

Ivan Shearer was a colleague and a friend; I mourn his passing. When I arrived in Adelaide in July 1959, Ivan was in his last undergraduate year and served in articles of clerkship with Genders Wilson Bray. He visited the University only to attend lectures, so I did not get to know him until 1963 when he joined the Law School staff as a lecturer. In 1964 he completed his LLM with a thesis on extradition in the British Commonwealth. I recall his excellent presentation of this research at a staff seminar in 1964. Two further papers soon followed;<sup>1</sup> in 1971 his book on the subject was published.<sup>2</sup> Much more on extradition was to come.<sup>3</sup> Once a subject had his attention, it remained on his radar. This kind of follow-up is, in itself, an indication of the quality of his academic work. In 2005, the *Australian Year Book of International Law* published the whole of volume 24 as ‘a collection of essays to honour Professor IA Shearer’.<sup>4</sup> James Crawford contributed an assessment of Ivan’s achievements as a scholar, teacher and practitioner which includes a bibliography.<sup>5</sup> Donald Rothwell’s introduction to the volume is a detailed account of Ivan’s career.<sup>6</sup>

Our academic interests did not intersect by much. He was essentially an international lawyer and I was chiefly interested in private law, legal history and comparative law. While he developed a fruitful relationship with the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, I developed a connection with its counterpart (Comparative and International Private Law) in Hamburg. However, we were Law School colleagues for many years. He was one of the most solid and effective teachers on our staff. In 1970, when the students became restive about the quality of the teaching of the introductory course (Elements of Law), Ivan took it

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\* Honorary Professor, The University of Queensland; Professor Emeritus, The University of Adelaide.

<sup>1</sup> Ivan A Shearer, ‘Non-Extradition of Nationals: A Review and a Proposal’ (1966) 2(3) *Adelaide Law Review* 273; IA Shearer, ‘Recent Developments in the Law of Extradition’ (1967) 6(2) *Melbourne University Law Review* 186.

<sup>2</sup> IA Shearer, *Extradition in International Law* (Manchester University Press, 1971).

<sup>3</sup> Ivan A Shearer, ‘The Current Framework of International Extradition: A Brief Study of Regional Arrangements and Multilateral Treaties’ in M Cherif Bassiouni & Ved P Nanda (eds), *A Treatise on International Criminal Law* (Thomas Publishing, 1973) vol 2, 326; I Shearer, ‘Extradition Without Treaty’ (1975) 49 *Australian Law Journal* 116–22; IA Shearer, ‘Extradition and Asylum in Australia’ in KW Ryan (ed), *International Law in Australia* (Law Book Co, 2<sup>nd</sup> ed, 1984) 179; IA Shearer, Butterworths, Sydney, *Australian Commentary on Halsbury’s Laws of England, Extradition and Fugitive Offenders*, vol 18 (at July 1991) ch 64 [C201]–[C292]; IA Shearer, ‘Extradition and Human Rights’ (1994) 68(6) *Australian Law Journal* 451.

<sup>4</sup> (2005) 24 *Australian Year Book of International Law* [i].

<sup>5</sup> James Crawford, ‘Ivan Shearer: International Lawyer and Teacher’ (2005) 24 *Australian Year Book of International Law* 1.

<sup>6</sup> Donald R Rothwell, ‘Ivan Shearer’ (2005) 24 *Australian Year Book of International Law* i, i–iv.

over and there were no more complaints. I was very sorry when we lost him to a chair at the University of New South Wales in 1975. He often returned to Adelaide to visit his mother and his sisters, Jan and Sara. On such occasions, he would sometimes pay us a visit, first in Medindie and then in Semaphore where we had moved in 1985. It was always a great pleasure for Ruth and me to see him again; he seems to have felt the same way.<sup>7</sup>

We were both close to Professor Daniel Patrick O’Connell who was Ivan’s mentor and guided his way into an academic career once he chose teaching and scholarship rather than practice. O’Connell made all the arrangements to bring me and my family to Australia and gave me generous and friendly guidance when I took my first steps in this country. Ivan and I both had visiting fellowships at All Souls College in Oxford, he in 1978, I in 1968. We shared a knowledge of German, my native tongue and his second language of which he had an excellent command. For confidential communications, he occasionally switched to German.<sup>8</sup> We were temperamentally compatible and became friends — good friends, if not close ones.

Ivan possessed many admirable qualities. As his stature grew with his successes in Australia and internationally,<sup>9</sup> he retained his inborn modesty. There never was even a touch of haughtiness. Conceit and self-aggrandisement were foreign to his nature. One of Dan O’Connell’s sons, Sean O’Connell, knew Ivan well; he told me: ‘His personable character was self-evident and he was marvellously “grounded” with no hint of the over-confidence of the great achiever.’<sup>10</sup>

The Hon Margaret White had this to say about Ivan’s companionability:

He had a huge circle of friends both at home and abroad. He was wonderful company and could engage on many different topics with interest and a great sense of fun. He was an enthusiastic diner — perhaps too enthusiastic, he admitted to me, when we lunched together in Adelaide once more recently! He had been a long-time member of ‘The Modern Pickwick Club’ in Adelaide counting among its members many prominent South Australians who enjoyed red wine, rich food and the escapades of Mr Pickwick and his friends. His crack of laughter was a wonderful sign that one had touched his keen sense of humour. He was an ardent fan of PG Wodehouse.<sup>11</sup>

Courtesy and good manners were part of his nature. On 22 July 2019, in his homily for Ivan at the funeral Mass, Father Shinnick mentioned that civility in public life

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<sup>7</sup> ‘Wonderful to see you again’ — his last entry in our guestbook.

<sup>8</sup> It reminded me of the telephone conversations of German Catholic bishops during the Nazi regime which were sometimes held in Latin.

<sup>9</sup> He held visiting positions at Heidelberg (1962), Oxford (1978), Thessaloniki (1985, 1992) and the Stockton Chair at Newport in 2000–01. He served in the Royal Australian Naval Reserve, reaching the rank of Captain.

<sup>10</sup> Letter from Sean O’Connell to Horst Lücke, 28 July 2019.

<sup>11</sup> Email from Margaret White to Horst Lücke, 6 August 2019.

was one of Ivan's deep concerns.<sup>12</sup> A good example is an issue Ivan raised in 1973 with the Common Law Committee of the Law Society of South Australia of which, as Dean of the Faculty of Law, he was an ex officio member. It concerned 'the publication of names by newspapers without the ordinary courtesy title Mr, Mrs or Miss (or ... we should nowadays add Ms)'.<sup>13</sup> He protested that the Premier's wife had been referred to simply as 'Dunstan' by a newspaper in a report of a minor traffic offence. Courtesy in personal relations remained just as important to him to the very end. His invitation to my 90<sup>th</sup> birthday celebration reached him when, as he told me, the side-effects of his cancer treatments caused him extreme lethargy. I could hardly have complained if he had left me without a response. Only a day later, on 15 May 2019, his answer arrived: 'First, let me thank you for the invitation to your 90<sup>th</sup>. What a fantastic milestone. Unfortunately, I shall not be able to come because of my medical condition. But I wish you many further good years.'<sup>14</sup>

Another of Ivan's virtues was his unswerving loyalty to his friends. Before his untimely death at age 54, O'Connell had asked Ivan to finish his two-volume treatise on the law of the sea. As Ivan explained:

I remember visiting Dan in Calvary Hospital in Adelaide when he was laid low by this infection. He did not think he would survive and he gave me instructions as to how to finish the two volume treatise on law of the sea which he had written.<sup>15</sup>

Ivan would not have hesitated or considered whether this was compatible with his own plans; he accepted without question and completed the work.<sup>16</sup>

In 1972, Dan O'Connell had been elected to the Chichele Professorship in Public International Law at the University of Oxford.<sup>17</sup> After his death in 1979 the Warden of All Souls College, Francis Patrick Neill, suggested to Ivan that an anthology of reminiscences and sketches might be compiled. Ivan gladly undertook this task.<sup>18</sup> His own contribution to the anthology was more personal in tone and content than

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<sup>12</sup> Funeral Mass for Ivan Anthony Shearer AM 9 December 1938–9 July 2019.

<sup>13</sup> Letter from Ivan Shearer to JW Perry, Chairman of the Common Law Committee, 27 June 1973.

<sup>14</sup> Email from Ivan Shearer to Horst Lücke, 15 May 2019.

<sup>15</sup> Ibid.

<sup>16</sup> DP O'Connell, *The International Law of the Sea*, ed Ivan Shearer (Clarendon Press, 1982–4) vol 1; DP O'Connell, *The International Law of the Sea*, ed Ivan Shearer (Clarendon Press, 1982–4) vol 2; Email from Ivan Shearer to Horst Lücke, 15 May 2019.

<sup>17</sup> See James Crawford, 'The Contribution of Professor DP O'Connell to the Discipline of International Law' (1980) 51(1) *British Yearbook of International Law* 1. Pages 83–7 contain a bibliography of O'Connell's publications.

<sup>18</sup> I was pleased when he invited me to contribute. The final product was not published but made available to friends, contributors and university libraries.

his account of O'Connell's life in the *Australian Dictionary of Biography*.<sup>19</sup> There are comments on the hospitality which O'Connell and his family extended to friends and colleagues in their 18<sup>th</sup> century house on Boar's Hill near Oxford and on his plan eventually to return to Adelaide.<sup>20</sup>

Dan O'Connell and later also his wife Renate and their family were greatly enriched by Ivan's devotion. He remained close to the family after O'Connell's death. As Sean O'Connell explained: 'Ivan was much loved by his students and younger friends who would quite comfortably call him "Uncle Ivan".'<sup>21</sup> Sean remembers many of Ivan's loves and likes: his love of his nieces, nephews and godchildren, his attachment to his sister's property in Naracoorte, his love of the Australian bush, his interest in blind wine tasting, his love of opera and of Wagner in particular which took him all the way to Bayreuth.

Our religious orientation was not the same. Ivan was religiously committed. My agnosticism is best summed up in the words of John McKellar Stewart, Professor of Philosophy in Adelaide from 1922–53: 'We are not provided with thought instruments sufficiently penetrating to bring the universe into anything like a complete subjection to our thinking.'<sup>22</sup> Beginning in 2013, the intense interest of the students of the 1950s and '60s in the Christian faith were at the centre of my academic attention. There had been, at that time, a surprisingly large number of students in Adelaide who had converted to the Roman Catholic faith. Though raised as an Anglican, Ivan became one of these converts. He generously gave me a thoughtful explanation of this and allowed me to publish it in full.<sup>23</sup> Emotion was an important factor:

At the emotional level I was greatly moved by universality of the Church, that it existed in virtually every country, and was not a branch or national church like that of Canterbury. That it should have survived at all the excesses, abuses and scandals of the past seemed to demonstrate its inherent validity and divine guidance.<sup>24</sup>

<sup>19</sup> *Australian Dictionary of Biography* (online at 6 October 2019) 'O'Connell, Daniel Patrick (1924–1979)' <<http://adb.anu.edu.au/biography/oconnell-daniel-patrick-11280>>.

<sup>20</sup> In a letter from Dan O'Connell to Horst Lücke, 18 February 1975, O'Connell, situated in Oxford, stated: 'The winter is very mild, the daffodils are out, but this last week has been rather damp and foggy. Which makes me homesick for Adelaide.'

<sup>21</sup> Email from Sean O'Connell, 28 July 2019.

<sup>22</sup> Comment by McKellar Stewart as relayed by his friend E Morris Miller, 'McKellar Stewart: A Contemporary's Appreciation' (1954) 32(3) *Australasian Journal of Philosophy* 169, 177.

<sup>23</sup> See 'Appendix Shearer' in Horst Klaus Lücke, 'John Finnis and the University of Adelaide: The Christian Faith Half a Century Ago' (2016) 35(2) *University of Queensland Law Journal* 193, 235–7.

<sup>24</sup> *Ibid* 236.

His fellow students, David St Leger Kelly, Helen Bardolph (who became Kelly's wife), Gervase and Hilary Coles were Catholics and became Ivan's friends.<sup>25</sup> An even more important emotional trigger for his conversion was his admiration for Dan O'Connell:

We were ... taught by Professor Daniel O'Connell, who in his jurisprudence lectures introduced us to natural law theory. O'Connell also represented a figure whose evident commitment to his faith commanded a certain degree of wonder and respect.<sup>26</sup>

However, once at the 'frontier of faith',<sup>27</sup> the essential step was what he called a 'leap of faith': 'Of course, reason and emotion can take one just so far: to the edge of faith. The final step was a leap of faith, one I have never regretted.'<sup>28</sup> Some see such a commitment as a vice. As Richard Dawkins has said:

Religion is an insult to human dignity. With or without it, you'd have good people doing good things and evil people doing evil things. But for good people to do evil things, it takes religion.<sup>29</sup>

This may be true for some or even for many, but I must insist that Ivan's Christian faith was one of his great virtues; it was a true expression of his nature.

I had agreed with Professor Paul Babie, the Director of the Research Unit for the Study of Society, Law and Religion at the University of Adelaide, that I would present my thoughts on these student conversions in Adelaide on 28 April 2014. The lecture was well attended by former colleagues, friends and people with a special interest in the topic. Ivan was unable to be there because he was in Istanbul, engaged in a law of the sea arbitration. I sent him a transcript; my conclusion was a personal confession:

I have been a religious sceptic ever since my revered religion teacher, the Lutheran Pastor Hanusch, announced at our matriculation party in Wuppertal in 1949: 'Do I know that my redeemer liveth? The honest answer is that I don't.' That caused a great *éclat* in the Lutheran Church and it caused me to give up my plan to study theology. It seemed too risky an enterprise. Am I the wrong person to conduct this enquiry? The honest answer is: I don't know.

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<sup>25</sup> These friendships were quite close. Ivan and Gervase Coles toured France together (information provided by Ben, Gervase's son). Ivan and David Kelly joined and wrote to *On Dit*, the student Newspaper, in defence of the Catholic Church — see Ivan Shearer and David Kelly, 'Pride and Prejudice' (1958) 26(12) *On Dit* 5.

<sup>26</sup> See 'Appendix Shearer' in Lücke (n 23) 235.

<sup>27</sup> 'Frontier of faith' is an expression coined by Ivan.

<sup>28</sup> See 'Appendix Shearer' in Lücke (n 23) 236.

<sup>29</sup> Richard Dawkins, *The God Delusion* (Bantam Press, 2006) 249. Dawkins was quoting the eminent physicist Steven Weinberg. See also Steven Weinberg, 'A Designer Universe', *PhysLink* (Web Page) <[https://www.physlink.com/Education/essay\\_weinberg.cfm](https://www.physlink.com/Education/essay_weinberg.cfm)>.

Ivan was concerned when he read this. He told me that I had taken a wrong turn:

Your conclusion was very moving. I think your pastor in 1949 was saying that ‘knowing’ and ‘believing’ are two different things. This demonstrates the leap of faith of which I spoke. We are impelled by our natures to go on questioning the very reason for our existence, on either side of that divide, throughout our lives.<sup>30</sup>

I had nearly asked Paul Babie for a postponement of the lecture because my wife had died after a long illness, on 1 April. We were then living in Brisbane, having moved there from Adelaide in 2007. I sent Ivan the sad news and his faith inspired him to find words of true comfort: ‘It was with great sadness that I received your news. Ruth was a gracious and wonderful person. Please accept my condolences and deepest sympathy to your family. I pray for you all. May her good soul rest in peace.’<sup>31</sup> After much hesitation I decided not to seek a postponement and was relieved when Ivan approved:

I am sure that you are right to go ahead with your lecture in Adelaide later this month, and, indeed, with other work as well. It is a blessing that those of us who have professional and other obligations, taking us outside of ourselves, can find a quiet place of separation from our grieving, without in any way diminishing the reality of our loss.<sup>32</sup>

His Christian faith sustained him to the very end as he was battling his deadly disease. Father Ben Hensley OP has told me that Ivan participated in the planning of his funeral Mass, choosing the Beatitudes (St Matthew chapter 5, verses 1–12) for the service.<sup>33</sup> There might even have been a touch of humour in Ivan’s choice of ‘When The Saints Go Marching In’ as the recessional.

In his homily to Ivan at the funeral service, Father Maurice Shinnick mentioned Ivan’s deepest concerns: ‘peace and international humanitarian law, civility in public life, healing for victims of abuse, service of the poor and sick through the Sovereign Order of St John of Malta’. The first of these concerns is reflected in a number of his publications.<sup>34</sup> I am not familiar with the role he played in the Order of St John of Malta.

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<sup>30</sup> Email from Ivan Shearer to Horst Lücke, 3 June 2014.

<sup>31</sup> Email from Ivan Shearer to Horst Lücke, 4 April 2014.

<sup>32</sup> Ibid.

<sup>33</sup> I am grateful to Father Hensley for information about the preparations for the funeral Mass.

<sup>34</sup> See, eg, Ivan Shearer’s publications provided in the bibliography of Crawford (n 5) 10–12. In particular, see, Ivan Shearer, ‘The Legal Position on Aliens in National and International Law in Australia’ in J Abr Frowein and T Stein (eds), *The Legal Position of Aliens in National and International Law* (Springer Verlag, 1978) 43–90; Ivan Anthony Shearer, ‘International Humanitarian Law and Naval Operations’ in *Quatre Études du Droit International Humanitaire* (Institut Henry-Dunant, 1985) 17–34; Ivan Shearer, ‘Rules of Conduct During Humanitarian Intervention’ in A E Wall (ed),

In my tenth decade the religiously formative period of my life has become a distant memory, yet I still feel deeply moved by Ivan's religious faith. It prompts me to conclude by quoting the words of Father Shinnick who said, referring to Ivan's assistance with the preparation of his own funeral Mass, that it shows 'his deep faith in Jesus Christ, his devotion to the Church, ... his love of family — living and departed'. This passage concludes:

As Ivan lived and worked for others in Church, professional and personal life, so he desires that all of us might be ever open to the channels of God's grace.

HKL

2 August 2019

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*Legal and Ethical Lessons of NATO's Kosovo Campaign* (Naval War College, 2002) vol 78, 71–83; Ivan Shearer, 'Human Rights in an Age of Terrorism' in G Doekermach and K A Ziegert (eds), *Law, Legal Culture and Politics in the Twenty First Century* (Franz Steiner Verlag, 2004) 89–105; IA Shearer, 'Extradition and Human Rights' (n 3).

