

PERICLEANS, PLUMBERS AND PRACTITIONERS BOOK LAUNCH

Monash University Law School 50th Anniversary

Chief Justice Robert French AC
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Chief Justice Warren, Deputy Chancellor Nixon, Professor Horrigan, your Honours, ladies and gentlemen — Memory and the passage of the decades can play tricks on all of us from time to time. Yet I remember 1964 quite well. It was the final year of my secondary school education in Perth. A few doors down from our family home in Claremont, on our side of the street, lived a psychiatrist, Dr Stewart Plumley Derham,¹ better known as Bill Derham. He was a younger brother of David Derham. In that same year, on the other side of the Continent, David Derham, wondering whether he 'was "mad" to take on the task',² began establishing the Monash University Law School. I don't believe I ever met him, but I remember his brother. Bill Derham once asked me to act as his ad hoc crewman and navigator for a speed boat time trial on the Swan River. Afterwards, in the bar of the Claremont Yacht Club, we were kept busy fending off the question: 'How do you get lost on the Swan River?' Bill had plotted the course for me in pencil on a page taken from a Perth regional roadmap. He provided me with a compass so I could give him directions and a squeegee so I could keep his windscreen clear. Sad to say on the choppy waters of the Swan that afternoon the combined tasks of maintaining clear vision with the squeegee and giving accurate compass directions were beyond me.

By way of heavy handed segue you can, if you like, think of Monash Law School in 1964 as a small boat putting out into choppy waters, indeed pushed out at the urging of Zelman Cowen who wanted a new law school to take disappointed applicants for entry into Melbourne Law School.³ As things turned out, it did a lot more than that. Unlike Bill Derham and myself, David Derham and the founding staff began and continued their voyage with a clear vision and a settled direction. David had well established opinions about the theory and practice of legal education. He set out, in an 18 page document, a process for the

¹ Stewart (Bill) Plumley Derham graduated Melbourne University MBBS (Melb), 1946.

² Peter Yule and Fay Woodhouse, *Pericleans, Plumbers and Practitioners: The first fifty years of the Monash Law School* (Monash University Publishing, 2014) 1.

³ Ibid 7–11.

development of the Law School which had been prepared without agonising over the mission statements, corporate objectives and performance indicators which cloud the vision of so many institutions today.⁴ It was the best kind of planning document in that it reflected decisions already made. How often it is that great things can be done in simple and direct ways.

In their history of the Monash University Law School's first fifty years, which it is my pleasure to launch tonight, Peter Yule and Fay Woodhouse have brought to life the personalities, the events, the achievements and the challenges that have so richly populated the half century of this Law School's existence since David Derham and his colleagues set about their foundational task.

The book is entitled *Pericleans, Plumbers and Practitioners*. The title encapsulates a debate about the purpose of legal education that stretches back to at least the 19th century. Is it to produce graduates informed by Periclean perspectives of legal philosophy, history and ethics, and the social sciences, or is it to produce master plumbers in the techniques of lawyering? The implied opposition between the metaphors of philosophers and plumbers has been questioned. John W Gardner, who was Secretary of Health, Education and Welfare in the Johnson administration, once said:

The society which scorns excellence in plumbing because plumbing is a humble activity and tolerates shoddiness in philosophy because it is an exalted activity will have neither good plumbing nor good philosophy, Neither its pipes nor its theories will hold water.⁵

The authors have not fallen into that error. As they correctly observe:

Sometimes the pendulum has swung towards Pericles, at others towards the plumber. At most law schools a working synthesis is developed, but the tensions between the two visions of legal education are always there, even if the proponents are not fully aware of them.⁶

⁴ Ibid 19.

⁵ John W Gardner, *Excellence can we be Equal and Excellent Too?* (Harper & Roe Publishers, 1961) 86.

⁶ Yule and Woodhouse, above n 2, 4.

A notable feature of the early years was the quality of the academic lawyers who joined the Faculty. One of the first was Frank Beasley, who had served as founding Dean of the University of Western Australia Law School from 1927 until 1963.⁷ He was engaged as a 'special lecturer in law' to set up the law library and later to teach constitutional and legal history.⁸ Many notable names followed then and in the fifty years that we celebrate tonight. They included people who, through their written work, became known to law students, legal academics, practitioners and judges across Australia. There are too many to list. Two, by way of example only, were Louis Waller and the astonishingly productive Enid Campbell, the first woman to be appointed as a Law Professor in Australia when she was appointed to the Sir Isaac Isaacs chair at the Law School in 1967 and the first woman to be appointed as a Law Dean, when she became Dean of this Law School for a year in 1971. As the authors rightly observe, she made 'a massive contribution to establishing Monash law school's academic reputation.'⁹ I still find her work a delight for its crisp, readable logic. It has been cited in at least 18 High Court decisions since 1996, the earliest of which was the *Wik*¹⁰ decision and the most recent of which was *Williams (No 1)*.¹¹

The academic reputation of the Law School was also enhanced in the years that followed by the quality of its leading graduates who came to occupy significant positions in the judiciary, the Academy, the practising profession and in politics and public life. Many of them are here tonight. A number of them, as the book recounts, were offered places at both Melbourne and Monash and chose, for various reasons, to enrol at Monash. The simple idea of the Monash Law School as a vessel to carry away Melbourne's surplus, was far too simple.

Innovation was a feature of the teaching methods used, although they didn't always work. The property course in 1968 was described by Mark Aronson as 'insanely different from the traditional course'.¹² The authors of the history report that the property lecturer, David Jackson, said at the beginning of his course '[y]ou won't understand anything I'm going

⁷ Ibid 31.

⁸ Ibid.

⁹ Ibid 54.

¹⁰ *Wik Peoples v Queensland* (1996) 187 CLR 1.

¹¹ *Williams v Commonwealth (No 1)* (2012) 248 CLR 156, 212 [75] (French CJ).

¹² Yule and Woodhouse, above n 2, 67.

to tell you for about half a year, but then it will all fit into place.'¹³ For some students the first part of the statement was true and remained so.

Standards were also extremely high, perhaps even over the top. Enid Campbell is recorded as having described one student's work in an honours contract seminar as like that of a 'semi-illiterate five year old'.¹⁴ That kind of searing denunciation, which today would be regarded as a species of emotional abuse, might have caused a sensitive soul to throw in the towel and look for some other career. That student was made of sterner stuff. He went on to top the course, did post-graduate studies at Queens University in Canada, was appointed Foundational Blake Dawson Waldron Professor in Industrial Law in the Faculty of Law of the University of Sydney and subsequently served as Dean of that Faculty.¹⁵ He was made an Officer in the Order of Australia and in 2011 was named Senior Australian of the Year. As Emeritus Professor Ron McCallum, he is here with us tonight together with his wife, Professor Mary Crock. He was made of sterner stuff than I was. When the Dean of Science and Professor of Physics told me after a seminar presentation in 1967 that I expressed myself magnificently but he was not sure I knew what I was talking about, I decided I would enrol in law.

Monash University acquired a national reputation in the 1960s for student activism on political issues. The noise of that activism travelled across the Nullarbor. Even in Perth we had all heard of Albert Langer, who later became known as Arthur Dent. Campus-wide student action about the Vietnam War and conscription reached a peak in 1969 and 1970. The law students, however, were generally not very prominent in those activities. There were some notable exceptions. One of them, Ray Finkelstein, later to become one of my colleagues on the Federal Court, helped to set up a New Left Group which was chronically at odds with the Maoist Labor Club although united with them against conscription. A high point of rebellion within the Law School seems to have been reached when Julian Burnside pressed the emergency stop button on the escalator in the Ming Wing and was fined three dollars. The University had discipline statutes but there was so little going on among the law students that the Faculty dissolved its Discipline Committee in 1969.¹⁶

¹³ Ibid.

¹⁴ Ibid 68.

¹⁵ Ibid 68.

¹⁶ Ibid 171.

On 29 February 1968, David Derham completed his time as Dean at Monash and left to take up office as Vice-Chancellor of the University of Melbourne. The Deans after Derham varied markedly in their tenures, their styles and their legacies. Some were more innovative than others and in surprising ways. According to the authors, David Allan began his deanship rather provocatively by rearranging the furniture in the staff common room to break up the cliques, which he considered were forming among the staff.¹⁷ Stephen Parker engaged interior decorators to change the look of the staff library. One of the things they did was to rearrange the books according to colour.¹⁸ HP Lee said the staff library took on the appearance of a bordello.¹⁹ Stephen Parker moved onwards and upwards to become Deputy Vice-Chancellor of Monash University, an event described by HP as '*res ipsa loquitur*', and later Vice-Chancellor of the University of Canberra.²⁰ He was succeeded by Ari Freiberg, who had the unique achievement of becoming the first Dean of Monash Law School to survive in office long enough to earn his gold watch.²¹ By the time he left, the finances of the Law School were yielding a substantial annual surplus. His successor, Bryan Horrigan, is described by the authors as 'cheery of face and secure of trousers',²² which I imagine is some kind of compliment. Given the currency of his term, they are otherwise more prudently reticent in their evaluations of him than of his predecessors.

Important though the office of the Dean may be, the character and ethos, achievements and failures, of law schools depend ultimately upon what I call the combinatorial chemistry of the staff and students. This will inevitably vary from time to time for better or for worse. It may result in different relative emphases on teaching and research, on commercial and human rights law, on clinical and theoretical learning, and on the relative dominance of the Pericleans and plumbers. There are many different strands in the history of the Law School over the past fifty years which reflect those shifting emphases and which the authors have woven together into a colourful and engaging tapestry. Some institutional histories find it difficult to rise above a tedious and anodyne chronology of office holders and events. This is not one of them.

¹⁷ Ibid 91.

¹⁸ Ibid 301.

¹⁹ Ibid 301.

²⁰ Ibid 316.

²¹ Ibid 336.

²² Ibid 337.

It is occasionally a feature of universities, from which law schools are not immune, that their public celebrations can enmesh the participants in a rather sticky fairy floss of obviously false superlatives and hyperbole, which obscure their real achievements. This book does not make that mistake. It is good for the members of any institution to be able to look back upon its achievements *and* its failures, its high points *and* its low points over an extended period of time to be able to learn to avoid repeating old mistakes and how to find new pathways to success. More than that, a history of this kind becomes part of the memory of all who read it and so contributes to a shared sense of the identity of the institution as a whole. The history of the Monash University Law School over the past fifty years is worthy of celebration, not just by the Law School itself, but also by the community it serves. The book does that well. I congratulate its authors and declare it launched.