

THE SYDNEY LAW SCHOOL REPORTS



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Welcome to the The Sydney Law School Reports. With a modicum of encouragement from our readers, we hope to produce this publication at least once each year.

This is a time of far-reaching change for Sydney Law School. In 1987 we filled a Chair and six Lectureships, and we anticipate filling three Chairs and at least seven Lectureships in 1988. Two of the Chairs have been newly established with the aid of generous private funding — the Blake Dawson Waldron Chair of Banking Law and the Landerer Chair of Information Technology and the Law. Our new appointments will represent a net increase in staff of two professors and seven lecturers over the two year period.

Our new curriculum came into operation this year, expanding the options available to students in their penultimate and final years while, one hopes, preserving the sound treatment and coverage which has been Sydney Law School's hallmark.

Research at the Law School is developing strongly and in new directions, in such fields as artificial intelligence and the law, law and economics, and alternative dispute resolution.

Plans to move the Law School to campus are actively under consideration, and the Faculty has resolved that the move should take place provided that certain reasonable conditions are met.

Meanwhile, various improvements have been made to the existing building, including the establishment of a 35 terminal computer laboratory, which was opened recently.

And there are significant changes in many other Law School endeavours, including our

Continuing Legal Education and Employment Programmes.

Our aim in this publication is to present perspectives on these and other matters for your information. We hope you will respond through our **Letters** or **Yesterday** columns or otherwise.

The Sydney Law School Reports will be distributed to all our current undergraduate and postgraduate students, and to our graduates as known to the Office of Graduate and Community Relations.

I hope there will be sufficient community of interest that our publication will appeal to all of these groups.

A final note, for our graduate readers. If you would like to organise or participate in a class re-union, the University is able to help. Our Graduate and Community Relations Office now has reasonably accurate lists of names and addresses of law graduates. Their advice is that re-unions should be calculated from the year of **graduation**, not the final year of law studies. Thus my own class, which completed law in 1968 and graduated in 1969, will be holding its 20 year re-union next year. The way to get started in arranging a re-union is for three or four co-graduates to form a self-appointed organising committee, and then contact me or the Graduate and Community Relations Office for assistance with names and addresses.



Robert Austin, Editor,
June, 1988.



Sir,

I heartily commend the inauguration of the Sydney Law School Reports — an imaginative project which will, I am confident, soon lead all connected with the Law School to wonder how we got on without these Reports. They will provide a vehicle for the dissemination of information of interest and importance to members of the Faculty and students alike — not to mention others of us who still maintain a close and lively interest in the Sydney Law School and its doings.

It is a particularly appropriate time to initiate this project. The role of law schools in our nation has been recently opened up to debate by the provocative and controversial CTEC report. And, within the immediate local area of interest and concern to the Sydney Law School, the question of its physical location is again being reagitated. In this context, a regular publication which provides ongoing communication on the wide variety of topics planned by the sponsors has the potential to play a major part in almost every aspect in the life of the Law School.

I send my warmest good wishes for the realisation of that potential.

Yours sincerely,

LAURENCE STREET
Chief Justice of the Supreme Court
of New South Wales
25 January 1988.



Sir,

The Bar Council welcomes the arrival of the Faculty of Law Newsletter on the legal scene in Phillip Street. The newsletter will represent a significant contribution to the two-way flow of legal information and ideas between the Sydney University Law School and the practising profession and judiciary.

Yours sincerely,

K.R. HANDLEY Q.C.
President,
Bar Association of
New South Wales
10 February 1988



Sir,

It is good to see and welcome this new Faculty of Law Newsletter. A venture which is certain to improve communication among students, recent graduates and older graduates can only be to the advantage of all of them. Many solicitors have very fond memories of their time at the Sydney Law School, but for various reasons know little of what is happening there now. I have no doubt that they would like to know and I wish this new publication every success.

Yours sincerely,

W V Windeyer
President,
Law Society of New South Wales
13 January 1988



Sir,

The Sydney University Law Graduates Association welcomes the initiative of the Faculty of Law in establishing a Faculty Newsletter.

The Newsletter will maintain the interest of the profession, not only in the Law School, but in legal education generally, to the great advantage of the profession, the Faculty, the students and the community generally.

The Sydney University Law Graduates Association has always had a close and cordial relationship with the Law School and is particularly pleased that it will now have another means of informing its members of its activities.

The Association looks forward to continuing and developing its association with the Law School and is confident that the Newsletter will have the success it deserves.

Yours sincerely,

THEODORE SIMOS, Q.C.
President,
Sydney University Law
Graduates Association
29 June 1988

(A regular column by the Dean and the Heads of the Departments of Law and Jurisprudence.)

We should begin this column by offering an explanation. Like other parts of the University, the government of the Law School is sub-divided into Faculty and Departmental matters.

The Faculty of Law comprises the Departments of Law and Jurisprudence. The Dean is the Chairman of the Faculty, and is our principal spokesman within the wider community. With assistance from his Sub-Deans, he is responsible for general student affairs, including examinations and course rearrangements. The Heads of Department are responsible for staffing, teaching and financial administration within their respective departments. In addition the Head of the Department of Law takes responsibility for the Law School building, and is Chairman of the Committee for Postgraduate Studies which administers the Continuing Legal Education Programme.

Over the last four years the single most important administrative concern for the Head of the Department of Law has been the business of recruiting new academic staff, a topic noted in the Editorial.

The other large area of activity in the administration of the Department of Law relates to building alterations and equipment. In 1984-5 a substantial part of Level 6 of the Law School building (formerly the Browsing Room of the Library) was converted into staff studies. Further increases of academic staffing over the next five years will require us to convert some of the Work Tutorial Rooms into staff studies and use as productively as

we can every square centimetre of the Law School building. In 1987 the Faculty resolved in principle (and subject to certain conditions) to re-locate the Law School on the main university campus. This will be the subject of a feature article in our next issue. Our shortage of space will be cured by a move to campus but will remain a chronic problem in the meantime.

While we are gradually increasing our academic staffing establishment, the number of support staff in the Law School has been substantially reduced over the last 4 or 5 years. None of the newer Professors is entitled to a secretary, and the ratio of secretarial to academic staff has declined from about 1:3.5 to 1:5. Fortunately the situation has been relieved by the decision of the Committee for Postgraduate Studies in 1985 to provide academic staff with micro-computers for research purposes. Most of our academic staff now use computers for their writing, or at least for certain stages of it.

The University has in recent times given us very substantial support in matters relating to computers. Funds have been found to enable us to connect to CLIRS without (so far, at least) any charge to students. Alan Tyree's column contains a report on our new computer laboratory. Provision has been made for a new recreation area for students on Level 3.

1987 presented us with a serious threat to our continued research productivity. Faced with a cut-back in Government funding, the University's Research Committee decided to review the allocation of research assistants to all departments of the University. Their review threatened a reduction of the equivalent of one

position in the Department of Law; but ultimately, by the use of salary savings on unfilled positions, we have been able to maintain the status quo for 1988. All departments have been warned that there can be no guarantee of the continuation of existing arrangements beyond 1988. The issue depends upon Federal Government decisions as to the allocation of funds for the tertiary sector. Legal research is a central component of the work of the Law School, and a further reduction in research assistance would be a serious blow.

The introduction of our new curriculum (the subject of a separate article in this issue) has produced great demands for teachers and students, and also for administrators. As is inevitable on such occasions, the transitional arrangements have involved some delicate and complex decisions, especially for students taking rearranged courses. The solution of these problems is calling for patience and goodwill on all sides. We have no doubt, however, the benefits of the new curriculum are worth the effort.

We wish our students every success in their studies in 1988. We hope that all our readers will find this and subsequent issues to be a valuable and interesting means of getting to know the Law School better.

Colin Phegan, Dean
Robert Austin, Head of the
Department of Law
Alex Ziegert, Head of the
Department of Jurisprudence

RESEARCH AND WRITING

(A regular column summarizing some of the current or forthcoming work by staff of the Sydney Law School.)

David Harland has published a piece on "The United Nations Guidelines for Consumer Protection", ((1987) 10 **J Consumer Policy** 245-66) as part of a continuing project on international aspects of consumer law and policy. Work is well advanced in preparation of a book (in collaboration with Mr Lars Broch of the Norwegian Ministry of Consumer Affairs) which will be a commentary on the UN Guidelines.

Romana Sadurska (who joined the Faculty in January 1988) analyzes the problem of "Threats of Force" in the first serious attempt to look at that problem separately from the use of force in international relations. Dr Sadurska argues that in practice international actors, contrary to the official language of international agreements (which equate the use of force and the threat of it), recognize a separate set of criteria of lawfulness of the threat of force. This test is less stringent than the criteria of legality of the use of force, and

includes a consideration of security, of the remedial nature of the threat, of its rationality and economy, and of its consequences. States tend to condemn less effectively an illicit threat than an illegal use of force, despite the fact that the threat might (if carried out) have resulted in a comparable violation of international law. (**American Journal of International Law**, April 1988).

Stephen Odgers continues the work on the law of evidence begun while he was a Senior Law Reform Officer at the Australian Law Reform Commission. In a piece on "Trial by Trance: Hypnosis, Witnesses and the Developments of New Rules of Evidence", he argues that the courts have not yet come to grips with developments such as refreshing memory by hypnosis. A review of overseas developments suggests that the trial judge should be required to decide whether the safeguards adopted (videotaping, nature of questions asked, etc) were adequate to allow such evidence to be admitted. (**Australian Bar Review**, March 1988).

James Crawford has collaborated with Keith Mason QC on a review of the new cross-vesting scheme, due to come into force in mid-1988. They "explain" the legislation, and discuss some of the changes it may make to rules concerning service *ex juris*, forum conveniens and choice of law and procedure. (**Australian Law Journal**, May 1988).

Andrew Stewart is one of the contributors to the first issue of the new journal, **Australian Journal of Labour Law**. In a piece on "Confidentiality and the Employment Relationship" he analyses the redress available to employers against employees who seek to use or disclose confidential information relating to the employer's business. The article questions some of the assumptions underlying the present law and criticizes the relative efficacy of general covenants against competition and specific obligations of confidentiality.

Pat Lane continues to produce a stream of wisdom and work on constitutional law, with the 4th editions of **An Introduction to the Australian Constitution** and **A Manual of Australian Constitutional Law** (both Law Book Co, 1987) and the 3rd edition of his **Digest of Australian Constitutional Law** (Law Book Co., 1988).

Robert Austin has published an article on developments in securities markets, arguing that the current guidelines and policies of the US Securities and Exchange Commission are too restrictive and contrary to the US national interest, having regard to the increasing internationalization of markets ((1987) 50 **Law and Contemporary Problems** 221-50).



Wojciech Sadurski has just published a study of "Conventional Morality and Judicial Standards" ((1987) 73 **Virginia Law Review** 339-97). The article discusses the relations between the standards of judicial lawmaking and the dominant, conventional morality. It considers whether judicial review based upon conventional morality is compatible with the traditional democratic theory about the division of tasks between the legislature and the judiciary. Further, it distinguishes the main categories of uses the courts make of conventional morality in their reasoning, and focuses on the fundamental dilemma: the conflict between an avowed fidelity to community standards and the plurality of moral systems. An appeal to a "deeper consensus" is critically discussed, and the philosophical claim that substantive principles of justice can be inferred from "common meanings" of social goods is rejected.

Alex Ziegert is working on a joint research project (with assistance from the NSW Law Foundation) on 'Law and Family Coping in New South Wales and Sweden'. Some preliminary results were presented in a paper (co-authored by **Richard Vann**) on 'Why do Australians Evade Taxes?' at the Australian Tax Research Foundation Conference in 1987.

Graeme Cooper and **Richard Vann** presented a paper on payroll tax to the conference on State Taxes, organized by the Australian Tax Research Foundation in December 1987.

Other items in press

* Stanley Yeo — "The Demise of Excessive Self-Defence in Australia" (**International and Comparative Law Quarterly**)

* John Wade (recently appointed to the Family Law Council and a member of the Council's sub-committee on 'The Future of the Family Court') presented a paper on 'Family Mediation in Private Legal Practice' at the Bicentenary Family Law Conference in Melbourne in March.

* James Crawford — **Australian Courts of Law** (a fully revised 2nd edition of a book first published in 1982 — with a redrawn cover showing the Privy Council relegated to the heaven of juristic concepts) (Oxford University Press, April)

* Peter Butt — **Introduction to Land Law** (a revised 2nd edition of this standard introductory text) (Law Book Co, June)

* Robert Austin — **Company Takeovers — The Management of the Battle for Control** (to be published by the Australian Institute of Directors).

And many others!

Enrolments in LL.M and Ph.D in Law

Another major source of research work in the Law School arises from the postgraduate (coursework and thesis) programme.

In 1987, 383 students were enrolled in the LL.M degree by coursework and 22 in the LL.M by thesis; 20 were enrolled in the Ph.D degree. This represents a dramatic increase in enrolments since 1981 when there were 270 LL.M coursework, 5 LL.M by thesis and 4 Ph.D candidates. The peak year for LL.M coursework enrolments was 1986 with 442 candidates, although that figure is somewhat artificial because it included a number of students who have now obtained pass LL.M degrees under new regulations.

For inquiries about postgraduates' work at the Law School contact the Postgraduate Sub-Dean, Dr Stein (232 5944).

James Crawford
Challis Professor of International Law

(A regular column on teaching and assessment.)

The Faculty has introduced a teaching assessment programme the prime aim of which is to enhance the quality of the courses we offer.

A survey will be conducted annually and students in all subjects will be asked to complete a questionnaire covering many indicia of excellence in teaching. The results will be made available to individual teachers (i.e., tenured and untenured members of staff; guest and part-time lecturers are not included in the programme) and will be recorded in the University's personnel files. A decision will be taken at the end of this year as to whether results should also be made available to students. The main benefit of the assessment scheme is likely to be the refinement of courses from year to year in light of suggestions for improvement. As yet, no provision has been made for formal awards or sanctions, whether positive or negative; there are no immediate plans to displace virtue as the most tempting fruit of academic success.

Although opinions about the worth of teaching survey data

vary widely, the view that prevailed in the Faculty was that a well-constructed questionnaire would provide more reliable information than has been available in the past. Informal polls, expressions of praise or blame from a small handful of observers, or pronouncements by CTEC's itinerant gurus, may be unrepresentative of mainstream opinion, a danger best avoided by using valid survey techniques. Much thought has gone into the design of our questionnaire, which we consider to be an advance on the examples available from other leading law schools, including Osgoode Hall Law School in Toronto.

Valuable as teaching surveys are likely to prove, they should be seen in perspective. First, although the good law teacher is a notoriously prolific species, not all are sure of the attributes which have enabled only the fittest members to survive. Nonetheless, it is possible to design a questionnaire which measures a variety of basic indicators of performance. The questionnaire we propose to use will include over thirty questions covering a wide range of factors and will elicit suggestions for improvement.

Secondly, faith should not be pinned exclusively on student evaluation. In particular, peer group assessment and discussion of teaching performance may be more effective as a catalyst of improvement. This process now occurs on an informal basis but there is a case for making it routine. Thirdly, teaching is a major function of the University but the need for constant improvements in this area should not divert attention from research, another major activity in its own right and the life-blood of much good teaching. In the past this law school has achieved high distinction in the field of legal research and scholarship. It would be tragic, to say the least, if that tradition were abandoned by expecting teachers to act as homunculi, capable only of echoing the words found in judgments, statutes, and other official sources of legal knowledge.

Brent Fisse
Professor of Law



(A regular column on computers in the Law School.)

For my introductory column, I have decided to offer an overview of our current activities and plans for 1988.

Recent decisions by the University to provide staffing and equipment in this area have led to some remarkable developments. In fact, this summary is likely to be out of date by the time of publication.

First Year Teaching

Every first year student will receive training in the use of computers in a new Legal Research and Writing programme which is a part of the new curriculum which commenced in 1988. Students are being given a comprehensive introduction to legal information and to other uses of computers to improve research and writing skills.

There is a more limited programme for final year students. These programmes have been made possible by generous support from the University. As a part of this support, the Faculty has acquired a Honeywell mini-computer which is the centre of a new 35 terminal computer laboratory located in the Law School. In addition to teaching, the equipment is being used for research purposes, some of which are the subject of a feature article in this issue.

Legal Information/Retrieval

Large scale teaching of legal information retrieval has been made possible by the AIRS programme developed by Andrew Mowbray as a part of the DataLex Research Project. AIRS (Another Information Retrieval System) is a CLIRS simulator which uses a

database consisting of selected State and Commonwealth cases and statutes.

Direct connection to CLIRS for teaching purposes is not financially feasible. Even at the very favourable rates which CLIRS has offered to the law faculties, the number of students and the time required to gain proficiency in computer based research renders the costs prohibitive. AIRS fills this gap. AIRS is fully self-contained on the Honeywell mini-computer so that the Faculty incurs no connection time related costs. The user of AIRS finds it indistinguishable from the CLIRS service except, of course, that the amount of data is limited. AIRS also emulates the Commonwealth SCALE database.

Writing and organizational skills

The legal research and writing programme also uses computers to increase students' organizational and writing skills. This is possible because the terminals in the laboratory are micro-computers which are used to run word processing and "outline processing" programmes.

An outline processor is an organizational tool which allows the user to rearrange related ideas in much the same way that a word

processor allows the user to rearrange words.

Outline processors will also be used to teach students better study habits. Methods of note taking which emphasize "key" words and diagrammatic structure will be taught to all students in an attempt to alter the "dictation" style of note taking which is now used by many. The "new" style of classroom notes will then be reorganised by an outline processor to provide the students with a structured and useful set of notes for later reference. A beneficial side effect of this procedure will be that students may be more active participants in the classroom.

Students will be encouraged to use word processing programmes to complete written assignments. This approach is based on the idea that the word processor is simply the final step in the preparation of an assignment which begins with key word notes which then progress through the outline processor. We hope that there will be a significant improvement in the quality of students' writing.

Alan Tyree
Associate Professor of Law

The new computer laboratory, David Lewis instructing.



ACADEMICS

VISITORS

(A regular column about visitors to the Law School.)

The Allen Allen and Hemsley Visiting Fellowship was established in 1984 by an offer from Messrs Allen Allen and Hemsley to provide funds for the appointment on an annual basis of a distinguished lawyer to the Department of Law.

The Allens Fellow for 1987 was Dr J W Harris, a Fellow of Keble College, Oxford. He was with us from June until December and taught Equity and Jurisprudence.

The Allens Fellow this year will be Professor Denis Galligan, Dean and Professor of Law in the University of Southampton. His writings also deal with jurisprudence, criminal law and administrative law. Previous Allens Fellows were Professor D G T Williams, Rouse Ball Professor of English Law and President of Wolfson College, Cambridge (1985 Fellow) and Professor Richard M

Buxbaum, University of California at Berkeley (1986 Fellow).

The Faculty encourages distinguished overseas scholars who are visiting Australia to spend some time with us and to share their perspectives with both staff and students and, where feasible, with our graduates and the profession through the Law School's continuing legal education programmes. Recent longer-term visitors included Mr John G Collier, Vice-Master of Trinity Hall, Cambridge (private international law and commercial law), Professor M A Eisenberg, Koret Professor of Law, University of California at Berkeley, visiting us as a Senior Fulbright Fellow (company law and securities regulation law), Mr David Lloyd Jones, Fellow of Downing College, Cambridge (international law), Associate Professor A Paizes, University of Witwatersrand (evidence), Dr Rainer Hofman,

Max-Planck Institute of Comparative Public Law and International Law, Heidelberg (constitutional law and human rights law) and Professor David Mullan, Queen's University, Kingston, Ontario (administrative law).

Professor Howard Hunter, Emory University, Atlanta, Georgia (restitution) has recently joined us as a Senior Fulbright Fellow. A number of other distinguished visitors are expected during the course of this year but details were not confirmed at the time of going to press. As far as possible, information about forthcoming visits will be announced in these columns and readers interested in obtaining further details are welcome to contact the writer.

David J Harland
Professor of Law

YESTERDAY

(A regular column by guest contributors.)

The Law School in World War II

I have called these reminiscences "The Law School in World War II" because my years there coincided with the War.

I entered Law I in 1940, the year in which Germany conquered France; I completed Law IV in 1945, the year in which the allies were victorious. The Law School was carrying on under great difficulties which were increased

when the master figure of the Faculty, Sir John Beverley Peden, retired in ill-health in 1942.

I was in the last class that Peden himself conducted in Constitutional Law, probably his favourite subject. Along with Property, Contracts and Torts, he thought it the best test of aptitude for Law. Peden's Constitutional Law course was a traditional account of the outlines of the British Constitution followed by a more detailed, original and authoritative study of the federal and state constitutions. The course was much more besides, because

Peden treated it as an introduction to the study of all law and to legal practice. In Contracts that year the lecturer was B. Sugerman, later Judge of the Court of Appeal, of whom it has justly been said that every lecture was an exercise in scholarship. I had the good fortune to be in a strong class in Law I that contained two future Professors of Law, W.L. Morison and R.W. Parsons, and a future Supreme Court Judge, J.A. Lee, as well as Maurice Byers, who was to become Solicitor-General. Classes were small in 1940 and became even smaller as the War

continued. Most students were in employment as articled clerks or public servants. Full-time students were rare.

The Peden Law School, as it may justly be called, had many virtues, that earned it a great reputation in the profession throughout the country. Peden wanted every Law graduate to be competent professionally, for no lawyer should "slaughter his client". Every graduate was also to have a broad understanding of Law as a sound institution and a part of our culture. The strict professionalism of the Law courses was matched by Peden's insistence that Roman Law, Legal History, Political Science, Public International Law and Jurisprudence were all compulsory subjects. The Law School then had no options.

Because most Law was taught as a practice discipline, and because financially there was no alternative, the School relied heavily on part-time teachers. Drawn principally from the Bar, they varied in their enthusiasm for the task and in their ability as teachers, but generally their



The old Law School.

standing was good and many of them were appointed to the Bench. Among the part-time teachers who impressed me were Sugerman, whom I have already mentioned and on whom the University later conferred the honorary degree of Doctor of Laws, B. P. Macfarlan, K. W. Asprey, C. W. McLelland, V. H. Treatt, R. Else Mitchell, R. M. Hope and the solicitor P. R. Watts. With them should be mentioned C. D. Monahan, who guided his classes through F. R. Jordan's important printed notes on Equity, and C. H. Currey, a Doctor of Laws who never practised law but taught Legal History and Political Science with verve and enthusiasm.

Teaching was entirely through lectures, in which the asking of questions by either teachers or taught, was not common, and through typed notes of the lectures. In the Library at night the Tutor, F. C. Hutley, if he were on duty, was always ready to answer questions and to guide genuine seekers after knowledge. The Library was adequate for the courses taught.

One's results in Law subjects were determined by performance in a single paper final examination, a procedure that Peden with his emphasis on practice in court, did not think too exacting. The award of honours was determined by results from every part of the course on the stern principle laid down by Peden, "you have to do well from the jump". Students in Law varied from young people who had just left school to men and women, who had graduated in other Faculties with high Honours. The system emphasised rote learning and concentration on examinations, in ways more appropriate to young

inexperienced students than to graduates.

Because of the War and a number of personal factors I was at the Law School for a longer time than usual, and did not finish my courses until I was already a Teaching Fellow in History. In 1944 I was not at the Law School at all and in at least one other year had to withdraw unexpectedly. In that difficult time I had much sympathetic assistance first from Peden and then from Professor James Williams, who was Dean from 1942 to 1946. I knew little then of the internal troubles of the School in those years and was grateful for help I had from both Deans.

When I went back to the Law School in 1945, the return of a large number of men and women from the War had begun. They dominated student attitudes with their determination to get on with their work and to graduate quickly. I was teaching the same sorts of people in History and have never felt closer to my students or to my teachers, among whom Julius Stone, the Challis Professor of International Law and Jurisprudence, was outstanding. Stone's course in Jurisprudence brought together all that I had learned in Law and much of what I had learned in History.

The War years at the Law School were exceptional years, but they witnessed the survival of much of what was best in the Peden tradition and produced some distinguished practitioners and legal scholars.

Professor John M. Ward, A.O.,
Vice-Chancellor and Principal,
The University of Sydney

(A regular column by student Faculty Representatives and members of the Sydney University Law Society executive.)

Our country's Bicentennial year is a mere two years before the Law School Centenary, an event of more focused significance. It is an excellent time to inaugurate the Sydney Law School Reports, and I write the first student article with considerable enthusiasm for the project. Sydney Law School Reports shows great promise in improving the chain of communication not only between students and the administration but also between today's Law School and Law graduates.

Forthcoming editions will contain information on the work of the Faculty's student representatives (currently Joe Hockey, David Short and myself) and the Sydney University Law Society (whose current President is Michael Sharp). It is hoped in future Reports to answer correspondence on student issues.

1987 proved to be an interesting although only partially successful year on Faculty for the student representatives. A good response was received by the student body to our motion, which Faculty adopted, allowing a minimum of 15 minutes reading time for each exam and permitting students to make notes on the exam paper during this period. However, the October meeting of Faculty rejected our proposals to alter the calculation of the Honours mark (by allowing students to disregard some of their worst marks) and rejected our proposal to make all exams open book. The December meeting of Faculty narrowly passed a motion put forward by the student representatives to require that in all closed book exams a case list and statutes be allowed. However, a subsequent motion moved by a member of



The Law School canteen.

staff limited the operation of the motion to cases where the exam is strictly closed book and not to exams where some materials are allowed. In effect, the original motion applies only in a very few cases.

One of the more important decisions of Faculty in 1987 was the decision in principle to move back to campus. A student survey revealed that 65% of all Law students were in favour of this proposal. Support was stronger amongst campus students than amongst students at Phillip Street, but a majority of the latter group favoured the move. The Dean is actively pursuing the question, but it is impossible to say at this stage when the move will take place.

On the teaching front, Faculty has resolved to conduct student evaluations of teaching in all subjects in 1988. This move was welcomed by the student representatives on Faculty, not least because student representatives have been trying to achieve it for many years.

1988 has seen the introduction of the new curriculum which will give students more subject choices and overcome some other problems of the old curriculum. The student representatives on

Faculty over the last three years have had input to this curriculum.

The New Year also saw the addition of several new members of staff. This will further improve the poor staff-student ratio and hopefully provide for more small group teaching.

Finally, for the uninitiated a short word on the role of the student representatives on Faculty. We are there to hear your complaints on any matter to do with your legal education and to take them to the relevant members of staff. Not only this, but we may advise you on any problem you may have at Law School and (if possible) how to solve it. Further, we may make representations and speak on your behalf before any member of staff or the administration. If you have any views, complaints or problems, please do not hesitate to contact any one of us by leaving messages on Level 12 or with the Law Society on Level 6, or just coming up to any one of us during the day.

Stephen Janes,
Student Representative
Faculty of Law

(A regular contribution by the Law School's Placement Officer and the Careers and Appointments Service)

In my relatively short term as "Placements Officer" at the Law School one of my main activities has been to administer the Graduate and Summer Clerkship Employment Interview Programmes.

There seem to be two predominant questions asked of me by students. The main considerations from the students' point of view, when they submit applications are "What are law firms looking for when selecting?" and "What should I do and say when I'm being interviewed?"

There are approximately 30 legal firms participating in the employment interview programmes. Six law schools take part — the Australian National University, University of New South Wales, Macquarie University, The University of Technology, The Law Extension Committee (Solicitors Admission Board) and The University of Sydney. Participation of legal firms has increased by 50% since 1985, though this has done nothing to reduce the intensity of competition for summer and graduate employment.

The Summer Clerkship Interview Programme is for students in their penultimate year of law studies. The Graduate Programme is for final year students. Details are announced in the Faculty's Weekly Notes — a very important publication for jobseekers. As in most employment areas where competition is high, when selecting applicants employers rely on such things as good academic results, good communication skills and a wide range of interests outside University.

Sometimes students forget that presentation is also important: the application should be neat and clear, and you should dress neatly for the interview. It is a good idea to do some "research" on the firm, and prepare a list of informed questions.

Obviously, no two interviews are ever the same. Some interviewers prefer the casual "getting to know you" attitude whereas others are more formal. Both kinds of interview are aimed at finding out more about you and how well you present yourself in different situations.

For students who feel they need some advice on "technique", I recommend the University's Careers and Appointment Service. The Careers and Appointments people are specialists who conduct an employment service for all students of our University. Apart from helping to place students from every faculty in all fields of employment, casual or permanent, they also offer careers advice, a careers library, and a graduate vacancy mailing list. They conduct Careers Week which is usually in the August vacation and an Accounting Interview Programme in May. The Director of Careers and Appointments Service is available at the Law School during term, and appointments may be made at the Information Desk at Level 12. Each year CAS speaks to law students on preparation for interviews and in 1988 it plans to conduct one or more workshops on interview technique.

Arrangements are made for participating Law firms to visit the law school during Lent and Trinity terms to speak about legal practice and their own activities. These visits are proving to be popular and informative for both

the speakers and the audience. They present a good opportunity for intending applicants for summer and graduate employment to become familiar with the firms and the nature of legal practice as a solicitor.

The programmes allocate only a limited pool of jobs. The statistics for 1987 make this clear:

GRADUATE EMPLOYMENT PROGRAMME:

Total number of students interviewed:	554
Total number of students employed:	95

SUMMER CLERKSHIP PROGRAMME

Total number of students interviewed:	581
Total number of students employed:	79

Consequently the majority of applicants will receive no interviews and no job offers. However much we may warn you of the likelihood of this outcome, you are bound to be disappointed if you fall within this majority category. But you must remember that it is, after all, the majority category; there are very few jobs on offer; and on our experience to date, the vast majority of our graduates will have arranged jobs by the time they complete the College of Law course.

At this stage in your career, you should normally take the course of action which keeps your options open. To say "I won't bother with the employment programmes because my academic results are only average", is to cut off an option. Employers are influenced by good academic results (just as well, from the Law School's point of view), but it is relatively common for an applicant with

very ordinary grades to secure a job because of his or her other qualities.

In this column I have been concentrating on only one aspect of the Law School's Placement Office. Apart from the limited number of jobs which are offered through the interview programmes, they have two other significant limitations. They are

available only to final year and penultimate year students, and they provide jobs only in city solicitors' offices.

We have some activities for more junior students, such as the Professional Observation Programme, and we are trying (admittedly with limited success) to interest other employers of law graduates to present their cases

and even to recruit at the Law School. The recent "Law Careers Hypothetical" was a step in that direction.

These matters will be subject for future Careers columns.

Lesley Corey

C L E N O T E S

(A regular column by the organisers of the Department of Law's Continuing Legal Education Programme.)

The Law School's main CLE programme is organised by the Committee for Postgraduate Studies, which was formed in 1960 to promote postgraduate teaching, study and research in law.

Profits from the Committee's activities are used for those purposes. A major component of the Committee's funds is applied to provide postgraduate scholarships. Though the Committee pays its lecturers, it is not a private profit-making concern.

Over the last eighteen months and with the encouragement and assistance of the Law Society of New South Wales, we have substantially increased our CLE programme. In 1986 the Committee offered four lecture series and seminars; in 1987 we were able to offer eleven lecture series and seminars.

The courses provided during 1987 ranged from "bread and butter" practical topics such as "The Structure of Income Tax Law", "Imputation", "Current Commercial Law", "Developments

in the Law of Evidence", "Construction of Contracts", "The New Accident Compensation Scheme — TransCare & TransCover", through to "Cultural Heritage Law", Criminology in various aspects ("Ethnicity and the Objective Test in Provocation", "Criminal Liability of Corporate Officers — Managing the Legal Risks"), "Developments in Federal Jurisdiction" and "Alternative Dispute Resolution".

The 1988 programme is at least as extensive as the 1987 offerings. We have conducted or propose to conduct courses in "Developments in Tax Law 1988", "Current Commercial Law", "Developments in the Law of Voluntary Manslaughter", "Statutory Interpretation and Drafting", "The New Admiralty Legislation", "New Family Law Legislation — Maintenance reform and Unification of Jurisdiction", "Alternative Dispute Resolution — Overview", "Negotiation", "Mediation", "Current Issues in Employment and Industrial Law", "Aspects of Criminal Evidence", "Confronting the Witness", "The New Evidence Act", "National

Companies and Securities Legislation" and "Aspects of Administrative Law". We are also administering non-CLE attracting courses in "Industrial Relations and the Law" in conjunction with the Centre for Industrial Relations Research at the University of Sydney.

We have a new mailing list and data base, which we are keen to keep as accurate and up-to-date as we can. If you are not already receiving our 1988 brochures, please 'phone Jenny Littman on 232-5944 or 225-9238, or write to have your address included in future mailings. You could also call at our office which is situated in Room 1307, on level 13 of the law school.

From time to time new courses will be conducted to cater for recent developments in the law and legislation which may arise spontaneously. To be informed and up to date, please have your name included on the mailing lists.

Jenny Littman.

WILL JUSTICE FALL TO BITS? THE DATALEX PROJECT

Artificial Intelligence (AI) is a branch of computer science which attempts to build machines that "think". Researchers from three Sydney Law Schools have joined to form the DataLex Project which is in the forefront of applying AI technology to the problem of building computers that are capable of solving legal problems and of giving legal advice at a professional level.

What is Artificial Intelligence?

Artificial intelligence is itself an elusive concept. From the very earliest days of computers, it was the dream of some to mechanise the thought process. The idea was simple: we would isolate the essential features of "thinking" and of "learning" and build a machine which was the equivalent of a new-born baby.

But what a baby this would be! It would have a super-high IQ and could be fed information at a blinding speed, information which would be digested, organised and used in the same way that a human learns. Within a matter of a few months, a year at the most, our machine would know more and be "smarter" than any human.

Of course, it didn't work. The whole concept of "intelligence" turned out to be far more difficult than anyone imagined. It seems to be wholly impossible to separate "intelligence" from "knowledge". Put another way, if an organism, either human or mechanical, is going to learn anything at all, then it must already know quite a bit.

Knowledge Based Systems

Modern AI research has learned from the early failures. The current focus poses the following problem: how can we build machines that can manipulate knowledge in a meaningful, apparently "intelligent", way? This newer approach accepts that we must build a substantial amount of existing knowledge into the machine.

The solution hinges on finding different ways to represent knowledge. At one extreme, the text of a book or of a case represents "knowledge", but there is no known way to devise computer programmes which can use that knowledge to solve problems. What is needed is a way to represent the same knowledge in a way which can be manipulated by current computer technology. The manipulation must be able to reproduce the forms of reasoning used in the subject area.

Why is Law Difficult?

Law presents a particularly difficult challenge in this respect. Legal "knowledge" varies from the (apparently) clear words of statutes through the complexities of case law to the ordinary rules of simple common sense. However we choose to represent this knowledge, we must then be able to subject it to the varied forms of legal reasoning. Since we know that these forms of reasoning are difficult for human subjects to learn, we cannot be too optimistic about the performance of machines.

The most common way of representing knowledge in the new AI programmes is through the use of production rules. These are rules of the form "If A is true, then B is true". In a legal application, a production rule might take the form "If party A breached a contact with party B and if party B suffered loss as a result of that breach and if that loss was not too remote, then party A is prima facie liable to pay damages".

There have been a number of "expert systems" built which use production rules. A typical medium size programme might contain four or five hundred production rules. Rule-based systems have not, however, proved to be very effective at dealing with case law and case law reasoning. The reason for this is that case law must be analysed in context, that is, it is not enough to read a case in isolation and attempt to determine the "ratio decidendi" of the case. Sophisticated case law analysis requires that the case be read within a larger body of legal information. DataLex research has devised new and different ways of approaching the case law problem.

Another way in which law is fundamentally different from other areas is the role which is played by justification. In most AI programmes, the aim of the programme is to give some advice. When justification is provided for that advice, its aim is to make the advice more believable and understandable to the human user.

In a programme which advises on legal problems, the justification is central to the purpose of the programme. It is nearly useless for a programme to advise "your client will win with 73% certainty". What is wanted is the

arguments, the justification, which lead to the advice given.

The DataLex Project

The DataLex Project was formed to study the problems of simulating legal reasoning, particularly the difficult problem of reasoning with case law. The Project is jointly managed by Alan Tyree of the University of Sydney, Andrew Mowbray of the University of Technology and Graham Greenleaf of the University of New South Wales.

The Project has developed a number of tools to assist in the construction of legal programmes. These tools have been used to build demonstration programmes and are being used to construct several large scale programmes which should have commercial potential.

The problem of case law analysis is demonstrated by FINDER, a program originally developed by the winter. FINDER is concerned with disputes which arise between the finder of a chattel and some other person, typically the owner or occupier of the premises where the chattel was found. The area is interesting for experimentation since such disputes are governed almost entirely by case law. FINDER queries the user concerning certain key factors of the dispute and then writes an "opinion" giving the likely outcome and the arguments which support the predicted outcome. FINDER also generates the most powerful arguments which might be raised to support the opposite outcome. This emphasis on the generation of arguments is seen as the most important aspect of FINDER. The

methods used in FINDER are completely general and have been incorporated in other programmes. COPYRITA is a programme which analyses problems of copyright and which includes FINDER-style case law analysis integrated with the analysis of the governing statutes.

What is the use of such systems?

In one way, AI programmes which are capable of legal reasoning may be seen as simply another form of delivering knowledge to users. As "interactive textbooks" they could be used for reference or for teaching in much the same way as ordinary legal books are now used.

However, it is clear that they also have the potential to go beyond that passive role. Properly built and supervised, there seems little reason why AI programmes could not give legal advice directly to clients in certain circumstances, particularly those circumstances where current practice finds it expensive to deliver advice.

Many people find it distressing to hear suggestions that machines could offer advice and even, with appropriate safeguards, act as judges to resolve disputes. It is seen as a dehumanisation of the law and can give rise to emotional arguments concerning the merits of human justice as opposed to machine justice.

The argument simply overlooks the fact that many disputes are now settled outside the operation of the legal system simply because the costs of delivering "human

justice" have risen to high and unacceptable levels. In such cases, the choice is not between human justice and machine justice, but between machine justice and no justice at all.

Acknowledgments

The DataLex Project has received financial support from the Law Foundation of New South Wales, the Australian Research Grants Scheme and the Faculties of Law of the University of Sydney, the University of NSW and the University of Technology.

Alan Tyree
Associate Professor of Law



A NEW CURRICULUM FOR THE SYDNEY LAW SCHOOL

The process of curriculum reform at Sydney has been sluggish, to say the least. To appreciate the significance of the most recent changes, it is necessary to go back to the position in the 1960s. In those days the Law School offered a four-year course which was full time for the first two years only (for the first one year, in the case of Arts/Law students), and a five-year part-time course. The system was geared to articles of clerkship, it being assumed that all law students would be in articles by their third year of law school. There were significant variations of size and difficulty of subjects, and a fair degree of emphasis on a presentation which downplayed the unresolved and difficult areas.

In the late 1960s and early 1970s a number of major changes occurred. Articles of clerkship were abolished; the use of part-time teaching staff diminished while there was a corresponding increase in full-time staff, and there was an explosion of legal scholarship and law reform activity. The burgeoning literature of the law had to be addressed and assimilated in the University context, and it was unrealistic to expect that this would be done otherwise than within a solid and reorganised full time law course taught principally by full-time teachers.

A new curriculum in 1974 adopted the principle that every subject should be given equal weight. It divided the course into thirteen compulsory subjects, taken over three full-time years. This three year course was available to students with another degree whether this was obtained independently of the law degree

or as part of combined degrees (Arts/Law or Economics/Law). Students who wished to take subjects which were optional could enrol for them as non-degree students. A compulsory year of optional subjects was retained only for school leavers who proceeded straight to law, on the theory that they needed some further tertiary education to compensate for the absence of another degree.

The next modest attempt at improvement was undertaken in 1979. The Conflict of Laws and Succession courses were reduced in size, and room was made for combined degree and graduate students to take two options in the final year. That system ("the 1980 Resolutions") persisted until last year.

By 1983, it was generally agreed that it was high time to reconsider the curriculum thoroughly. While the Faculty was concerned to preserve and consolidate our reputation for ensuring that all students were thoroughly grounded in a comprehensive core of compulsory subjects, it also wished to free up student choices and further develop our response to the explosion of legal scholarship. In addition, we felt that more needed to be done in the way of providing students with the opportunity to pursue in depth areas of law in which they had developed a particular interest or which they saw as possible areas of specialisation in their professional careers.

With exceptions to be noted, it is broadly accurate to say that the above objectives were achieved by reducing the size of each compulsory course by one third, rather than by excluding formerly compulsory courses from the compulsory category. In 1974, in

an effort to produce an equality of subject loads which was never really achieved, each compulsory subject came to be taught in three hours per week. The architects of the new curriculum formed the perception that a more than adequate, intellectually satisfying compulsory course could be taught in two class hours per week, by eliminating some topics and by reducing the amount of time spent in exploring the finer points of the subjects.

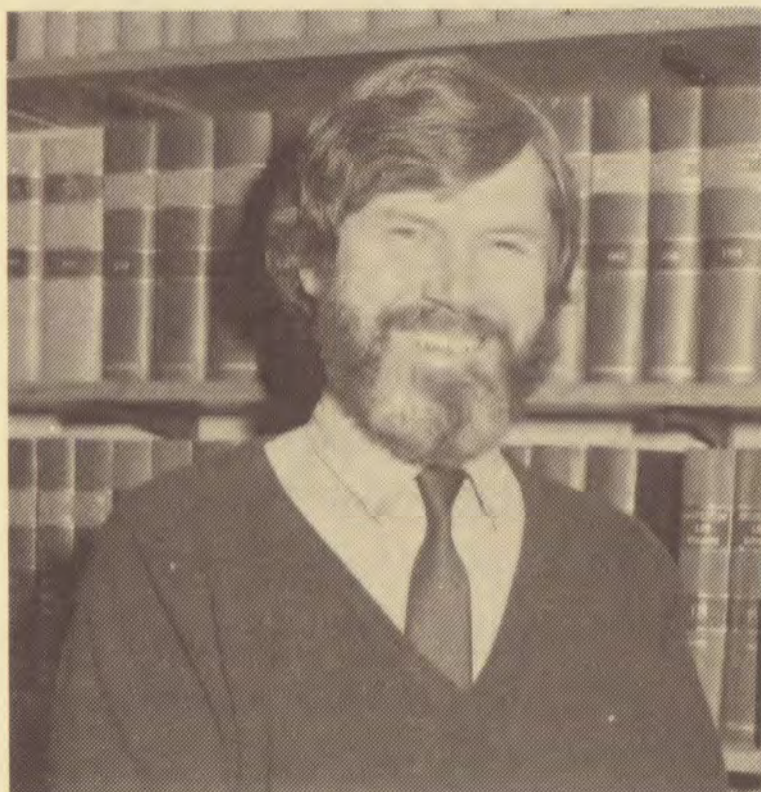
A number of subjects which are not compulsory in other law schools have remained compulsory at Sydney because they expose students to legal concepts that are so differentiated and important theoretically and practically that a rounded legal education should embrace them. Equity, Company Law and International Law (consisting of Public and Private International Law) fall into this category. In addition, the Faculty supported the view that Jurisprudence should be a compulsory subject. While legal theory has a proper place in all subjects in the curriculum, it requires a special focus at the conclusion of the degree.

The case for particular compulsory subjects was considered in each area of law, and it was decided that the following should be the compulsory subjects in the new curriculum: Legal Institutions, Constitutional Law, Criminal Law, Torts, Administrative Law, Contracts, Real Property, Equity, Succession and Personal Property, International Law, Company Law, Evidence and Jurisprudence.

Compared with the 1974 curriculum, the main changes in subject details will be these. Evidence becomes a compulsory

subject. Commercial Law I is replaced by options in Banking and Insurance Law, Sale of Goods and Consumer Finance, and by the personal property component of the compulsory course in Succession and Personal Property. Succession is reduced in size so that the succession component of Succession and Personal Property will be primarily concerned with the law of wills, and there will be an option in the Administration of Estates. Legal Institutions, the key introductory law course, has five hours of classes per week (three of lectures; two of tutorials) as well as providing the context for a new Research and Writing course in which research and writing skills are developed. Public International Law, one of Sydney's traditional strengths distinguished by the presence of a Challis Professor, becomes a component in a compulsory course in International Law, the other component of which is Private International Law (Conflict of Laws).

The conceptual and policy issues raised by legal rules must be analysed to reach a proper understanding of the law. The social and economic significance of the legal rules, and the values which support them, must also be understood. The Faculty regarded this as an essential part of a

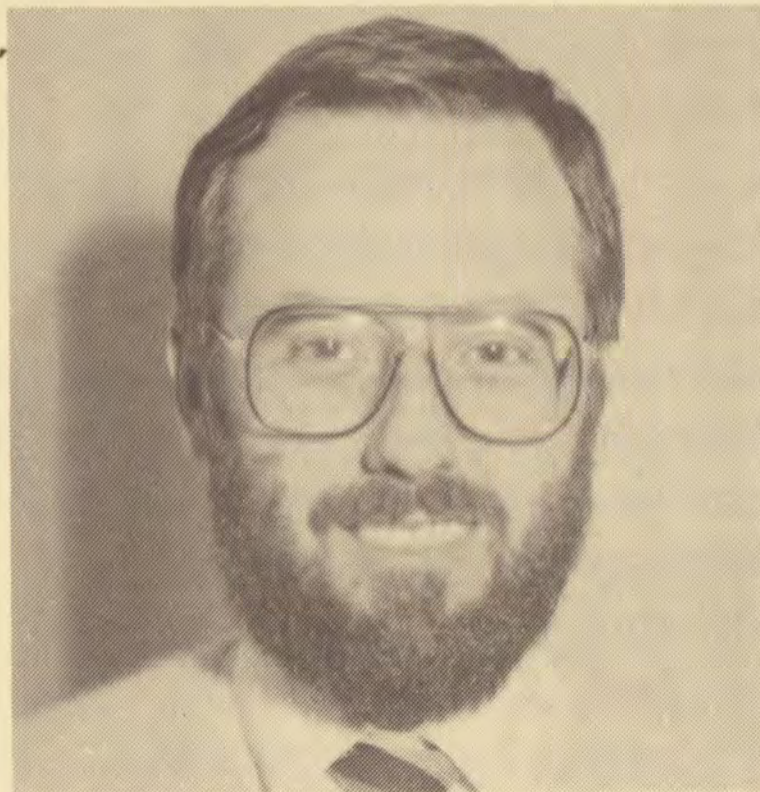


Colin Phegan.

University legal education and therefore of the new curriculum. Such considerations also have a practical aspect. The law is changing so rapidly that it is more important than ever that students come to understand where the law came from and where it is going, as well as where it currently stands, if they are to be able to cope in legal practice.

Two other major changes have been made. The first relates to the combined degree students. Under the 1974 curriculum they took only four law subjects during the first three years of the five year combined degree programme. That created an imbalance between the first three years, in which the legal component was relatively light, and the last two years in which the great bulk of legal subjects was studied. Under the new curriculum, the number of legal subjects taken in the first three years of the combined degrees is increased to six.

Another change relates to the "straight law" degree programme. From 1988, there are only two categories of admission to law, the combined Law quota and the graduate quota. There is no separate quota for straight law. Students who gain admission to the combined Law quota have the choice of either taking two degrees (Law and one of Arts,



Richard Vann.

Economics and Science) in five years, or one degree (Law) in four years. For a non-graduate to obtain the Law degree, however, he or she is required to take at least one year of the combined degree programme (i.e. Legal Institutions plus other subjects in Arts, Economics or Science). The notion that straight Law students should do more legal subjects than combined degree students has been abandoned in favour of the view that all law students should be required to undertake at least some general tertiary study outside law. The legal component of the Law degree will be uniform for all students.

In the result, students taking the combined degrees will normally proceed as follows:

- Year I Legal Institutions
- Year II Constitutional Law, Torts and (perhaps) Criminal Law
- Year III Administrative Law, Contracts and (if not done earlier) Criminal Law
- Year IV Real Property, Equity, Succession and Personal Property, International Law, Company Law and 3-5 optional units
- Year V Evidence, Jurisprudence and 7-9 optional units.

Students who enter the Law School as graduates will take Legal Institutions, Constitutional Law, Criminal Law, Administrative Law, Contracts and Torts in their first year, and their second and third years will be equivalent to combined Law IV and V. There is an impressive array of forty-two one and two unit options. Some of the options correspond with material which was compulsory or covered in the limited range of options offered under the old curriculum. Others reflect new areas of legal development.

A two unit course has two class hours per week for the whole academic year, and a one unit course is half as long (being easily converted to a one semester course when the University changes from terms to semesters in 1989).

The availability of the optional courses will, of course, depend on staffing and demand, but we are optimistic that we shall be able to offer them all when the new curriculum is fully on stream in

the 1990s, and most of them are being offered in 1988.

In designing the new curriculum, the Faculty has borne in mind the fact that in Australia, in contrast with Great Britain and the United States, the law degree is virtually the sole academic prerequisite to legal practice, and there is no equivalent of the "bar finals". Graduates of the University of Sydney should have no difficulty in complying with the profession's requirements.

At the same time, we hope and expect that our graduates under the new curriculum will have a clear perception of the place of law in society and will have the prerequisites of knowledge and understanding necessary to evaluate and, where appropriate, reform the legal system.

Colin Phegan, Dean.
Richard Vann, Chairman of the
Faculty Curriculum Review
Committee

LAW AND ECONOMICS AT SYDNEY LAW SCHOOL

Trends Overseas

Over the last twenty years, two new areas of legal scholarship have emerged as the major influences on current legal analysis: the critical legal studies movement stemming from roots in critical theory, and the economic analysis of law which has its foundations in traditional utilitarianism.

The birth of economic analysis can be dated with some precision to the publications of Professor



Graeme Cooper.

Calabresi, former Dean of Yale Law School, and Professors Coase and Becker of the University of Chicago, in the 1960's. Since then, economic analysis has spread with remarkable vitality to influence the work of legal scholars, practitioners and the curricula of law schools in the United States, Canada and the United Kingdom, and, most recently, in Australia including the Sydney, Monash and UNSW Law Schools.

The impact of economic analysis upon legal scholarship is evident in many ways. It can be seen in the number of individuals, specialised journals — there are at least five journals devoted exclusively to law and economics — and general articles in leading journals, adopting an economic approach to legal rules. Centres, designed to foster and examine work using economic analysis, have been set up at several universities, including Oxford, Columbia and Stanford. Economics is also reflected in the background of many judges, particularly in the

United States, such as Justice Scalia of the Supreme Court, Judge Robert Bork, recently considered for appointment to the Supreme Court, Judge Richard Posner, a former Professor at the University of Chicago Law School and the author of one of the first and most influential books on economic analysis and Judge Frank Easterbrook, also a former law Professor (who will visit Sydney Law School this year). It is hardly surprising that strands of economic thought are apparent in their judgments.

Analysing Laws Using Economics

What is economic analysis? It is recognised that some familiarity with economics is a necessary skill in order to understand the law of restrictive trade practices, but the use of economics has now spread into more traditional areas: the law of property, torts, contracts, criminal law, administrative law,

company and securities law, environmental law and legal procedure.

The economic analysis of law is a field of study which takes the descriptive and predictive tools of economics and uses them to scrutinise legal rules. It follows from basic economic assumptions — that individuals act to maximise their utility or welfare, and firms act to maximise profits — once it is recognised that laws put implicit prices on certain activities. The price of polluting is set by nuisance and statutory environmental laws, the price of breaching a contract is set by the law of damages and other remedies, and the price of larceny is set by the penalties imposed by the criminal law and the likelihood of detection.

Because laws set prices, they can be analysed using externalities, Pareto-optimality, opportunity cost, elasticity of demand and the other tools of microeconomics — is it efficient to allow a factory to pollute without compensating victims; do we pay too high a price for innovation by granting a statutory monopoly in the form of a patent; who bears the cost of complying with consumer protection laws and compulsory licensing schemes?

How is it different? Answering these and similar questions from an economic perspective can aid in making judgments about how the existing laws are operating, and how desirable proposed reforms might prove to be. An economic analysis also has a descriptive element — how have individuals responded to the existence or absence of cost for the activity they undertake.

But the normative judgments that are made from an economic perspective will use different

criteria from those that are traditionally used in law schools. Lawyers are familiar with and well prepared to debate the justice and fairness of rules. Much of the criticism of any set of rules will proceed in this manner. But laws need not be judged only by this standard. An economic analysis gives a further perspective by using a different tool: will the proposed solution cost more to implement than the harm it is intended to solve; might the cost of the harm be reduced by another rule which is cheaper and easier to administer; is the party who must bear the loss better able to prevent or minimise the harm than the other? The answers to these questions are a powerful ally to intuitions of fairness where they co-incide, and where they conflict, a deliberate and conscious ordering of values must be made explicit which should help vigorous and informed debate.

Sydney Law School's Curriculum

At Sydney, this economic approach to studying laws is influencing the curriculum at three levels.

The first contact a student may have with the economic analysis may be from a theoretical perspective. The compulsory courses in Legal Institutions and Jurisprudence offer an introduction to economic analysis as an example of one of the theories of law: utilitarianism. Benefit-cost calculations are an integral component of both.

Some students will also come into contact with economics as a part of more specific courses: Company Law, Personal Taxation, and Restrictive Trade Practices B,

all use economics as a part of the study and rely upon economics as providing a model and explanation of the background elements of the environment within which laws must operate.

Finally there is a new course — Economic Regulation — introduced as part of the 1988 curriculum and devoted exclusively to economic analysis. This course focuses in greater detail on the implications of economic analysis for the substantive rules in various areas of law that students have already studied: property, contracts, torts, criminal law, the rules of procedure, and regulatory schemes. The perspective that economics can offer on these sets of rules is both positive and normative: how do individuals respond when faced with this rule, and how ought they to respond, if we are using efficiency as the primary criterion?

The influence of economics on many disciplines (one commentator has called it “the imperialism of economics”) is pervasive and, for some, unwelcome. But in so far as it can accurately describe and predict human behaviour in response to limited resources it offers potentially great assistance. The new curriculum at Sydney will expose students to that potential as one of the diverse streams of modern legal education. Justice Oliver Wendell Holmes expressed it this way:

“For the rational study of law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.”

Graeme Cooper
Lecturer in Law

