

**SPEECH TO COUNCIL OF AUSTRALIAN LAW DEANS
UNIVERSITY HOUSE, UWA
22 MARCH 2012**

The role of specialised legal knowledge

James Edelman

I want to speak this evening on a topic which is currently a matter of some controversy in overseas law schools. The thesis I will advance is to a degree provocative. It is designed to advance some debate on an issue which has been mostly, but not entirely, dormant for several decades. It concerns the role and need for specialised legal education.

My point is that the primary purpose of a legal education is not to provide specialist knowledge. Specialist knowledge can be of great assistance in developing understanding but it is, at best, a secondary aim, and one which is of less and less importance.

The primary aim of a law degree ought to be to teach students how to think. The goal ought to be to teach students to think about how the law operates and how its constituent parts tie together. Professor Tony Thomas once said that a university which abandons this primary goal has betrayed its commitment to learning.

Specialised legal education is a means to an end, rather than as a end in itself. The provision of specialised knowledge ought to have as its focus

the illustration of the broad principles and rules by which the law operates. Or, to borrow from a recent expression of several judges of the High Court in a different context, how broad principles and rules serve a 'taxonomical function' which assist in understanding the relationship between various categories of case.¹

There was once a time before the very recent rise of the modern law school when it was thought by many that the best understanding of the law was by an alphabetical taxonomy. The thrice Lord Chancellor of England, Hardinge Stanley Gifford, a graduate from Merton College with fourth class honours, left us with one very unfortunate legacy. It is called "Halsbury's Laws of England" and it taxonomises the law in precisely this manner. The first six entries in Halsbury's Laws of England are 'Agency, Agricultural Land, Agricultural production and Marketing, Air Law, Animals, and Arbitration'.² There is a very good reason why law schools do not teach a unit in 'Agency, agriculture, air law, animals and arbitration'.

One consequence of this manner of thinking in England is that it is possible for a person to obtain a qualification to practise law by a one year legal education. Institutes of legal learning hold out a person as

¹ *Equuscorp Pty Ltd v Haxton; Equuscorp Pty Ltd v Bassat; Equuscorp Pty Ltd v Cunningham's Warehouse Sales Pty Ltd* [2012] HCA 7 at [30] (French CJ, Crennan and Kiefel JJ).

² LexisNexis, Halsbury's Laws of England (5th ed, 2008), vols 1, 2.

having been legally educated in a single year. The University of Oxford assists in such courses which the late Peter Birks once described as 'a laughing-stock in Europe'.³

I should emphasise at the outset that I am not suggesting that law schools could ever abolish the teaching of specialised knowledge. Specialised knowledge is essential to the instruction in legal technique. And there is some specialised knowledge which a law school must impart as part of the process of preparing a person for the practice of law. Some of the subjects formerly known as the 'Priestley 11' serve this function. But it should not be taken for granted that all of those subjects are essential.

Against this thesis is an argument that law schools exist to prepare students for legal practice. Even if we put aside the significant numbers of law graduates who do not go on to legal practice, there is the impossible issue that specialised legal knowledge is becoming increasingly diverse. There are many specialised areas of the law which assume great significance in legal practice today. Very few of these are compulsory subjects: competition law, public and private international law, intellectual property, family law, human rights law, environmental law are just a few examples.

³ P Birks 'Legal education' (1992) 108 LQR 521 at 523.

The answer which I suggest is that the increasing specialisation of law is not something which law schools should fear. A good practitioner, and especially one who understands the way that the law operates, should always be able to develop an understanding of these areas of law without university instruction. In fact, at the very elite level it might be that no specialised legal instruction is required at all.

I want to illustrate this point with a story of two different men, both extraordinary successes in their field of mathematics. One of them had the best education a university had to offer. The other had none. Both developed a specialised understanding which exceeded almost all their peers.

The first was a Hungarian mathematician. His name was Paul Erdos. Erdos was a mathematical prodigy. Both of his parents were mathematicians and trained him from a young age. At the age of three he could multiply 3 digit numbers in his head.

Erdos went on to be the most prolific mathematician in history. He obtained his doctorate at 21 from the University of Budapest. His thesis advisor was an acclaimed mathematician who also advised several other famous mathematicians. He soon obtained a scholarship to Princeton.

As an academic, Erdos was probably the most prolific mathematician in history. He revolutionised numerous sub-fields of mathematics. He wrote on combinatorics, graph theory, number theory, classical analysis, approximation theory, set theory, and probability theory.

Some people have compared Erdos with the Hollywood actor Kevin Bacon who has appeared in hundreds of films. There is a Hollywood game called the Kevin Bacon game where actors identify their degree of connection with Kevin Bacon.

The same game is played by mathematicians in relation to Erdos. A mathematician will ask another what his Erdos number is. An Erdos number of 1 means that you have published with Erdos. A number of two means you have published with someone who has published with Erdos. And so on.

A limerick was written about Erdos which went like this:

A mathematical proof so profound

Argues that the circle is round.

In a paper in Kurdish, written by Erdos

A counterexample is found.

Paul Erdos was obsessed with mathematics. He owned no house of his own and his belongings would fit into a single suitcase. He would turn

up, unannounced at the house of colleagues, and launch into a mathematical problem. He would stay in their houses, sleeping 3 hours a night, until they were utterly exhausted. Then he would move on. He would start conversations about mathematics at funerals and interrupt the Christmas lunches of colleagues with their families to discuss maths.

The second person was a man named Srinivasa Ramanujan. His father was a clerk and his mother was a housewife. He had real difficulties at school. His parents moved around. He skipped classes. But then he found mathematics in a book given to him at age 10. It changed his life. He had two university students who were living with his family at the time. Within a year he had exhausted their knowledge of mathematics.

He was lent a book on advanced trigonometry and mastered it by age 13. By 16 he had mastered the standard guide of 5000 theorems which were the basis for entry examinations to Cambridge University.

He was offered a scholarship to study at the Government Arts College in Tamil Nadu. But he lost his scholarship after he failed most subjects apart from maths. He enrolled in a different university for fine arts. But he failed again.

He left college and began studying mathematics independently. He was on the verge of starvation. This was the beginning of a series of illnesses which marked the rest of his short life until the age of 32.

Unlike Erdos, Ramanujan never had any real formal instruction, and little tertiary education. But his early publications caused several Indian academics to send his work to leading English mathematicians. One of the English mathematicians wrote back saying that Ramanujan lacked the educational background and foundation needed to be accepted by mathematicians.

But another had a different reaction. The other person was the great English mathematician G H Hardy, later the Savilian Chair of Geometry at Oxford and then Sadleirian Professor at Cambridge. Hardy said that the he had never seen anything like Ramanujan's theorems and that they "must be true, because, if they were not true, no one would have the imagination to invent them".

Ramanujan was brought to Cambridge where he collaborated with Hardy. He was soon elected to the London Mathematical Society. He was only the second Indian to become a Fellow of the Royal Society in 1918.

Soon afterwards he became the first Indian to be elected a Fellow of Trinity College, Cambridge. His work, and his conjectures, dramatically

advanced fields of mathematics including his discovery of, the circle method for finding asymptotic formula and mock theta functions.

In an interview with Hardy towards the end of his life, conducted by none other than Paul Erdos, Hardy was asked about his greatest contribution to mathematics. Hardy did not pause. He instantly replied that it was his discovery of Ramanujan.

Both of these men reached the pinnacle of their field, greatly advancing our understanding of mathematics. But they took very different paths. One, Erdos, epitomised formal education. The other, Ramanujan, had miserably failed the formal tertiary processes.

In some ways, Ramanujan, with a lack of specialised education could see answers that Erdos could not. He was said to have an immediate grasp of new issues and lightning responses to novel problems. The brilliant Erdos, on the other hand, was said to have been initially stymied by the Monty Hall problem.

Even apart from the most talented students, there are three further reasons why specialised legal knowledge is becoming less important to legal teaching today.

(1) Information technology and accessibility of specialised information

The first is information technology and accessibility. Online information is becoming rapidly more accessible in a clearly structured and defined way. Some universities will make a subject syllabus freely available online. There are now hundreds of online legal discussion groups and blogs. I am a member of discussion groups and blogs on constitutional law, the law of obligations, torts, restitution, and legal theory. On average I receive 20-30 emails and postings from these sources a day. This is not information about which it should be the primary function of a university law school to provide.

Consider the counterfactual. If the role of law schools were to provide specialised legal knowledge then today, in many areas, the online resources would rapidly eclipse the university in terms of value added by the provision of specialised knowledge. At Oxford, the university's approach is for the main examinations to occur at the end of a student's whole degree. Torts was a subject I would teach in a student's first year. The subject was, and is, extremely fast moving. There are dozens of important appellate decisions every year. In Oxford the examination was held almost 2 years after I taught the subject. I would hold revision classes for students prior to the exam. If the method of teaching had been a focus only upon specialised legal knowledge then there would have

been many years in which I would have had to reteach almost the entire subject. An online blog, or email discussion group, would be a far more effective and efficacious way of imparting such knowledge.

(2) Emphasis on clarity and public understanding

The second factor which has reduced the importance of specialist knowledge is the increased appreciation of the need for accessibility and public understanding of the law.

Brilliant Roman jurists, nearly two thousand years ago, grappled with and debated many of the issues with which we still struggle today. But, although our law has evolved for two thousand years, only two hundred years ago, not long in the life of the development of law, the so-called "*common law*" courts were still almost impenetrable to the lay person. The lack of clarity and transparency of the law meant that it was very difficult to see that the law as 'common'.

In courts today, there is a great movement towards accessibility and transparency; in their procedure and practice as well as in the writing of decisions. When Australian courts release an important judgment, it is often accompanied by a short summary of the issue and what was decided. When the United Kingdom Supreme Court was established in

2009, its hearings began to be podcast. It has been said that most of the people who watch them are not lawyers. And one of the most recent appointments to the highest court in the United Kingdom, one of England's most brilliant lawyers, does not have a law degree. The same has occurred in the High Court of Australia.

(3) Continuing legal education

The third factor which has reduced the importance of specialised formal education is the increased recognition of continuing legal education.

When a lawyer moves into a specialised area of legal practice, he or she will often be surrounded by others working in that field. Law firms run regular seminars within these groups. Law Societies, law schools and specialist institutes run specialist seminars for the profession. There are also hundreds of specialist journals which provide regular updates and commentary on particular subjects.

In a recent essay in *The American Scholar*, called the "Disadvantages of an Elite Education", the American literary critic, William Deresiewicz has argued that the best American universities have forgotten that the reason they exist is to make minds, not careers.

From what I can see of the six law schools I have visited in Australia in the last few years I do not believe that the same can be said of Australian

legal education. At the moment, from what the teaching of law still has a strong focus on general principle. But, there is a move, present in many places overseas and often dictated by the profession for law schools to focus more on provision of specialised legal knowledge. The profession is becoming more and more specialised. But my short message is that this is a trend which law schools should resist. The primary purpose of teaching law which is to teach students *how to think* and, in doing so, to challenge them to develop an understanding of how the law operates and how its constituent parts tie together.