

REFLECTIONS ON FOUR LEADING EARLY AUSTRALIAN LAW ACADEMICS

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ABSTRACT

This paper reflects on the lives and careers of Professors John Peden, William Moore, Dugald Gordon McDougall and Frank Beasley, who are four arguably leading early Australian law academics, who influenced the development of Australian legal education.

I INTRODUCTION

Anyone undertaking a historical review of Australian legal education would arguably be influenced by the individuals who shaped its early development and unfolding. The concept of legal education does not immediately give rise to a review of who might be considered the early icons of learning and teaching scholarship in law. Yet in their own ways, Professors John Peden, William Moore, Dugald Gordon McDougall and Frank Beasley, might be considered as epitomising what was expected of the early standard bearers of the Australian law academy, and illustrating the characteristics which justify their being considered as legends in their lifetimes. These four Australian law academics are known: for the way they developed their own law schools and, as was characterised by most law academics at the time, for remaining with their law schools for most of their careers. This paper discusses each Australian law professor's academic career and considers the legacy that their respective approaches have left for legal education in Australia.

II PROFESSOR JOHN PEDEN, DEAN, UNIVERSITY OF SYDNEY LAW SCHOOL

The first Australian law academic considered is Professor John Peden² who was appointed in 1910 as Dean and Challis Professor of Law at the University of Sydney, where he graduated with a BA with first class honours in 1892, and with first class honours in a Bachelor of Laws (LLB) with the University medal in 1898. Peden was a barrister with an extensive legal practice specialising in equity and probate law, who was originally appointed as a part-time lecturer at the Law School in 1902. Peden is different from his three other contemporaries because he was much more involved with affairs outside his Law School than they were, or in fact most other Australian law deans at the time. For example, Peden became a member of the NSW Legislative Council from 1907 to 1946, serving as its President from 1929 to 1946.

There was a gradual increase in Sydney law school enrolments under Peden's influence as Dean, although there was a reduction of 25 per cent during World War I which was more than compensated for by a trebling in numbers when that War ended. Interestingly, the Great Depression of the early 1930s seemed to have a relatively small impact on enrolments. This might have been because the Sydney Law School was the only law school in NSW then, and at that time, law students came from the comparatively wealthier groups of Australian society. Peden's own specialist subjects were constitutional law, property, conveyancing and private

1 AM, Emeritus Professor – AustLII, Faculty of Law, University of Technology Sydney.

2 Judy Mackinolty, 'Learned Practitioners 1910-1941' in John Mackinolty and Judy Mackinolty (eds), *Century Down Town: Sydney University Law School's First Hundred Years* (University of Sydney, 1991) 57, 57.

international law. Peden's teaching technique has been described as incorporating a 'slow and hesitant' form of speech, being couched in 'homely English' whilst he explained:

Constitutional law in a practical, business-like way, not ignoring theory, but stressing the everyday working of legislative and constitutional procedures. His students had to know works of Professor A.V. Dicey whose shadow, according to H.V. Evatt, always lurked behind Peden, but they had also to know the constitution of New South Wales and Australia and some British constitutional history, and appreciate how to temper philosophical propositions with practical common sense.³

Peden could be described as charismatic, and the lack of other tenured academics at the Sydney Law School at the time meant that he had little or no competition to being perceived as personifying an overwhelming influence over the Law School's character. This might be exemplified in an account of Peden's classes, by Judy Mackinolty, who said that he was not there 'to create pedants but learned practitioners.'⁴ However, Mackinolty was also opined that others would argue that the creation of 'competent legal technicians' would be a more accurate description of Peden's law school teaching style. Miss Hay, who was clerk to the Sydney Law School from 1919-53, expressed that Peden preferred to take students who had already completed two years of the University's Arts course, so he could turn out legal practitioners who were equipped to earn their 'bread and butter'.⁵ Peden has also been described as:

A towering figure in the university: legendary for his hard work, high standards, uncompromising rectitude and plain speaking, he was not always an easy colleague. He was a fellow of the senate (and active on many of its committees) in 1910-41, chairman of the professorial board in 1925-33, and as his old friend Sir Thomas Bavin remarked 'the man to whom everybody turned if there was a difficult problem to be solved, the man from whom everybody-even his strongest opponents-could expect a strong deal.'⁶

III PROFESSOR WILLIAM MOORE — DEAN, UNIVERSITY OF MELBOURNE LAW SCHOOL

At the University of Melbourne, William Moore was appointed Dean and Professor of Law in 1893 at the age of 25, and served as Dean for 34 years until his retirement in 1927.⁷ Moore had legal qualifications from the University of London and King's College, Cambridge University, and was called to the Bar (Middle Temple) in 1891.

Moore is perceivably unique in his approach to developing Australian legal education as he was the first law professor at the Melbourne Law School to visit law schools in the United States, and he pre-empted interest in North American legal education when he appeared before the Royal Commission into the University of Melbourne in 1902, where he said that: 'What we have to learn we have to learn from America'.⁸ An illustration of this outward looking attitude were his efforts to observe American legal education teaching methods when he travelled to the United States (US) in 1911.

3 John M. Ward, 'Peden, Sir John Beverley (1871-1946)', in Melanie Nolan (ed) *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, 1988) Vol 11, 1-2. <<http://adb.anu.edu.au/biography/peden-sir-john-beverley-8008/text13955>>.

4 Mackinolty, above n 2.

5 Ibid.

6 Ward, above n 3.

7 John Waugh, *First Principles: the Melbourne Law School 1857-2007* (Miegunyah Press, 2007) 58.

8 Ibid 80.

When Moore visited the law schools at Columbia University and Harvard University, he focused on the ‘case method’ which characterised much law teaching in the US then as it arguably still does now. Like his counterpart, Jethro Brown of Adelaide Law School, who had also made an earlier visit to the US in 1904 (when he was an academic at the University of Sydney), Moore realised that while the case method might be regarded as an effective teaching method in US law schools, the pre-conditions for its effectiveness - such as a large academic staff, graduate rather than under-graduate entry, casebooks and a substantial law library - were not available at the Melbourne Law School at the time. Although these factors might suggest an inability to replicate the then dominant US legal education approach in Australia, they could also be regarded as evidence that Moore was not complacent about how law should be taught in Australian law schools. In this respect, Moore saw an important role for the law school in Australia’s development, when he wrote in 1927 that:

It is inevitable that Dominion Courts should owe less to British Courts in the future than they have done in the past ... our courts are now accumulating a mass of case law ... we shall become more dependent on schools of law and on the literature of the law to keep the systems in harmony.⁹

Moore was concerned that legal education should reflect both moral and social values, and stressed linking the study of law with history and politics. Consequently, Moore’s jurisprudence course included political philosophy and historical themes in constitutional and legal history. His lectures were described by Sir Keith Hancock as: ‘[t]he best course that I have ever known at any of my many universities.’¹⁰ It was also acknowledged that ‘the themes were broad, the methods exact and the whole delivered with Moore’s sardonic wit and customary precision in speech.’¹¹

Moore also gave monthly addresses to the Melbourne Law School’s Student Society which were recorded in the student magazine *The Summons*, where he is said to have used his wide-ranging knowledge to trace the development of legal institutions, and give a rationale for their existence. Moore also advocated for reform of the existing law.¹² His two major publications reflected his interest in Constitutional Law: *The Constitution of the Commonwealth of Australia*¹³ was regarded as the first scholarly study of the subject, including a history of the Australian Federation movement and detailed examination of Australia’s Constitution. Moore’s second publication in 1906, was *The Act of State in Relation to English Law*.¹⁴

IV PROFESSOR DUGALD GORDON MCDUGALL – DEAN, UNIVERSITY OF TASMANIA LAW SCHOOL

Although originally appointed in 1900 as Dean of the University of Tasmania Law School on a three-year contract, Professor McDougall served for 32 years, eventually retiring in 1932.¹⁵ Like his predecessor Professor Jethro Brown, McDougall was originally appointed as Professor

9 Loretta Ray, Moore, Sir William Harrison (1867-1935) in Melanie Nolan (ed) *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, 1986 Vol 10, 1-2. <<http://adb.anj.edu.au/biography/moore-sir-william-harrison-7645>> accessed online 15 May 2017.

10 Ibid.

11 Ibid.

12 Ibid.

13 Michael Moore, *The Constitution of the Commonwealth of Australia* (Legal Books, 2nd Ed 1997).

14 Michael Moore, *The Act of State in Relation to English Law* (John Murray, 1906).

15 Richard Davis, *100 years: A Centenary History of Law, University of Tasmania 1893-1993* (University of Tasmania, 1993) 12.

of Law and Modern History, but eventually persuaded the University to drop ‘History’ from his title in 1915.¹⁶

McDougall had an outstanding career that began at Trinity College at the University of Melbourne, where he gained a BA in 1888 and an MA in 1890.¹⁷ McDougall then studied at Balliol College, Oxford University as a Williams Exhibitioner, where he took first classes in classical moderations, jurisprudence and post-graduate studies, and was awarded an Oxford BA in 1892, and an MA and a BCL degree in 1902. McDougall was also called to the Bar at the Inner Temple (London) in 1892, and then returned to Melbourne in 1893 where he worked as a solicitor before admission to the Victorian Bar in 1895, to practise as a barrister until 1900. Moore also graduated with an LLB in 1894 and LLM in 1896, from the University of Melbourne, and was awarded an LLD in 1909.

Like the situation for other contemporary law schools at the time, the Tasmanian Law school was apparently chronically underfunded which caused McDougall to have a huge teaching load, which was not helped by the fact that in 1910, his wife was diagnosed with a mental illness, that gave him the sole concern of raising their six sons.¹⁸ Whilst having little time for research, in the early days of his deanship McDougall nevertheless wrote several history books including ‘*Self-governing Colonies*’ in 1905 and ‘*Commonwealth and States*’ in 1907.¹⁹

It is important to also note that at this time, a Law School Dean was principally responsible for teaching *all* the subjects in the law degree curriculum. This meant that McDougall had to teach a wide variety of at least ten subjects in his early years as Dean, including: International Law, Roman Law, Contracts, Commercial Law and Constitutional Law. However, the average class size was only two students.²⁰ Whilst to today’s law academics this size might appear preferable to larger classes, there was an arguably contrary challenge of spreading a wide amount of subject content across a very small number of students. McDougall also had to meet the University’s requirement that law students be taught in Launceston as well as at the University’s main campus in Hobart. This meant that McDougall needed to spend at least two but usually three days a fortnight teaching in Launceston, which was likely to have been taxing given the modes of transport that were available for long distances at the time. McDougall was also required to give 75 lectures in Launceston in 1908, to a class of six students; in 1909 it was 105 lectures to five students and in 1910 it was 40 lectures.

McDougall presided over a major change in the law degree’s structure in 1908, which involved law students studying a first year of arts subjects before commencing law subjects in the second year of their undergraduate programme. This change was similar to that already undertaken at the law schools of the University of Sydney and University of Melbourne. The change meant that students subsequently undertook the law subjects: Property One, Wrongs and Contract (in the second year), Property Two, Constitutional Law and Equity (third year) and Private International Law and Roman Law in the fourth year. A helpful outcome was that McDougall was no longer required to teach history in the Faculty.²¹ A resource challenge however was that McDougall’s office was also labelled as the ‘study’, so doubled as the students’ law library.

16 Ibid 13

17 Ian McDougall, Faculty of Law Alumni, ‘The McDougall Involvement with the University of Tasmania’ (2016) University of Tasmania, Faculty of Law, Stories 1.
<[http://www.utas.edu.au/lawalumn/stories/stories/the-mcdougall-involvement-with-.](http://www.utas.edu.au/lawalumn/stories/stories/the-mcdougall-involvement-with-)>

18 Ibid.

19 R.W.Baker, McDougall, Dugald Gordon (1867-1944) in Melanie Nolan (ed) *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, 1986 Vol 10, 1.
<<http://adb.anu.edu.au/biography/mcdougall-dugald-gordon-7344>>

20 Davis, above n 15, 14.

21 Ibid, 13.

Although McDougall was not physically affected by World War I, it required him to take on even more responsibilities at 47 years of age because he was one of the University's most senior professors. For example, in 1915 McDougall became President of the Board of Studies, and was elected by the Senate as a member of the University Council until 1922.

An assessment of McDougall's achievements as a legal educator, includes the fact that 112 LLB degrees were awarded during his Deanship, resulting in an average of three law graduates per year. Eight students were also awarded an LLM degree. In 1930, Arndell Lewis, the son of the then University of Tasmania Chancellor, was awarded the first Tasmanian LLD. Another significant achievement was Helen Dunbar's graduation in 1931, as the first woman in Tasmania to graduate with a LLB and to receive the James Backhouse Walker Prize, which was named after a former University of Tasmania Vice-Chancellor.

During his period as Dean, McDougall was supported by only one additional staff member, Phillip Griffiths, who was appointed to the Faculty in 1913 and stayed until 1930 when he became Tasmania's Solicitor General. Griffith's salary was £100 a year, compared to McDougall's salary of £500 a year. Note however, that staff salaries were reduced 'voluntarily' by 20 per cent during the Great Depression. Griffith was replaced by two part-time staff members when he resigned in 1930.

There was no doubt that the distress of: overwork, a challenging family situation and sole parenting responsibilities, combined to exact a heavy toll on McDougall personally, whose alcohol consumption also affected him to some extent in his later years. However, evidence from McDougall's students at the time was that despite all the distress he was under, it never affected the quality of his lectures. One of these students was Bruce Piggott, who apparently said that McDougall was a wonderful man and a brilliant scholar who was always up-to-date with his law.

McDougall suffered a serious accident in 1929 which left him partially paralysed temporarily. This gave McDougall the opportunity to retire in 1932 when he was 65 old, with the title of Emeritus Professor, a retiring allowance of £320 and a government grant of £100 a year.

V PROFESSOR FRANK BEASLEY – UNIVERSITY OF WESTERN AUSTRALIA LAW SCHOOL

The Faculty of Law's establishment at the University of Western Australia ('University') was very similar to the early situation at the University of Sydney, in that although a Law Faculty had been established earlier, it was not a teaching law school. This meant that law students in Western Australia had the choice of studying for a law degree, either in another state or overseas, or undertaking training as an articled clerk for five years whilst studying for the State Barristers Board examinations.

Although the University's Professorial Board had already decided in June 1920 that it would support the establishment of a Law Faculty with full teaching facilities, there were long-drawn out negotiations which seemed to characterise the creation of other Australian law schools. It was not until the beginning of 1928 that the formal opening of the University of Western Australia Law School took place, with the commencement of law teaching under the aegis of Professor Frank Beasley.²² Beasley graduated from Wadham College, Oxford University (BA in 1920), and the University of Sydney (LLB -1924), and was admitted to the New South Wales Bar in 1924. Professor Beasley was appointed from 17 applicants, and was to have a profound influence on the early development of the law school by serving as Head of the Law School and then continuing as a professor until his retirement in 1963.

²² Marion Dixon, *Looking Back: A Short History of the UWA Law School, 1927-1992* (University of Western Australia, 1992) 8.

In the early years, the law school was located with the rest of the University in Irwin Street, Perth. The buildings were not prepossessing and were nicknamed ‘Tin Pot Alley,’ but they did have the advantage which most law schools had at this time, in that their central location suited the law students, most of whom were articled clerks to law firms located nearby in the city.²³ There were approximately 18 law clerks and some other Arts degree students who were continuing on to the LLB degree. The lectures were arranged to take place from 9-10 o’clock in the mornings and 5-6 to o’clock in the evenings, which suited those students who were also employed as articled clerks.²⁴

Professor Beasley was the only full-time member of the academic staff and was supported by members of the local practising legal profession in a part-time capacity. A contemporary historical account of the law school states that: ‘It was regarded as something of an honour to be appointed a visiting lecturer to the Law School, and the paltriness of the remuneration did not discourage even the most distinguished of practitioners offering their services.’²⁵

Frank Beasley remained the only full-time academic staff member of the Law Faculty until World War II. This meant that when he returned to active service in the army at the beginning of that War the University suspended teaching in the Law School for 1942 and 1943 with Beasley returning in 1944 when he resumed teaching on his own, without outside lecturing assistance. When Beasley retired in 1964, he had served as Dean for 37 years and there was arguably no doubt that his retirement marked the end of an era for the University. A history of the University’s Law School describes Beasley and his influence as

an austere, sometimes severe, teacher with a passionate commitment to the ideals of scholarship, service and morality. His capacity for comment described as ‘forthright and incisive’ and at time ‘devastating and emotive’ did not always endear him to students or some colleagues in the University. But there was no denying that his energy, determination and dedication had brought to the Faculty of Law high standing among the law schools of Australia.²⁶

VI ICONS INFLUENTIAL IN AUSTRALIAN LEGAL EDUCATION – OR BEYOND TO THE LEGAL PROFESSION AND WIDER COMMUNITY?

Peden, Moore, McDougall and Beasley are all names which immediately spring to mind when discussing early Australian Legal Education. However, the extent of their influence very much reflects the nature of the law school which each headed. Inevitably, both Peden and Moore as Deans of law schools in the more heavily populated of the two major Australian States, were arguably in a position, if they chose, to exercise influence on the wider Australian community. It seems to say much for their natures that both Peden and Moore’s influence arguably did extend far beyond their respective law schools.

John Peden regarded law as embracing both public and academic life as one. As President of the NSW Legislative Council from 1929, Peden resisted all attempts by the NSW Premier John Lang, to abolish it. Peden accomplished this in 1929 by inserting a section 7A amendment into the *NSW Constitution Act 1902 (NSW)* which ensured that the NSW Legislative Council could not be abolished or have its powers altered, except after a referendum. This amendment was upheld as valid under the *Colonial Law Validity Act 1865* by both the High Court of Australia and the Privy Council.

Similarly, William Moore was influential for his expertise in Constitutional Law, involving himself in the work of the Federalists at the 1893 Corowa Convention, and the initial drafting

23 Ibid 9.

24 Ibid.

25 Ibid.

26 Ibid 20.

of the then proposed Australian Constitution. It has been said that by the end of the Australasian Federal Convention's first meeting at Adelaide in 1897, Moore was an acknowledged authority on the drafts and was 'used as a human reference library'²⁷ by convention members.

In comparison, Frank Beasley and Dugald McDougall were unable to exercise the same influence over their State's legal community as did Peden and Moore, arguably because of the limited wider community impact of their respective law schools. Beasley was actually always highly regarded nationally as a legal educator and this was recognised after his retirement from the University of Western Australia Law School, by the Foundation Dean of Monash University Law School, Professor Derham, who sought the Monash Professorial Board's approval for Beasley's appointment as a special lecturer involving the Monash law library. Derham recommended that Professor Beasley had contacts with: 'Every law library in the world' adding that: 'Few men knew more than [him] about the sources and the techniques of building up a collection of law books.'²⁸ Such was Beasley's reputation that the Monash Professorial Board accepted Derham's recommendation without question.

Although Dugald McDougall's influence as Dean was arguably less than his contemporaries, his influence ought to be viewed perhaps in light of Tasmania's isolated island regional nature and the small size of its legal profession during his tenure. Even after McDougall's retirement, his former students and those who were involved with governance of the law school and the University of Tasmania, continued to recognise his influence on the development of Tasmanian legal education. What has to perhaps also be recognised, is that all of the four early law academics discussed in this paper, were the forerunners in developing and enhancing legal education as a major university discipline in Australia, in a period in Australian legal education where there was a far greater interconnection between law schools and the practising legal profession.

27 Loretta Ray, above n 9.

28 Peter Balmford, 'The Foundation of Monash Law School' (1989) 15 *Monash University Law Review* 167.