

**THE TRADITIONALITY OF THE LAW**  
**OFFICIAL ADDRESS**  
**OPENING OF THE LAW SCHOOL**  
**UNIVERSITY OF SYDNEY**  
**THE HONOURABLE J J SPIGELMAN AC**  
**CHIEF JUSTICE OF NEW SOUTH WALES**  
**SYDNEY, 30 APRIL 2009**

This new Law School represents the most recent manifestation of one of the great institutional traditions of this University. I refer to the strength of its professional faculties, of which the Faculty of Law is only one, albeit one with a high level of achievement for well over a century.

Each of the professional faculties have, throughout their lengthy respective histories, manifested the symbiotic relationship between an underlying body of learning considered as an academic discipline, on the one hand and the practical requirements of implementation of that knowledge in the context of a collegial profession, on the other hand.

The long debate about whether the Law School should stay downtown or move to the campus reflects, to some degree, the emphasis to be given to one or other of these requirements. However, the experience of the other professional faculties, with their on-campus locations, establishes that both roles can be properly performed from here.

From the time that I left this campus after four years of an Arts Honours degree, for Phillip Street, I was an advocate of the move to campus. I am pleased and honoured to give this address on the occasion of the opening of this wonderful new building.

The closeness of this Law School to the profession has been one of its great strengths. That bond remains, in this era of competition amongst tertiary institutions, one of its competitive advantages. This move will require the Law School to make an extra effort to retain its traditional ties.

Ensuring that graduates of this faculty are in a position to become fully trained members of the profession is a matter which must continue to be given significant weight, as I am sure it will be. That objective is not, however, incompatible with the objective of

ensuring that law graduates do not emerge from the Law School with a narrow concept of their role as lawyers and of the function of law in our society, nor with an inward looking, inbred intellectual perspective. Teaching students to learn to think like a lawyer is not incompatible with teaching them to think.

This relocation serves the interests of the profession, of the University and of the broader community that both serve. The profession benefits if its members have intellectual horizons beyond the law and acquire a broader range of knowledge and experience to bring to the resolution of legal issues. The University benefits from the greater engagement of legal academics and law students in the intellectual and social life of the University. There are few spheres of discourse which do not benefit from a legal perspective. There are no areas of the law that cannot be informed by other perspectives.

The relocation of the Law School brings to this campus the institutional rigour which the law imbues by reason of its traditionality. Perhaps more so than other disciplines, the law is marked by traditionality.<sup>1</sup> A sense of continuity has a salience for lawyers that it may not have in other disciplines. In some spheres

of conduct only the founders of an institutional tradition and subsequent innovators are valued. However, in the law those who have maintained the traditions, which the founders and innovators have created, are also highly valued.<sup>2</sup>

The traditionality of the law recognises that not all change is progress and not all innovation is improvement. However, legal traditions do not simply reflect the continuation and repetition of past rules and practices. All aspects of the law manifest the omnipresence of continuity and change. The law is like an eagle in the sky: it can only be stable when it is in motion.<sup>3</sup>

The significance of tradition for lawyers is of the same character as T S Eliot identified for tradition in literature. He said:

“If the only form of tradition, of handing down, consisted in following the ways of the immediate generation before us in a blind or timid adherence to its successes, ‘tradition’ should positively be discouraged. We have seen many such simple currents soon lost in the sand; and novelty is better than repetition. Tradition ... cannot be inherited, and if you want it you

must obtain it by great labour. It involves, in the first place, the historical sense ... and the historical sense involves a perception, not only of the pastness of the past, but of its presence; ... This historical sense, which is the sense of the timeless as well as of the temporal and of the timeless and of the temporal together, is what makes a writer traditional. And it is at the same time what makes a writer most acutely conscious of his place in time, of his contemporaneity.”<sup>4</sup>

So it is with lawyers. The traditionality of the law both gives us a rootedness to the past and a sense of the contemporary contribution that the law makes.

The traditionality of the law is of value in its own right. It provides a sense of continuity and of stability in fundamental social relationships. However, the traditionality of the law also has significant practical functions. The law represents the accumulated wisdom of the past which has developed for reasons that are not always obvious to those who have not lived through the development or studied it with a high degree of intensity.

Furthermore, the traditionality of the law enhances the sense of predictability and the certainty which is such an important aspect of the law in its practical operation in our society.<sup>5</sup>

The value of traditionality is a significant contribution that this law faculty will make to the University by closer integration with the community of scholars on this campus.

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The design of this building has been described by one of the architects as “uncompromisingly modern”<sup>6</sup>. It is a striking example of that tradition. The significance of the built environment for the life of those who must experience it cannot be understated. As one of the founders of the Bauhaus Movement, Walter Gropius, said in 1949 of then contemporary developments in architecture on the Harvard campus:

“If the college is to be the cultural breeding ground for the coming generation, its attitude should be creative, not imitative. Stimulative environment is just as

important to free the students' creative talent as vigorous teaching. ...

How can we expect our students to become bold and fearless in thought and action if we encase them timidly in sentimental shrines feigning the culture which has long since disappeared?"<sup>7</sup>

This building feigns nothing. It *is* uncompromising and I look forward to the 'bold and fearless' contribution of its current and future students and staff.

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<sup>1</sup> See the analysis in P Parkinson *Tradition and Change in Australian Law* (3<sup>rd</sup> ed) Law Book Company, Sydney (2005) Pt 1.2.

<sup>2</sup> C/f Edward Shils *Tradition* Faber & Faber London (1981) p 2.

<sup>3</sup> I owe this simile to A Barak "A Judge on Judging: The Role of a Supreme Court in a Democracy" (2002) 116 *Harvard Law Review* 16 at 29.

<sup>4</sup> T S Eliot "Tradition and the Individual Talent" in *The Sacred Wood: Essays on Poetry and Criticism* Methuen, London 1920.

<sup>5</sup> See generally A T Kronman "Precedent and Tradition" (1990) 99 *Yale Law Journal* 1029; D Luban "Legal Traditionalism" (1991) 43 *Stanford Law Review* 1035; "Losing Sight of Hindsight: The Unrealised Traditionalism of Law and Sabermetrics" (2003-2004) 117 *Harvard Law Review* 1703.

<sup>6</sup> Richard Francis-Jones "Law School Building" (2009) *JuristDiction* 5

<sup>7</sup> Walter A Gropius "Not Gothic But Modern for Our Colleges" *New York Times* 23 October 1949.