

## LAW AT OTAGO: 1873-1998

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### I The Early Years: 1873-1901

The University of Otago is New Zealand's oldest University. It was established in 1869 by an Ordinance of the Otago Provincial Council with authority to grant degrees in Arts, Medicine, Law and Music. The University opened its doors in July 1871 with a staff of three Professors offering courses in Classics and English Language and Literature, Mathematics and Natural Philosophy, and Mental and Moral Science.

The first move towards establishment of a law school came in May 1871. A committee of the Provincial Council noted that there were between 30 and 40 law students in Dunedin preparing themselves for the examinations (at that time conducted by the Judges) required for admission to the legal profession, and concluded that these students would be keen to attend formal classes of instruction in law. The committee therefore recommended that the University establish a School of Law with a staff of two lecturers.

The University Council settled for one appointment, and in April 1873 Robert Stout was appointed to the position of "Lecturer of Common Law" on terms that he give two lectures a week for a salary of "50 pounds for the session and a fee of three guineas from each student".<sup>2</sup> This modest beginning marked the establishment of New Zealand's first law school.

Robert Stout was an exceptional man.<sup>3</sup> He was born in 1844 at Lerwick in the Shetland Islands, the eldest of six children. Like many Shetlanders, Stout was descended from Norse adventurers who settled in the islands in the 9th century. On his father's side, Robert claimed descent from "Sigurd the Stout" who was an elder brother of the famous Norseman who became Rollo, Duke of Normandy, and whose grandson was William the Conqueror. He was an exceptional student at the local school and at the age of 14 was appointed to the position of "pupil teacher" at an annual salary of 10 pounds. At nights he studied surveying and he became a fully qualified land and marine surveyor in 1860. Stout emigrated to New Zealand in 1864, intending to find work as a surveyor on the Otago goldfields. Finding no opportunities as a surveyor, he turned to school teaching

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<sup>1</sup> The author acknowledges the assistance derived from following sources: G E Thompson, *A History of the University of Otago (1869-1919)* (J Wilkie & Co, Dunedin, 1921); W P Morrell, *The University of Otago, A Centennial History* (University of Otago Press, Dunedin, 1969); M J Cullen, *Lawfully Occupied, The Centennial History of the Otago District Law Society* (John McIndoe Ltd, Dunedin, 1979); and an unpublished paper by Sandy Bardsley, commissioned by the Faculty of Law in 1992, entitled "Law at the University of Otago, 1872-1992".

<sup>2</sup> Minutes of the meeting of the Council of the University of Otago, 30 April 1873.

<sup>3</sup> The following account is drawn from Waldo Hilary Dunn and Ivor L M Richardson, *Sir Robert Stout, A Biography* (A H & A W Reed, Wellington, 1961).

and taught in Dunedin until 1867. He then decided on a career in the law and became an articled clerk to Downie Stewart, a prominent Dunedin lawyer. Stout completed his articles and professional examinations in just three years and he was admitted as a barrister and solicitor in July 1871.

Stout lectured at Otago Law School for only three years, resigning his position in April 1876 following his election to the New Zealand Parliament. Sir Robert Stout went on to a distinguished career in the fields of both law and politics. He served as Attorney-General and Premier (1884-1887) of New Zealand, and in 1899 he was appointed Chief Justice, an office which he held until 1926. Sir Robert's early contribution to the Otago Law School is commemorated by the fact that the Law Library now bears his name.

In its early years the law school struggled for support from both students and the University, and indeed the University's use of the term "School of Law" seems rather grandiose. At the time of his resignation in 1876, Stout was giving four lectures a week: two in the Law of Contract and Real Property to a "Junior Class", and two in Equity and Criminal Law to the "Senior Class".<sup>4</sup> However the University's expectations as to enrolments had proved to be rather optimistic. Stout reported that in his last session nine students enrolled in the Senior Class but only four attended regularly, while in the Junior Class ten students enrolled of whom six were regular attenders.<sup>5</sup> Clearly, many law students preferred to save their University fees and prepare themselves for the professional examinations without the benefit of formal tuition. This pattern continued for many years.

In 1877 the University of New Zealand (of which Otago University had, reluctantly, become a constituent college in 1874) passed the first set of regulations for the degree of Bachelor of Laws. The requirements of this three-year course could hardly be described as onerous or demanding. In the first year, candidates had to pass examinations in Jurisprudence and one of English, History of the British Empire, and Political Economy; in the second year one examination in Roman Law, Constitutional Law, Law of Property and Obligations; and in the third year one examination in International Law, Wrongs and Procedure. In 1883 a new four-year structure was adopted and this remained the basis of the LLB degree for many years. Candidates were required to pass examinations in the following subjects: Latin, English or Mental Science, Jurisprudence, Constitutional History, Roman Law, International Law and Conflict of Laws, Contracts, Torts, Real and Personal Property, Evidence, Criminal Law, and Equity.

By 1888 the Judges had delegated responsibility for the law professional examinations to the University, and the LLB degree now covered all the subjects required for admission as a barrister. But the requirements for admission as a solicitor remained much less demanding,<sup>6</sup> and since (after 1898) solicitors who had been in practice for five years automatically became entitled to admission

<sup>4</sup> Letter by Robert Stout to the Registrar of the University of Otago dated 6 April 1876.

<sup>5</sup> *Ibid.*

<sup>6</sup> A pass in the University Matriculation examination satisfied the "general knowledge" requirements (equivalent to University passes in Latin and English), and solicitors were not required to pass the law examinations in Jurisprudence, Constitutional History, Roman Law, International Law and Conflicts of Law. See Cullen, *supra* n 1 at 120.

as barristers,<sup>7</sup> there was little incentive for law students to complete the LLB degree. Consequently enrolments in University degree courses remained very low, and for many years the law school offered instruction in only a small number of the subjects required for the degree. F R Chapman (later Justice Chapman), who succeeded Stout in 1876, was disappointed to find that he had only ten students and enrolments seldom exceeded this number in the years up until 1901.

Of course the low level of student interest may have been due, at least in part, to less than inspired teaching. Of Allan Holmes (Chapman's successor and lecturer from 1878 to 1893) one student wrote:<sup>8</sup>

England's law is bad enough,  
So doubtless too was Rome's:  
But God preserve us one and all,  
From anything like Holmes.

Holmes was succeeded in 1894 by Dr W D Milne whose lectures on jurisprudence seem to have been rather better received than those of his predecessor. One student wrote:<sup>9</sup>

... our new lecturer invests his subject with sufficient life to interest us; and, on the whole, we feel critical enough only to express ourselves as well satisfied.

In 1890, two additional part-time lecturers had been appointed from the ranks of the Dunedin profession; A R Barclay lecturing on Constitutional History, and W A Stout on the Law of Property. But when Stout resigned in 1893 he was not replaced, and from 1894 until 1901 the law school offered only two courses: Jurisprudence with Dr Milne and Law of Property with Barclay.

The law students of the day were almost all employed as clerks with local law firms. Lectures were held before and after working hours, either in the lecturer's office or in a small lecture room in the Supreme Court Building. The University did not maintain a law library — students were permitted to study in the Otago District Law Society's library. Law students had little contact with the wider University and as a result were regarded by other students as distinctly different and somewhat elitist. In 1893 one described the typical law student in these terms:<sup>10</sup>

<sup>7</sup> See Law Practitioners Act Amendment Act 1898.

<sup>8</sup> R Gilkison, *Early Days in Dunedin* (Dunedin, 1938) 164, quoted by Cullen, *supra* n 1 at 123.

<sup>9</sup> "Legal Notes", (1894) 7 *Otago University Review* 23-24, quoted by Bardsley, *supra* n 1 at 3.

<sup>10</sup> "Varsity Types — No 4 — The Law Student", (1893) 6 *Otago University Review* 154, quoted by Bardsley, *ibid* at 5.

His number is small but his opinion of himself is large... He is the cream that disdains anything but a nodding acquaintance with the milk.

The writer's use of the male pronoun was justified; with one notable exception, law students were all male.

The single exception was Ethel Benjamin who first enrolled for the LLB degree in 1893. Apparently she found her fellow students supportive, even after she received the top examination marks in Constitutional History and in Jurisprudence.<sup>11</sup> The Otago District Law Society was less encouraging. It refused to let Benjamin read in the Society's library, presumably fearing that her presence would prove a distraction to its members. However it seems to have been assumed that the Judges would be immune to such distractions, and Benjamin was permitted to study in the "Judges' Chamber Room".<sup>12</sup> Ethel Benjamin duly graduated in 1896 and, following enactment of the Female Law Practitioners Act, in 1897 she became the first woman in New Zealand (and apparently in the British Empire) to be admitted to the bar. Unfortunately her successful example did not encourage other women to pursue a career in law and the law school remained a male preserve until relatively recently.

The first, less than notable, phase in the history of Otago Law School came to an inglorious end in 1901 when the University, faced with a financial crisis, decided to reduce expenditure by abandoning law classes and abolishing the two law lectureships.

## II Revival and Consolidation: 1905-1959

Law classes were revived in a modest way in 1905 when the Otago District Law Society persuaded the University to reappoint Mr Barclay as Lecturer in Constitutional History and to appoint W G Hay lecturer in Jurisprudence, in each case on a "fees only" basis. Then in 1908 the law students' organisation, with the support of the District Law Society, appealed to the University to establish a Faculty of Law that would offer instruction in the full range of subjects required for the LLB degree. The University Council agreed and a first step was taken with the appointment of J M E Garrow as a full-time Lecturer in Law. Unfortunately Garrow proved too good for the job — he left in 1910 to take up the first Chair in Law at Victoria University, and he was not replaced.

Once again it was left to the District Law Society to take the initiative. With a contribution of 100 pounds a year from the Society, and the University providing a further 50 pounds, six additional part-time lecturers were appointed in March 1912, and in 1913 the University formally established a Faculty of Law. In February of the following year the Law Faculty was merged with accountancy to form a combined Faculty of Law and Commerce, but this unusual arrangement was shortlived and the Law Faculty regained its separate identity in 1920.

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<sup>11</sup> C Brown, "Ethel Benjamin — New Zealand's first Woman Lawyer" unpublished BA (Hons) research paper, History Department, University of Otago pp14-15, quoted by Bardsley, *supra* n 1 at 6.

<sup>12</sup> Cullen, *supra* n 1 at 52.

The following forty-odd years saw little change. Lecturers continued to be drawn from the ranks of Dunedin practitioners and employed by the University on a part-time basis, in most cases to teach a single subject. The Faculty remained based at the Supreme Court and dependent on the Law Society's library. Apart from the fact that the University (from 1919) accepted full responsibility for payment of lecturers' salaries, the Otago law school remained an adjunct of the Dunedin legal profession rather than a University law faculty in the modern sense. One fact illustrates this rather well. JB Callan (who lectured in Torts) served as Dean of the Faculty of Law from 1921 to 1934, and student handbooks referred new students wishing to consult him about their courses to the address of his law firm's office.<sup>13</sup>

Some of the part-time lecturers seem to have been less than committed to their teaching duties. A capping song in 1914 included the verse:<sup>14</sup>

Some of us have been to Court!  
 You're mistaken there, Old Sport;  
 It's not because at crime we're caught,  
 But for Jurisprudence.

You stroll along at half-past eight;  
 It doesn't matter if you're late-  
 It's ten to one you have to wait;  
 The Profs are worse than Students.

Nevertheless, during the period immediately following World War I enrolments in law steadily increased, reaching a high point of 91 in 1928,<sup>15</sup> and the law school seems to have been an active flourishing institution. This growth was assisted by changes to the LLB degree structure, introduced in 1926, which extended the degree course to five years for most students. At the same time the requirements for admission as a solicitor were strengthened, reducing the gap between the professional qualification and the degree, and thereby encouraging more students to complete the LLB.

However the impact of the economic depression of the 1930s, followed by the Second World War, brought about a steady decline in student numbers, the low point being reached in 1942 when only 8 students enrolled for the LLB degree.<sup>16</sup> Interest in legal study picked up again after the war, although it was not until 1956 that total enrolments exceeded the number reached back in 1928.<sup>17</sup>

So until the late 1950s the Otago Law School was very much a part-time institution which identified itself much more closely with the Dunedin legal profession than with the University. The local profession took considerable pride

<sup>13</sup> *University of Otago Student Handbook* (1922, 1924), quoted by Bardsley, supra n 1 at 8.

<sup>14</sup> "Professors", *Otago University Students' Association Capping Handbook*, 1914, quoted by Bardsley, *ibid*.

<sup>15</sup> Cullen, supra n 1 at 127.

<sup>16</sup> *Ibid* at 132.

<sup>17</sup> *Ibid* at 136.

in the law school and lectureships were keenly sought by practitioners. Many prominent Dunedin lawyers lectured in the Faculty for more than 20 years, including P S Anderson, C B Barraclough, J B Callan, H L Cook, R L Fairmaid, AN Haggitt, W G Hay, J Lang, A G Neill, J B Thomson and C J L White. The contribution of A C Stephens was quite exceptional — he was a lecturer from 1926 to 1962, and served as Dean of the Faculty of Law from 1935 to 1959.

### III Growth and Change — Development of a Full-time Academic Law School

The long-established pattern began to change in the late 1950s. Along with steady growth in the number of enrolments, an increasing proportion of law students began to spend their first two or three years at University as full-time students. This placed greater demands on the part-time lecturing staff, and led to pressure being placed on the University to appoint a full-time professor who would also act as Dean of the Faculty. The University Council finally established the position in August 1958, and in July 1959 F W Guest was appointed the first full-time Professor and Dean of the Otago Law Faculty. Frank Guest was an inspired choice, being well-known and respected by both the University academics and the Dunedin legal profession. He had been a lecturer in the Philosophy Department at the University of Otago before entering upon the practice of law, then became a highly respected member of the Otago bar and served a term as President of the Otago District Law Society. Professor Guest was ideally placed to lay the foundations for a full-time academic Faculty of Law, and a number of enthusiastic full-time lecturers were appointed during his term as Dean: A C Holden in 1960, PT Burns in 1963, P E Kilbride in 1965, and Dr D E Paterson and D M McRae in 1966.

By 1966, when student numbers had reached 161, the Faculty had outgrown its accommodation in the Supreme Court building and it moved to a building on the University campus which had been constructed as the first Dental School and later housed the University Registry. The shift to the University campus brought major changes. The physical separation of the law school from the centre of legal activity in town posed practical difficulties for part-time students, and in 1967 the Faculty adopted a four year full-time LLB degree course followed by a further year of post-degree study for professional admission. By 1970 almost all law students studied full-time and few lectures were scheduled outside normal office hours. Law students were fully integrated into the wider student body and had become much more involved in student affairs on campus. An increasing number began to combine legal study with conjoint degree courses in Arts or Commerce.

In order to achieve promotion in competition with academics from other disciplines, the full-time law lecturers had to establish themselves as researchers and publishers, and in 1965 the *Otago Law Review* was established to provide a vehicle for publication of staff and student research. The Review flourished; it soon attracted contributions from well beyond the Otago faculty and it now commands an international reputation and readership.

So by the end of the 1960s, both the intellectual and the social focus of the law school had shifted away from the practising legal profession towards the University community.

Professor Guest's major contribution to the development of the Otago Law Faculty ended with his sudden death in 1967. His contribution is commemorated by the annual FW Guest Memorial Lecture which was established by the joint efforts of his students, his colleagues in the profession, and members of the academic staff of the University as a tribute to his work for the Faculty and his endearing personal qualities.

Professor Guest was succeeded by Professor PBA Sim who served as Dean from 1968 until 1981. His term in office was marked by rapid expansion of both the student body and the full-time teaching staff. By 1980 the Faculty of Law comprised 381 full-time students taught by 13 full-time and 9 part-time lecturers. The law library also expanded rapidly and the Faculty's first premises on the campus soon proved totally inadequate. In 1979 the law school moved to its present accommodation in the upper floors of the Hocken Building.

Today some 600 students are enrolled in the law school proper (ie, at second year level and above) while a further 550 compete for entry through the first year course in The Legal System. The teaching staff presently number 24 full-time lecturers and 13 part-time instructors. The full-time lecturers comprise an interesting mix of the Faculty's own best graduates together with scholars attracted from other New Zealand law schools and from England, Canada, USA and South Africa. Since 1981, when Professor Sim retired as Dean of the Faculty, the Deanship has been rotated among senior Faculty members. The Sir Robert Stout Law Library houses some 70,000 volumes and is equipped to access the full range of computerised legal databases.

In 1988 a more flexible LLB degree structure was introduced to offer students a much wider range of optional subjects and greater opportunity for specialisation. An intensive, post-graduate, Professional Legal Studies Programme of 13 weeks duration is now required for admission to the bar. In addition to the basic LLB degree, the Otago Law Faculty also offers the LLB Honours degree (for selected undergraduate students who undertake additional independent research work), and programmes for the LLM, PhD and Master of Bioethics and Health Law degrees.

While the Otago Law School is now very much a full-time academic institution, the traditionally close relationship with the practising legal profession remains strong. Dunedin practitioners continue to make a valuable contribution to legal education at Otago by lecturing in some specialised optional subjects, conducting tutorials in criminal procedure, judging moots and witness examinations, serving as guest instructors in the Professional Legal Studies Programme, and supervising student advisers at the Dunedin Community Law Centre.

Without a doubt, the most dramatic change within the Faculty over the past 20 years or so has been in the composition of the student body. Despite the early example set by Ethel Benjamin, until the 1970s few women enrolled in law and even fewer completed the degree and were admitted to legal practice. As a student in 1964, I well remember the reaction of a venerable part-time lecturer in criminal law to the surprising (and disturbing) fact that his class of 20 odd students included two women. Upon recovering from his initial shock, he declared that "This year, for obvious reasons, we will not be dealing with sexual offences." Those days are long gone. From the early 1970s women began to enrol

in law in ever-increasing numbers, to the point where they now comprise a substantial majority of the law student body. This year 62 percent of all Otago law students are women, and in the second year class women outnumber men by more than two to one. There has also been a marked increase in the number of Maori and Pacific Island students studying law at Otago.

### **Conclusion**

While the first 90 or so years of the Otago Law School's existence was marked by a constant struggle for survival in the face of low student enrolments and less than enthusiastic support from the University, it has since flourished and developed into a lively and stimulating law school which enjoys a strong reputation both within New Zealand and internationally. Although one can never be absolutely sure about these things, the future of New Zealand's first law school seems secure.