin*, note 118, *supra*.

121 *Ibid.*

122 Professor Scott, as the new Professor of Classics, presented a new scheme for the University curriculum in 1886. The *Sydney Morning Herald* of Monday, 8th March, 1886, sums up his attitude to the Law School: "Having shown its relation to the other schools, Professor Scott, mindful no doubt of the judges and barristers on the Senate, left the law school to the experts".

123 Barff, note 56 *supra* 98; *University of Sydney Calendar*, 1883-84, 130.

must have had difficulties similar to those of Hargrave in achieving a successful series of lectures, for he resigned "disheartened" in 1886.[124] Despite his "zeal for legal education", it seems, "he found that a single lectureship in so wide a subject as the Law could be of no real value".[125]

By 1885, the Senate had begun somewhat more earnest efforts to establish a Law School. The Senate Minutes of 20th July, 1885 contain a resolution to appoint a committee to consider the establishment of Schools of Jurisprudence and Modern History. The committee was to comprise the legal members of the Senate, who at the time included Manning, Mr Justice Windeyer (as Vice-Chancellor), Sir Alfred Stephen, Mr Justice Faucett, Edmund Barton, John Hay and Alexander Oliver. The *Daily Telegraph* of Friday, 24th July notes that the resolution was carried "after some debate about the financial question involved and whether legislation for the encouragement of legal studies would be necessary".

It seems that little progress was made, for the next year, on 1st March, a similar motion was put to establish a committee comprised of the same members. This time the reference was to enquire into the establishment of a School of Law, not of Jurisprudence.

The Committee reported to the Senate on Monday 17th May, 1886.[126] It was decided that it was not "practicable" to set up an effective School of Law, primarily for financial reasons. By this time the Senate had recognised that they would have difficulty securing the attendance of students, and that "some practical advantage must be held out in the direction of admission to professional practice" which, according to the Report, the Senate did not have power to institute without legislation. They did, however, recommend the institution of night lectures which would be given with a view to later substituting certificates of attendance on these lectures for those required by the Barristers Admission Board, and hoped to gain the "sanction" of that Board. The matter was referred back to the committee and it seemed that money for the lectures was to be taken out of the state fund for evening lectures.

A letter to the *Daily Telegraph* on 8th June, 1886, signed "Graduate", referred to the fact that Sydney was now lagging far behind Melbourne in respect of lectures in law, stressing that money ought to be no problem. Law was a "lucrative" profession and lecture fees could be paid by students. The writer believed that great advantage could be obtained by making even an incomplete series of lectures compulsory for admission to both branches:

> In this way, the hundreds crowding into the law might be brought under the genial influence of Alma Mater.

The Subcommittee again reported on 7th March, 1887, recommending the establishment of evening lectures, to be given in Equity and Real Property, in

124 See *Chancellor's Address*, 29th May, 1886.
125 *Chancellor's Address*, 19th April, 1888.
126 *Sydney University Calendar*, 1887, 310.

Contracts, Personal Property and Torts, and in Evidence and Criminal Law.[127] Lecturers were to be appointed in those subjects and were to be paid in the manner projected. It was believed that no arrangements could be made for complete substitution of admission requirements until law could be established on a permanent footing, the financial reason again being given for the inability to do so.

(b). Criticism of the Senate's Position

It was now becoming clear that the Senate did not consider the Law School a very high priority. There may even have been actual resistance to it from within the ranks of the Bar. Since, at the time, there were at least three members of the Supreme Court Bench on the Senate, this may have been representative of the attitute of the Barristers Admission Board as well.

A letter to the *Sydney Morning Herald* on Saturday, 19th March, 1887, accused the University of neglecting law lectures. The author believed that lawyers should be "scientifically trained instead of being left to pick up their knowledge of law like sparrows". A course of temporary lectures like those proposed would not have been tolerated in other subjects, and lecturers were only given a small sum which was insufficient to attract highly qualified men. Moreover, if legal education was to be "scientific instead of being merely piecemeal and empirical", Roman Law and Jurisprudence should be included in the course. Whatever the value of the lectures, the author wrote, "the University, at any rate, does not risk its reputation for philosophic teaching by establishing them"!

The Chancellor's Address of 14th May of the same year attempted to justify the postponement of the law school again by pointing to the greater need for medical training, and the dangers involved in its neglect. Certainly, a Law School would be beneficial but, Manning believed, a law giving the University power to grant degrees as "a complete passport to the Bar" would not be secured until there were an amalgamation of the two branches.

The *Sydney Morning Herald* of 16th May again accused Manning of hopelessness as regards the establishment of a Law School. The most encouraging thing the Chancellor had to say, according to the *Herald*, was "possibly that at some remote period there may be a self-supporting School of Law". The writer proceeded to put the case for legal training in the University, and wrote:

> considering the number of lawyers that there are and always have been in the Senate, graduates with an eye to the law have a right to complain that the University does nothing for them.

A similar view was expressed in *Hermes*, the University's undergraduate magazine, a week later.[128] The magazine also found the Chancellor's explanations for deferring the Law School unconvincing. Certainly the

127 *Sydney University Calendar*, 1888, 336.
128 Thursday, 26th May, 1887.

Medical School was a high priority, but it was harder to explain why law had fallen behind engineering, all the more because it could be expected to be self-supporting and no expenditure of the order necessary for technical education would be necessary. Sydney was clearly lagging behind the Universities in Melbourne and Adelaide, and

> the sooner Law is recognized as a regular subject for university teaching the better for the success of the institution.

Meanwhile, standards for admission to the profession were rising. Rules of March 1887 had extended the period for studentship at law from one to three years, and more concessions had been given to undergraduates.[129] Those who had passed two annual exams in law could be admitted as law students and, upon graduation, could apply for admission to the Bar after a studentship of only two years. A special rule was made confirming that undergraduate studies were a "literary pursuit" within the meaning of the restriction imposed by the rules of 1877.[130]

(c). A Positive Alternative: The American Experience

Other demands for a School of Law were beginning to be felt outside the University. One writer, Augustus Nash, published "A Plea for a School of Law" in the *Sydney Quarterly Magazine* of December, 1887.[131] For Nash, the present scheme which focussed on science and medicine was commendable, but law was "equally a necessity of civilized life". Lawyers were directly involved in civil society as public functionaries, in the processing of civil and criminal cases and in enforcing security of property. Judges in particular were at the helm of a "free, law-abiding state" and the provision of skilled practitioners would directly contribute to their ability.[132]

While it was uncertain just what form a law school should take, it seemed clear to Nash that the present scheme of practically-oriented night lectures was insufficient. For Nash, as for earlier writers in the 1850s, law was a branch of moral philosophy. He put forward a tentative scheme of instruction with the intention of proving that "a liberal education is possible in a school in which all the studies have a direct legal tendency".[133]

The proposed scheme incorporated the following four subject areas:

1. Some idea of law as an abstract conception and of legal duty as opposed to moral duty.
2. An historical and comparative treatment of law.
3. The system of law binding in the country.
4. An appreciation of "law living and armed", by the actual witnessing of the court system.[134]

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129 Legg, 228.
130 *Id*, 228-229.
131 307.
132 *Id*, 308.
133 *Ibid*.
134 *Id*, 308-309.

But these proposals were admitted to be "glimpses, and glimpses only, into what a School of Law might or should be".[135] All that was certain was that law was the most popular ambition of young men in the colony, and that a Law School would be likely to attract a substantial number of students. He pointed to the American experience to show that the study of law was both attractive and successful. The major American universities had recognised that law was a science and had treated it with the "respect appropriate to its importance in the affairs of life".[136]

According to Nash, America had developed under similar historical conditions, from English roots. Since it was "no longer true that no-one reads the American book", and Australia's chances of securing a continuing source of legal talent from overseas were looking remote, it should give its citizens opportunities like those which transformed humble men like Lincoln and Garfield into men of standing and repute. The University could play an important role in preserving the distinctions which Australian lawyers had already obtained:

> If we succeed in retaining the honourable reputation which both branches of the profession have acquired and the learning, love of justice and integrity of the Bench, we shall have obtained what was most worth keeping and may proceed under the guidance of advisors educated in our midst 'to mould the old decrees to the new and altered circumstances of our life'.[137]

5. Structural Change Within the Profession

By 1888, the profession was moving toward its long-projected "amalgamation".[138] In February of that year, the Supreme Court passed a new rule enabling a solicitor of five years standing to have his name struck off and then to be entitled to admission to the Bar, subject to a studentship and examination. By rules of June in the same year, graduates in Law were also exempted from further studies in Roman, International and Constitutional Law.[139]

In his address of 14th April, 1888, Manning made a petulant attempt to defend himself against the previous criticisms. His critics had mistakenly believed that "the Senate had only to say that there shall be a School of Law and that it must at once spring into existence". He again pointed to the legal obstacles to granting degrees sufficient for legal practice when that power was vested in the judges and the Barristers Admission Board (of which he was a member). But he had "lately begun to think the way was open for the Judges to remove them and to concur with the Senate in rules for instruction and admissions"! Thankfully, it was only necessary to consider the scope of the rules as regards barristers, since solicitors already had such concessions made to them. He believed, however,that a university education might be even

135 *Id*, 309.
136 *Id*, 310.
137 *Ibid.*
138 Forbes, note 13 *supra*, 60.
139 Legg, note 1 *supra*, 229.

more relevant for barristers because an "office education" was still more appropriate for the lower branch.

A response to Manning's speech in the *Herald* two days later was also ready to pronounce the School a lost cause.[140] Apart from the legal difficulties, it seems there was "still to be counted much opposition from members of the Bar, who do not readily give up legal traditions". The *Telegraph* of the same day was slightly less perturbed by Manning's recalcitrance. It believed that the School:

> might well be postponed until the University has no more pressing object upon which to pour its surplus energy. Law is a lucrative profession, and there will always be plenty of able lawyers, no matter how little they may be indebted to the University.

6. Proposal for A School of Law

But it seems that the spectre of fusion could no longer be erased, and that the Senate had been spurred to action. On 19th November, 1888 a Committee was appointed to enquire into what chairs would be founded when the Challis Bequest fell due. The Minutes of that Committee on 14th December, 1888 resolved that the legal members of the Senate bring up a scheme for a full course of law, especially to enquire into the requirements of admission to the bar and "such advantages as could be given" towards the admission of solicitors.[141] The Committee Minutes of 11th February, 1889 moved for the establishment of a Professorship and four Lectureships and voted 2000 Pounds per annum out of the Challis fund for that purpose.

The full report of the Committee was brought down on 12th March, 1889 and adopted later that month by the Senate.[142] The Professor in Law was to teach Jurisprudence, Roman Law, Constitutional and International Law, and four lecturers were to teach the Law of Property, the Law of Obligations, the Law of Wrongs (Civil and Criminal), and the Law of Procedure. Applications for these positions were invited in the colonies and in the United Kingdom, and the selection committee was to consist of several prominent English legal academics, including, for example, Pollock and Westlake. The Senate was, however, to have the final decision on appointments.

The Senate's report mentioned that they were conferring with the judges of the Supreme Court as to what arrangements could be made with the University for the admission of barristers, and what would be the most appropriate instruction for articled clerks, so as to give the School as "practical an application as possible".[143]

But by his address of 13th May, 1889, Manning had already undermined his former justification for postponing the School by announcing that the Senate would proceed without new rules facilitating admission to practice for those

140 Monday, 16th March, 1888.

141 Challis Bequest Chairs Committee, *Minute Book (Committee)* 1888-1900, University of Sydney Archives.

142 *Sydney University Calendar*, 1890, 327.

143 *Ibid.*

with university degrees. He was "confident that when the University shall have done its part by supplying the means for higher and more complete education in Law than are afforded by present inferior systems, the Judges of the Supreme Court will be ready to give their cordial co-operation".

The Senate received a final report on the curriculum in October, 1889, which Manning expanded in his address of 14 April, 1890, after the School had commenced operations. The course was to comprise a five year Arts/Law course and was to be taken as complete instruction in Law, "so far as it is susceptible of being imparted in the form of lectures".

Manning apologised to those who would be obliged to enter the School with no guarantee that the degree would entitle them to practice. But he was still unwilling to acknowledge that he wore two hats — the power to decide whether to recognise the course was "out of the hands of the University", the Senate could do no more than to confer with the Judges, for it had:

> no right or duty to concern itself with professional distinctions or divisions, but only desires to raise the standard of legal education for the benefit of all who may be encouraged to seek it, and that of the Country in regard to its dependence upon the practitioners of the Law for their professional and ultimately judicial services.

Manning emphasised that, while the course might be sufficient for the training of barristers, it was still less than satisfactory for solicitors. Moreover, both branches would still require practical instruction in addition to the formal requirements. While the University instruction would be as complete as possible, the crowning glory of a legal education was still to be found "in the inducements which the desire for practice will hold out".

Thus the School commenced its existence in March 1890. The *Sydney Morning Herald* of 24th March, seemingly ignorant of the in-house conflict which had accompanied the School's career, acclaimed its establishment as "a step in the right direction to popularise the University by creating links between the institution and the learned professions". The public would have some guarantee of professional standards and could be assured that:

> The stamp of the highest teaching authority we possess will be definitely placed upon the work of study and preparation for the Bar.

7. Final Negotiations: Recognition by the Barristers' Admission Board

At this stage, Pitt Cobbett, the first Professor of Law, had not yet arrived in the colony but it would not be long before a fully-fledged, if still humble, teaching entity came into existence. The course was recognised as regards barristers in 1891, when the Barristers Admission Board seems to have surmounted the "legal impediments" to university affiliation by amending their rules without further legislation. The exemption for graduates of the University was extended to include all subjects, in Law as well as in Arts, provided that the examinations were the same.[144] The effectiveness of the course was still questionable, because as yet no further arrangements were

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144 Bennett (1969), note 1 *supra*, 21-23.

made for the education of articled clerks other than through the Solicitors' Admission Rules of 1877.

In his address of 23rd April, 1892, Manning found this aspect difficult because the question of compulsory action for articled clerks might be "embarrassing" for the judges. Whereas the situation in Melbourne was one "of long standing, and it causes no friction ... here it would be an innovation". The extension of the advantages of University education to the lower branch of the profession could not be deferred for long, however. As Manning pointed out, the Legal Practitioners Act, 1892 facilitated interchange between the two branches and called for a common basis of admission. A "cross-practice measure" and a compromise rather than the full amalgamation which had been so greatly feared, this move gave solicitors a right of appearance in all courts, and entitled men who had been members of either branch for five years to be admitted as a member of the other branch.[145] A general exemption for graduates of the University from the articled clerks legal examinations in law was granted in 1894, and this extended to all examinations except practice and procedure.[146]

From this time onwards the University might have become the primary site for legal training. Enrolments still remained low for some years, perhaps because of student preference for apprenticeship and the fact that training in England was still preferred by those who could afford it. But the real significance of the affiliation is exemplified by three of its key features. First, the School was located away from the campus, in the heart of professional and commercial Sydney. Secondly, while the lectures were free and the University was responsible for funding the School, fees by graduates were still paid to their respective professional associations in lieu of the final examinations.[147] And thirdly, as Pitt Cobbett noted soon after his arrival, the Faculty of Law established by the Senate would comprise a Supreme Court Judge and practising barristers, which gave, at the very least:

> an ample guarantee that the teaching would have a sufficiently practical bias.[148]

V. CONCLUSION

The history of legal education until 1848 gives modified support for the idea that formal legal training was as much concerned to achieve respectability for the colonial legal profession as it was to impart necessary practical skills. As for the desire to "rationalise" the basis of admission further by affiliating with the University, the evidence strongly suggests that financial constraints and legal technicalities were not the main cause for delay. Both the interested members of the Senate and leaders of the Bar seem to have had difficulty conceiving of the usefulness of practical legal studies.

145 Forbes, note 13 *suprà*, 61-62.
146 Bowen Report, note 9 *supra*, 13.
147 *Id*, 9,13. This would not be dispensed with until 1903: Legg, note 1 *supra*, 231.
148 "The Establishment of the Law School", *Sydney Morning Herald*, 16th July, 1890.

They may even have delayed for longer had the contemplated amalgamation of the profession with its requirement for a common standard of education and greater controls over admission not forced their hands. Moreover the University itself stood to gain patronage and prestige from the establishment of a Law School. Lawyers in New South Wales could not stave off this innovation for long whilst university legal education forged ahead in other places and whilst professional studies gained a firm foothold in other occupations.

It is also true, however, that, by the late 1880's demands for law reform and criticisms of the social exclusivity of the profession had begun to elicit defensive responses from the Bar to a degree not hitherto discernible in their attitudes to lawyers' law. As Woodman has shown elsewhere, this exhibited as a new liberalisation and flexibility in admission rules and as a shift in the willingness of the profession to concede to pressures for structural change.[149] Exemptions for university graduates from Bar examinations thus appear to represent some erosion of the Bar's direct control over the production of legal knowledge and entry to the profession.

It would be wrong to overemphasise the extent of this shift however. Reforms were introduced only reluctantly, reminiscent of the gradualist and co-optive stance adopted by the profession to other proposed reforms, such as the division question.[150] These were sufficient to deflect pressing conflict whilst doing little to prevent Bar leaders from exerting ultimate control.

Moreover, overtly restrictive policies were eased only to be replaced by covert controls. University education at the end of the nineteenth century was hardly a popular pastime, no matter how favourably disposed to the poorer classes its governors wished to appear, and the University's autonomy was already substantially diminished by the fact that lawyers played a commanding role in its governance and in the enjoyment of its cultural advantages. Once a certain gentlemanly status and standardisation was achieved by local admission rules, legal men had little further use for a cultural or institutional basis for their authority. Seen in this light, the new focus of legal education appears less as a change in the substance of legal knowledge than a change in its form, and the Senate's hesitation in introducing legal studies proceeds more from indifference than from any baser motive.

The decision to locate the School in the centre of Sydney was no accident. Apart from the convenience for students and staff, it also attested to the strict controls which the practising profession wished to maintain over the schooling of lawyers and to the very few concessions which would be made to the ideals of university education. Indeed one could surmise that, rather than spearheading any moves to shore up the cognitive foundations of legal knowledge or to integrate it into a new educational model, the relationship

149 Woodman, note 1 *supra*.

150 *Supra*, 6-11, 39, and sources cited therein.

between the profession and the Law School ensured that legal education would remain practice-based. The early law curriculum remained a shaky compromise between the few who, like Blackstone before them, still saw law as a "high and noble science", and those who knew that it was only by conducting a compulsory and necessarily insufficient rendition of "law living and armed" that students could be enticed from their law offices and so help to rescue the greater University from an untimely death.

Speculation on later developments in legal education would be unwise on the evidence presented. It may be, however, that this compromise affected the ability of the School to integrate theoretical and practical perspectives on law and to achieve a degree of autonomy and self-determination for law teachers. The latter would continue to be drawn from the practising Bar until the second half of the twentieth century.[151]

Some support for this view can be found in the remarks of visiting Professor Erwin Griswold, Dean of Harvard Law School in the 1940's and 50's. In a review of Australian Law Schools in 1952 he noted that:

> theoretical legal education in Australia is considerably more theoretical than in the United States, and practical legal education more narrowly practical...[152]

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151 See Legg, note 1 *supra*, 233-234.

152 "Some Observation on Australian Legal Education" (1952) *Ann L Rev W A* 197, 204.