

even the heightened participation rates since 1945 have not brought the same improvement to the status of women in society at large.

References

1. Cited in E. Byrne, *Women and Education*, Tavistock, London, 1978, p. 11.
2. Sydney University Union, *Recorder*, July 1982.
3. E. Boehm, *Twentieth Century Economic Development in Australia*, Longman, 1971.
4. *ibid.*
5. 1945 figures are excluded from the long term comparisons because of the relative absence of men in wartime.
6. J. Jones and F. Lovejoy, "The perceived role of Australian female academics", *The ANZ Journal of Sociology*, 16, 1980, pp. 97, 98.
7. Sydney University does not have figures for male/female honours degrees until 1980.
8. J. O'Neill, "Women in Biological Sciences in Victorian Universities in 1981: An attempt at Perspectives", ANZAAS paper, May 1982, is a recent study confirming this.
9. ABS, *University Statistics 1950-1980*, AGPS, Canberra.

10. R. Over, "Women Academics in Australian Universities", *Australian Journal of Education*, 25, 2, 1981, p. 170.

11. *ibid.*, p. 170.

12. *ibid.*, p. 174.

13. Enrolments, all degrees:

	1950	1960	1970	1980
	24,224	41,836	108,906	151,238

ABS *University Statistics*, 1950-1980.

14. *ibid.*, 1961, 1980.

15. **Table a**
Teaching and Research Staff, Universities

	Males				Females			
	Tutors etc.		Total		Tutors		Total	
	No.	%	No.	%	No.	%	No.	%
1961	301	10.2	2,952	100	187	46.7	400	100
1964	501	12.3	4,063	100	245	42.8	574	100
1970	793	12.5	6,366	100	398	39.7	1,002	100
1980	770	8.6	8,983	100	534	30.7	1,739	100

Source: ABS *University Statistics*, 1963, 1964, 1970, 1980.

16. Melbourne University, Sectional Report No. 3, 1980: "Women Academics in the University, 1974-79".

THE UNIVERSITY VISITOR: A GUEST FROM ANOTHER AGE

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Australian universities, being largely modelled on their British counterparts, have in the majority of cases acquired the office of University Visitor. The purpose of this paper is to examine the need, the implications and the extent of recourse to the Visitor in Australian universities so that an opinion can be formed about the usefulness of this office.

HISTORICAL BACKGROUND

The function had its origins in the remote past as an essential ingredient of the Constitutions of eleemosynary institutions which appear to be one of the earliest examples of corporate identities. The distinction between eleemosynary and other types of corporations was succinctly summarised by Shelford in his *Law of Mortmain*¹ as follows:

Lay corporations are again subdivided into two classes, eleemosynary and civil. Eleemosynary corporations are such as are constituted for the perpetual distribution of the free alms, or bounty of the founder of them, to such persons as he has directed. These are of two general descriptions; hospitals for the maintenance and relief of poor and impotent persons; and colleges for the promotion of learning, and the support of persons engaged in literary pursuits; of which the greater number are within the Universities, being corporations within a corporation of which they form a component part; and other colleges are out of the Universities and are not necessarily connected with them.

It is unclear exactly when the divisions between various corporations occurred but the differences were well established in England at the beginning of the 19th century so that ecclesiastical and eleemosynary corporations were subject to visitation whereas other lay corporations were not. A further difference that can be observed between the two kinds of corporations subject to the Visitor's jurisdiction can be seen in the type of a person appointed to that office. Whereas the ecclesiastical corporations followed the established hierarchy, the eleemosynary corporations left the identity of the Visitor up to the legislator who passed the enabling legislation.

This is but a brief historical outline of the rise of the visitorial jurisdiction. Any such historical synopsis would be incomplete, however, without a review of the early cases which shaped the extent of the Visitor's Office.

One of the earliest cases to define the powers of a Visitor was *Phillips and Bury*.² Sir John Holt J.C., in a judgement which was actually a dissenting judge-

ment in the Court of Kings Bench but which was subsequently approved by the House of Lords when reversing the judgement of that Court, stated:

The office of Visitor by the common law is to judge according to the statutes of the college and to expel and deprive upon just occasions and to hear appeals of course. And from him and him only the party grieved ought to have redress; and in him the founder hath reposed so entire confidence that he will administer justice impartially that his determinations are final and examinable in no other Court whatsoever.³

In substance the English Courts still follow the gravamen of that statement. In more recent times the law pertaining to Visitors was consolidated and enlarged upon by Sir Richard Kingersly V.C. in the case of *Thomson and University of London*.⁴

Whatever relates to the internal arrangements and dealings with regard to the government and management of the house, of the domus, of the institutions is properly within the jurisdiction of the Visitor, and only under the jurisdiction of the Visitor and this Court will not intervene in those matters; but when it comes to a question of right of property, or rights as between the University and a third person de hors the University, or with regard, it may be, to a breach of trust committed by the corporation that is the University, and so on, or any contracts by the corporation, not being matters relating to the mere management and arrangement and details of their domus then indeed this Court will interfere.⁵

From these two quotations, but especially from the latter, a number of conclusions can be drawn about the extent of the visitorial jurisdiction before the beginning of the 20th century.

• In the beginning, only a member of the corporation can instigate a complaint or appeal. Thus, in the first instance, the jurisdiction of the Visitor is confined to questions arising between members of the corporation and cannot be invoked in any disputes arising between corporations and non-corporations. This is established law and is stated, among others, by Bridge.⁶

Visitorial jurisdiction is therefore essentially limited to corporations and does not extend to other persons within or outside the corporation.

Thus, for example, a dispute between a laboratory technician and the university that employs him cannot be settled by a Visitor but recourse must be made to the appropriate court.⁷

To avoid misunderstandings it must be made clear that the rule that the Visitor's functions can only be involved in questions between corporators, does not exclude the exercise of his or her jurisdiction in cases where corporators challenge their expulsion from the corporation, as where a member of academic staff questions the right or the justice to expel or remove them from the position which would make them a corporator; for their status as a corporator is then at issue. Conversely, it is within the Visitor's jurisdiction to determine whether an application to gain corporate status has been wrongly rejected. Hence one of the functions of the Visitor is to decide all questions of disputed membership of the corporation.

- The Visitor exercises a special jurisdiction over all private disputes within the corporation according to the special statutes and code of law governing the corporation.

Thus the principle that the Visitor can only be concerned with the domestic affairs of the corporation and the corporators carries with it two limitations over the range of matters that can be dealt with. The first is that matters arising out of any dispute between the corporation or corporators and outside parties, or concerning the rights and liabilities of outsiders in relation to the institution or its corporators, cannot be the subject matter of the Visitor's determination.

The second limitation is that matters arising between the corporation and its corporators alone which concern compliance with the demands of the public law, that is to say law that is applicable to all persons, or to classes of persons without regard to their character as insiders of the institution, travel beyond the limits of the Visitor's jurisdiction.

Thus, with respect to the maintenance of order, the Visitor has cognisance only of offences against the foundation instrument and not offences against some other statute or at common law. That is not to say that an overlap may not exist between the common law or other statutes and the statute of the foundation, but rather that the founding Act contains a reasonably exhaustive list of matters that a Visitor may properly deal with. These matters must impose duties that are owed between corporators or to the corporation itself rather than to the public at large. This would be very much a matter of degree and would depend on the interpretation of the founding Act.

- Lastly, by the very nature of determining his/her duties the Visitor has to interpret the founding act and ascertain what rights and obligations flow therefrom and whether these rights and obligations involve his/her jurisdiction. Such issues are, of course, threshold matters and, if wrongly determined, would give rise to an appeal to an appropriate court, most likely a Supreme Court of the State or the Territory.

Such are the limits of the Visitor's jurisdiction as a result of the historical formulations of the office and the early cases fleshing out its duties. Since then, we have seen a number of changes in the nature and the method of definition of the office in Australia.

The Visitor's Office in Australian Universities

A brief outline of the relevant legislation is provided for all Australian universities. As the matter of corporate identity and the extent to which members of academic staff are corporators is important, these sections are included as well.

New South Wales

- *University of Sydney*

Enabling Act; the University and University Colleges Act of 1900 which was enacted pursuant to a Royal Charter of the University of Sydney dated 27 February, 1858.

By section 6 the University of Sydney is incorporated. By section 7 the Senate is established as the governing body.

Section 17 states:

The Governor of New South Wales shall be the visitor of the University, with authority to do all things that pertain to visitors as often as he deems meet.

In chapter 5 of the By-laws the members of the convocation are deemed to include fellows, officials deemed to have the same rights within the University as masters and doctoral graduates, master and doctoral graduates of the University and bachelor graduates and their equivalents. Exemption is provided (section 1(2)) on the grounds of conscience.

- *University of Newcastle*

Enabling Act; University of Newcastle Act of 1964. By section 4(2) the University is incorporated. Section 14(1) includes academic staff as members of the Convocation.

Section 31 provides for the Visitor along the same lines as the University of Sydney Act.

- *University of New South Wales*

Enabling Act; University of New South Wales of 1968 which consolidated four prior acts, the earliest being enacted in 1949.

There is no provision for a Visitor in the Enabling Act. Although there are provisions for the election of members to the Council, there is no convocation of academic staff as such in the enabling Act or statutes or in the by-laws enacted thereunder.

- *Macquarie University*

Enabling Act; Macquarie University Act of 1964. Section 4 provides a corporate identity for the University. Section 14(1) includes academic staff of the University in a convocation.

Section 30 provides for a Visitor along the same lines as the University of Sydney Act.

- *University of New England*

Enabling Act; University of New England Act of 1953.

Section 4(3) provides incorporation for the University, Section 15(1), includes academic staff as members of the Convocation.

There is no specific provision for a Visitor in the Enabling Act but specific persons are mentioned as University Ombudsmen in the list of appointments.⁹ It is interesting to note that in the 1980 Calendar⁹ the Governor of New South Wales is mentioned as the Visitor under the section headed Officers and Staff of the University. In 1980, as today, no specific enactment was provided for the Visitor in the enabling Act and one can only speculate why that entry was dropped from the 1982 Calendar.

- *University of Wollongong*

Enabling Act; University of Wollongong Act of 1972.

Section 9(1) provides incorporation for the University. Section 29 allows academic staff to become members of the Convocation. Section 36 provides for the appointment of a Visitor along the same lines as the other Acts.

Victoria

- *Monash University*

Enabling Act; Monash University Act of 1958.

Section 3(2) provides incorporation for the University. Section 3(1) outlines what the membership of the University is which includes professors and members of the teaching staff and there is also a provision for some members of Council to be elected from the incumbent professors and other teaching staff of the University.¹⁰ Section 42 provides for the Visitor to be the Governor of Victoria and uses an identical formulation to the other acts.

- *University of Melbourne*

Enabling Act; Melbourne University Act of 1958 which consolidated the previous Acts and which was enacted pursuant to a Royal letters Patent issued on 14 March, 1859.

Section 4(1) provides a corporate identity for the University. The same section outlines the membership of the corporation which includes members of the academic staff. Section 47 provides for a Visitor to the University.

- *La Trobe University*

Enabling Act; La Trobe University Act of 1964.

Section 3(2) provides for incorporation of the University. Section 3(1) states that some members of academic staff are corporators and section 26¹¹ establishes a Convocation. Section 42 provides for a Visitor to the University.

- *Deakin University*

Enabling Act; Deakin University Act, 1974.

Section 3(2) incorporates the University. Section 3(1) provides that the University shall consist of such members of academic staff as may be prescribed. Section 38 provides for a Visitor.

South Australia

- *University of Adelaide*

Enabling Act; University of Adelaide Act, 1971-1978. This Act repealed the previous Act of the same name which was in force from 1935-1964.

Section 4(1) provides for a continuation of the University being a body corporate. Pursuant to section 18, the Senate is established which includes all graduates of the University and all persons in full time employment who are graduates of other universities or who have attained equivalent qualifications. Section 20 provides for the establishment of the Visitor's office.

- *Flinders University of South Australia*

Enabling Act; The Flinders University of South Australia Act, 1966-1973.

Section 3(3) establishes a corporate identity for the University whereas section 3(2) states that the University shall consist of a Council and a Convocation. Section 17 outlines the membership of the Convocation which includes all academic staff. Section 24 provides for the Governor of South Australia to be a Visitor.

Queensland

- *University of Queensland*

Enabling Act; University of Queensland Act, 1965-1981 which consolidated and repealed a series of Acts going back to 1909¹¹.

Section 5(1) establishes a corporate identity for the University. Section 5(2) outlines the composition of the body corporate and Section 15 establishes a Convocation which includes all full-time members of academic staff. No specific statutory provision can be found in the University Act although, on page 9 of the 1982 Calendar¹² the Visitor is specified as the Governor of Queensland.

- *James Cook University of North Queensland*

Enabling Act; James Cook University of North Queensland Act 1970-1981.

Section 4(2) provides incorporation and Section 4(1) outlines the membership of the corporation which includes academic staff. No provision is made for the Visitor in the enabling Act, the statutes and by-laws enacted thereunder or even, as is the case at the University of Queensland and the University of New England, under the heading outlining the officers of the University.

- *Griffith University*

Enabling Act; Griffith University Act 1971-80.

Section 4(2) provides incorporation whereas Section 4(1) specifies the membership of that corporation.

Section 19 establishes a Convocation of the University (includes academic staff). No provision has been made in the statute for a Visitor and none has been appointed.

Western Australia

• *University of Western Australia*
Enabling Act; University of Western Australia Act of 1911.

Section 5 provides that the Senate shall be the governing body of the University. By Section 6 the University is made a body corporate. Section 17 establishes a Convocation and outlines its membership; all members of the Senate, all graduates of the University and members of other institutions that are authorised to grant degrees.

Section 7 provides for a Visitor along similar lines as provided in other Acts.

• *Murdoch University*
Enabling Act; Murdoch University Act, 1973-1978.

Section 4(2) provides incorporation for the University. Section 19(2) outlines the membership of the Convocation which includes, among others, all persons that are full-time members of academic staff.

Section 9 provides for a Visitor in the person of the Governor of Western Australia.

Tasmania

• *University of Tasmania*
Enabling Act; the Tasmanian University Act of 1889. The most recent consolidation occurred in 1951.

Section 4(2) provides incorporation for the University. Section 4(3) provides that the University shall consist of a Council and a Convocation. Section 10 outlines the membership of the Convocation which includes all permanent members of the teaching staff of the University that are employed on a full-time basis.

Section 16 provides for a Visitor in the person of the Governor of Tasmania.

Australian Capital Territory

• *Australian National University*
Enabling Act; Australian National University Act of 1940-1960.

Section 4(2) provides for the incorporation of the University. Section 4(1) provides that the University shall consist of a Council, a Convocation, graduate and under-graduate members of the University. Section 16 outlines the membership of the Convocation which includes graduates of this and other universities and members of Council but there is no blanket provision for academic staff to be admitted as members.

No provision is made for a Visitor.

Conclusions on extent of provisions

Given the above information, a number of conclusions can be made about the extent of statutory provisions for the Visitor, namely:

• Only six out of nineteen universities do not have a Visitor specifically provided for in the enabling Act. Of the six, a further two (University of Queensland and until 1980, University of New England) have a Visitor specified in the body of the University Calendar under a heading of "senior officers" of the University.

• Most universities have a Convocation of some type which outlines the membership of the corporation, but only eleven or so of the universities have all academic staff included as corporators. Other universities have a membership which is predominantly based on persons that have graduated from the university or possess equivalent qualifications. Some confusion could arise because of this multiplicity of entrance requirements for members of academic staff to become corporators. These provisions have certainly impeded an easy identification of persons within the university who are or are not eligible for corporate status. It is interesting to note that some universities have undergraduate students as corporators, but the majority do not.

If ever the Visitor's Office becomes a successful forum for the settlement of industrial disputes, the entry requirements for corporate membership ought to be streamlined and basically include the governing, teaching, research and studying population of the university.

• All nineteen universities mentioned are corporations of a eleemosynary type and as such, are eligible for the visitorial jurisdiction.

• All Visitors cited in the above pages are State representatives of the Crown.

• Given the wide formulation of the visitorial powers, the Visitor specified for Australian universities must be a general visitor. The question is usually settled by the formulation of the visitorial powers in the enabling act.¹² The courts have generally taken the Visitor's power as general in absence of any express formulation.¹⁴

Given the third point above the question arises whether in fact the State representative of the Crown has the right, irrespective of any statutory pronouncements, to become a Visitor based on the rights flowing to him/her because of the nature of the institution. Or, to put it another way, would a member of the corporation at, say, the University of New England, be able to invoke the Visitor's jurisdiction to settle an internal dispute? Matthews¹⁵ is somewhat inclined to the view that universities that do not appoint a Visitor do have one as a matter of strict law but the matter is by no means settled. The

only solid support cited is a passage from Shelford which states that a school which is founded by charter or by an Act of Parliament must be regulated, in the first instance by the charter and not by application to a Court of Equity¹⁶. Since that article no cases have arisen which would settle this question.

Bridge is not very helpful on this question, although he does state:¹⁷

But the modern universities, being eleemosynary corporations, have, or are entitled to have, a Visitor.

Where no such petition has been received and no appointment made the sovereign, as founder, is the Visitor.

Although these two quotations by no means settle the matter, they tend to indicate that a right for the Visitor to perform the duties of the office can be inferred from the nature of the institutions. These influences are not placed any more highly than as an indication of the view the British Courts would take if asked to decide this matter. A similar view is taken by Davidson J. in *Ex parte McFayden*¹⁸ where he states:

*It is true that, where no visitor is appointed to an eleemosynary corporation, or if the office becomes vacant, his duties fall to be discharged, in England, by the King, who acts in that connection through the Court of Kings Bench.*¹⁹

This leaning towards the presence of the Visitor in universities where no specific provision has been made must be set off against the reluctance of the Australian Courts to give as wide powers to the Visitor as is the case in England. To use the words of Halse Rogers J. in *McFayden's* case:

*I think also that probably nobody, until Ex parte King; Re University of Sydney (1943) 44 S.R. 19 ever thought that there was any possibility of intervention by the Visitor. With regard to the section dealing with the appointment of the visitor ... — it was never contemplated by the legislature or by anybody from the time the Act was passed until quite recently, that it did anything more than give the Governor an official connection with the University.*²⁰

*That would mean that the Visitor, at the direction of this Court, might have to turn himself into a Court to examine domestic matters which obviously are properly within the jurisdiction firstly of the Faculty and then of the Senate of the University.*²¹

This, of course, seems to be exactly the function which the Visitor is meant to discharge, as outlined in Thomson and University of London.²²

Thus this matter remains undecided but, in my opinion, the most likely course for the Australian Courts to adopt, if a case raising these issues even

comes to trial, is that a Visitor has a right to discharge the functions of his office even if no specific provision is made in the enabling act but to read down the importance of the Visitor and the matters over which he can preside.

Case law on the Office of the University Visitor in Australia

To determine the direction of this jurisdiction, as well as its future role, wherever possible, only the most recent cases are examined and only those concerning academic staff. As a corollary, a brief examination is undertaken of the attempts made to use the fact that a Visitor is specifically provided for in a number of universities as an argument against the jurisdiction of the state industrial commissions over the universities concerned.

Visitor as an industrial arbitrator

In two recent cases, the university administrations sought to obtain exemption from the jurisdiction of the state industrial commissions by arguing:

• that the University Act is a special Act which vests in its governing body an exclusive power to determine all conditions of employment for its academic staff and by the maxim of *generalia specialibus non derogant* the special provisions of an earlier act do not repeal the general provisions of a later statute.

• that the Visitor of the University has exclusive jurisdiction to determine any dispute between the University and the academic staff employed by it.

• that academic staff are not engaged in an industry or a calling and their work cannot be deemed industrial.

In the first case, the University of Western Australia Academic Staff Association (Union of Workers) applied for an award before the Industrial Commission. The University then gave notice that it wanted the three points mentioned above discussed as threshold issues. The matter came up before Commissioner Collier in the first instance who found for the Staff Association. The University appealed and the matter was heard before the Full Bench of the Western Australia Industrial Appeal Court. In a decision handed down on 5 June, 1979²³ all Justices found for the University on the third ground above and only one Justice addressed himself to the visitorial question. Wallace J. had this to say on the importance of the Visitor as an arbitrator;

*... whilst there is no express power to register a group of academics as an association akin to that of the respondent or to settle disputes between such an association and its senate by means of conciliation, arbitration and mediation, it does possess a Visitor having the exclusive jurisdiction to hear and determine complaints and appeals relating to the internal affairs, membership, government and management of the appellant.*²⁴

This would seem to be cold comfort to the Staff

Association, especially given the fact that a Visitor could manifestly not provide them with a resolution of their application.

The second case arose in New South Wales where the University of Newcastle disputed the ability of the University Academic Staff Association of NSW, a registered State union, to apply for an award. The points of objection taken were similar to the ones in the Western Australian case. The case was originally heard before Macken J. of the Industrial Commission who found on 5 May 1981 for the union. The University of Newcastle then appealed to the Full Bench of the Industrial Commission.

In a joint judgement, the Industrial Commission handed down its decision²⁵ on 26 October 1981, and found for the union on all of the jurisdictional points in dispute.

The Full Bench, at the end of their decision outlined what they considered to be the scope of the visitorial jurisdiction and then stated:

As far as claims and complaints are concerned, the jurisdiction of a visitor is confined to hearing and determining claims and complaints concerning the internal affairs of the corporation. Under the University's Act the professors are included in the corporators and a dispute between a professor and the Council of the University concerning the amotion of the professor would, we apprehend, be cognisable by a Visitor ... The type of question we would wish to leave open is whether a tribunal under the Industrial Arbitration Act would be deprived of jurisdiction to deal with a dispute between a professor and his university concerning the terms of the professor's employment or concerning his removal from office because that is a matter within the visitor's jurisdiction. We distinguish such an internal dispute from one between an association to which the professor belongs and the university, for the association would not be a member of the corporate body and the visitor would have no jurisdiction.²⁶

It is submitted that, of these two interpretations, the second one is infinitely more preferable as it does preserve what can be considered to be the traditional area of visitorial jurisdiction while at the same time allowing the Industrial Commission jurisdiction to conciliate and arbitrate on industrial matters. The former decision effectively destroyed the access of the staff association while providing it with nothing in return. If the staff association was a corporator then perhaps the visitorial jurisdiction could be invoked even though, on McFayden's²⁷ interpretation of the extent of the visitorial jurisdiction, that is very unlikely.

Other recent cases

In the recent case of Clark and University of Melbourne²⁸ the Full Court of the Supreme Court of Victoria discussed generally the history of the Visi-

tor at the University of Melbourne and concluded generally that the members of the University, if they come within the ambit of the legislative powers of the University must do so at their own risk and in full appreciation of the extent of control the University can exercise over them, including the jurisdiction of the Visitor.²⁹

The Federation of Australian University Staff Associations recently instituted a case on behalf of a lecturer whose tenure application was refused by Council. The Federation, on legal advice decided to commence the case by a writ of *certiorari* in the Supreme Court. The case has not come up for hearing yet, but it is interesting to note that the University's Statement of Defence included the following ground:

... the matters complained of by the Plaintiff in this action concern the internal affairs or government of Deakin University and are within the exclusive jurisdiction of its Visitor.

The case is scheduled for hearing sometime in 1983.

Most recently of all was the case of Murdoch University v Bloom and Another.³⁰ In that case a member of the university staff sought to present a petition to the Visitor and the University sought a declaration that the Visitor did not have the jurisdiction to determine the matter which concerned the rights to study leave. By a majority (Burt C.J. and Smith J.) the court held:

- that the Visitor had no jurisdiction to hear and determine the first statement appearing in the staff member's petition that he is entitled by virtue of his terms and conditions to a 12 month study leave.
- That the Visitor had the jurisdiction to determine the alternative claim based upon the statement that the Vice-Chancellor's decision to limit the period of the petitioner's study leave is harsh and unjust and contrary to the spirit and intention of the petitioner's contract of service.

Wallace, J. dissenting took the view that the Visitor had the right to hear both claims based broadly on the wording of the enactment in the enabling act (which has the word 'shall' rather than the word 'may' which is found in other statutes). On the extent of the visitorial jurisdiction Wallace, J. had this to say:

The dispute between the Plaintiff and the First Defendant is essentially an internal affair because it involves entitlement to study leave and therefore comes squarely in my opinion within the Visitor's jurisdiction. The Visitor is not an anachronism, he is the subject of appointment in a statute expressing Parliament's intention in the month of June 1973. I endorse all that Megarry V.C. had to say in Patel v. Bradford University Senate.

Wallace, J. seems to have followed the spirit of the British cases and what appears to be the correct interpretation of the Visitor's jurisdiction — to look at the fact whether the dispute is internal to the workings of the university and is between corporators rather than whether it is contractual in scope or not. With respect, this sort of interpretation severely limits the usefulness of the Visitor as a majority of cases arising in modern universities can be classified as contractual.

In any case, in the matter heard before the Visitor on 5 May 1980 the Visitor held for the University in the matter in which he had jurisdiction. In the course of his decision he stated:

In my ruling on the preliminary point of jurisdiction on 12 December 1979 I accepted that a Visitor has no authority to interfere with the exercise of a discretionary power unless that power has been exercised 'from motives, illegal or corrupt'.³²

Needless to say that it is very difficult to find for the petitioner if that sort of test is used.

Lastly, we have the following statement as to the visitorial jurisdiction given in a recent case:

When the question is whether a trust has been imposed and whether it has been breached or when a contract concerned with matters outside domestic affairs is in issue a matter of public law is involved, the determination of which is not an internal affairs, and rights of property are for the Courts and not the Visitor to determine.³³

Again, the test is based on the dispute in question having to be internal and between members rather than being put on a strictly contractual basis.

Conclusion

The majority of Australian universities do possess a specific statutory enactment, usually found in the enabling Act, which establishes the Office of Visitor. Although the matter is far from settled, it is likely that even the universities that do not have a specific enactment for a Visitor would still possess a Visitor in the person of the Crown, by nature of the institution.

The British cases outline the nature of the visitorial jurisdiction which, to simplify somewhat, include all domestic matters which could form a dispute between members of the corporation. Initially the disputes would have been mainly a matter of status although gradually contractual elements peculiar to the university environment were included as well.

In Australia, as evidenced by Bloom's case, and others, the contractual element was never really accepted and this coupled with a very strict, almost ceremonial interpretation of the nature of the Office, resulted in a very limited application of the visitorial jurisdiction. Thus we have a system that allows the Visitor to adjudicate on the matters of status and a very limited definition of 'internal matters'. Given the problems with this jurisdiction and the very uneven

definition of the corporators under its influence, do we need a Visitor at all?

I believe we do. The Visitor still serves a useful function, especially in States where the prospective petitioner does not have any access to the state industrial commission. I believe, however, that this ancient office should be streamlined and rationalised as follows:

- By ensuring that all full-time members of academic staff are included as members of the corporation.
- By ensuring that the Visitor does not have any jurisdiction over matters involving logs of claims or awards for all members of academic staff. The fact that such matters are generally brought by the Staff Association which is not a corporator should sufficiently distinguish this case from the case of an individual bringing a petition before the Visitor (in which case the Visitor would have jurisdiction).
- By applying the test as outlined in Thomson and the University of London.³⁴ I would go as far as to say that no appeal should lie from the Visitor's decision provided that it is made within the jurisdiction as defined.

NOTES AND REFERENCES

1. At page 23.
2. (1692) 2T.R. 348.
3. Ibid, at page
4. (1864) 33L.J. ch 625.
5. Ibid, at page 634.
6. Keeping peace in the Universities — the role of the Visitor (1970) 86LQR531.
7. See RV Industrial Disputes Tribunal ex.p. Queen Mary College, University of London (1957) 2WB 483.
8. *University of New England Calendar*, 1982, UNE Press, at pp. 50-51.
9. *University of New England Calendar*, 1980, UNE Press, at p. xxi.
10. *Monash University Calendar*, 1982. M.U. Press, Statute 9.1.5 and 9.1.6, at p. 154.
11. 9 Edw. VII No. 7.
12. *University of Queensland Calendar*, 1982, Simpson Halligan & Co.
13. See the test enunciated in *St. Johns' Coll., Cambridge v Toolington (1757)* 1 Burr. per Lord Mansfield, at p. 201.
14. Note 13, supra, at p. 200.
15. T.G. Matthews, 'The Office of the University Visitor', UQLJ, 11, 2, 152, at p. 155.
16. Op. cit., at p. 336.
17. Note 6, supra, at p. 531.
18. (1945) 45 S.R. (N.S.W.) 200.
19. Ibid., at p. 201.
20. Ibid., at p. 205.
21. Ibid., at p. 205.
22. Supra, note 4.
23. Unreported, Appeal No. 6 of 1979.
24. Ibid., Wallace, J., judgement at p. 8.
25. In Re University of Newcastle Staff No. 286 of 1981.
26. Ibid., at p. 41.
27. Supra, n. 17.
28. (1979) UR 66.
29. Ibid., at p. 73.
30. Action No. 2293 of 1979 of the Supreme Court of Western Australia W.A. S.C.J. April-May 1980.
31. Ibid., at p. 6 of the judgement of Wallace, J.
32. At page 15 of the decision.
33. Petition by J. De Simone and others on 16 October 1979 at the University of Melbourne.
34. Supra, n. 4.

PROFESSIONAL ETHICS IN ACADEMIA

Some years ago Eric Ashby proposed a form of Hippocratic Oath for members of the academic profession.¹ More recently the *Journal of Advanced Education* published a draft code of ethics for its readers to consider.² Many professional groups have adopted a formal code of ethics or a set of principles which members are expected to observe, while others have canvassed some of the issues which might arise in the course of professional practice (e.g. Royal Institute of Chemistry).³ In recent years there has been an upsurge of interest in some of the ethical issues which can stem from academic work largely because of revelations of fraud and improper applications of research expertise.⁴

The topic is a large one and somewhat daunting because of its complexity and the manner in which many of the issues interconnect. Here I shall only attempt a sketch of the outlines of its scope and indicate the general character of some of the issues. An academic has responsibilities in five major areas: research, teaching, the institution, the profession, and the community. I shall say a little about each of these but give most attention to the first two.

Research

A quite fundamental issue which arises here concerns the general thrust of research efforts and the choices which face an individual in determining his or her own priorities.⁵ We are all familiar with the moral dilemmas which can arise, for example, in relation to weapons research versus work aimed at enhancing human welfare, and I do not propose to discuss this topic despite its great importance.

Many problems have emerged from the manner in which research is conducted and the ways in which results are published and it is this area which has attracted the most attention during the past decade, although there is certainly nothing novel about such controversies. Charles Babbage, the founder of computing science, published in 1830 his *Reflections on the Decline of Science in England* in which he discussed varieties of hoaxing, forging, trimming of results and what he called cooking.⁶

It is helpful to view many of these issues as having their origins in a conception of the results of scientific work as being the property of scientists in which they have certain rights. This approach has been developed in considerable detail by Ravetz who argues that the protection of these rights is necessary if scientists are to be confident that their efforts are to be rewarded. This protection is achieved through the mechanism, developed in the late eighteenth century, of publishing authenticated results and so enabling the subsequent citation of

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such results by others thus ensuring their attribution to the originator. What Ravetz calls an 'etiquette' has evolved which governs citation practices and the operation of the system of quality control which is in the hands of journal editors and referees. Ravetz admits, however, that 'etiquette' is too weak a notion to convey satisfactorily what is involved here.

It is the concern with property and the rewards which may be anticipated to come from it which leads to many of the difficulties which are generated by the operation of the quality control system. Prominent among these is the use of the work of others without adequate acknowledgement. This is often unintentional, for few of us are able to recall the origins of all our thoughts, but sometimes it is deliberate as in acts of plagiarism. Referees sometimes take advantage of their access to the unpublished work of others to plunder both ideas and data. Supervisors have been known to fail to accord full credit to the efforts of their postgraduate students.⁷ Name-ordering on publications at times does not reflect accurately the contributions made by each author.⁸ The Royal Society has attempted to avoid this problem by insisting upon alphabetical order only. Some workers neglect to publish results promptly out of a concern for secrecy in order to promote self-interest.

Because of the advancement of knowledge depends upon the authenticity of published results it is obvious that the integrity of research workers is of crucial importance. In recent years, however, there has been a spate of allegations and revelations concerning instances of scientific fraud. One of the most publicized cases is that of Cyril Burt⁹ but there have been many others.¹⁰ (see Marwell and Baker, 1981). Indeed, Brush has argued that the history of science is so replete with disreputable acts and practices that it offers a most unsuitable model for students to be encouraged to follow.¹¹

The gate-keepers of science are the editors and referees of the papers which constitute the journal literature and Ravetz has stressed the fundamental significance of their role.

If their concern is no more than the creation of intellectual property which can be cashed for material and social benefits, then there are no internal barriers to the rapid degeneration and corruption of a field at all levels.¹²

There is another aspect of intellectual property rights which has received little attention in the literature. This concerns ownership claims, or the ascription of ownership rights, to objects and locations rather than to discoveries or results. For example, there is a sense in which anthropologists 'own' the