



**The 90th Anniversary of the Law School at the
University of Western Australia**

address

by

**The Honourable Wayne Martin AC
Chief Justice of Western Australia**

UWA, Nedlands
22 June 2017

I am greatly honoured to have been invited to address the first of a series of celebrations which will be held to commemorate 90 years of outstanding achievement by the Law School at the University of Western Australia.

The Traditional Owners

I would like to commence, as I always do, by acknowledging the traditional owners of the lands on which we meet, the Wadjuk people who form part of the great Noongar clan of south-western Australia, and by paying my respects to their Elders past and present and acknowledging their continuing stewardship of these lands. As it happens, we meet today immediately above an area which stores one of the greatest collections of art, artefacts and other items depicting the extraordinarily rich culture and traditions of the original inhabitants of this continent. I refer, of course, to the Berndt collection and express my most sincere wish that the University's plans for the construction of an appropriate venue for the display of that extraordinary collection come to pass sooner rather than later.

The Teaching of Law

90 years does not sound like a particularly long time if you compare it to the many centuries of academic tradition established by universities in Europe. However, 90 years appears a much more respectable period when compared to the relative novelty of teaching law in an academic environment. For many centuries most English lawyers qualified through a process of what we would today describe as practical legal training. Each of the two branches of the legal profession developed

systems of training which corresponded broadly to forms of apprenticeship - for barristers through the Inns of Court, and for solicitors through service of a period of articles with a practising solicitor.

Universities in the new world of America embraced the teaching of law considerably earlier than their English counterparts. The first sign of law as a field of academic study in England is to be found in the lectures presented by Sir William Blackstone, Professor of Law at Oxford, commencing in 1753. Of course those lectures were later published under the title "Blackstone's Commentaries", and became a famous treatise on the laws of England. I must confess that during my time at this law school, Sir William Blackstone was rather better known for lending his name to the society which regularly organised drinks parties for the law students than for the publication of his seminal work on English law.

As Professor Peter Handford has observed,¹ after Blackstone's time, the teaching of law at Oxford effectively lapsed, and it was not until the 19th century that the teaching of law recommenced at the University of Oxford, and was taken up by the universities of Cambridge and London. Even then it was commonplace for English lawyers, including some very senior and eminent English lawyers to qualify through a process of vocational training - quite commonly after reading some subject other than law at university, such as history or literature. Viewed in that context, and in the context of the very modest population of Western

¹ *The Law School Now and Then: from 1928 to the Juris Doctor* - a lecture given in 2013 published in June 2017 in Brief magazine, vol 44 no 5.

Australia until relatively recent times, a history of 90 years of law teaching is quite respectable. It is, however, a little embarrassing for me to note that I commenced my studies at this law school during the first half of its life, and graduated at almost exactly the mid-point of the history we are celebrating tonight.

The Arrival of Professor Beasley

One of the skills imparted by any decent law school, including this one, is the ability to challenge and debate even the simplest propositions. So it is with the date of commencement of the law school. There is I think considerable room for debate on the question of whether the commencement of the law school should be taken to have occurred in September 1927 when Frank Beasley, a graduate of Wadham College, Oxford and Sydney University was appointed as its first professor, or when teaching began in early 1928 in premises known as "Tin Pot Alley" at the corner of Irwin Street and St George's Tce. Either way, it seems that the enthusiasm of the organisers to mark this milestone means we are enjoying the celebrations just a teeny bit early - but it is always better to be early than late.

Professor Beasley served for an extraordinary 37 years as the inaugural dean of the law school before retiring in 1963, to be replaced the following year by Professor Douglas Payne - also from the University of Oxford, who was in turn succeeded by a series of distinguished deans, culminating of course in the current dean, Natalie Skead, our gracious host this evening.

The Changing Structure of the Law Course

From the commencement of lectures in 1928 until my first year at the law school in 1970, a four-year undergraduate degree course was offered. Since then there have been a number of changes in the structure of the course, including, in 1971, a requirement that all students complete first year in another faculty before entering the law school, and that students first graduate with a Bachelor of Jurisprudence before obtaining the degree of Bachelor of Laws with a further year's study. A cynic might suggest that the requirement that students complete the first year in another faculty was a good way of passing the trouble and expense associated with all those students who fail their first year at university to other faculties, and the B Juris degree was thought to be attractive to the increasing number of students who did not intend to practise law.

Eventually the B Juris/LLB structure yielded to the five-year combined degree, so that the majority of graduates graduated in law and one other discipline. Most recently, that concept has been taken one step further, in common with a general restructure of the courses offered at the University of WA, by requiring that students graduate in another field before entering the Law School, with the result that law is now effectively taught as a post-graduate degree. Because of the time which it takes to get two degrees, the study of law has now been compressed into three years.

There has, of course, been considerable debate in relation to the merits of the most recent change to the structure of the law degree at this

university. I suspect that the answer to that debate might lie in the remark made by Zhou Enlai who, when asked his views on the effect of the French revolution, observed that it was probably too early to tell.

The issue which has run through all the changes in course structure since 1971 is, of course, the question of balancing the desirability of law graduates receiving a broad tertiary education not limited to the study of law on the one hand, and the desirability of ensuring that students spend enough time studying law, given its ever-increasing complexity, on the other. Clearly the trend in the second half of this law school's life has been in favour of the former virtue - that is, the virtue of a broad tertiary education, rather than the latter. If pressed on the question of whether that is a good thing, I would again pray in aid Zhou Enlai.

Collegiality

The issues associated with these changes in course structure are not entirely pedagogical or limited to curricula. One of the key distinctions between a university and a trade training school is the collegiality of university life. The importance of that aspect of a university education was enforced by a requirement generally imposed by the great universities of England and America to the effect that students had to reside on campus in colleges. The word "college" is of course the root of the word "collegiality", which has become a generic term used to connote positive interaction between any group of peers or colleagues. Without disparaging my law teachers in any way, I think I learnt more from my interaction with other students at this university than I did through my formal studies. And because the degree which I studied was

not mixed with any other degree or faculty, that interaction was focused upon (but not limited to) my fellow law students. During the four years of our studies, we developed close personal bonds which have stood the test of time and which I believe have made a major contribution to the collaborative and collegiate practice of law in Western Australia.

The strength of those personal bonds was diminished when students were required to spend their first year at university in another faculty, because, of course, first year is the year in which many friendships are formed. Those bonds were weakened significantly with the introduction of the combined degree, as students were spending almost as much time in other faculties, with other friends, as they were spending in the law school.

It will be interesting to see what effect the post-graduate degree structure has upon what I regard as a valuable aspect of a legal education. On the one hand students will by definition have completed another degree, and formed friendships and personal associations in other faculties, or other universities, before entering the law school. On the other hand, once they enter the law school, they, like my cohort commencing in 1970, will spend all of their time at university in one faculty only, which should enhance the formation of bonds and collegiality, but for the scourge of technology, to which I will now turn.

Virtual Teaching

This is the point in my remarks where I start to sound like King Cnut trying to turn back the tide. Modern technology, and in particular, modern means of communication, enable us to do many things we have

never been able to do before. However, just because we can do things using technology does not mean that we should. Put more directly, the fact that we can audio visually record law lectures and make them available for viewing at any time by students who, for one reason or another, choose not to attend the lecture, does not mean that we should. If students are given the choice of whether to attend a lecture, it is inevitable that many will elect not to, but will view the lecture in the privacy of their own home at some time convenient to them. That inevitably reduces the amount of time spent on campus and consequently the interaction with fellow students, diminishing the collegiality which I consider to be so important an aspect of a legal education.

Law is fundamentally a mechanism for the regulation of human affairs. People, and their relationships with each other, are central to its operation and effect. It should not be studied remotely or in a virtual world.

There is also an important pedagogical aspect to this issue. I was largely taught by the Socratic Method, which of course involves interaction between teacher and student. It is impossible for a student to interact with a pre-recorded lecture. Nor is it possible for a student viewing a lecture at his or her home to discuss issues arising in the lecture with fellow students over a coffee, or perhaps a glass of wine, immediately following the lecture. These are all important aspects of the educative process which are diminished, if not destroyed, by virtual teaching.

However, I am well aware that events have overtaken my pleas and that I am largely a lone voice, railing against things that are probably as inevitable as the setting of the sun. But as this law school looks forward to its next 90 years and more, I would encourage the pursuit of every opportunity to ensure the physical attendance of students for as much time as possible, and the encouragement of their collegial interaction with each other.

Aboriginal People and the Law

While I am on my soapbox, I would like to return to my opening remarks concerning the traditional owners of this country. Colonisation has not been kind to the descendants of the original inhabitants and the law has been an instrument of their oppression for much of the time since colonisation. The role of the law, as an instrument of oppression of Aboriginal people, was not addressed at all during my legal studies, and there were no Aboriginal students at the law school I attended. My fellow law students and I protested against the apartheid regime in South Africa when the Springboks played Australia at Perry Lakes in 1971, completely ignorant of the shameful laws which had created what was, in effect, apartheid in Western Australia until just before we were born.

Happily, the law school at this university, in common with most, if not all, Australian law schools, has specific programmes designed to encourage Aboriginal people to study law, and those programmes have had a measure of success, although I think there is more that could be done in this area. What is less clear to me is the extent to which the impact of post-colonial law upon Aboriginal people is a topic embedded

into all subjects taught at this law school. I am not here referring to the teaching of a unit styled "Aboriginal people and the law", although of course there is nothing wrong with a unit of that kind. What I am talking about is the need for the effect of our laws upon Aboriginal people, and other minorities and disadvantaged groups to be an embedded and integral component of each and every course taught in the law school.

The legal profession has I think developed a reputation for elitism and some components of that profession are seen as handmaidens of big business. I think that reputation is largely undeserved, but that is a debate for another day. In that context, I think it is of the utmost importance for students to appreciate the impact which the laws they are studying have upon all components of our society, whether affluent or indigent, whether powerful or vulnerable.

The Law School's Record of Success

Let me now climb down from my soapbox and congratulate the law school on 90 outstanding years of achievement and success. Any attempt to canvass the illustrious alumni of this law school would consume the rest of the evening. It is perhaps sufficient to note that its graduates include a Prime Minister, a Premier, a Chief Justice of Australia and several judges of the High Court of Australia, several Governors of Western Australia, several Attorneys-General and senior Ministers in State and Commonwealth governments, several Chief Justices of Western Australia, many, many judges and magistrates, distinguished academics and successful entrepreneurs. Success of that

magnitude does not occur by accident but only as a consequence of the dedication and commitment of generations of law teachers. I have no doubt that this law school will continue to produce graduates well equipped to confront the many challenges which they will encounter in an increasingly complex and cosmopolitan world. I conclude by congratulating the Law School of the University of Western Australia on 90 years of outstanding achievement and wish it every success in the next 90 years, and more.