FOREWORD

ACCESS TO LEGAL EDUCATION

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There are few occupational choices that can give the successful entrant a greater certainty of a share in the power of government than the law.

This truism derives, in part, from our common law tradition; although it is probably a feature of all legal systems. In our tradition, a very great part of the law has been "made up" by lawyers. It is lawyers who, by the application of settled principles, the development of new principles by analogous reasoning and the interpretation of ambiguous constitutional and legislative provisions, give reality to the content of law. Every lawyer plays a part in this. Lawyers who enter the public service, devise and apply regulations and suggest draft legislation. They have a particular claim on the levers of power. But at every level of legal practice it is so to a greater or lesser extent. Advocates in court, by the imagination and persuasion of their arguments, can push the development of legal principle this way or that. Judges, as we now increasingly acknowledge, have choices. They must construe ambiguous legislation. They must fill the gaps which they find in the principles of common law and equity. By the dialogue between the advocate and the judge - especially at the highest levels of the courts of Australia - legal rules are undoubtedly developed.

All of this is commonplace. But it needs to be said to understand the importance of the recruitment process for entry into the legal profession. If the cast of the legal drama is confined to a relatively small group of self-selecting and repeatedly renewed candidates, the result will be that a professional group with a remarkable influence on the way in which our country is governed will not only be unelected. It will usually come from a rather unrepresentative section of the community. In a monochrome society, with established social values and attitudes, this might not matter much. So it was in the England from which Australia derived its basic legal system. So it was for the great part of Australia's modern history.

But now we live in a time of rapid social and technological change. Our country, its ethnic composition, its spiritual foundations, its linguistic patterns and its social attitudes are changing quite rapidly. If this dominant and highly influential employment group - lawyers - were to remain a mere reflection of an elite section of society, that would not only be bad for the legal profession. It would not be very good for the laws devised, applied and elaborated by them for the rest of the community. Instead of the law, and its profession, moving with fast changing times, it would become a kind of time capsule of an earlier period, unsuited (except by chance) to the mental adjustments which are necessary to fashion the law for a new and very different millennium which approaches.

This is the problem to which the research project elaborated in these pages by Mr David Barker, Deputy Head of School, University of Technology, Sydney, and Ms Anna Maloney is devoted. It arose out of a number of independent investigations about the access to, and composition of, the new recruits for the legal profession entering law schools in New South Wales. The stimulus came from within and outside legal academe. It came from developments within Australia and analogous research overseas, particularly in England. Mr Barker began his work on this

project when he was Dean of the Law School of the Polytechnic of Central London (now the University of Westminster). That Faculty initiated one of the first two access law courses introduced in the United Kingdom in 1983. Mr Barker has brought the message to Australia, where the need is apparently just as acute.

The fundamental problem in Australia was revealed by research in the 1970s by Professor John Goldring and by D S Anderson and others. They found that, more than in the case of students entering engineering or teaching, those entering law tended to have graduate parents. They tended disproportionately to come from private schools and advantaged home environments. In the two decades which have passed since that research was gathered, despite general governmental programmes to help disadvantaged students and their schools, the position, according to Dean David Weisbrot of Sydney University Law School, has not really changed. Although the number of women entering law courses has corrected the gross gender ill-balance which existed in my youth, the other cohorts of inequality remain largely undisturbed. Entrants into law still, it seems, come disproportionately from private and systemic Church education and not from public schools. Their parents (both of them) are more likely to be graduates. Their home environments are more likely to be supportive of their educational needs and demands. There tends to be a very serious under-representation of Aboriginality, of some ethnic groups, of geographical location of homes, of disability or socio-economic circumstances. These are the features of disadvantage which have, until now, tended to prevent such groups from getting into the law and, when they do so, staying there to gain the qualification that will admit them into the profession.

To some extent, the reasons for these features of the composition of the succeeding waves of entrants into university law schools can be readily

understood, even in egalitarian Australia. The course is longer, by at least two years, than the average vocationally oriented university degree. Parents or others must therefore be willing, and able, to sustain the student with economic and environmental support for a longer time. The course lays emphasis on words and ability in the English language, in comprehension, expression and the verbal subtlety which this involves. Whereas mathematics is a realm largely impervious to linguistic and cultural disadvantage, the world of law is a world of words. In that world, cultural background can help make or break the student. But even if the frighteningly high Higher School Certificate (HSC) cut-off does not prevent admission, there must be an original desire to enter a vocation that still looks, and sounds, rather English - a vestige, cherished it is true, of Australia's colonial origins. Its symbols may be comfortable to old Australians but less so to other groups who may see them as somewhat alien to their experience.

It is to redress these imbalances that law schools in England and Australia have lately begun to introduce access courses. Their aim is to give people in particular categories of society, who would not gain entry by the HSC route, an opportunity to come into law by an alternative mode of entry. It is appropriate that a teacher of law at the School of Law of the University of Technology, Sydney, should pursue this study. That School has been foremost in Australia in providing opportunities for entry into law studies to students who might not have gained the chance through the other law schools yoked to the HSC. Now even they, and some of the newer law schools in Australia, are establishing their own access courses. They are reserving a small number of places for students who have the will to study law but lack the HSC passport to do so. A special place is now being kept for those who come through the access courses and who trace their ethnic origins to the Aboriginal and Torres Strait Islander people of

Australia who inhabited this continent before the settlers came. They are still seriously under-represented in the law and its institutions. But they are over-represented in the prisons and amongst the socially disadvantaged where some parts of the law frequently finds many of its customers.

In addition to this particular group of indigenes, other targets of late and special entry include students with disabilities, with non-English speaking backgrounds, students from socio-economically disadvantaged backgrounds or remote home environments and women who are returning to education after completing parenting responsibilities.

The study points to the dangers and difficulties of access courses. The problem of countervailing inequity to the students who have struggled to gain HSC entry. The risks of corruption and influence that could attend any variation from the objective standard of a public examination. The peril of disappointment and fractured self-image, already large, magnified by a failure to succeed in an access course which is necessarily very demanding. For all these problems, the courses offer hope to a growing number of applicants who want to enter law and who would otherwise have missed the chance of entry. To the legal community, such courses offer the prospect of a more diverse and interesting group of professional people who may better relate to many of the needs for legal services of the diverse Australian community of today and tomorrow.

In the next edition, I hope that there will be empirical data sustaining the impressionistic assertion of the critics of the present makeup of university entrance into law. It would also be interesting to track the success of those entrants who are given the access entry. It is always possible that commercial and other pressures within the legal profession itself might divert such people, on graduation, to replicate the professional experience of those who entered by the normal route. If so, little, in terms of social equity, will have been gained by this brave experiment. It would

also be desirable to extend the study of access programmes to other States of Australia and to other jurisdictions in North America where there are doubtless lessons to be learned.

The study is clearly an important one. The authors deserve praise and encouragement. So does the Law Foundation of New South Wales for supporting yet another valuable enterprise, concerned with nothing less than the future composition of the profession of law.

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Michael Kirby