

International Postgraduate Studies for NZ Law Graduates: Are There Any Benefits?

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When the Editors-in-Chief of the Auckland University Law Review Henry Frear and Hugo Wagner-Hiliau invited me to give a speech at the Law Review Annual Dinner I reflected on what might be a topic of interest for Auckland Law School students. My time at the Auckland Law School from 1963-1966 preceded the establishment of this Auckland University Law Review.¹ Thus, unlike those who have given this speech in earlier years, I had to find a topic of interest beyond the role of the Law Review. After some discussion it was agreed that, based on my own experience of a year at Harvard Law School in 1966 to complete my Master of Laws (LLM), it might be of interest to speak to the following question: "Are there any benefits in international postgraduate studies for New Zealand law school graduates?"

The Early Days

In answering this question, I shall discuss my own experience of the Harvard LLM programme. However, by way of introduction, I must briefly address my earlier experience at secondary school. I boarded at Mt Albert Grammar School. My academic record there was unimpressive. First time around, I did not have sufficiently good marks to be awarded a pass without examination for University Entrance (UE). I had to sit the UE exam, and I failed. The following year I managed to obtain an accredited UE pass.

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1 Sir David did, however, publish in the inaugural issue of the Review. He argued that in reforming the "no-comment" rule in criminal cases the Government failed to consider the full implications of their reform. See David AR Williams "Judicial Comment on the Failure of An Accused to Give Evidence" (1967) 1 (Special Issue) Auckland U L Rev 69.

On what I wanted to do in life I had few ideas, aside from wanting to attend University. I opted to go to Law School. When the Headmaster of Mt Albert Grammar School learned of my plan, he told my parents that based on my school grades I might be better suited to go into one of the trades, like plumbing or carpentry!

Under the LLB Programme at the time, one first had to pass three Arts subjects. I took English, History and Political Science. All three courses inspired me, mainly due to the fact that I had some of the great teachers then lecturing at the University of Auckland, including Sir Keith Sinclair for New Zealand History² and Robert Chapman for Political Science.³ I proceeded to obtain my LLB.

During my time at Law School I had a chance meeting with an American Army serviceman/lawyer in an Auckland hotel one Friday night, I felt that it would be a great idea to take an LLM course at an American Law School. In that respect I had the good fortune of receiving advice from the then-Dean of the Law School, Jack Northey.

Before I talk about Dean Northey I should say that in those days my law school friends considered overseas graduate study a rather useless step. The general consensus was that you needed to work at a decent downtown law firm and get on with your career. Postgraduate study in law was seen largely as a waste of time. If you were silly enough to take that route, there were only two places in the world to go: Oxford or Cambridge.

Fortunately, Dean Northey had obtained a doctorate from the University of Toronto, and was thus familiar with North American legal education. He encouraged me to apply to a few US Law School LLM Programmes and seek a scholarship or some other form of financial assistance. In making these applications, the only helpful thing I could offer was that I had been President of University of Auckland Law Students Society. Following his advice, I applied to several American Law Schools, namely Harvard, Yale, New York, UCLA, Northwestern, and Columbia. In order to make such a venture possible I explained to all these institutions that I would need financial assistance.

2 Sir Keith Sinclair is widely regarded as helping establish the field of New Zealand history publishing two seminal books on the topic. See Keith Sinclair *The Origins of the Māori Wars* (2nd ed, Auckland University Press, Auckland, 1961); and Keith Sinclair *A History of New Zealand* (1st ed, Oxford University Press, Oxford, 1961).

3 Robert Chapman, alongside Sir Keith, established the discipline of New Zealand studies and was one of the first scholars to seriously analyse New Zealand's unique political landscape.

An American Experience: Studying at Harvard

As events unfolded five of those Law schools responded saying that, while they would like to accept me, my academic record was insufficient to justify financial assistance. The last place I had not heard from was Harvard. Since Harvard was renowned as having the top Law School in the United States, I thought I had little or no chance of gaining entry there. I considered that my aspirations for postgraduate studies in North America were doomed. To my great astonishment, Harvard Law School awarded me a scholarship and admitted me to their LLM programme.

When attending the compulsory initial interview with the Harvard Foreign Student advisor I asked why I had succeeded. He said:

Your university record was not impressive but as it happens you were the only applicant from NZ or Australia this year. Harvard aspires to be the best law school in the world and seeks to have representation from students all over the world. So that is why you are here.

I will not spend too long on my Harvard experience except to say it was incredibly stimulating and the quality of teachers breath-taking. For example, I had Professor Richard Baxter, who had been a judge on the International Court of Justice, for International Law. I still recall what he said in his first lecture:

We shall only be studying one case in this course: the Anglo Norwegian Fisheries Case — in that case you will find all you need on the principles of Customary International Law.⁴

For American Constitutional law I had Archibald Cox, a former United States Solicitor General and the Watergate Prosecutor of President Nixon.⁵ Then there was Professor Phillip Areeda, the author of the leading United States text on Anti-Trust Law.⁶

Harvard was an amazing experience for me. Beyond the experience itself, the environment exposed me to several ideas and people that led me down some interesting pathways. One was my meeting with Professor Charles F Wurster of New York University, who was a founding trustee of a public interest organisation called the

4 *United Kingdom v Norway* [1951] ICJ 3.

5 Archibald Cox was famously fired by President Nixon in the Saturday Night Massacre.

6 See Phillip Areeda *Fundamentals of Antitrust Law* (Aspen, New York, 2004).

Environmental Defence Fund (EDF).⁷ EDF was a pioneering environmental law organisation in the United States. EDF took on board, on a Pro Bono basis, important environmental cases such as the campaign to outlaw the DDT pesticide.⁸ In 2015 Professor Wurster penned a book reflecting on the DDT campaign and the creation of the EDF.⁹ In this book he referred to our meeting.

I liked the idea of trying to establish a similar public interest environmental organisation in New Zealand. When I returned home, I met with others who were interested in such a project. In 1971, I became the founder of the New Zealand equivalent of the EDF, the Environmental Defence Society (EDS). EDS celebrated its 50th Anniversary in 2021.¹⁰ There was no textbook on the environmental law in New Zealand in 1980, so I myself wrote one.¹¹ I am pleased to say that the text is now in its 7th edition and is edited by my good friend and colleague, Derek Nolan QC of Bankside Chambers.¹²

How Did Harvard Law School Help Me?

Harvard broadened my knowledge of the law immeasurably, and educated me on relevant United States jurisprudence. It also introduced me to the famous United States judges about whom I had read so much. Of particular note were the most famous United States Supreme Court Justice, namely Oliver Wendell Holmes, and another judge with the unusual name of Learned Hand.

I set out below two examples of statements by these great Judges which made an indelible impact on me. The first quotation from Justice Holmes is relevant to all of us who end up practising law. In one of his speeches, he presented his view on legal practice and what made it meaningful:¹³

Happiness, I am sure from having known many successful men, cannot be won by simply being counsel for great corporations and having an income of US\$50,000. An intellect great enough to win the prize needs other food besides success. The remoter and more general aspects of the law are what give it universal interest. It is through them that you not only become a great master in your

7 See Environmental Defence Fund "Our story: How EDF got started" (20 January 2022) <www.edf.org>.

8 See Environmental Protection Authority "DDT Ban Takes Effect" (press release, 31 December 1972)

9 Charles Wurster *DDT Wars: Rescuing our National Bird, Preventing Cancer and Creating the Environmental Defence Fund* (1st ed, Oxford University Press, New York, 2015).

10 Environmental Defence Society "EDF Conference 2021: 50th Anniversary" (26 July 2021) <www.eds.org.nz>.

11 David AR Williams *Environmental Law in New Zealand* (1st ed, Butterworth, Wellington, 1980).

12 Derek Nolan (ed) *Environmental and Resource Management Law* (7th ed, LexisNexis, Wellington, 2020).

13 Oliver Wendell Holmes Jr "The Path of the Law" (1897) 10 Harv L Rev 457.

calling but connect your subjects with the Universe and catch an echo of the infinite, a glimpse of its unfathomable process, a hint of the Universal Law.

This famous passage led me to research on two subjects of great general interest in the 1970s: first, Environmental Law, as mentioned above; and secondly, the Law of Domestic and International Arbitration, which later resulted in my co-authorship of the textbook *Williams & Kawharu on Arbitration*.¹⁴

The other example came from Judge Learned Hand. (I have always wondered why any parent would call their child Learned — however, by chance, he became supremely Learned!). His famous Spirit of Liberty speech, which he made during the Second World War, is worth reading and is reproduced in Appendix 1. For now, here is a passage that resonated with me:¹⁵

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interest alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never learned, but has not quite forgotten — that there may be a kingdom where the least shall be heard and considered side by side with the greatest.

In my workings as a Judge of the New Zealand High Court from 1991-1994, the Cook Islands Judiciary (2000-2020) and the Court of the Dubai International Financial Centre (2007-2013), this passage often reminded me to be alert to protecting the rights of defendants in criminal cases.

Another beneficial occurrence during my study in Harvard was that I came across the writings of the famous 17th Century English literary figure Dr Samuel Johnson. As many of you will know, Dr Johnson's most amazing achievement was the single-handed production of the first English dictionary, which was published in 1755.¹⁶ He also had a sense of humour. Thus, in his dictionary he defined lexicographer as “a harmless drudge who busies himself in

14 David AR Williams and Amokura Kawharu *Williams & Kawharu on Arbitration* (2nd ed, LexisNexis, Wellington, 2017).

15 Learned Hand, Judge of the United States Court of Appeals for the Second Circuit “The Spirit of Liberty” (speech to I Am An American Day, Central Park, New York, 21 May 1944).

16 Samuel Johnson *A Dictionary of the English Language* (J & P Knapton, London, 1775).

tracing the original and detailing the significance of words".¹⁷ Dr Johnson also established the first gentlemen's club in England. He believed such clubs would bring friends together. In 1750 in one of his letters he made the following statement about friendship:¹⁸

Life has no pleasure higher or nobler than that of friendship. Friendship is a combination of esteem and love. If friendship is to be at once delightful and lasting the friend should not only be supportive and strong in the days of distress but gay in the hour of jollity: not only useful in times of emergency but pleasing in the everyday aspects of domestic life. The presence of a friend should give cheerfulness as well as courage and dispel alike the occasional gloom of fear and of melancholy. A good friend must also be able to preserve the precious flame of friendship from the occasional gust of gossip and from the corrosion of envy.

I reproduce that quotation because you will have made many friends in the course of your time at law school, and I seriously suggest that you should cherish your friendships. Many of those friends will endure for the rest of your life. May I also suggest that one of the best ways to keep in touch with friends is to join the Northern Club — which, by the way, long ago decided to admit female members — and occasionally meet friends there.

Finally, my study at Harvard Law School indirectly benefitted the New Zealand legal system as a whole. On the Harvard Law School notice board, law firms in Boston and New York placed invitations for graduates to apply for summer clerkships. I applied and was honoured to obtain a summer clerkship at the famous Boston law firm Ropes & Gray. It was a valuable experience. When I returned and became a partner at Russell McVeagh, we established summer clerkships here in New Zealand. Other firms followed suit, and many firms employ summer clerks to these days.

Concluding Comment

Few law graduates of 1965 went on to study overseas. The situation has changed dramatically. As you know, it is not unusual now for LLB students to take a year off and study abroad. However, in these Covid times it is understandably difficult to undertake postgraduate studies abroad. Nevertheless, I give my advice.

The first thing I would suggest to any LLM aspirants is to think about which of the law schools are currently held in the highest

¹⁷ Johnson, above n 16, at — lexicographer.

¹⁸ Letter from Samuel Johnson to Unknown regarding The Requisites to True Friendship (27 October 1750).

regard. A while back I came upon an article on the internet dealing with this precise topic. It listed what it considered to be the 10 best law schools in the world. There are many such rankings on the internet. For example, the QS World University Rankings ranked the law schools of Harvard University, the University of Oxford and the University of Cambridge as the world's best in 2021.¹⁹

I am not for a moment suggesting that such a pathway is *necessary* for success in either legal practice or at the Bar; but what I will say is that what I learned from my study abroad helped me obtain a position in a top-level Auckland law firm, and vastly expanded my legal knowledge. My Harvard LLM was attractive both to the firm and to the firm's potential overseas clients, especially those based in the United States. As I have also outlined, my experiences abroad also provided significant assistance to my progress as a practising lawyer, as a judge, and later as an international arbitrator.

Appendix 1: The "Spirit of Liberty" Speech²⁰

We have gathered here to affirm a faith, a faith in a common purpose, a common conviction, a common devotion.

Some of us have chosen America as the land of our adoption; the rest have come from those who did the same. For this reason, we have some right to consider ourselves a picked group, a group of those who had the courage to break from the past and brave the dangers and the loneliness of a strange land. What was the object that nerved us, or those who went before us, to this choice? We sought liberty - freedom from oppression, freedom from want, freedom to be ourselves. This then we 'sought; this we now believe that we are by way of winning. What do we mean when we say that first of all we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow.

19 "QS World University Rankings by Subject 2021: Law & Legal Studies" QS Top Universities <www.topuniversities.com>.

20 Learned Hand, Judge of the United States Court of Appeals for the Second Circuit "The Spirit of Liberty" (speech to I Am An American Day, Central Park, New York, 21 May 1944).

A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a savage few - as we have learned to our sorrow.

What then is the spirit of liberty?

I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interest alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded: the spirit of liberty is the spirit of him who, near two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten - that there may be a kingdom where the least shall be heard and considered side-by-side with the greatest. And now in that spirit, that spirit of an American which has never been, and which may never be - nay, which never will be except as the conscience and courage of Americans create it - yet in the spirit of America which lies hidden in some form in the aspirations of us all; in the spirit of that America for which our young men are at this moment fighting and dying; in that spirit of liberty and of America so prosperous, and safe, and contented, we shall have failed to grasp its meaning, and shall have been truant to its promise, except as we strive to make it a signal, a beacon, a standard to which the best hopes of mankind will ever turn; In confidence that you share that belief, I now ask you to raise your hand and repeat with me this pledge:

I pledge allegiance to the flag and to the United States of America and to the republic for which it stands--One nation, Indivisible, with liberty and justice for all.