50 Years On: The ANU Law School

Address by Professor the Hon Gareth Evans, Chancellor, to the ANU College of Law 50th Anniversary Alumni Dinner, Canberra, 1 October 2010

Life has become a little more complex for me as my email signature block has grown longer. It was one thing to be simply a Professorial Fellow at my alma mater Melbourne University. But now that I have had, as well, since the beginning of this year, the even grander title of ANU Chancellor (though when I look at my new robe, 'chief bumblebee' might be a better title), I constantly find myself -- when making speeches on one campus or other, extolling the virtues of each institution in turn, and quite often called upon to make comparisons of one kind or comment on other people's comparative rankings -- caught up in a conflict of disloyalties. I just have to keep reminding myself of that wonderful defence of political dexterity by the Scottish socialist MP Jimmy Maxton nearly a century ago: "If tha' can't ride two bloody horses at once, tha' shouldn't be in bloody circus."

That said, it really isn't all that hard for me to ride a second horse when it comes to what is now the ANU College of Law, celebrating this year – and this evening – its 50th anniversary. Not only was it born out of amalgamation with Canberra University College, which awarded Melbourne University degrees, but I am cheerfully prepared to concede that throughout its history it has been, along with Melbourne, one of the country's top two law schools – I think we can both agree, at least for this evening, to leave Sydney out of the equation – and that ANU law alumni have made a fantastic contribution to the public and professional life of this nation: including not least some of the old friends and close colleagues of yesteryear I see around these tables tonight – including Peter Bailey, Terry Higgins, John McMillan (with whom I wrote a book on constitutional reform about a century ago), Dennis Pearce, Hilary Penfold and David Solomon (who worked with me even more than a century ago), and apologies if I've missed anyone even more exalted.

I also see when I look around these tables a few people who remind me vividly of my own original incarnation as a purported law academic, and one moreover who was particularly interested in constitutional law, and the intersection of law and social change. There's, for a start, our very distinguished Dean, Michael Coper, although he was then, as I recall, rather like John McMillan, a precocious whippersnapper contemporary from some other unmentionable university rather than a functioning ANU role model. I'm thinking now more immediately of people like David Hambly, who invited me to write a paper for a conference, and then book, on *Lawyers and Social Change*, in which I argued -- employing the new and wonderful pseudo-science of jurimetrics – that High Court decisions were much influenced by the background and attitudes of its judges, in the process driving the then very black-letter Bill Deane QC into a paroxysm of critical frenzy: for which he never really got around to apologising later when he himself became, on that same bench, a wonderfully civilised, and dare I say on occasions even Kirby-like creative, force for decency.

And I'm certainly thinking of Leslie Zines, who was not only a wonderful constitutional lawyer who understood all about the interface of law with politics and policy, but someone whom I've always rather fondly thought of as the kind of platonic form of a legal imp: perhaps inheriting in that respect some of the mantle of Geoffrey Sawer, ANU's first law professor -- and a hugely influential role for me when I started out -- though of course Sawer's chair was not in the faculty but the unspeakable Research School of Social Sciences.

It was Geoff Sawer who penned here in 1952 the immortal lines 'On Discovering Two Scribbling Strangers in Attendance at a Joint Seminar':

\[
\text{Thou wretched, rash, intruding fools you say} \\
\text{They're students, here by right? It cannot be;} \\
\text{Is teaching, dreadful trade, our destiny} \\
\text{The profound hell to which we wend our way?} \\
\text{Yet all's not lost. Around me still there sit} \\
\text{Professors, Readers, Fellows – near a score} \\
\text{Of faithful friends. Let not this alien crew} \\
\text{Peer at my doctrine, denigrate my wit,} \\
\text{Question my sources, call my logic poor;} \\
\text{Be humble, students: we outnumber you} \\
\text{One wonders now how long Geoff would have lasted in this depressingly more politically correct age. Or, for that matter, how long these days he might have avoided wrath from on high for his more than slightly irreverent take on the exercise of any institutional authority over his chosen research pursuits:} \\
\text{A Director? Don't be crazy;} \\
The bastards cost a lot, \\
They're a waste of dough if lazy, \\
And a menace if they're not.}
\]
But then I’ve always had a certain soft spot for constitutional law professors with a streak of cheerful anarchy in their makeup. I think my favourite example is that story some of you have undoubtedly heard before about my Melbourne Law School Dean, Zelman Cowan – who admittedly did become a little less anarchical as he assumed the mantle of national greatness later in life, but whose role as the Queen’s man still didn’t stop him being an enthusiastic republican. The story in question could only be true in a different academic universe than the one we now inhabit, but true it is:

It involved a perennial law student who ambled his way through the Melbourne course some five decades ago, about the time the Faculty here was founded, failing more subjects than he passed each year – until finally just one compulsory subject stood between him and his degree, Australian Federal Constitutional Law. That was a subject, however, in respect to which this student’s ignorance seemed to remain impenetrably boundless. Contemplating yet another dismal examination performance, the lecturer asked the Dean of the Faculty how might it be possible to temper justice with mercy and get the laggard out of everyone else’s way and for all. After pondering a moment, Zelman came up with a solution of unimpeachable simplicity and elegance: ‘Give him a supplementary oral examination and ask him just one question: Is there a Section 92 in the Australian Constitution?’ ‘But’, said the still justifiably sceptical lecturer, ‘What on earth do I then do if he says No?’ ‘Well then’, said the great man, ‘you must reason with him’.

A gathering of law alumni in reminiscing mood, like this one here tonight, whether it be here or in Melbourne or anywhere else, is perhaps the occasion for each of us to do a little reminiscing about our own law school experience, and the impact it had on the rest of our lives. I can’t speak for you – as Oscar Wilde put it, you have to “be yourself, [because] everyone else is already taken” – but I can say something about my own time as a law undergraduate and how it influenced my later professional and public life.

When I first started studying law, back in ancient times – in the early ’60s – as a number of you will remember, law students looked a little different from the way most do now: the guys all wore short hair, tweed jackets, skinny ties, grey trousers and brown suede shoes; the girls angora twin-sets and tweedy skirts; the only redeeming feature being that hair grew longer and skirts dramatically shorter as the decade progressed. The overwhelming majority of my contemporaries did law because they wanted to practice it: or thought they wanted to, or, perhaps more often, knew their parents wanted them to. For some of them it wasn’t so much law as such, but that it was a professional degree – and medicine was out because they couldn’t cope with the maths or the blood.

There were a few who did law for other reasons: that it would look good on their CVs if they decided to go into business, or diplomacy or maybe even politics; and even a handful who thought that – wherever else they ended up – it might at least be useful to have the rigorous intellectual training, in logical and linear thinking, that a law degree then, as now, was rather optimistically thought to involve. But I don’t think there was anybody much who did law because they were passionate about public policy, about social and institutional change, about serving the community, and saw law – and a legal training – as a vehicle for achieving it.

I can’t pretend that at the time I had any very clear, let alone radical, vision of what I wanted to do with my own law degree. As a working class kid from a respectable family I grew up without any exposure to the legal profession whatsoever. I did law basically because I could – because I had the marks to get in, because it was a flash professional degree that didn’t involve cutting people up or drilling teeth, and because (when combined with Arts) it went on long enough for me to have a great time at university. Which I duly did, paying far more attention to student politics, and all the other familiar student distractions of the ’60s, than I ever did to Property, Mercantile Law or Equity.

The idea of law as a vehicle for human liberation, for protecting human dignity and advancing human security in the broadest senses, and not as a source of limitation or constraint – not just something you practised as a technical vehicle for the rational management of personal, business and property affairs and community safety – was not then central to anyone’s thinking. There were some professors and lecturers who showed signs of a social conscience, and of whom I took some notice, but this was hardly a mainstream preoccupation. And it certainly didn’t feature very largely on the program of law student society conferences, or at least not Melbourne’s: the annual preoccupation for us, as I recall it, was who would win that year’s Harry Curtis Trophy – a fur-lined jockstrap – as the perpetrator of the weekend’s worst social atrocity.

This was a time when books and plays were banned, people were still being executed, abortion was completely illegal, there were no administrative law protections worth the name, racial or sexual discrimination or land rights legislation was undreamt of, and there were no Aboriginal legal services or community legal services as we would now recognize them. Law reform commissions, if they existed at all, worked on cutting edge issues like negotiable instruments and cattle trespass.

I cut my own teeth as a law reformer – and as someone who gradually came to the belief that law and a legal training could be harnessed in the cause of great public policy developments – mainly through my involvement, as a campus rather than law school activist, on issues such as anti-censorship, anti-capital punishment, abortion law reform and anti-apartheid. A little bit later, as an articled clerk in a small city law firm which had previously given as much attention to social justice as it had to hunting elephants, I generated a number of near heart-attacks among the partners after persuading them to take on some extravagant but doomed litigation, which became a considerable media cause célébre at the time, on behalf of the teenage son of a mud-brick dwelling artist from Eltham who had been expelled from school because his hair was too long (closer to his waste, I have to concede, than his collar). And it was in this period, and the years after, that I really started to get concerned about indigenous people – and particularly kids – breaking out of the cycle of criminality and neglect to which they had been condemned by generations of legal mismanagement.

But I guess my real awakening to the sense that a legal career could involve something a bit more emotionally satisfying than sorting out drainage easements came after my return from study in Oxford as a lecturer in law at Melbourne University, teaching constitutional and a variety of civil liberties-law related courses – and in an environment where I had
the time and, as an academic, some credibility (those were the days!) – to work on changing public attitudes and political directions. I also had the benefit of being reasonably close to the action in Canberra, where during the Whitlam Government I worked as an adviser on human rights issues to Attorney-General Lionel Murphy, and on the emerging issue of Aboriginal land rights.

So for most of the decades of the 70s and 80s I was consumed – as a young agitator, academic and policy adviser, then as a somewhat less young opposition member of parliament and eventually minister – with a series of major domestic law reform crusades. The issues included sex and race discrimination legislation, trying to get support through Lionel Murphy as Attorney for a full-scale legislated bill of rights, arguing as a member of Michael Kirby’s new Australian Law Reform Commission for significant liberalization of criminal investigation law and procedure, and fighting the breaches of constitutional convention which had occurred in 1975 and on constitutional reform issues more generally. Then, when I became Attorney-General myself, in the early ‘80s, I tried not only to keep all these balls in the air, but added to them efforts, among many others, to further liberalize family, anti-discrimination and freedom of information law, and to introduce a more aggressive approach to environmental protection law.

I’ll spare you now any more detailed stories of all these efforts to use essentially legal strategies to improve the quality of governance in general and protect the vulnerable, but some of you here tonight will remember all that all too well, and I have to say I bear some of the scar-tissue to this day. Most of these enterprises were doomed to failure, or at best only partial success, and some proved quite counterproductive: my efforts to move toward effective privacy protection, for example, led to the press in Sydney sponsoring for years afterwards annual ‘Gareth’ Awards for the year’s worst invasion of free speech…

For most of the two decades which followed – the ‘90s and the noughties – I have been much more preoccupied, and a little more successfully, with international than domestic issues, first as Foreign Minister for nearly eight years to 1996, then as President and CEO of the International Crisis Group for ten years after 2000, and throughout that time as a member of various international policymaking commissions and panels. While law-related issues were a constant preoccupation in a whole variety of problem areas on which I worked – for example the need to have much more effective rule-of-law delivery as core components of peacekeeping and peacebuilding missions, and the need to somehow reconcile the competing claims of peace and justice when trying to resolve conflicts – there are two big policy issues I have pursued more than anything else during this period, eliminating mass atrocity crimes, and eliminating the threats posed by nuclear weapons.

Both of these areas have been characterized by a failure of both international law and international policy to protect those who should be protected, and my mission in life has been to at least try to energise a much more effective response by the international community. I’ll spare you any more detail about all that, not least because I’ve made umpteen speeches on these topics over the years, in Canberra as elsewhere, and I don’t want any of you who may have suffered through them to bear any more pain.

But I guess the last point I want to make about my own law school experience is that although my international preoccupations over the last two decades have been primarily general policy-focused rather than specifically legal, the foundations for both the atrocity crimes and nuclear efforts, and just about every other international reform I have been pursuing, have always been essentially legal in character. What has driven me is a total commitment to a rule-based international order, not least when it comes to human protection issues, and my comprehensive distaste for the sheer moral indecency of conducting international life either without principled standards, or with double standards.

A lot of that distaste was bred into me by some wonderful teachers and colleagues in my own law school days, and I hope and believe it forms an even greater part of law school teaching today, not least here at the ANU. That distaste, I have to say, remains unsuppressed despite years now of trampling diplomatic corridors and sitting around international conference tables, not to mention all the rigorous insensitivity training I received in twenty-one years of Australian party and parliamentary politics.

Coming back finally to where I began, and my new role as Chancellor of this great university, I have to say that all that insensitivity training I had in politics – and the thick skin that, like all politicians, I acquired in the process has on occasion stood me in good stead. Like, for example, this week, when I was reading the highly confidential due diligence report prepared by our search consultant about our splendid new Vice-Chancellor elect, Professor Ian Young, whose appointment, you will know was announced today. One of the reported comments from a colleague of Professor Young’s was this: “Gareth might be a challenge as chancellor, but I think he’s a pretty busy man and Ian will be able to manage him…”

Well, whether Ian Young succeeds or fails in maintaining the Ian Chubb record of chancellor management, let me just say – as I did to the press today – that I think the future of the university, as has been the case in the present and for some years now, will be in outstandingly good hands, as we work through the next stage of our development.

We all know that the higher education environment, both domestically and internationally, is becoming ever more fiercely competitive, and that for all our achievements until now, we know that the ANU cannot just rest on our laurels.

There are some tough and testing times ahead, for the College of Law as for every other part of the university. But the history of this place over the last fifty years, and the quality of the leadership it has maintained, up to and including Michael Coper’s reign, leaves me in absolutely no doubt that the future will be as glittering as the past we celebrate tonight.

Please join me as I propose a toast “To the ANU Law School in all its incarnations – the last fifty years, and the next!”