

The Idea of a Law School named after Thomas More

Launch of Thomas More Law School, Australian Catholic University

Chief Justice Robert French AC

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The elements were so mixed in him that nature might stand up and say to all the world 'this was a man'. So said Mark Antony of Shakespeare's Brutus. So much could also be said of Cicero, the great Roman orator, essayist, ethicist, summary executioner of the Catiline conspirators, and allegedly discreet supporter of the assassination of Caesar. The elements were also mixed in the man they called the 'Christian English Cicero', Thomas More.

He was a person of fierce principle and conscience in the administration of justice, which led his son-in-law William Roper to write, in famous words:

were it my father stood on the one side, and the devil on the other, his cause being good, the devil should have right.¹

He seemed to believe in a form of popular sovereignty. He once wrote a poem in Latin entitled 'The Consent of the People Both Bestows and Withdraws Sovereignty'. In English translation it read:

Any man who has command of many men
owes his authority to those whom he commands
he ought to have command not one instant longer
than his subjects wish. Why are impotent kings so proud?
Because they rule merely on sufferance?²

As occupant of the highest judicial office in England, appointed by King Henry VIII as Lord Chancellor in 1529, he was an activist reformer who foreshadowed the bringing together of the administration of law and equity more than three centuries before it happened

¹ William Roper, *The Life of Sir Thomas Moore*, (Cosimo Classics, 2009) 33.

² Clarence H Miller, Leicester Bradner and Charles A Lynch (eds), *The Complete Works of St Thomas More* (Yale University Press, 1984) vol 3, Pt 2, 169.

with the enactment of the Judicature Acts of 1873. There was a verse in an Elizabethan play about More which went as follows:

When More some time had Chancellor been
 No more suits did remain;
 The like will never more be seen
 Till More be there again.³

In a memorable address to the Thomas More Society of America in 1940, Professor Garrard Glenn described him as the good companion of Mansfield, Blackstone and Campbell, and said of him:

we of the Bar, practitioners and teachers, need him because he showed us how it is possible for a man to lead a busy life, to find time for his family, to leave behind him the idea of reforms which the centuries were to develop; and, better still, also to leave the memory of a vibrant personality.⁴

He was the family man who, while in prison in 1535 awaiting his execution, wrote to his daughter, Margaret Roper, on a scrap of paper with a piece of coal: 'I am in good health of body, and in good quiet of mind; and of worldly things I no more desire than I have.'⁵ He concluded, 'and thus fare you heartily well for lack of paper.'

Thomas More was, as all of us are to a greater or lesser extent, a person of his time and the beliefs in which he had been nurtured. That was also reflected in his zealous pursuit of those said to be heretics of whom he wrote to Erasmus:

I find this kind of people so repugnant that I want, so long as they do not change their opinion, to be as odious to them as I can possibly make myself.⁶

The life of Thomas More reminds us of the human dimension of the law reflecting the humanity of those who make laws, those who administer them and enforce them, those who seek their protection, those who advise about them and advocate as lawyers about their application to particular cases, those who interpret them and who adjudicate upon their application.

We may think of the law as an intangible and yet indispensable societal infrastructure. It is a construct, some parts of which have been built up over centuries, some parts of which

³ Peter Berglar, *Thomas More — A Lonely Voice Against the Power of the State*, (Scepter Publishers, 2009) 62.

⁴ Gerrard Glenn, 'St Thomas More as Judge and Lawyer' (1941) 10 *Fordham Law Review* 187, 195.

⁵ Roper, above n 1, 11.

⁶ Berglar, above n 3, 62.

are the product of considered and thoughtful legislative reform and some of which are jerry-built components made in a rush to meet some perceived urgent social or political imperative. Sir Owen Dixon, addressing the Medico-Legal Society of Victoria in 1933, described 'the methods of a modern representative legislature and its preoccupations' as an obstacle to 'scientific or philosophical reconstruction of the legal system'.⁷ So much we may lament, but in the end must accept. The law is not always perfectly coherent and logical and that is a deficiency which we acknowledge, if not without complaint, as a feature of our representative democracy.

The law being what it is, a human construct in its formulation, interpreted and applied by human beings, the search for any all-encompassing theory of law which might underpin legal education, is elusive. Oliver Wendell Holmes, addressing Boston University Law School in 1897, spoke of the danger in thinking 'that a given system, ours, for instance, can be worked out like mathematics from some general axioms of conduct'.⁸ The law, like the man after whom this Law School is named, must be understood in its historical and social context.

The idea of a law school, a fortiori, a law school named after Thomas More, is a mix of elements whose proportions change from time to time as ideas about legal education evolve. Accepting its changeability, it must embrace a working definition of 'purpose'. It is only with some such working definition that legal educators can manage the tensions that have informed their task for the better part of the last century and continue to inform it, tensions between practical skills, theoretical understanding, and ethical perspectives.

This Law School does not stand alone, but as part of a university. The idea of a law school today is embedded in the idea of a university. It is an idea on which another great public figure of Catholic history wrote extensively in the 19th century. In language which might seem hopelessly aspirational in today's world of managerial higher education, Cardinal Newman described a university as:

the place ... in which the intellect may safely range and speculate, sure to find its equal in some antagonist activity, and its judge in the tribunal of truth ... a place where inquiry is pushed forward, and discovery is verified and perfected, and rashness

⁷ Reproduced in Woinarski, *Jesting Pilate*, (WS Hein, 2nd ed, 1997) 11–23.

⁸ Oliver Wendell Holmes, 'The Path of the Law' (1897) 10 *Harvard Law Review* 457, 465.

rendered innocuous, and error exposed by the collision of mind with mind, and knowledge with knowledge.⁹

They are words which are often quoted, although I sometimes fear that if you asked a contemporary student what they describe, the answer might be Wikipedia.

Cardinal Newman focused upon professional education, in the context of a university education, in his Discourse VII 'Knowledge Viewed in Relation to Professional Skill'. In it he observed that professional or scientific knowledge is not the sufficient end of a university education. Of the professor of law, or medicine, or geology or political economy, he said:

out of a University he is in danger of being absorbed and narrowed by his pursuit, and of giving Lectures which are the Lectures of nothing more than a lawyer, physician, geologist, or political economist; whereas in a University he will just know where he and his science stand, he has come to it, as it were from a height, he has taken a survey of all knowledge, he is kept from extravagance by the very rivalry of other studies, he has gained from them a special illumination and largeness of mind and freedom and self-possession, and he treats his own in consequence with a philosophy and a resource, which belongs not to the study itself, but to his liberal education.¹⁰

Again, the language is aspirational. It is also gendered, but even Cardinal Newman was at, in part, a man of his times.

Since the mid-19th century when those observations were written, an enormous literature has accumulated about law schools and legal education. It reflects continuing contention about purpose, content and method.

AV Dicey in 1883 said that 'nothing can be taught to law students of greater value, either intellectually or for the purposes of legal practice, than the habit of looking at the law as a series of rules.'¹¹ Max Radin, writing 50 years later in the *California Law Review*, said that 'the lawyer's task is ultimately concerned with justice and ... any legal teaching that ignores justice has missed most of its point.'¹²

⁹ John Newman, 'The Idea of a University' in *Essays English and American* (Collier & Sons, 1910) vol 28, 31, 39.

¹⁰ John Newman, *The Idea of a University: Defined and Illustrated*, (Longmans, Green & Co, 1907) 166-167.

¹¹ AV Dicey, 'Can English Law be Taught at the Universities?' , *Inaugural Lecture*, delivered at All Souls College, 21 April 1883 quoted in D Sugarman, *Legal Theory, the Common Law Mind and the Making of the Textbook Tradition* in W Twining (ed) *Legal Theory and Common Law* (Oxford, Blackwell, 1986) 26, 30.

¹² Max Radin, 'The Education of a Lawyer', (1937) 25 *California Law Review* 676, 688.

Each of those prescriptions might be seen to describe a necessary condition of legal education. People who graduate from law schools need to know how to read, to understand and to apply the law, whether it be the law of the Constitution, the law to be found in the countless statutes, regulations, by-laws, rules and other forms of legislative instrument created by parliaments and executive governments, or whether it be the judge-made doctrines of the common law and equity. But people who graduate from law schools need to know more than how to read the rules and apply them. They need to be able to have some sense of their historical, institutional and wider social context. And on top of all that, they should have a sense of the purpose for which they wish to use the knowledge and the skills which they have acquired. That may be informed by a normative element in legal education. Law schools can be exemplars of that element.

Harold Koh, former Dean of Yale Law School, said:

I do not believe it is our job to simply bless the status quo. We stand for principles about what the rule of law ought to be. As a law dean, I think that law schools are not just professional schools. They are institutions of moral purpose. We must speak up for the rule of law when someone is threatening it, because if we don't, who will.¹³

It is not for me to try to state exhaustively the purposes of a good law school or the way in which those purposes should be achieved. The most important point I can make is that the question of purpose, which one writer about legal education has called 'the lost question',¹⁴ must be asked and at least a working answer arrived at. Law schools are not there to make money for their universities or to enhance their prestige. Any institution worthy of the name of a university must seek a higher purpose.

The Dean of this Law School has written that all of its programs 'are designed to produce ethical and practical legal practitioners who understand the challenges of law in today's modern society and possess the skills to influence positive change in communities and in society.' Although expressed in general terms, that statement seems to me to indicate a working purpose which encapsulates what we would understand today to be the essential elements of a good legal education.

¹³ Harold H Koh, 'On Law and Globalisation', Address to the American Law Institute, Washington DC, 17 May 2006 quoted in Michael Coper, 'Legal Knowledge, the Responsibility of Lawyers, and the Task of Law Schools' (2008) 39 *University of Toledo Law Review* 251, 260.

¹⁴ Bethany Rubin Henderson, 'Asking the Lost Question: What is the Purpose of Law Schools?' (2003) 53(1) *Journal of Legal Education* 48.

In responding to the needs of the time, the Law School programs have what the Dean calls 'a distinctive international flavour'. They involve both academics and practitioners in their teaching. There is a pro bono program. Of particular importance is the emphasis on small class sizes and individualised personal attention for students. There is an increasing use in legal and other education today of online learning. That has its place. However, as I said in opening, the law has an inescapably human dimension. Its practice involves interactions with human beings in advising, in negotiating, in advocacy, in seeking to change the law, in a multitude of different ways. A law course which does not provide a significant emphasis on interpersonal interaction as part of the learning process is a law course which is deficient in a vital respect.

I am pleased to take this opportunity to open this Law School named after a great public figure in the Catholic tradition and in the history of the law of England, which is part of the tradition that we have inherited in this country. His complex and vibrant personality, with its shades of light and dark, and yet sainted as a Christian martyr, speaks to us of a real person who was of his time, but whose humanity is universal. So too may education at this Law School enable its graduates to understand the sometimes untidy human processes which they study and the universality of the aspirations which inform them.