
**Australasian Law Teachers Association - ALTA
2006 Invited Conference Paper**



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Legal Knowledge: Learning, Communicating and Doing

Invited Conference Paper

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The Australasian Law Teachers Association (ALTA) is a professional body which represents the interests of law teachers in Australia, New Zealand, Papua New Guinea and the Pacific Islands.

Its overall focus is to promote excellence in legal academic teaching and research with particular emphasis on supporting early career academics, throughout Australasia, in the areas of:

- (a) Legal research and scholarship;
- (b) Curriculum refinements and pedagogical improvements in view of national and international developments, including law reform;
- (c) Government policies and practices that relate to legal education and research;
- (d) Professional development opportunities for legal academics;
- (e) Professional legal education and practices programs.

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**ON BUILDING A SUCCESSFUL CAREER AS AN ACADEMIC
LAWYER**

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I INTRODUCTION

I find myself in an ironic position this afternoon. This morning I was supposed to be a commentator on the keynote address, but pretty much gave my own independent perspective on legal knowledge and lawyers' responsibilities.¹ This afternoon I am supposed to give my own independent perspective on building a successful career as a legal academic, yet I find myself so stimulated by Ros Croucher's paper that I can't resist falling into the role of being a commentator on it. You might think that this is another example of the tensions and dilemmas I spoke about this morning. I rather think it is an example of my perverse streak, which actually launched me on my academic career, when, 35 years ago, against all advice, I forsook the US and the UK and took off to India for postgraduate study. But perhaps more of that later. I say perhaps because, despite Paul Moyle's dangerous invitation to Ros and me to reflect on our personal experiences, I don't want to cross the line into total self-indulgence.

Ros' paper—'What About Me?'²—falls broadly into three parts: the context, in which Ros' snapshot of the legal academy today is so incredibly different from, say, 50 or 60 years ago; the background, in which Ros offers many rich insights into the nature of law as a discipline and the diversity of careers it offers; and lastly her practical, hands-on advice about career planning—building a CV, finding good mentors and good referees, networking at conferences and giving papers, doing a PhD, and so on. Let me offer a few reflections on all of these themes, and even propose an alternative theme song to 'What About Me?', one which I'll disclose later but will foreshadow now as from the earlier era of the Beatles, a more romantic and idealistic time, after which good music died or, like 'What About Me?' in the 1980s, reflected the societal shift to obsession with self.

¹ Michael Coper, 'Legal Knowledge, the Responsibility of Lawyers, and the Task of Law Schools', address to Opening Plenary Session, ALTA Conference 2006, Victoria University, Melbourne, 5 July 2006.

² Rosalind F Croucher, 'What About Me? Academic Futures—From the Ground Up', paper delivered at Legal Academic Job Network Session, ALTA Conference 2006, Victoria University, Melbourne, 5 July 2006.

II BEING AN ACADEMIC LAWYER: A GREAT VOCATION

First the context. Ros is absolutely right. The scene today compared with that of the immediate post-World War II period is unrecognisable. Geoffrey Sawer and Julius Stone were, I think, the only full-time law professors in the country. Today there are over 1000 legal academics.³ As Ros says, we are part of a genuine scholarly community today, very much like that of our brothers and sisters in the humanities and social sciences—perhaps even part of that wider community, but I'll come back to that in a moment.

My own legal education was early in the time of transition between the part-time practitioner model and the academy we know today. I won't dwell on it, except to say that the best thing about it was that, wittingly or unwittingly, it marvellously fostered the skill of self-reliance. I'll come back to that too.

All I want to say at this point is to underline that to choose the career of a legal academic is to choose a worthy and honourable career. That may sound self-serving; in any event, it will find ready acceptance in a group seeking confirmation or reassurance. But, if it is necessary to say it at all, I think I can say it with some credibility, having had careers also in government⁴ and in private practice,⁵ and having chosen to return to the academy, notwithstanding the lesser material reward. To the extent that the financial differential has consequences for one's material standard of living, that is the choice one makes and the price for re-entry to the wonderful world of ideas. To the extent that it may be taken to reflect a difference in status, there are many answers.

³ See Michael Coper, 'Law Reform and Legal Education: Uniting Separate Worlds' in Brian Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (The Federation Press, 2005) 388, 391. For a recent reminiscence of the legal academy in the 1950s and 60s, see Zelman Cowen, *A Public Life: the Memoirs of Zelman Cowen* (The Miegunyah Press, 2006) 174-230.

⁴ Mainly as a member of the Inter-State Commission from 1988 to 1990, but also as a member of or consultant or adviser to a number of other government bodies of one kind or another.

⁵ Mainly with Deacons Graham & James (formerly Sly & Weigall) as Director of Government Advising from 1991 to 1995, but also as counsel in a number of High Court and Federal Court cases on an ad hoc basis over the years.

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First, I'm not sure that it does reflect a difference in status. Perhaps one sees what one wants to see, but everywhere I go I see respect and admiration for those who succeed by virtue of their intellect (except, perhaps, when it suits a political purpose to attack an academic foray into public policy).⁶ And if one cares about material reward, things like the Federation Fellowships, and perhaps also the Carrick Institute awards for teaching, are the beginnings of some matching of academic achievement, in scholarship and teaching, with financial recognition.

Secondly, even if there is a difference in status, which I do not concede, who cares? The important thing, to my mind, is not external recognition but personal integrity and personal satisfaction. If status is a problem, if there really is a malady of 'status anxiety',⁷ in our material, consumerist society, it is a problem in the minds of the status seekers. In the end, satisfaction comes, I think, and as I suggested this morning, from the contribution one can make, not the reward or recognition one can garner.

Thirdly, we are in any event setting up something of a false dichotomy between academia and the outside world. An academic position provides a marvellous platform from which to make a contribution not only in teaching and scholarship but also in advising, making submissions to enquiries, and engaging in a myriad of other community outreach activities, whether in the course of one's full-time academic position or by taking periods of leave. I don't want to get into the trap of those who say that Canberra is such a good place to live because it's so easy to get out of, and in fact I am not. This kind of wider engagement is part and parcel of being a legal academic, and our applied skills are as much valued as our intellectual capacities, though I acknowledge Ros' observation that it can be quite challenging to get the right balance between all of the diverse activities that we might become involved in as legal academics.

⁶ One of my recent favourites is Kevin Andrews' response in November 2005 to a letter critical of the Commonwealth's industrial law reforms and signed by distinguished labour law academics: 'The opinion of a group of academics is no substitute for commonsense': ABC Radio, AM Program, 17 November 2005, 8.16 am.

⁷ Alain de Botton, *Status Anxiety* (Penguin Books, 2005).

In a nutshell, it is great to be a legal academic. Be proud of it, and go out and do good work!

III WHERE DOES THE DISCIPLINE OF LAW SIT IN THE ACADEMY?

Moving on from the context to the background, Ros makes some interesting observations about where the discipline of law sits, and in particular about the difficulties we sometimes face in being understood within our own universities. Do we play the game, Ros asks, as if we were an undifferentiated part of the humanities and social sciences, or do we emphasise our differences?

I spend a lot of my time trying to combat stereotypes about law and lawyers, so I well understand the dilemma. I think that we have to emphasise both the similarities and the differences. There are distinctive elements in the discipline of law, and they need to be explained. To take but one example, other disciplines struggle to understand that the humble textbook can, in law, represent original research of the highest order, involving quite sophisticated selection, analysis, and synthesis of primary material, that can not only make a scholarly contribution but can also have a real world impact by shaping the way that future generations of lawyers, including judges, conceptualise and think about the law. On the other hand, we do not want to draw a line in the sand between law and the humanities and social sciences. This would cut us off from the rich insights and methodologies of those disciplines, and from an understanding of the role of law in society. Indeed, we are a part of both the humanities, in some aspects of legal research, and the social sciences, in other aspects, along with those elements that we can identify as distinctive.

Juggling and conceptualising all of this is a challenge, as I found when I wrote the submissions of the Council of Australian Law Deans to DEST's Research Quality Framework (RQF) enquiry. That now appears on the CALD website as the CALD Statement on the Nature of Legal Research,⁸ and you may judge how persuasive it is

⁸ Viewed 2/7/06 at <http://cald.anu.edu.au/>.

and whether it resonates with your ideas about legal research. The point in the current context is that we are engaged not only in a worthy and honourable academic enterprise, but also one of considerable importance, complexity, and subtlety. This makes it even more of a privilege.

IV ACADEMIA AS A COLLECTIVE ENTERPRISE

I also believe that it is a collective enterprise. One of the challenges of academic life, in which a faculty or school can be seen as the accidental aggregation of talented individuals single-mindedly pursuing their own agendas, is to find the collective or corporate element in what we do. That is what I have tried to do in my Deanship at ANU, though of course without stifling individual ambition or aspiration. The collective aspect can manifest itself in a variety of ways, from group projects⁹ to collaborative research to team teaching, but is most important, I think, in providing mutual collegial support—reading each other’s drafts; filling in when a colleague is incapacitated; acting professionally so as not to let the team down by, for example, missing deadlines and putting undue pressure on others; volunteering for administrative tasks that are important to the operation of the enterprise; and generally caring about, identifying with, and participating in, the enterprise as a whole. Interestingly, I see the same challenge on a higher plane in my current role as Chair of CALD: how can a large group of diverse and competitive law schools find enough common ground to add value to the discipline of law as a whole?

The relevance of this in today’s context is that, in my view, building a successful career as an academic lawyer is not just about individual achievement. It is in *part* about that, and especially about individual flair and initiative, but I think that that is necessary rather than sufficient. It is also about contributing to the institution of which you are a part, in ways that go beyond the mere aggregation of your work with that of your colleagues. This is not to compromise individual excellence, which can indeed

⁹ For example, Tony Blackshield, Michael Coper and George Williams (eds), *The Oxford Companion to the High Court of Australia* (OUP, 2001); Suzanne Corcoran and Stephen Bottomley (eds), *Interpreting Statutes* (The Federation Press, 2005).

require a good deal of selfishness or single-mindedness to achieve, but just to ask you to think about why you are doing what you do.

The question is, to my mind, not just ‘what about me?’ but is also ‘what about you?’, ‘what about us?’, ‘what about my institution?’, and ‘what about my discipline?’. In this, I think that your institution has some corresponding responsibilities towards you, such as providing you with a fair and equitable teaching load, reasonable access to sabbatical and other research support, good mentoring, and appropriate and warm recognition, public and private, of your achievements. No doubt all law schools aspire to these goals, with varying degrees of will, capacity, and success.

V SOME SUGGESTED PRINCIPLES

Finally, I get to the third element of Ros’ paper, her practical advice recipe book: Ros’ top ten cooking tips on how to progress your career.¹⁰

I am not going to second-guess any of Ros’ advice, which I think is excellent: practical, sensible, and conducive to both the individual and collective goals I have espoused. I am just going to say a little about my personal philosophy.

In many ways, I think that I am the worst person in the world from whom to seek advice. I have a fairly anarchic view, believing more in serendipity than in detailed planning, more in personal satisfaction than in public recognition, more in risk-taking than in safe choices, more in personal freedom (and consequent responsibility) than in close supervision, and more in altruism than selfishness. What a stew! I don’t know if even Ros could cook up anything coherent with all those ingredients!

If I were to give advice—and with my colleagues I prefer to think of myself as a sounding board and tester of ideas than as a dispenser of wisdom—I would think primarily of the following four related precepts or principles (‘rules’ sounds too rigid).

¹⁰ Rosalind F Croucher, ‘The Academy as Kitchen: Mrs Beeton Comes to Law School’ (2005) 39(3) *The Law Teacher* 243.

VI FOLLOW YOUR HEART AND FALL ON YOUR FEET

First, I always think that is a good idea, other things being equal, to focus on what you enjoy and do best. We know this is good advice for students, why not for us? More often than not, you will fall on your feet in unexpected ways. The future is in any event so unpredictable that a careful plan, incorporating elements that seem sensible but perhaps not congenial, may come unstuck. This is neither an open invitation to total irresponsibility, nor is it predicated upon some superficial notion of ‘enjoyment’ as involving constant highs or avoiding the hard slog. It is rather about the achievement, at whatever point you can realistically judge it, of deep satisfaction, and, correspondingly, about the avoidance of deep dissatisfaction.

Although perhaps a trivial example, I mentioned earlier that, in my youth, I took off, against all advice, to undertake postgraduate study in India. I had become interested in India in my undergraduate days, largely through the stimulating teaching at Sydney University of the quietly charismatic Upendra Baxi, and I wanted to explore issues surrounding the transplantation of British law in a foreign culture. I was not deliberately pursuing an academic career—in fact, I thought it most likely that my sojourn to India would be a temporary lull before resuming legal practice—but I was open to the idea. While I was in India, studying under a Myer Foundation Fellowship at the University of Rajasthan in Jaipur in 1970, I received a call from Hal Wooten, who had just been appointed as the Foundation Dean at the new law school at UNSW and was recruiting the foundation staff. As the then President of Lawasia, Hal was at least as attracted to those with an interest in the region as to those who had followed the more conventional paths of going straight into practice or pursuing postgraduate study in the US or the UK. So he recruited me, although I had, at that stage, no teaching experience, no publications, and no higher degree. Although after many years I did eventually go back into practice, I was very grateful to Hal for giving me

the exciting opportunity of being a part of building a new law school from scratch,¹¹ and of building my own academic career (to which, after some time out that I shall mention in a moment, I have now returned).

VII BE FLEXIBLE AND TAKE OPPORTUNITIES

The second principle I would suggest to you is, be flexible, be bold, be prepared to take risks and undertake challenges, and position yourself to take opportunities, as they arise, to expand your experience. I like Ros' metaphor of the train track. Be prepared to change trains. It is not compulsory, and we are all different—your personality may suit a more stable ride and a more predictable journey. But I agree with Ros that you should not think of yourself as 'falling behind' if you do something different, although, interestingly, I did in this respect once have a very disillusioning experience. I returned briefly to UNSW after a heady experience in the late 1980s as a member of that curious creature of the Constitution, the Inter-State Commission,¹² quite excited about the new insights that my time in government could bring to my thinking about constitutional law. A senior official of the university (not in the law school) told me that I had been marking time for three years, that my academic career had been on hold, and that it could now resume. I was aghast at this narrow-minded attitude, and, although there were other, stronger reasons (such as my family living in Canberra), it was an ingredient in my decision to leave. I would hope that, today, one would not encounter such a myopic perspective, which I think is just plain wrong. (In any event, I have to add that, even if it were right, I would still not resile from my first two principles.)

VIII THE CHOICES ARE YOURS

My third principle is that, at the end of the day, you have to work things out for yourself. My undergraduate experience had taught me that, at least in learning if not

¹¹ See generally Marion Dixon, *Thirty Up: the Story of the UNSW Law School 1971-2001* (UNSW Law School, 2001).

¹² See generally Michael Coper, 'The Second Coming of the Fourth Arm: The Role and Functions of the Inter-State Commission' (1989) 62 *Australian Law Journal* 731.

in life decisions, self-discovery is powerful and exciting, whether motivated by good teaching or necessitated by its absence. In career decisions, you should seek advice widely and from many sources, and then back your own judgment. I had a junior colleague once who, at a retreat, spoke passionately about how difficult it was for someone in his position to know what to do after receiving conflicting advice. Those of us in senior positions should perhaps aspire to give consistent advice, and we should certainly try to align our advice, the expectations they generate, and the material rewards that follow, but there are no simple rules. Conflicting advice is a part of life. There are many guideposts; you have to choose, and you have to take responsibility for your choice. This is not a bad thing. And in any event, it will be uncertain where it will lead—and, when you do get there (wherever that is), it will also be uncertain precisely what role your choice played in it.¹³

IX AND IN THE END....

My fourth and last principle, related to the others, is, do things for their own sake, not necessarily for instrumental ends, and try to think altruistically rather than selfishly. This has, I know, a moral dimension, and it has been my theme this morning as well as this afternoon. I cannot prove it to be true. I cannot remould personality, and I am not seeking to challenge the whole basis of western capitalism or the economic theory of enlightened self-interest. I am simply arguing that, in pursuing a successful career, you need to ask, what is success? It would be nice to align material reward, external recognition, and personal satisfaction, but in the end, my hope is that the personal satisfaction comes from the contribution one makes rather than the kudos one takes. That is why, as I foreshadowed at the outset, I prefer to reject ‘What About Me?’ and go back to the Beatles. In the end, said the Beatles at the close of *Abbey Road*, ‘in the end, the love you take is equal to the love you make’.

¹³ I should add a corollary: you must not only make your own choices, but you should be yourself in the way you carry them out. See Michael Coper, ‘We Are What We Write’, paper presented to the ANU Postgraduate Research Conference 2006, Canberra, June 2006. However, if this is beginning to sound like a self-help manual, and you are tempted to think that I am taking it all too seriously, see also Michael Coper, ‘The Seven Habits of a Highly Effective High Court’ (2003) 28 *Alternative Law Journal* 59.

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Well, those are my principles. As Groucho Marx once said, if you don't like them, I have others. I look forward to testing them with you in the crucible of vigorous discussion.