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Legal Education in Australia: An American Perspective

Craig M. Bradley*

Legal education in Australia is, after the British and European model, an undergraduate curriculum, embarked upon when the student has completed secondary school. Generally, the course of study lasts five years1 with the student pursuing a major in addition to law.

In contrast to the large, impersonal classes held in the lecture halls of Europe, classes, at the Australian National University at least are relatively small (Constitutional Law has about 50 students per section) and well attended.2 Classes tend to be straight lectures rather than the livelier Socratic method employed in America, though there is awareness, and some use of, the American system.3 A three hour course will have three lectures per week, and some weeks will include one hour of tutorial where students divide into small groups for discussion of the week’s lectures and of “problem” materials. One or two such groups may be led by the lecturing faculty member, the others by non-tenure track “tutors” or by adjuncts.

* Professor of Law, and Harry T. Ice Faculty Fellow, Indiana University. The research and observations presented in this article arose from my experience as a Senior Fulbright Scholar, Australian National University, Canberra, Australia. I wish to thank the Australian-American Educational Foundation for its financial support. Thanks also to Peter Drahos, Geoff Lindell and Steve Parker of ANU for their helpful comments on an earlier draft of this Article.

1. Dennis Pearce (chairman), Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission 64-65 (Canberra 1987) [hereinafter Pearce Report]. For the recent observations of a current faculty member at the University of Sydney, see Wade, Legal Education in Australia-Anomie, Angst and Excellence 39 J. LEGAL ED. 189 (1989).

2. ANU endeavors to keep its classes below 50 and usually succeeds. Monash keeps its groups in Legal Process to about 35 but other compulsory subjects are taught to classes of 70-80 students. Queensland and Sydney, on the other hand, have some classes that exceed 100 and all of the compulsory subjects in Adelaide are taught to groups of this size. 1 Pearce Report, supra note 1, at 158-59.

3. “Until recent years, the experience of the United Kingdom legal system and the United Kingdom law schools was the primary influence in Australian law schools. This influence has diminished markedly in the last 10 to 20 years and intellectual leadership is now being set by the law schools of the USA.” Id. at 62. However, “the casebook method, as practiced in the USA, has not become entrenched in Australia.” Id. at 156.
At most schools, the instructor must discuss the method of grading with the students at the beginning of the course, such as whether the grade will be based solely on an exam or include a paper or class participation. The final decision regarding composition of a student's grade lies with the instructor. Most schools have a system of second marking for failing, honor and/or borderline papers.

Skills training and clinical education at most Australian law schools are extremely limited, but following graduation the student must take a legal practice course where such matters as trial simulations and will drafting are studied. The length of this course differs from state to state. It is nine months in the Australian Capital Territory. There is no bar exam.

In all there are twelve public law schools and one, newly formed, private law school in Australia to serve a population of about 16.5 million. The largest schools are Monash, in Melbourne (1,600 students) and New South Wales, in Sydney (1,200 students). The oldest are the University of Melbourne and Sydney University, both of which have offered law classes since the 1850s. Half of Australia's law schools have been established since 1960. This recent growth of legal education is due to the fact that apprenticeship persisted as "a major mode of entry into the profession well into the second half of the twentieth century." As late as 1978, one-third of all bar admittees were without university degrees. Traditionally,

law faculties, although situated in universities, were generally viewed as adjuncts to the legal profession rather than truly academic institutions dedicated to liberal educational aims. They had few full-time academic members; instead, law teaching was chiefly a part-time activity for practitioners. They suffered from limited re-

4. Id. at 177.
5. Id. at 179.
6. Only Monash and University of New South Wales in Sydney have clinics. Id. at 125-26. For an assessment of the various schools' skills programs, see id. at 113. Most schools offer training in legal research and writing and have moot court programs, but no more. Id. at 115.
7. Id. at 5.
8. Id. at 4-6.
10. Id. See also Griswold, Observations on Legal Education in Australia, 5 J. OF LEG. ED. 139, 145 (1952) ("the profession's assumption that the business of Law Faculties is to train practitioners results in legal education being dominated by practical rather than intellectual interests.").
current funding, low staff ceilings, small libraries, scant research funds and assistance, and poor infrastructural facilities. Little legal research was done and the general approach in the courses taught was fairly uniform.11

While this attitude toward legal academics no longer obtains, at least in the more ambitious schools such as Australian National University, Monash and New South Wales, the tradition of rather meager support from the central university lingers.

Consequently, Australia's law schools are starved for resources to the point where a recent study (the Pearce Report) recognized the "increasing unattractiveness of law teaching as a career."12 Lawyers in public service can make substantially more money and rise more rapidly in rank than law teachers,13 and the private sector is vastly better paid. Salaries for each level are uniform throughout all faculties of a university and throughout the country. Thus, there is no opportunity for the law schools to respond to the market forces and regional differences in cost of living that are drawing many of the best people, particularly commercial lawyers, out of teaching and into private practice.14 Teaching loads are very heavy—usually seven hours a week at ANU—and salaries low. The nationwide salary is $A33,000 (approximately $US23,500 in buying power) to $A40,000 for a Lecturer, depending on time and rank (the rough equivalent of an Assistant Professor in America); $A53,670 for a Reader (the equivalent of a relatively junior full Professor in America) — there is no salary range among Read-

11. Chesterman & Weisbrot, supra note 9, at 711.
12. 2 Pearce Report, supra note 1, at 586. "In the 1980s in Australia as elsewhere, financial incentives for legal academics . . . have dwindled." Wade, supra note 1, at 200.
13. "[I]t is fairly clear that a law graduate who enters service in the Attorney General's department can look forward to a more rapid advancement than can a law graduate with comparable professional qualifications who enters academic service." 2 Pearce Report, supra note 1, at 586.
14. There are two exceptions to this general principle. First, law schools generally hire new lecturers at the third or fourth rank ($A33,000) rather than the beginning rank which pays $A31,000. Also the law school seems to have more Professorships than other units (The ANU English Department, for example, has one Professor). Interview with a Professor of Law at the Australian National University in Canberra, Australia, (July 1989). Currently the central administration at ANU is, at least informally, considering whether law faculties should be given a salary supplement similar to that given to medical faculties. Interview with an Administrator of Australian National University, Canberra, Australia (May 1989).
ers) and $A64,000 ($US45,000 in buying power) for a Professor.\(^{15}\) This, combined with a marginal tax rate of 49% and non-deductible home mortgages, make things tight. Moreover, there are only six Professorships in the ANU law faculty and four Readers. The number of Professorships can only be expanded by consent of the central university (which is rarely given) regardless of the number of qualified applicants. The number of Readerships, while technically not fixed, tends to remain the same in a faculty. Consequently, it frequently happens that a highly qualified Senior Lecturer or Reader either has to wait for years for a position as a Reader or Professor to come open or has to go to another university.\(^{16}\) Recently, a Lecturer with two years experience left ANU for private practice and a salary in excess of $A100,000. This "brain drain" is very common in legal academics, especially in Sydney and Melbourne where housing prices are very high (but academic salaries the same as everywhere else) and where switching to a law firm does not require moving, except into a better house. The other result of the low salaries is that legal academics, particularly in the big commercial centers, devote much of their time to part-time private practice rather than research and other academic duties.\(^{17}\)

One advantage that Australian academics have is a generous sabbatical policy—a paid, half year sabbatical (plus a travel allowance) is available after every three years. This is designed to counter Australia's isolation from the rest of the world. There is, however, a downside to the sabbatical policy. People are constantly coming and going, and those who are at home, especially the most junior faculty members, are frequently pressed into teaching new courses to fill gaps left by leave-takers, as well as by those who have left permanently.

Student teacher ratios are not bad, hovering around 20:1 at most schools, with two exceptions: University of New South Wales has a very favorable ratio of 13:1 and Sydney University an "appalling" ratio of 32:1.\(^{18}\)

\(^{15}\) Academic Salary Schedule, Australian National University (November 24, 1988). A very few especially distinguished Professors make salaries of $A67,000 or even $A72,000 but the $A64,000 salary applies to "98% of Professors in Australia." Interview with Professor, supra note 14.

\(^{16}\) "Promotion and appointment incentives are hampered by a logjam of tenured middle-aged academics in the mid-salary levels and by the absence of merit pay." Wade, supra note 1, at 200.

\(^{17}\) See, e.g., 5 Pearce Report, supra note 1, at 62 (citing Melbourne and University of Western Australia (Perth) as schools where this problem is particularly prevalent).

\(^{18}\) Id. at 32-38.
The physical facilities are no better than the salaries. The physical plant of the University of Queensland was also described by the Pearce Report as "appalling" and the law building and library at Melbourne as "very inadequate from a number of viewpoints." Only two schools, Australian National University in Canberra and Monash, were found to have an adequate physical plant.

Particularly inadequate are library resources. In 1984, the ANU law library had 83,000 volumes for about 700 students; New South Wales, the largest academic law library in Australia, 115,000 volumes for 1200 students; and Monash, 99,000 volumes for 1600 students. This compares to 460,000 volumes at Ohio State, 497,000 at the University of Virginia and 355,000 at the University of Florida law schools in the same year. Moreover, the law librarian frequently does not have a law degree and is appointed by, and reports to, the university rather than the law faculty. One school, New South Wales Institute of Technology, does not have a separate law library and another, the University of Queensland, is so cramped that "material in continual use are located underneath the seating." Only at three law libraries does the number of professional staff exceed two. The physical plants of all of the libraries in Australia would be inadequate to house any major increase in collection size. ANU's library, which was rated one of the best by the Pearce Report, while it may be adequate for most student needs, seemed to me to be small and understaffed as a faculty research facility.

Despite all of these problems, Australian law schools seemed able
to attract, though not necessarily to keep, a surprisingly high quality faculty. This is due in part to the fact that British universities are even worse off than their Australian counterparts. Consequently there is a regular influx of British academics into the Australian ranks. Since Australian law is still heavily tied to the British, the transition is generally successful, though British lawyers are, of course, unfamiliar with the special problems posed by federalism. I was especially impressed with the quality of people applying for two vacant Professorships at ANU. In my view they would have been well received had they applied for a comparable position at most American schools.

The main pedagogical issue confronting Australian law schools can be traced to the current trend away from Britain and toward America as the dominant influence in Australian law. On the one hand, Sydney University, one of the two original law schools in Australia, seems mired in the old, British tradition of demanding that students learn through lectures, rather than Socratic exchange. At the other extreme, Macquarie University has become dominated by critical legal studies (CLS) adherents, at least some of whom "reject any obligation of the law school to train students to become professional lawyers." This has led some Sydney law firms to be reluctant to hire Macquarie graduates and 41% of the students to complain that the courses needed "more solid legal substance" (compared to 16% nationally who hold this opinion).

30. "There is a steady traffic of [excellent] teachers both into and out of Australian law schools." Wade, supra note 1, at 202.
31. Sometimes an Australian may go to Britain to get a Professorship, for example, but most of the flow seemed to be toward, rather than away from, Australia. This may change, however. A British academic visiting at ANU reports that salaries, though not physical plant or support facilities (computers, libraries, etc.), are now better in Britain than in Australia. Appeals to the British Privy Council were not abolished until 1986. Australia Act 1986, ch. 2.
32. In this respect matters have not changed since Dean Griswold's visit to Australia 37 years ago: "Australian law teachers I met seemed to me to measure up fully to those of the rest of the Anglo-American world in terms of scholarly ability and capacity." Griswold, supra note 10, at 146.
33. See supra note 3.
34. According to a recent British arrival at ANU, Australia's legal academics are more mired in the "British tradition" than their British counterparts.
35. "According to (Sydney's) graduates, rote learning was the rule of the day; social, political and ethical issues are given a low priority." 5 Pearce Report, supra note 1, at 38.
36. 3 Pearce Report, supra note 1, at 944.
37. Id. at 945.
The dissension created within the law school by the competing factions has become so severe that the Dean was fired, reinstated, then resigned.\textsuperscript{40} The faculty "at all levels are seeking appointments elsewhere,"\textsuperscript{41} and the Pearce Report recommended that the school be closed down.\textsuperscript{42} Whether this is due to the militancy of the left, the obduracy of the right, or some combination of both, is unclear. However, Macquarie is unique. In at least some of the other schools, such as ANU, there seems to be a healthy interest in critical analysis and interdisciplinary teaching and scholarship\textsuperscript{43} combined with a recognition that at least one of the major functions of a law school is to prepare its students to be lawyers. Given the high quality staff and the high student demand for legal studies, it is a shame that Australia has not seen fit to commit adequate resources to legal education.

\textsuperscript{39} Id. at 944-45.

\textsuperscript{40} Sydney Morning Herald, July 18, 1989, at 11.

\textsuperscript{41} 3 Pearce Report, \textit{supra} note 1, at 945. "Professor Quits Problem School" in The Australian, July 5, 1989, at 1 ("a group of ideologically committed and intolerant staff had been attempting to dominate the school for some time, by excluding staff who did not agree with it . . . [t]his group did not wish to provide a professional dimension to legal education . . . . ").

\textsuperscript{42} Id. at 947. "[W]hen . . . obscene remarks are made to proponents of different views at school meetings; when (faculty) members are visited after school meetings and an explanation demanded as to why they voted a certain way, and . . . at least one complaint of threat of assault has been made, intellectual debate has gone and factionalism has replaced it." Id. at 945. See Chesterman & Weisbrot, \textit{supra} note 9, at 721, attributing the criticism of Macquarie to the "traditional, profession-oriented approach" of many Australian legal academics.

\textsuperscript{43} Still, as Chesterman & Weisbrot point out, overall, "there has not been a clear and decisive shift from the traditional and predominantly professional orientations of earlier years." Id. at 722-23. "Few long-term interdisciplinary units are blossoming within the law schools." Wade, \textit{supra} note 1, at 202.