Legal Education in Victoria

In the March issue of the Australian Bar Gazette, legal education in New South Wales was described as being in a state of crisis(1). In Victoria also, although the scene is very different from New South Wales where legal education is concerned, a crisis state is developing.

Until 1962, for very many years all legal education in Victoria, and all examining of those preparing for admission to practise, was conducted by the University of Melbourne. The University acted on the one hand as a body granting degrees recognized for professional purposes, and, on the other, as a body providing courses and conducting examinations to satisfy the requirements for admission laid down by the Rules of the Council of Legal Education.

In 1961, the University of Melbourne restricted entry to its law courses by imposing a quota of 330 upon its first-year classes. In 1962, the quota prevented significant numbers of matriculants who wished to enrol as law students from doing so. The Council of Legal Education, in haste, acted to provide for the rejected students. With the co-operation of the Royal Melbourne Institute of Technology, the Council began its own school for Articled Clerks.

In 1963, 221 applicants were denied admission to the Melbourne University law courses. Of that number, some eighty-three entered the Council's school. With the students who were carrying on from 1962, those entrants brought the numbers enrolled in the Council's school to about 117.

In 1964 Monash University began law teaching and enrolled 150 law students in first-year courses. In spite of this, 47 new entrants who could not find places at either Melbourne or Monash, enrolled in the first year of the Council's course. Melbourne proposes to reduce its quota to 250 in 1965. The number of matriculants is expected to rise more than in any previous year. Even if Monash is able to carry out its plan to enrol 200 first-year students in 1965, therefore, it can be expected that the first-year enrolments in the Council's course will rise again appreciably.

All students in the Council's course are embarked on a course which requires them to complete four subjects before entering upon a period of four years under Articles of Clerkship. During those four years, they must pass an additional fourteen subject examinations. It is not an easy course. With four exceptions, the subjects are subjects of the degree course at Melbourne University.

The Council's course, notwithstanding the standards established when it began or perhaps to some extent because of them, faces real difficulties in the future. It has virtually no financial resources other than the fees paid by its students. The Government provides to it virtually no financial assistance. It has no proper library facilities and no full-time teaching staff. So far, by the co-operation of the profession, its students have been able to use professional libraries—in particular the library of the Law Institute of Victoria—but, if student numbers grow, it will be impossible to satisfy library requirements without providing a separate library for the students themselves. What accommodation (or for how long), the Royal Melbourne Institute of Technology can make available for the School is not known. In any case the deliberate establishment of a large "night school" in a technical institute for future lawyers is surely a retrograde step.

Other difficulties are emerging. Every student enrolled in the Council's course requires a place in a law office for at least four years as an articled clerk. Many of them take their first four subjects on a part-time basis and require places for at least six years. The profession was, in 1963, already finding it difficult to provide places for (one year) articled clerks who had graduated from Melbourne University. It seems clear that the establishment of the Council's school will make it necessary to consider the articled clerks system of providing practical office training with a view to the provision of suitable alternative training—else a complete breakdown in the system will be threatened. This creates difficulties for the University graduates also. The trend in Victoria over more than thirty-five years had been away from preparation for admission to the profession through articled clerk's courses, and towards full-time University education. The profession had slowly re-organized office structures so as to rely less upon articled clerks for junior work than had been the case in earlier times, and than is still the case in New South Wales. Thus, in 1931, forty-five per cent of all Law students enrolled at Melbourne University were articled clerks not proceeding to a degree, whereas in 1961 only 3.5 per cent of students were such articled clerks.

The emergence of the Council's school has reawakened a real demand from a large minority of the profession, in this writer's opinion retrogressive in their thinking, who think that the best preparation for practice is through long years in articles of clerkship and who like to run their offices with the assistance of poorly paid but talented students who will stay long enough to be of real use in the office. The result is and will be that, in many offices, the students in the Council's school will have first claim for places as articled clerks—places which they will fill for four or more years—and it will become increasingly difficult for graduates to obtain the office training necessary for their admission to practise.

When the Council's school was started in 1962, it was thought of as a temporary expedient, as a kind of rescue operation to enable young people unable to find a place at Melbourne University nonetheless to have their chance to qualify for entry into the legal profession. With the lack of facilities at both Melbourne and Monash Universities, even though a Faculty of Law was established at Monash and began teaching in 1964, expansion at a rate sufficient to provide for the aspiring law students coming on from the schools is impossible. It seems almost certain that the Council's school will be

(1) (1964) Vol. 1, at p. 12, "Legal Education in New South Wales—A Crisis".

forced to teach all eighteen subjects of the five years of the full articled clerks' course and that it will be part of the legal education scene indefinitely, in spite of the declared wish of governing bodies of the Bar and of the Solicitors that this should not be so.

The Universities

The University of Melbourne was the first University in Australia to offer courses in law. After 107 years of law teaching (and four years during which the numbers of first year law students have been restricted to 330 —250 in 1965) it has more than 1,300 students enrolled in its law courses. It has no building designed and built as a law school. For its 1,300 and more students, it has a law library with space proper for about 140 readers into which nearly 250 seats are squeezed. It has one lecture theatre. It has a worse staff/student ratio than any faculty or department in the University. Alone of all university students, the law students at Melbourne pay for all the functions of the law school from their fees. It is little wonder that Melbourne at this time has said that it can do no more than it is doing to provide legal education for the aspiring young —not, at least, until money for new buildings and more staff is provided.

Monash University has begun the establishment of a faculty of law with high hopes, and plans to create a large law school with new and ambitious educational aims. But there is a limit to the speed at which creation and growth can proceed. The first members of the law school staff arrived at Monash in February, 1964. On 9th March teaching began for 150 new students. It is hoped to increase first year enrolments to 300 by 1967; but this depends upon the provision of facilities and on the recruitment of staff. At present there are no law buildings at Monash and no money provided for them. Law teaching is carried on in accommodation "leased at sufferance" from the Faculties of Engineering and Science, and staff are housed under similar arrangements. But, in this new University, all Faculties are growing and the accommodation now being used by the lawyers was designed to satisfy the needs of Engineering and Science and will soon be needed by those Faculties. Unless facilities for law are provided at Monash by 1967 at the latest, the numbers of law students admitted will have to be severely restricted and the plans for growth will have to be put aside.

La Trobe University is still a paper plan. It has been said that it hopes to enrol its first students in 1967. Whether it does so remains to be seen; certainly it will not be able to do so before 1967. In any case, there has been no mention as yet of plans for law teaching to begin when the University opens its doors.

Student Numbers

It has been said above that, in 1963, 221 applicants for law student places in Melbourne University were not admitted, and that eighty-three of them enrolled in the Council of Legal Education's school. The entry of Monash into the field reduced the new enrolments in the Council's school to forty-seven in 1964.

Precise figures and reliable predictions for the future are impossible to obtain even for the next three years. One thing seems certain, however, and that is that the applicants for law school places over the next three years will increase much more rapidly than the combined capacity of Melbourne and Monash Universities to receive them can be expanded. There is, therefore, no immediate way to satisfy the demand for University law school places and the Council's school will tend to grow and to become more firmly established, inadequately equipped and staffed though it is.

Conclusions

There is a crisis in legal education in Victoria. To some extent, compared with the situation in New South Wales, it is brought about by the long slow movement to improve the standards of legal education required for those entering the profession. For a long time now, there have not been in Victoria, as there have been in New South Wales, large numbers of law students (articled clerks) preparing to enter the profession without any provision being made for their higher education. For a long time, the expectation that lawyers will have had a University education has been growing. But the provision of properly equipped and staffed University law schools has been deferred to the claims of all the other professional faculties, to all the scientific departments, and to almost all other University activities. The Melbourne Faculty has planned for a law building since 1952 when it was already desperately needed. Through three periods of Commonwealth investigation and financial subvention it has failed to achieve its aims. It would not now, under the system of Australian University Commission triennial grants, be possible to provide it with a suitable building before 1968 or 1969.

To some extent the remedy for the crisis is in the hands of the profession itself. If the profession were to demand that education for its new recruits should be treated as a matter as important as education for the medical or engineering professions, for example, its voice might well be heard in the places where the controlling decisions are made. In the long run, however, the profession will need to do much more than merely support claims by Universities to improve the facilities for legal education provided by them. It will need to give real attention to the improvement of the preparation for practice which it expects of its recruits.

A number of things seem to be clear, though not yet recognized by many members of the practising profession:

1. "Articled-clerk" or apprenticeship training is not only inadequate as a method of legal education to meet the demands of the future, but it is a grossly inefficient method of providing even that "practical" training in the "how-to-do-it" aspects of the law which it is often thought that Universities cannot or should not provide.
2. Most of the more responsible and influential members of the community, whether in government, in industry, in business, in the services or in the professions are, and will be increasingly, expected to be highly educated people. Broadly speaking, so far as the future is concerned, they will be expected to have had a University education or its equivalent.

   Lawyers as a group have never been popular or well understood by the lay public. They have in the main, however, maintained their claim to be

a learned profession and well educated in the eyes of most people whom they served. The levels of education expected in the community at large are becoming such, however, that if the lawyers do not raise their general standards, to their unpopularity which springs from natural misunderstanding, they will add a reputation for being narrow and rather ignorant technicians incapable of understanding the real nature of their client's problems. If that day comes, and there are many signs of it already, the profession will fail to perform its proper functions.

3. While there are many tasks to be performed in a law office which do not require higher education, either in the law or generally, it is dangerous to assume that there are large classes of law practice which do not demand men with such education in charge of them. It is probably true that the large law office needs men with technical training, but not necessarily more, in many subordinate positions. There ought to be courses available for the training of such men, with some certificate or diploma of qualification, as law clerks or as managing clerks no doubt. It does not follow that the country or suburban practitioner in a small office needs no more training and education than that. The complexities of modern government, whether at the Federal, State, or local level; the intricacies of business, of industrial and agricultural activities; the snares and traps of the taxation system; the new ways of preserving and transmitting claims to the good things of life once called "property"; these are increasing all the time and concern more and more people whether in the country or the city. The Master Solicitor of the future, who presumes to make himself ultimately responsible for advising highly qualified people in other walks of life how to manage their affairs in the legal jungle, will need to be much more than a competent technician with apprentice training behind him.

It is probable that only the profession through its own organizations can move effectively to reform the requirements for admission to practise as an independent practitioner so as to meet the demands of the future. It is certain that no effective steps can be taken to provide adequate "practical" training in legal techniques, whether in support of or in substitution for the articled clerk's system, without organized activity by the practising profession. And that is so whether the professional bodies set up professional "practice schools", or the Universities or other established educational institutions set out to do so, for such institutions could not succeed in the task without very great assistance from the profession.

It is relevant to note that in the United States of America, although many influences have been at work during the last 100 years or so, perhaps the most important influence for the improvement of legal education generally has come from the American Bar Association. That Association and the professional organizations across the whole country are continually pressing for improvements in the standards of legal education. It is not doubted there that the lawyer, to serve the community properly, must be a well educated man as well as a well trained one technically. For many years the American Bar Association has held to the principle expressed by Elihu Root in 1916:

> "No-one can help sympathizing with the idea that every ambitious young American should have an opportunity to win fame and fortune. But that should not be the controlling consideration here. The controlling consideration should be the public service, and the right to win the rewards of the profession should be conditioned upon fitness to render the public service. No incompetent engineer is entitled to construct a public work; no untrained lawyer is entitled to impair the efficiency of the great and costly machinery which the people of the country provide, not for the benefit of lawyers but for the administration of the law."

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Sir Owen Dixon

The End of a Period in Australian Legal History

II.

Sir Owen Dixon's identification of the judicial process with the "strict logic and high technique" of the common law is demonstrated by the uniformity of the rational processes found in his judgments. Cases of dramatic social and political importance like the *Banking Case*(1) and the *Communist Party Case*(2) merely highlight a pattern found without variation in judgments delivered over a period of thirty-six years in every field of Australian law. For this reason, the particular content, whether legal or factual, of any case in which he delivered judgment becomes of subordinate importance. The question which he himself chose to submit to the judgment, first of professional opinion, and then of history, is not whether he was a master in one or more particular fields—constitutional law, industrial regulation, torts, or statutory interpretation—but the greater issue of the validity and social utility of his legal technique, and with these, the validity of the assumptions upon which his reasoning is based. If his thesis is wrong, he errs with a host whose contributions to the arts of social life are a matter of clear record from the time of Aristotle to the present day. Hence it is not surprising to find that Sir Owen himself, in his judgments and other public materials, shows a consistent awareness of opposed critical positions, and, in fact, avails himself of every proper opportunity to challenge them. As his argument in reply has the same logical

(1) (1948) 76 C.L.R. 1. (2) (1950) 83 C.L.R. 1.