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## **CONTROVERSY AND RENOWN: COLEMAN PHILLIPSON AT THE ADELAIDE LAW SCHOOL**

### ABSTRACT

Coleman Phillipson, international lawyer and Professor of Law at the University of Adelaide from 1920 to 1925, became the first Australian professor of law to be forced to resign, when a controversy over private coaching of students ended his academic career. He was the first Australian professor of law of Jewish heritage, his family having settled in northern England after leaving Russian Poland as anti-Semitism flared there in the early 1880s. Before it appointed Phillipson, the University received private warnings that he was Jewish. While he conceded the truth of the key allegations that led to his resignation, he believed that he was unfairly treated. The details of the controversy, recorded in archival sources, allow it to be seen in the context of Phillipson's life and the University's history.

### I INTRODUCTION

Coleman Phillipson, Professor of Law at the University of Adelaide from 1920 to 1925, has an ambiguous place in the University's history. He was 'a renowned international lawyer',<sup>1</sup> in the words of an eminent successor in the field, Ivan Shearer, who described Phillipson's work on international law in ancient Greece and Rome as 'magisterial'.<sup>2</sup> Yet Phillipson departed the Adelaide Law School amid controversy, following a complaint that he had offered expensive private coaching to one of his students. Feelings ran high. Before he left, an anonymous note was pinned to his office door: 'Coleman Phillipson, Blackmailer[.] Get out you dirty swine.'<sup>3</sup>

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<sup>1</sup> Ivan A Shearer, 'The Teaching of International Law in Australian Law Schools' (1983) 9(1) *Adelaide Law Review* 61, 69.

<sup>2</sup> Ivan Shearer, 'James Crawford: The Early Years' in Christine Chinkin and Freya Baetens (eds), *Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford* (Cambridge University Press, 2015) xiii, xv.

<sup>3</sup> Letter from Coleman Phillipson to Justice Poole, 18 April 1925 (University of Adelaide Archives, series 280, item 369).

He became the first Australian professor of law to have his appointment effectively terminated.<sup>4</sup>

The most detailed, albeit brief, study of Phillipson's time in Australia was written by Victor Edgeloe, the former Registrar of the University. In retirement, as the University's Registrar Emeritus, Edgeloe wrote a history of the Law School as part of a series of papers on the University's history.<sup>5</sup> Edgeloe described his work as 'an administrator's history' that summarised university records and newspaper comment.<sup>6</sup> He drew no conclusions about Phillipson but commented that he was 'deeply interested in money'.<sup>7</sup> The comment is contentious: a contemporary of Phillipson formed the opposite impression, as we will see. Edgeloe had an administrator's reticence about potentially embarrassing details. He chose not to publish the names of the parents who reported Phillipson to the University's Vice-Chancellor and did not mention the note pinned to Phillipson's door, although both featured in contemporaneous newspaper reports.

Silence about the names of the complainants was perhaps tactful. Their son, the student whose poor academic record gave rise to the discussion of coaching, had gone on to a notable career as a lawyer, company director, Member of Parliament and Lord Mayor of Adelaide, becoming Sir Arthur Rymill. He was still alive when Edgeloe wrote. This reticence continued a pattern of silence concerning the details of the case that was established by the University Council in 1925. Edgeloe's focus was institutional rather than biographical, and he did not explore Phillipson's scholarship or his life and career before and after Adelaide. Other brief mentions of the controversy appear elsewhere.<sup>8</sup>

Archival records now provide insights into Phillipson's early life and the controversy that ended his career. Shearer noted that 'a great deal of mystery' surrounded Phillipson; information about his career before and after his time in South Australia

<sup>4</sup> For earlier resignations, see: VA Edgeloe, 'The Adelaide Law School 1883–1983' (1983) 9(1) *Adelaide Law Review* 1, 11, 13, 24–5; JM Bennett, 'Out of Nothing: Professor Pitt Cobbett 1890–1909' in John Mackinolty and Judy Mackinolty (eds), *A Century Down Town: Sydney University Law School's First Hundred Years* (Sydney University Law School, 1991) 29, 48; Michael Roe, *Nine Australian Progressives: Vitalism in Bourgeois Social Thought, 1890–1960* (University of Queensland Press, 1984) 29; John Waugh, *First Principles: The Melbourne Law School, 1857–2007* (Miegunyah Press, 2007) 56.

<sup>5</sup> Edgeloe, 'The Adelaide Law School 1883–1983' (n 4) 25–7; VA Edgeloe, *Annals of the University of Adelaide* (Barr Smith Press, 2003) 105–6, 134–5.

<sup>6</sup> Edgeloe, *Annals of the University of Adelaide* (n 5) 71.

<sup>7</sup> Edgeloe, 'The Adelaide Law School 1883–1983' (n 4) 26.

<sup>8</sup> Alex Castles, Andrew Ligertwood and Peter Kelly, *Law on North Terrace, 1883–1983* (Faculty of Law, University of Adelaide, 1983) 26–7; Rosemary De Meyrick, *Rymill: His Life and Times* (Aldgate Publishers, 2003) 42–3; WGK Duncan and Roger Ashley Leonard, *The University of Adelaide, 1874–1974* (Rigby, 1973) 32–3.

was thin.<sup>9</sup> *The British Year Book of International Law* has described him as ‘sadly neglected’.<sup>10</sup> More light can now be thrown on his origins and on his later life. Archival records also document, in detail, the inquiry that led to his resignation. Phillipson contended, and continued to believe, that the University had acted unfairly. His reasons, and those of the University, can now be understood more fully.

## II PHILLIPSON’S BACKGROUND

Phillipson was the first Australian professor of law of Jewish heritage.<sup>11</sup> He was ‘a co-religionist’, according to *The Hebrew Standard of Australasia*,<sup>12</sup> and was listed in the press among leading Jewish jurists.<sup>13</sup> While these descriptions by others are supported by Phillipson’s family background, the extent to which he saw himself as Jewish is unclear. Most sources state that he was born in Leeds, Yorkshire, where he grew up, but it was more likely that, as English census records indicate, he was born in Poland and came to England with his parents as a child.<sup>14</sup> Census records for his family give his birthplace as Poland or Germany; the occupation of much of Poland by Austria, Germany and Russia in the 19<sup>th</sup> century complicates the identification of countries of birth. His year of birth varies in published sources, but the census entries suggest that he was born around 1875. Jewish emigration from Russian-controlled areas of Poland surged in 1881, in response to persecution after the assassination of Tsar Alexander II, and the migrant Jewish population of Leeds began to grow rapidly.<sup>15</sup>

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<sup>9</sup> Shearer, ‘The Teaching of International Law in Australian Law Schools’ (n 1) 72.

<sup>10</sup> ‘Alberico Gentili (1552–1608)’ (2008) 79(1) *British Year Book of International Law* 1, 1 n 3.

<sup>11</sup> Earlier professors of law were: Frederick Pennefather, John Salmond and William Jethro Brown (Adelaide); Edward Jenks and William Harrison Moore (Melbourne); William Pitt Cobbett and John Peden (Sydney); William Jethro Brown and Dugald McDougall (Tasmania). All except Pennefather are the subjects of entries in the *Australian Dictionary of Biography* (online at 10 April 2021). Pennefather was Anglican: see ‘Church of England Synod’, *The South Australian Advertiser* (Adelaide, 2 May 1888) 5.

<sup>12</sup> ‘News and Views’, *The Hebrew Standard of Australasia* (Sydney, 11 August 1911) 10.

<sup>13</sup> W Summerfield, ‘Anglo-Jewry and the Law: The Legal Profession’, *The Reform Advocate* (Chicago, 10 June 1922) 475, 477.

<sup>14</sup> Victoria University of Manchester, *Register of Graduates Up to July 1st, 1908* (Victoria University of Manchester, 1908) 277; *Who’s Who in Adelaide, South Australia, 1921–22* (Associated Publishing Service, 1923) 120; General Register Office: 1891 Census Returns (The National Archives of the UK, RG 12/3688) 111; General Register Office: 1901 Census Returns (The National Archives of the UK, RG 13/4229) 89.

<sup>15</sup> Nigel Grizzard, ‘Demographic: The Jewish Population of Leeds’ in Derek Fraser (ed), *Leeds and Its Jewish Community: A History* (Manchester University Press, 2019) 35, 36–7.

Phillipson's father, Solomon, was a teacher of Hebrew, and in 1891 the family lived in the Leylands, home of most of the recent Jewish immigrants in Leeds and a district marked by poverty.<sup>16</sup> Coleman was educated in Leeds at the Central High School and at Yorkshire College, an affiliate of Victoria University (later the University of Manchester).<sup>17</sup> He supported himself by teaching. He is listed as a teacher in the 1891 census (aged 16) and was still working as a teacher, in Lincoln, in 1903–05.<sup>18</sup> In common with most English lawyers of the period, he had no undergraduate degree in law. At Yorkshire College, he studied arts, winning prizes in English, French and education and graduating with Victoria University degrees (BA, 1901; MA, 1905).<sup>19</sup>

The years that followed were ones of striking productivity and achievement. Phillipson worked at University College London, as a research student in 1907–10.<sup>20</sup> He did not take a London degree, but submitted his research for two Manchester doctorates in quick succession, in law (1908) and in letters (1910). As an author, he spanned international law, classics and history. His first books comprised his three successive winning entries, in 1906–08, for the essay prize offered by Sir John Macdonell, the Quain Professor of Comparative Law at University College, London.<sup>21</sup> The set topics included the effects of war on telecommunications and business operations. A series of biographical articles on early international lawyers that Phillipson wrote around this time were republished, together with chapters by other authors, in *Great Jurists of the World* (1913), under Macdonell's editorship.<sup>22</sup> In 1911, Phillipson's major work appeared, a pioneering two-volume study of international law in ancient Greece and Rome (the 'magisterial work' praised by Ivan Shearer).<sup>23</sup> His theme was that elements of international law, comparable to modern systems, could be identified in ancient history. He supported this thesis with a survey of ancient practice and

<sup>16</sup> General Register Office: 1891 Census Returns (n 14); Laura Vaughan and Alan Penn, 'Jewish Immigrant Settlement Patterns in Manchester and Leeds 1881' (2006) 43(3) *Urban Studies* 653, 657, 659–60.

<sup>17</sup> *Who's Who in Adelaide, South Australia, 1921–22* (n 14) 120.

<sup>18</sup> General Register Office: 1891 Census Returns (n 14); Victoria University of Manchester (n 14) 277.

<sup>19</sup> Victoria University, *The Yorkshire College, Leeds: Twenty-Seventh Annual Report, 1900–01* (Yorkshire College, 1901) 19, 57; Victoria University of Manchester (n 14) 277.

<sup>20</sup> University of London, *The Calendar for the Year 1910–1911* (University of London, 1910) 520.

<sup>21</sup> Coleman Phillipson, *Two Studies in International Law* (Stevens & Haynes, 1908); Coleman Phillipson, *The Effect of War on Contracts and on Trading Associations in Territories of Belligerents* (Stevens and Haynes, 1909) ('*The Effect of War on Contracts*').

<sup>22</sup> Sir John Macdonell and Edward Manson (eds), *Great Jurists of the World* (John Murray, 1913).

<sup>23</sup> Shearer, 'James Crawford: The Early Years' (n 2) xv; Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (Macmillan, 1911).

opinion that drew on his knowledge of ancient and modern languages. Contemporaries noted the severity of his judgements on earlier writers.<sup>24</sup>

The timely topic of international law in wartime provided Phillipson with material for no fewer than four books published in 1915–18. *International Law and the Great War* examined the commencement and conduct of the War.<sup>25</sup> It was followed by a study of peace treaties and the termination of war, with an appendix of treaty documents collated by his wife.<sup>26</sup> He co-authored a book on the international law applicable to the Bosphorus and Dardanelles (1917), and, in the fourth of his wartime books, he advocated self-determination for the contested territory of Alsace-Lorraine.<sup>27</sup> His method was, to adapt his own phrase, historical, analytical and comparative, founded on the compilation of sources from which he quoted freely.<sup>28</sup> He argued for stronger international institutions to avert future conflicts and, as was perhaps expected in wartime publications, criticised Britain's enemies, above all Germany for its breaches of the laws of war, which he catalogued in *International Law and the Great War*. He also edited numerous established texts, producing new editions of John Foote's treatise on private international law (1914), textbooks of international law by Henry Wheaton and Frederick Smith (1916, 1918), Thomas Taswell-Langmead's standard text on English constitutional history (1919) and John Mayne's treatise on damages (1920).<sup>29</sup> He was versatile, always readable, extraordinarily prolific, and experienced in both authorship and editing.

In addition to writing, Phillipson practised as a barrister. In Phillipson's time, Leeds law firms excluded Jewish people from employment or articles of clerkship.<sup>30</sup> In any

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<sup>24</sup> Amos S Hershey, 'The International Law and Custom of Ancient Greece and Rome' (1912) 6(2) *American Journal of International Law* 565, 565; Robert Warden Lee, 'The International Law of the Ancients', *The Times Literary Supplement* (London, 2 November 1911) 424, 424.

<sup>25</sup> Coleman Phillipson, *International Law and the Great War* (Unwin, 1915).

<sup>26</sup> Coleman Phillipson, *Termination of War and Treaties of Peace* (Sweet & Maxwell, 1916) vi.

<sup>27</sup> Coleman Phillipson and Noel Buxton, *The Question of the Bosphorus and Dardanelles* (Stevens & Haynes, 1917); Coleman Phillipson, *Alsace-Lorraine: Past, Present, and Future* (TF Unwin, 1918).

<sup>28</sup> Phillipson, *The Effect of War on Contracts* (n 21) 3.

<sup>29</sup> John Alderson Foote, *Foreign and Domestic Law: A Concise Treatise on Private International Jurisprudence*, ed Coleman Phillipson (Stevens and Haynes, 4<sup>th</sup> ed, 1914); Henry Wheaton, *Elements of International Law*, ed Coleman Phillipson (Stevens, 5<sup>th</sup> ed, 1916); Sir Frederick Smith, *International Law*, ed Coleman Phillipson (JM Dent, 5<sup>th</sup> ed, 1918); Thomas Pitt Taswell-Langmead, *English Constitutional History from the Teutonic Conquest to the Present Time*, ed Coleman Phillipson (Sweet & Maxwell, 8<sup>th</sup> ed, 1919); John D Mayne, *Mayne's Treatise on Damages*, ed Coleman Phillipson (Sweet & Maxwell, 9<sup>th</sup> ed, 1920).

<sup>30</sup> Amanda Bergen, 'The Unwalled Ghetto: Mobility and Anti-Semitism in the Interwar Period' in Derek Fraser (ed), *Leeds and Its Jewish Community: A History* (Manchester University Press, 2019) 125, 131–2.

event, his talents for research and public speaking were better suited to advocacy and the writing of opinions than to work as a solicitor. He qualified for legal practice in London, where he was called to the Bar in 1907.<sup>31</sup> His court appearances left occasional traces in the newspapers (but not, it seems, in the law reports). In 1918, he appeared in two cases challenging the conscription into the British army of Russian emigrants living in Britain, in the aftermath of the Bolshevik Revolution and Soviet Russia's peace treaty with Germany. In one of these, he appeared with the Attorney-General and the Solicitor-General.<sup>32</sup> The other was a test case in Phillipson's home town, Leeds, involving more than a hundred Jewish people from Russia who had migrated to England and been conscripted into the British army without becoming British subjects. As junior counsel for the Russian defendants, Phillipson argued that they were not Russian subjects, since Jewish people lacked citizenship rights there, and were not subject to conscription under arrangements made in 1917 between the British and provisional Russian governments for military service.<sup>33</sup> His personal connection (he was most likely describing his own citizenship) went unremarked.

Expertise on questions of wartime international law made Phillipson useful in other ways. *Who's Who* recorded that he 'did confidential work' for government departments during the War and wrote one of the many handbooks prepared by the Foreign Office to provide background information ahead of the Paris Peace Conference.<sup>34</sup> Phillipson attended the Conference and later recounted assisting the Conference's Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties.<sup>35</sup> *Who's Who* described Phillipson as legal secretary to the law officers of the Crown at the Peace Conference (the law officers were the British representatives on the Commission). His introduction to this work most likely came through Macdonell, who from 1918 chaired a committee of experts advising the British government on German breaches of international law.<sup>36</sup> In Adelaide, Phillipson was an outspoken defender of the provisions of the *Treaty of Versailles*<sup>37</sup> concerning payment by Germany of post-war reparations. He wrote: 'The hard terms imposed conform to the demands of universally established international justice.'<sup>38</sup>

<sup>31</sup> 'Coleman Phillipson', *The Inner Temple Admissions Database* (Web Page) <<http://www.innertemplearchives.org.uk/detail.asp?id=21952>>.

<sup>32</sup> 'Law Report, March 22', *The Times* (London, 23 March 1918) 4.

<sup>33</sup> 'Russian Jews and Army Service', *The Leeds Mercury* (Leeds, 29 January 1918).

<sup>34</sup> *Who Was Who 1951–1960* (Adam and Charles Black, 1961) 872.

<sup>35</sup> 'World Rebuilders', *The Chronicle* (Adelaide, 21 May 1921) 36.

<sup>36</sup> *Oxford Dictionary of National Biography* (online at 10 April 2021) 'Macdonell, Sir John (1845–1921), Jurist'.

<sup>37</sup> *Treaty of Peace with Germany (Treaty of Versailles)*, signed 28 June 1919, 2 UTS 43 (entered into force 10 January 1920).

<sup>38</sup> Coleman Phillipson, 'The Peace Treaty', *The Advertiser* (Adelaide, 6 August 1921) 15.



### A To Australia

In 1919, Phillipson seemed to be on track for high-status roles in Britain, perhaps at the Bar, perhaps in government or academia. He had an impressive record as an author on international law, and, as his referees for the Adelaide Chair would show, he received praise from the peak of the English legal establishment. Moving to Australia marked a major change of direction, one that at best postponed further advancement in England and more likely jeopardised it. In Australia, he would have little contact with the practice and development of international law.

His nemesis in Adelaide, AG Rymill, claimed to have asked Phillipson: '[W]hy did you come out to a place like this when you had London at your feet?'<sup>39</sup> Phillipson's answer, according to Rymill, was that he was war-weary. His war had certainly been a busy one, albeit not in military service, but his response was partly a deflection of the question. He had sought an overseas academic post before the War, applying in 1913 for a chair of jurisprudence and Roman law at the Khedivial School of Law in Cairo.<sup>40</sup> Under the British hegemony in Egypt, the School was increasingly staffed by lawyers from the United Kingdom.<sup>41</sup> In his Adelaide application, as if aware of a need to account for his interest in such a distant place, he mentioned that he had four siblings in Melbourne and that his wife had Australian relatives.<sup>42</sup>

Discrimination against Jewish people in academia was another possible reason for seeking positions overseas. The *Universities Tests Act 1871*, 34 & 35 Vict, c 26, s 3, abolished the last of the religious tests that had previously excluded adherents to Judaism from Oxford and Cambridge, but anti-Semitism still sometimes led to the rejection of Jewish candidates for appointments at the ancient universities and elsewhere. Such attitudes were not uniform, and they fluctuated over time. The first person elected to an Oxford or Cambridge fellowship who professed adherence to Judaism is said to have been Samuel Alexander, an Australian who became a fellow of Lincoln College, Oxford, in 1882 and later became Professor of Philosophy at the University of Manchester.<sup>43</sup> Other Jewish people were appointed to a professorship and a university readership at Oxford in the 1880s.<sup>44</sup> In Phillipson's chosen field,

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<sup>39</sup> 'Notes Dictated by AG Rymill to His Son' (University of Adelaide Archives, series 280, item 369) 2.

<sup>40</sup> See Reference from Sir John Macdonell, 19 March 1913 (University of Adelaide Archives, series 280, item 39).

<sup>41</sup> Leonard Wood, *Islamic Legal Revival: Reception of European Law and Transformations in Islamic Legal Thought in Egypt, 1875–1952* (Oxford University Press, 2016) 30, 168–9.

<sup>42</sup> See Coleman Phillipson: Additional Information (University of Adelaide Archives, series 280, item 39).

<sup>43</sup> David M Lewis, *The Jews of Oxford* (Oxford Jewish Congregation, 1992) 23.

<sup>44</sup> *Ibid* 23–4.

Hersch Lauterpacht, who was, like him, the son of a Polish Jewish family, became Whewell Professor of International Law at Cambridge in 1938.<sup>45</sup>

In other cases, anti-Semitism appeared explicitly in the historical record. The careers of two younger Jewish scholars can be compared with Phillipson's experience. The first, the historian Lewis Namier (1888–1960), was born in Russian Poland. He later described himself as 'a Russian subject by birth, naturalised British, a Jew by race'.<sup>46</sup> An Oxford graduate, he was rejected for a fellowship at All Souls College in 1911. Namier himself did not believe that he failed because he was Jewish, but two fellows of the College present at the election said that this was the reason. Namier's biographer, David Hayton, who assembled this evidence, commented: 'The fact that All Souls did not knowingly elect a Jew as a fellow until Isaiah Berlin in 1931 speaks volumes.'<sup>47</sup> Namier eventually became Professor of History at the University of Manchester, in 1930. The second scholar was Julius Stone (1907–85). He came, like Phillipson, from the Leylands area of Leeds, but Stone had an even more impressive record in legal scholarship. He was rejected for a series of university posts in England and in 1939 accepted a chair in distant New Zealand, at the Auckland Law School. He used Auckland as a springboard to a chair at the University of Sydney, where anti-Semitism was among the motivations for a prolonged but ultimately unsuccessful campaign against his appointment in 1941.<sup>48</sup>

Even when a Jewish candidate was successful, referees and others consulted about an application sometimes noted the applicant's Jewish heritage or supposed appearance as a relevant and potentially disqualifying factor. When Namier applied for the Manchester Chair, the university consulted the historian Albert Pollard, who replied: 'Namier is a brazen pot, a Jew of the Jews, and the worst bore I know'.<sup>49</sup> On the other hand, Pollard added that Namier was 'extraordinarily able, hard-working, vigorous and original'.<sup>50</sup> Some of Stone's referees, too, informed the institutions to which he applied that he was Jewish.<sup>51</sup>

The University of Adelaide had rejected a strongly recommended Jewish applicant for the Chair of Modern History in 1900,<sup>52</sup> and when Phillipson applied for the

<sup>45</sup> Sir Elihu Lauterpacht, *The Life of Sir Hersch Lauterpacht, QC, FBA, LLD* (Cambridge University Press, 2010) 9, 82.

<sup>46</sup> DW Hayton, *Conservative Revolutionary: The Lives of Lewis Namier* (Manchester University Press, 2019) 189.

<sup>47</sup> *Ibid* 41.

<sup>48</sup> Leonie Star, *Julius Stone: An Intellectual Life* (Sydney University Press, 1992) 42–3, 50–1, 59–64.

<sup>49</sup> Hayton (n 46) 199.

<sup>50</sup> *Ibid*.

<sup>51</sup> Star (n 48) 43, 50.

<sup>52</sup> Wilfrid Prest, 'How We Got Here from There: History in a "Scottish University"' in Wilfrid Prest (ed), *Pasts Present: History at Australia's Third University* (Wakefield Press, 2014) 6, 7, 9–10.



professorship, the Dean of Law, William Isbister, received two similar warnings. One came from company director James Frederick (Fred) Downer, a member of the London selection board for the Chair, who informed Isbister: 'Dr Phillipson's appearance suggests Jewish ancestry[;] with this possible qualification his claims seem to us to be undoubted'.<sup>53</sup> The other came from John Latham, the future Chief Justice of the High Court of Australia, who met Phillipson at the Paris Peace Conference and wrote at Isbister's request with his impressions:

I believe — as was generally understood in Paris — that Dr Phillipson is of Jewish race. I do not like to appear to pay attention to race prejudice, but I know that many persons would regard this aspect of the matter as highly relevant, & I therefore mention it to you. Personally, I got on well with him & found him a decidedly interesting man.<sup>54</sup>

Jewish ancestry marked Phillipson as something of an outsider for these men, but Latham found him well qualified for the appointment, 'a highly competent lawyer', 'well fitted ... for academic work', 'active minded' and 'a legal author of some distinction'.<sup>55</sup> His English referees could hardly have been more eminent. The Lord Chancellor, Lord Birkenhead (Frederick Smith), whose textbook on international law had been edited by Phillipson, endorsed him as 'a very learned lawyer' who had done 'valuable work for the British Government' and was 'an author of much distinction'.<sup>56</sup> In his preface to Phillipson's edition of his textbook, Birkenhead went even further, boosting Phillipson, and indirectly the book, by saying he was 'generally recognised as one of the greatest living authorities upon the subject of International Law'.<sup>57</sup> The Lord Chief Justice, Lord Reading, said Phillipson was 'eminently suited for the position' and 'certain to give every satisfaction'.<sup>58</sup> The praise of these patrons was impressive, but it does not seem to have helped Phillipson find employment closer to home.

The doctorates, the prizes and Phillipson's work at the English Bar more than compensated for his lack of a first degree in law, but the London committee still hesitated before recommending him. Phillipson had held no university teaching positions, although he was highly praised for his part-time lecturing at a commercial education

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<sup>53</sup> Letter from JF Downer to Registrar, 26 September 1919 (University of Adelaide Archives, series 280, item 39).

<sup>54</sup> Letter from JG Latham to WJ Isbister, 17 November 1919 (University of Adelaide Archives, series 280, item 39).

<sup>55</sup> *Ibid.*

<sup>56</sup> Telegram from Lord Birkenhead to Agent-General, 26 September 1919 (University of Adelaide Archives, series 280, item 39).

<sup>57</sup> Smith (n 29) 7.

<sup>58</sup> Letter from Lord Reading to Edward Lucas, 30 September 1919 (University of Adelaide Archives, series 280, item 39).

centre, or evening institute, operated by the London County Council, in 1909–14.<sup>59</sup> Getting a first academic appointment as a professor remained possible long after Phillipson's time (Richard Blackburn's appointment to the Adelaide Chair of Law in 1950 is an example).<sup>60</sup> In the choice of law teachers, general legal ability counted at least as much as teaching experience.

More significantly, the committee was unsure about Phillipson's personality. William Mitchell, Adelaide's Vice-Chancellor and Professor of Philosophy, joined the London selection committee while on a visit to Britain. He found Phillipson somewhat odd: '[H]e ultimately said that his one recreation is conversation! But, he added, in literature and philosophy.'<sup>61</sup> Mitchell continued:

If I hadn't known that he was in Paris for four months in connexion with international questions I should have put him down for a learned book-worm such as you see at the British Museum ... He said that he had collected a vast amount of material for a book on Elizabethan literary criticism!<sup>62</sup>

Mitchell wanted to 'get better at his character'.<sup>63</sup> The London committee provisionally recommended Phillipson, while seeking more information from people who knew him.<sup>64</sup> They evidently heard nothing against him, and their recommendation stood.

A local candidate, William Jethro Brown, was a strong rival to Phillipson, but his candidature was unusual. Brown, the former holder of the Chair of Law, had moved from the University to the bench, becoming President of the Industrial Court of South Australia in 1916. The transition was difficult. Brown faced complaints about delays in the work of the Court, and he submitted, but then withdrew, his resignation as President in the course of a disagreement over the terms of his appointment.<sup>65</sup> In 1918, he applied for reinstatement to the Chair of Law, which had been left vacant

<sup>59</sup> Letter from Coleman Phillipson to Registrar, 8 September 1919 (University of Adelaide Archives, series 280, item 39); Reference from FB Hart, 20 March 1913 (University of Adelaide Archives, series 280, item 39).

<sup>60</sup> See *Australian Dictionary of Biography* (online at 10 April 2021) 'Blackburn, Sir Richard Arthur (Dick) (1918–1987)'.

<sup>61</sup> Letter from William Mitchell to Sir George Murray, 25 September 1919 (University of Adelaide Archives, series 200, item 564/1919) 2–3.

<sup>62</sup> *Ibid.* 3.

<sup>63</sup> *Ibid.*

<sup>64</sup> Letter from Sir Frederick Young and JF Downer to WJ Isbister, 26 September 1919 (University of Adelaide Archives, series 280, item 39); Letter from JF Downer to WJ Isbister, 25 September 1919 (University of Adelaide Archives, series 280, item 39).

<sup>65</sup> 'Mr President Brown: Criticism in Parliament', *The Advertiser* (Adelaide, 22 September 1916) 10; 'Mr Jethro Brown's Resignation', *The Advertiser* (Adelaide, 11 October 1916) 6; 'Arbitration Judge's Salary', *The Register* (Adelaide, 11 November 1916) 11; 'Industrial Court President', *The Register* (Adelaide, 30 November 1916) 4.

for the duration of World War I, but the University chose to wait and advertise the vacancy the following year. When Brown was asked if he wanted his application to stand, his response was ambivalent, and the Council offered the Chair to Phillipson.<sup>66</sup>

### B *Phillipson in Adelaide*

The Jewish population of Adelaide was small and declining in the 1920s, and it sometimes lacked a rabbi.<sup>67</sup> Phillipson does not feature in available records of the community, and it is unclear whether he was religiously observant. (His wedding, in 1903, was a civil ceremony.)<sup>68</sup> In the words of Rodney Gouttman, the community ‘was dominantly Anglo-Jewish in composition, strongly Anglophile, and culturally well assimilated’.<sup>69</sup> One such family was that of Jonas Moses Phillipson (unrelated to Coleman), an early colonist in South Australia who prospered in the pastoral industry and received a significant mark of elite acceptance, membership of the Adelaide Club.<sup>70</sup> The Club was later reputed to exclude Jewish people, although that claim has been disputed.<sup>71</sup> A prominent Jewish Adelaidean in Coleman Phillipson’s time was the English-born businessman Lewis Cohen, Lord Mayor in 1921–23.<sup>72</sup>

Phillipson fitted this milieu well, although (unlike Brown and Arthur Campbell, Phillipson’s successor as Professor of Law) he was not a member of the Adelaide Club.<sup>73</sup> He, his wife Evelyn (known as Eva) and daughter Margaret, their only child, were active in the cultural and social life of Adelaide’s business, professional and university circles, as contemporary newspapers record. Eva was interested in French culture and the performing arts. She sang at the *Alliance Française* and joined the

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<sup>66</sup> Letter from W Jethro Brown to Chancellor, 7 October 1918 (University of Adelaide Archives, series 200, item 456/1918); Letter from Registrar to W Jethro Brown, 16 December 1918 (University of Adelaide Archives, series 200, item 456/1918); Letter from W Jethro Brown to Registrar, 26 November 1919 (University of Adelaide Archives, series 200, item 456/1918); Minute of Council, 28 November 1919 (University of Adelaide Archives, series 200, item 71/1920).

<sup>67</sup> Hilary L Rubinstein, *The Jews in Australia: A Thematic History* (William Heinemann, 1991) vol 1, 94; Wilfrid Prest, Kerrie Round and Carol Fort (eds), *The Wakefield Companion to South Australian History* (Wakefield Press, 2001) 287.

<sup>68</sup> ‘Yorkshire Marriage Indexes for the Years: 1903’, *Yorkshire BMD* (Web Page) <<http://www.yorkshirebmd.org.uk/marriagesearch.php>>.

<sup>69</sup> Rodney Gouttman, ‘Brothers and Sisters? The Response of Adelaide Jewry to Anti-Jewish Atrocities in the First Half of the 20th Century’ (1994) 12(2) *Australian Jewish Historical Society Journal* 359, 361.

<sup>70</sup> EJR Morgan, *The Adelaide Club, 1863–1963* (Adelaide Club, 1963) 106.

<sup>71</sup> Rubinstein (n 67) 426; PA Howell, ‘Rob Linn, *The Adelaide Club 1863–2013*’ (2013) 41 *Journal of the Historical Society of South Australia* 115, 117.

<sup>72</sup> *Australian Dictionary of Biography* (online at 11 April 2021) ‘Cohen, Sir Lewis (1849–1933)’.

<sup>73</sup> Morgan (n 70) 117, 126.

board of management of the Adelaide Repertory Theatre.<sup>74</sup> Her membership of the organising committee for the Artists' Ball, a charity event held under the patronage of the State Governor, led indirectly to the conversations that ended her husband's Australian career.

Like the professors at Australia's three other law schools, at the universities of Melbourne, Sydney and Tasmania, Phillipson was the sole full-time member of the law teaching staff.<sup>75</sup> (Sydney appointed a second professor of law in 1921.) During most of his tenure, Phillipson taught four law subjects, the remainder being taught by part-time lecturers appointed from the profession.<sup>76</sup> They shared the initiative in the main academic development of his tenure, a new requirement for students to pass the first year of the law course before commencing articles of clerkship. The change was introduced in collaboration with the Law Society of South Australia, which represented the State's practitioners.<sup>77</sup>

During term, the University's internal statutes required professors to make the whole of their time available to the University, for six days a week, but the Council could grant exemptions.<sup>78</sup> Phillipson taught Italian at the Elder Conservatorium of Music in the evenings, with the Council's approval, but it rejected his request in 1923 for permission to enter legal practice in Adelaide.<sup>79</sup> While Professor of Law at the University of Tasmania, Jethro Brown had been permitted to practise law, after an initial prohibition, but he did not pursue the opportunity.<sup>80</sup> In Adelaide, Brown was admitted as a practitioner but did not practise.<sup>81</sup> Phillipson's successor in the Adelaide Chair, Arthur Campbell, was another barrister who wanted to be able to continue practising. Unlike Phillipson, Campbell made a right of limited practice a

<sup>74</sup> 'L'Alliance Francaise', *The Mail* (Adelaide, 7 May 1921) 13; 'Adelaide Repertory Theatre', *The Critic* (Adelaide, 3 May 1922) 19.

<sup>75</sup> *Australian Dictionary of Biography* (online at 15 April 2021) 'McDougall, Dugald Gordon (1867–1944)'; Judy Mackinolty, 'Learned Practitioners: Professor John Peden 1910–1941' in John Mackinolty and Judy Mackinolty (eds), *A Century Down Town: Sydney University Law School's First Hundred Years* (Sydney University Law School, 1991) 57, 58; Waugh (n 4) 107–8.

<sup>76</sup> Faculty of Law Minutes, 21 September 1920 (University of Adelaide Archives, series 131, item 5) 63; Faculty of Law Minutes, 15 November 1920 (University of Adelaide Archives, series 131, item 5) 70.

<sup>77</sup> Faculty of Law Minutes, 20 March 1922 (University of Adelaide Archives, series 131, item 5) 88; 'South Australia: Supreme Court Rules, 1925', *South Australian Government Gazette*, No 47, 19 November 1925, 1359, 1359.

<sup>78</sup> *Calendar of the University of Adelaide for the Year 1925* (University of Adelaide, 1925) 97.

<sup>79</sup> Edgeloe, 'The Adelaide Law School 1883–1983' (n 4) 26; Letter from Registrar to Coleman Phillipson, 2 July 1923 (University of Adelaide Archives, series 200, item 325/23).

<sup>80</sup> Roe (n 4) 24.

<sup>81</sup> 'The Industrial Court: Resignation of Dr Brown', *The Advertiser* (Adelaide, 27 July 1927) 9.

condition of his acceptance of the Chair, and in the face of this insistence the Council gave permission, so long as any court appearances were approved in advance.<sup>82</sup>

Phillipson wrote feature articles for the newspapers and was a frequent, and popular, public lecturer. His subjects ranged far beyond international law to include penology, art, literature, music and other topics of general interest. ‘He is by way of being a universal genius’, one critic commented.<sup>83</sup> Phillipson was an empire loyalist, an advocate of reformatory prisons and the abolition of capital punishment, and a supporter of the League of Nations.<sup>84</sup> He defended his opinions in pugnacious exchanges with his critics, notably in a protracted debate in which he defended the *Treaty of Versailles*.<sup>85</sup> Fluent, engaging and prickly, he was slow to let a matter drop. On the other hand, the stream of scholarly publications that poured from his pen dwindled after he moved to Adelaide. While he was at the Law School, his only publication was *Three Criminal Law Reformers*, an appreciation of the work of Cesare Beccaria, Jeremy Bentham and Samuel Romilly. The manuscript had been completed before he came to Australia.<sup>86</sup>

Victor Edgeloe guessed, plausibly, that Phillipson was paid for his contributions to the newspapers, but his comment about Phillipson’s deep interest in money is more controversial.<sup>87</sup> Fred Downer had the opposite impression:

One first is inclined to wonder how it is that a man with such attainments should be prepared to accept a salary such as that offered by the Adelaide University, but he looks upon the Chair of Laws as an occupation which would not debar him from literary work, and, like so many scholars, he has little regard for financial considerations.<sup>88</sup>

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<sup>82</sup> Letter from AL Campbell to Mr Justice Parsons, 11 August 1925 (University of Adelaide Archives, series 200, item 70/1925); Letter from Registrar to AL Campbell, 15 September 1925 (University of Adelaide Archives, series 200, item 70/1925).

<sup>83</sup> ‘Metropolitan Memoranda’, *The Mount Barker Courier and Onkaparinga and Gumeracha Advertiser* (Mount Barker, 18 May 1923) 3.

<sup>84</sup> ‘English Characteristics: Future of the British Commonwealth’, *The Register* (Adelaide, 25 April 1921) 7; ‘Discriminating Imprisonment: Professor Phillipson’s Views’, *The Register* (Adelaide, 19 September 1923) 10; Coleman Phillipson, ‘The Death Penalty’, *The News* (Adelaide, 12 July 1924) 4; Coleman Phillipson, ‘Faith in the League’, *The News* (Adelaide, 5 January 1924) 4.

<sup>85</sup> Malcolm Saunders, ‘Harry Taylor, the *Murray Pioneer*, and the Issue of German War Guilt 1905–26’ (1998) 26(1) *Journal of the Historical Society of South Australia* 112, 130.

<sup>86</sup> Coleman Phillipson, *Three Criminal Law Reformers: Beccaria, Bentham, Romilly* (JM Dent, 1923) viii (‘*Three Criminal Law Reformers*’).

<sup>87</sup> Edgeloe, ‘The Adelaide Law School 1883–1983’ (n 4) 26.

<sup>88</sup> Letter from JF Downer to WJ Isbister, 23 September 1919 (University of Adelaide Archives, series 280, item 39).

Mitchell remarked on the smallness of Phillipson's London house, 'packed among others' at Putney.<sup>89</sup>

### III THE CONTROVERSY

The trouble that engulfed Phillipson centred on the coaching of law students. Coaching of university students was not unusual. Frederick d'Arenberg, the Law School's long-serving lecturer in Evidence and Procedure, got the Faculty's permission to coach law students in 1898.<sup>90</sup> Professional coach George Newman prepared students for the LLB Latin exams in the 1920s, and, after Phillipson's time, graduates William Anstey Wynes and David Hogarth both coached law students.<sup>91</sup> None of them, however, offered paid coaching in subjects in which they lectured at the University (d'Arenberg's permission from the Faculty was explicitly limited in this way). Private coaching by professors was not covered as clearly as it could have been by the University's statutes. They stated that no professor could 'give private instruction or deliver lectures to persons not being students of the University' without Council approval.<sup>92</sup> The ban on private tuition of students from outside the University was clear, but the clause's bearing on private tuition of the University's own students was uncertain.

It had once been common for students' fees to supplement professors' salaries. The University of Adelaide's early professors received their students' term fees, as did their counterparts at the University of Sydney.<sup>93</sup> Joshua Ives, Adelaide's Professor of Music, received up to £250 a year from the fees of his students, and Phillipson himself received the bulk of the fees paid by his students at the Elder Conservatorium.<sup>94</sup> In all of these cases, however, professors received the fees through the respective University, not directly from students.

<sup>89</sup> Letter from William Mitchell to Sir George Murray (n 61).

<sup>90</sup> Faculty of Law Minutes, 21 February 1898 (University of Adelaide Archives, series 131, item 3) 63–4.

<sup>91</sup> 'Value of Special Coaching: Adelaide Professional Coach Speaks', *The News* (Adelaide, 11 April 1925) 5; 'The Lure of the Open: Quiet Surroundings Conducive to Concentration', *The News* (Adelaide, 11 July 1925) 5; Faculty of Law Minutes, 12 February 1937 (University of Adelaide Archives, series 131, item 6) 6; Letter from David Hogarth to Acting Registrar, 23 September 1949 (University of Adelaide Archives, series 280, item 421).

<sup>92</sup> *Calendar of the University of Adelaide for the Year 1925* (n 78) 97.

<sup>93</sup> 'Distribution of Fees, 1876' (University of Adelaide Archives, series 169, item 59); *The Sydney University Calendar 1852–53* (Joseph Cook, 1853) 68.

<sup>94</sup> *Australian Dictionary of Biography* (online at 11 April 2021) 'Ives, Joshua (1854–1931)'; Edgeloe, 'The Adelaide Law School 1883–1983' (n 4) 26.



In December 1923, John McLeay approached Phillipson and offered him £250 to provide private tuition for his son, law student Marshall McLeay.<sup>95</sup> Phillipson turned down the offer, but in June 1924 he approached dentist John T Hardy and offered to coach his son, law student John Scott Hardy, for a substantial sum, £90 or more.<sup>96</sup> Neither proposal progressed any further. In March 1925, Agnes Rymill and her husband, Arthur Graham Rymill, wrote to the Vice-Chancellor stating that Phillipson had told them, in separate meetings, that he was willing to coach their son Arthur (known as ‘Lum’) in Contracts, for a fee of 200 guineas.<sup>97</sup> Phillipson himself was the lecturer in this subject.

The Rymill family was wealthy and well-known. AG Rymill was a pastoralist, land agent and director of various companies, including the Bank of Adelaide.<sup>98</sup> His father, too, had been a director of the Bank. Agnes Rymill was a friend of Eva Phillipson, at least until their conflicting recollections put them on opposing sides in the University inquiry that led to Phillipson’s resignation.<sup>99</sup>

The Council established a subcommittee to investigate. The high calibre of its members showed how seriously the Council viewed the matter. The subcommittee comprised two Supreme Court Justices (Thomas Slaney Poole, who was Acting Chief Justice and Warden of the University Senate, and Herbert Angas Parsons), together with William Isbister, the former Dean. The subcommittee met in Justice Poole’s chambers at the Supreme Court. It took statements from Coleman and Eva Phillipson, AG and Agnes Rymill, John McLeay and JT Hardy on three days in March and May 1925, extending its hearings so that Agnes Rymill, who was overseas in March, could attend. AG Rymill sent an emissary, the lawyer Richard Bennett, to Hardy, to encourage him to tell the University what he knew.<sup>100</sup> This is probably the source of later statements that Hardy had consulted his lawyer about Phillipson’s offer.

According to the Phillipsons, Agnes Rymill asked Coleman, during a social visit to the Phillipsons’ house in August or September 1924, whether he would coach

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<sup>95</sup> Transcript of Subcommittee Hearings (University of Adelaide Archives, series 280, item 369) 10–11, 39. On Marshall McLeay, see *Calendar of the University of Adelaide for the Year 1928* (University of Adelaide, 1928) 98; ‘Admitted to Bar: New Legal Practitioners’, *The Register* (Adelaide, 25 April 1927) 10.

<sup>96</sup> Transcript of Subcommittee Hearings (n 95) 26–8. On John Scott Hardy, see ‘Law Graduates’, *The News* (Adelaide, 24 April 1926) 1.

<sup>97</sup> Letter from Agnes Rymill to Vice-Chancellor, 3 March 1925 (University of Adelaide Archives, series 200, item 61/25); Letter from AG Rymill to Vice-Chancellor, 4 March 1925 (University of Adelaide Archives, series 200, item 61/25).

<sup>98</sup> HJ Gibbney and Ann G Smith (eds), *A Biographical Register 1788–1939: Notes from the Name Index of the Australian Dictionary of Biography* (Australian Dictionary of Biography, 1987) vol 2, 236; ‘Business Leader and Pastoralist’, *The Advertiser* (Adelaide, 11 September 1934) 15.

<sup>99</sup> Transcript of Subcommittee Hearings (n 95) 41.

<sup>100</sup> *Ibid* 14, 33–4.

her son.<sup>101</sup> Agnes Rymill raised the subject again, Eva Phillipson said, in January 1925.<sup>102</sup> In February, Agnes Rymill met Coleman Phillipson, at his suggestion, and he told her he was willing to coach her son for a fee of 200 guineas.<sup>103</sup> Phillipson later said, and Agnes Rymill denied, that he said he would first need to consult the Faculty of Law or the Council.<sup>104</sup> According to Agnes Rymill, it was Phillipson who first mentioned the coaching, and he did not do so until his meeting with her in February.<sup>105</sup> Following this meeting, AG Rymill met Phillipson with the admitted purpose of setting a trap, to get him to confirm his conversation with Agnes.<sup>106</sup> Phillipson initially confirmed his willingness to coach Lum Rymill but changed his mind when AG Rymill said he would consult the Chancellor.<sup>107</sup> Phillipson asked both AG Rymill and Hardy to keep their meetings with him confidential.<sup>108</sup>

The Phillipsons and the Rymills disagreed emphatically on many points, notably over who initiated the coaching proposal and whether Phillipson said he would need to consult the University before proceeding. The question of who initiated the proposal was a sensitive one. If Phillipson was the first to suggest coaching for a fee, he might seem to have demanded money to let the student pass the subject, as AG Rymill implied when he told his wife that Phillipson's offer was 'like a case of refined blackmail'.<sup>109</sup> On the other hand, if the idea came from the Rymills, they might appear to have sought preferential treatment for their son.

Although Phillipson attacked the reliability of the Rymills, he conceded the most important points: he had named a fee of 200 guineas for coaching Lum Rymill and such coaching was undesirable.<sup>110</sup> Some of his comments to the subcommittee were inflammatory. Concerning AG Rymill's reference to blackmail, Phillipson

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<sup>101</sup> Ibid 16; Letter from Eva Phillipson to Justice Poole, 22 March 1925 (University of Adelaide Archives, series 280, item 369) 1; 'Comments on Two Letters Addressed to the Vice-Chancellor' (University of Adelaide Archives, series 280, item 369).

<sup>102</sup> Transcript of Subcommittee Hearings (n 95) 17–18; Letter from Eva Phillipson to Justice Poole, 22 March 1925 (n 101).

<sup>103</sup> Transcript of Subcommittee Hearings (n 95) 55; 'Comments on Two Letters Addressed to the Vice-Chancellor' (n 101) 3; Letter from Agnes Rymill to Vice-Chancellor, 3 March 1925 (n 97).

<sup>104</sup> 'Comments on Two Letters Addressed to the Vice-Chancellor' (n 101) 2; Transcript of Subcommittee Hearings (n 95) 8–9, 43.

<sup>105</sup> Transcript of Subcommittee Hearings (n 95) 41–2, 51–2.

<sup>106</sup> Ibid 54.

<sup>107</sup> 'Comments on Two Letters Addressed to the Vice-Chancellor' (n 101) 4; Letter from AG Rymill to Vice-Chancellor, 4 March 1925 (n 97).

<sup>108</sup> Letter from AG Rymill to Vice-Chancellor, 4 March 1925 (n 97); Transcript of Subcommittee Hearings (n 95) 24, 28, 35.

<sup>109</sup> Transcript of Subcommittee Hearings (n 95) 53.

<sup>110</sup> 'Comments on Two Letters Addressed to the Vice-Chancellor' (n 101) 2–3; Report to the Council of the University of Adelaide of Subcommittee Re Professor Phillipson (University of Adelaide Archives, series 200, item 61/1925) 8 ('Report to the Council').

wrote: '[T]his is the construction of one who is possessed either of the mentality of an imbecile or the malicious spirit of a hooligan'.<sup>111</sup> AG Rymill had 'not the least element of a gentleman', he said.<sup>112</sup> When the anonymous note appeared on his door, Phillipson took its reference to blackmail as an indication that AG Rymill had something to do with the incident, an implication rejected by Rymill and by Justice Poole, who called the posting of the note 'a dastardly thing'.<sup>113</sup> The culprit was never identified. Phillipson also claimed that Agnes Rymill 'said the Rymill family had always had more money than brains'. She denied the claim.<sup>114</sup>

The subcommittee sifted the testimony with judicial care. It concluded that Phillipson had offered to coach Hardy and Rymill, and that he had not made his offers conditional on approval from the University.<sup>115</sup> However, it also found that Phillipson had 'never agreed to coach any student', meaning, it seems, that he had not agreed that the coaching would go ahead.<sup>116</sup> The Rymills' statements, the subcommittee commented, 'lose weight from their obvious indignation and animus', and in court proceedings AG Rymill's evidence 'would be open to strong comment as being the evidence of a "trap" witness'.<sup>117</sup> The subcommittee received several documents from Phillipson, but his scattergun arguments, made in writing and in person, did him little good. The subcommittee's report quoted at length a written statement from Phillipson on the propriety of coaching but dismissed it, saying that commenting on the statement was beyond the scope of the inquiry.<sup>118</sup>

In the absence of an explicit prohibition in the University's statutes, the report identified the essential problem: if he coached one of his students, Phillipson would face a conflict between his duty to the University to maintain its academic standards and his interest as a coach in making sure the student passed. The report commented:

It was his duty as a Professor examining to see that none passed unless they reached the proper standard. As a paid coach his business of coaching would be injured if the student he coached did not pass, and his interest *qua* coach would be in conflict with his duty as an examiner.<sup>119</sup>

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<sup>111</sup> Comments Received 6th May with Letter to Mr Justice Poole (University of Adelaide Archives, series 280, item 369).

<sup>112</sup> Transcript of Subcommittee Hearings (n 95) 56.

<sup>113</sup> *Ibid.*

<sup>114</sup> 'Comments on Two Letters Addressed to the Vice-Chancellor' (n 101) 2; Transcript of Subcommittee Hearings (n 95) 45.

<sup>115</sup> Report to the Council (n 110) 2–3.

<sup>116</sup> *Ibid* 3.

<sup>117</sup> *Ibid* 4.

<sup>118</sup> *Ibid* 4–9.

<sup>119</sup> *Ibid* 9.

On the other hand, the report rejected the characterisation of Phillipson's actions as blackmail.<sup>120</sup>

The subcommittee concluded that coaching would be an improper use of Phillipson's position, regardless of whether it breached the University's statutes and regulations. It did not recommend what action the University should take, although an unsigned note, probably originating from the subcommittee, suggested tentatively that offering to 'enter into transactions' that created a conflict between duty to the University and personal interest justified a professor's summary dismissal.<sup>121</sup> Under the University's statutes, the Council could dismiss a professor whose continuance in office or performance of duties would 'in the opinion of the Council be injurious to the progress of the students or to the interests of the University'.<sup>122</sup> Dismissal was subject to ratification by the State Governor. The terms of appointment to the Chair of Law also allowed termination by either side on six months' notice after an initial five-year term, which would expire at the end of 1925.<sup>123</sup>

An incident that occurred during the inquiry proved particularly damaging to Phillipson. On 16 March 1925, after the appointment of the subcommittee, Phillipson met again with JT Hardy. They discussed Hardy's son, although there was little clarity in their later statements about what was said.<sup>124</sup> Five days later, speaking to the inquiry, Phillipson had difficulty remembering his discussions with Hardy and said, in answer to a direct question, that he had had only one meeting with him.<sup>125</sup> The subcommittee concluded that Phillipson

has not, it appears to us, been at all times candid. He affected to recollect with difficulty whether there had been any offer to coach the student Hardy, although within a few days of our meeting he had been to Mr Hardy with reference to the very matter.<sup>126</sup>

Codes of professional conduct made a finding of dishonesty on the part of the Professor of Law all the more serious. Justice Poole told newly admitted practitioners in April, while the inquiry was proceeding, that their profession demanded 'honorable conduct and unremitting care'.<sup>127</sup>

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<sup>120</sup> Ibid.

<sup>121</sup> Note Concerning Dismissal of a Professor (University of Adelaide Archives, series 280, item 369).

<sup>122</sup> *Calendar of the University of Adelaide for the Year 1925* (n 78) 97.

<sup>123</sup> 'University of Adelaide: Professor of Law' (University of Adelaide Archives, series 200, item 633/1919).

<sup>124</sup> Transcript of Subcommittee Hearings (n 95) 29–32; 'Remarks on Mr Hardy's Statement' (University of Adelaide Archives, series 280, item 369).

<sup>125</sup> Transcript of Subcommittee Hearings (n 95) 11–13.

<sup>126</sup> Report to the Council (n 110) 4.

<sup>127</sup> 'Admissions to the Bar: Privileges and Responsibilities', *The Advertiser* (Adelaide, 28 April 1925) 14.

On 11 May 1925, the Council considered the subcommittee's report. The findings were evidently too damaging for it merely to warn Phillipson that he should not undertake private coaching. Instead, it began moves to dismiss him, through notice of a motion to give him immediate leave and terminate his appointment at the end of the year. In the meantime, the Council gave Phillipson the chance to resign.<sup>128</sup> Two days later, he did so. His letter of resignation portrayed him as the wronged party. He resigned, he said, because of 'an attack recently made on me, which I consider unjustifiable, and the unpleasantness thereby caused'.<sup>129</sup> He wanted to return to research and to the legal practice that the Council had denied him in Adelaide.

These parting shots stung the Council into rejecting the terms of his letter, but it authorised Vice-Chancellor Mitchell to accept his resignation, if he found the terms acceptable.<sup>130</sup> No amended letter of resignation appears in the records, and Mitchell seems to have decided to overlook Phillipson's choice of words. He wrote immediately to Phillipson, saying that his resignation was accepted and that he could have leave until the end of the year. His tone was conciliatory: 'This will leave you free to resume the valuable work which you gave up to come to Adelaide.'<sup>131</sup> The Council decided not to release the report of the inquiry. Even Phillipson and AG Rymill were not to receive copies, since disclosure to them would constitute publication (that is, it would meet the legal definition of publication for the purposes of defamation).<sup>132</sup> The subcommittee had heard that Phillipson was willing to sue for libel.<sup>133</sup> Non-disclosure would also remove the report from public debate or challenge.

#### IV REACTIONS

The case produced a burst of publicity in the newspapers, but it was short-lived, quickly starved of new material by the University's silence and the lack of any prospect of the outcome being overturned. Rumours about Phillipson had begun to circulate in March or earlier.<sup>134</sup> In April 1925, before the subcommittee completed its inquiry, Phillipson found the anonymous note pinned to his office door: 'Coleman Phillipson, Blackmailer[.] Get out you dirty swine.' He wrote to Justice Poole to inform him, adding:

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<sup>128</sup> University Council Minutes, 11 May 1925 (University of Adelaide Archives, series 18, item 13) 53.

<sup>129</sup> Letter from Coleman Phillipson to Vice-Chancellor, 13 May 1925 (University of Adelaide Archives, series 200, item 106/1925).

<sup>130</sup> University Council Minutes, 15 May 1925 (University of Adelaide Archives, series 18, item 13) 54.

<sup>131</sup> Letter from Vice-Chancellor to Coleman Phillipson, 15 May 1925 (University of Adelaide Archives, series 200, item 106/1925).

<sup>132</sup> University Council Minutes, 11 May 1925 (n 128) 53.

<sup>133</sup> Transcript of Subcommittee Hearings (n 95) 3, 29–30.

<sup>134</sup> *Ibid* 29, 32, 37.

I beg you to bring the enquiry to a speedy conclusion. My health is suffering through the protracted enquiry, through gross misrepresentations and distorted accounts scattered about the town, and through such an attack as the present one, which is probably a result of these misrepresentations and distortions and which will, no doubt, be followed by similar attacks in the dark.<sup>135</sup>

*The Register* reported on 7 April that a committee of the Council was investigating the propriety of coaching by an unnamed professor.<sup>136</sup> A month later, the newspaper reported that the committee had finished investigating and would report to the Council in a few days. This story included the new detail that the coaching was of a law student.<sup>137</sup>

When the full story broke in mid-May, the University was officially silent, aside from announcing Phillipson's resignation. However, *The Register* was well informed, aware that Phillipson and the Rymills disagreed over who initiated the coaching proposal and whether it was conditional on the University's approval. It also said explicitly, unlike other newspapers, that Phillipson was asked to resign. The fact that the Council had begun moves to dismiss him went unreported. *The Register* called on the University to release the report of the inquiry, as did AG Rymill.<sup>138</sup> But the only result was a further refusal by the Vice-Chancellor to comment, other than by saying that the report dealt 'only with the facts of the case, and the decision of the council was unanimous'.<sup>139</sup>

This information vacuum was filled by Phillipson, who told his side of the story to the newspapers. He also gave them his letter of resignation and the University's reply. 'The crux of the whole matter', he told reporters, 'was my willingness to give private tuition to one or two backward students. The council objected to my doing so. There is nothing dishonourable or wrongful in it'.<sup>140</sup> He told journalists about the note that had been pinned to his door and added that he had wanted to return to England for the last two years, but had stayed because his wife loved the climate. (The Phillipsons had bought a house in Adelaide the previous year.)<sup>141</sup> He quoted compliments he had received from Lords Birkenhead and Reading, along with other flattering comments. Soon he gave journalists more information, naming the Rymills and the fee he asked for coaching their son, while saying that he made his offer conditional on the approval of the Faculty or the Council. The University had overreacted: '[T]he initial suggestion I made may, perhaps, have been inexpedient or an indiscretion, if

<sup>135</sup> Letter from Coleman Phillipson to Justice Poole, 18 April 1925 (n 3).

<sup>136</sup> 'University Studies', *The Register* (Adelaide, 7 April 1925) 8.

<sup>137</sup> 'University Studies', *The Register* (Adelaide, 7 May 1925) 8.

<sup>138</sup> 'The Resignation of Professor Phillipson', *The Register* (Adelaide, 20 May 1925) 8.

<sup>139</sup> 'Professor Phillipson's Resignation: "Council's Decision Unanimous"', *The Register* (Adelaide, 20 May 1925) 9.

<sup>140</sup> 'Professor Phillipson's Resignation: "Glad to Return Home"', *The Register* (Adelaide, 18 May 1925) 7.

<sup>141</sup> 'The Social Round', *The Register* (Adelaide, 13 November 1924) 7.



you like, but surely it did not merit the application of a sledge hammer wielded in the dark.’<sup>142</sup>

Writers to the newspapers took sides. One correspondent regretted the loss to Adelaide of ‘an intellectual leader of the first order’ and condemned anonymous attacks on him, while saying little or nothing about the coaching question.<sup>143</sup> ‘An onlooker’, writing to *The Register*, was unimpressed by Phillipson’s repeated references to his testimonials and achievements:

I hope the public are admiring the way Professor Coleman Phillipson is ‘dragging a herring across the track.’ The question is not what he has done or what he can do in legal work, what books he has written, or what he may write; but whether a University professor has any right to coach students for a financial consideration. The suggestion of 200 guineas makes one consider. He must have a colossal idea of his own ability to ask such a fee.<sup>144</sup>

‘Lex’ (‘Law’), another writer to *The Register*, overheard passengers on a tram saying that Phillipson had been ‘persecuted and “hounded out”’.<sup>145</sup> ‘Lex’ retorted that the case ‘strikes at the very root of the University’, but sought ‘to impress on the University the absolute necessity for raising the veil of secrecy’.<sup>146</sup> *Truth*, under a characteristic headline (‘Adelaide’s University Scandal Searns a Shining Citizen: Was Professor Pushed Out?’), blamed the affair on the hostility of practitioners who feared competition from Phillipson and the jealousy of students who were not offered coaching.<sup>147</sup> The fear of competition was far-fetched (Phillipson was unable to practise in South Australia), but the hostility of practitioners was more plausible. In evidence to the Royal Commission on Law Reform in 1923, Phillipson freely criticised the conduct of South Australian advocates.<sup>148</sup> When publicly rebuked by Thomas O’Halloran, Vice-President of the Law Society, he returned fire vigorously in *The Advertiser*.<sup>149</sup>

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<sup>142</sup> ‘Professor Phillipson: A Personal Explanation’, *The Advertiser* (Adelaide, 19 May 1925) 13.

<sup>143</sup> Llewellyn Lewis, ‘Professor Phillipson’s Resignation: To the Editor’, *The Register* (Adelaide, 19 May 1925) 9.

<sup>144</sup> ‘Correspondence: To the Editor’, *The Register* (Adelaide, 20 May 1925) 9.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> ‘Adelaide’s University Scandal Searns a Shining Citizen’, *Truth* (Adelaide, 23 May 1925) 1.

<sup>148</sup> ‘Law Reform: Jury System Defended’, *The Register* (Adelaide, 7 March 1923) 9.

<sup>149</sup> ‘More Judges Advocated: With High Salaries’, *The Journal* (Adelaide, 10 April 1923) 1; ‘Law Reform: Mr TS O’Halloran’s Evidence’, *The Express* (Adelaide, 7 May 1923) 4; Coleman Phillipson, ‘Professor Phillipson and Mr O’Halloran: To the Editor’, *The Advertiser* (Adelaide, 9 May 1923) 10.

On his departure from Adelaide, Phillipson thanked his supporters and the groups of law students who had visited him.<sup>150</sup> He gave the subcommittee a copy of one letter of support that he received while the inquiry was under way. It came from one of the few women in his classes, Eleanor Wemyss. She wrote:

May I be permitted to express the feelings which are shared by every right-minded student, of the strongest sympathy with you, and of intense indignation at the base and cowardly attack made upon you by some unknown person, (who, we may hope, will soon be discovered and dealt with as he deserves.)<sup>151</sup>

Others viewed him harshly. John Ewens, who enrolled at the Law School the year after Phillipson left, had a low opinion of him: ‘He had little or no interest in the students, and so far as teaching students at the university was concerned, he was a dead loss.’<sup>152</sup> Jethro Brown remained a member of the Faculty of Law after his resignation from the Chair, and he and his family became friendly with the Phillipsons. Brown’s son Cyril recalled Phillipson as ‘a man almost completely lacking in tact, good form or sense of humour’.<sup>153</sup>

Phillipson’s daughter Margaret and his wife Eva stayed on in Adelaide for a few months after he left in August 1925. On their way to England, they visited Phillipson’s brother Brian, a member of the Indian Civil Service, in Assam. There, Margaret caught enteric fever and died, aged 18.<sup>154</sup> Phillipson remembered her in the preface to his next book: ‘I may perhaps be permitted to add that this work was written just after I lost one in whom my hopes had been centred, and who, notwithstanding her youth, often manifested a great interest in my dry writings.’<sup>155</sup>

## V CONCLUSION

Between its foundation in 1874 and Phillipson’s arrival in 1920, the University of Adelaide terminated the appointments of three professors against their wishes. Henry Read, inaugural Hughes Professor of Classics and Philology, was forced to resign in 1878 after he was alleged to have taken young women to a hotel for

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<sup>150</sup> Coleman Phillipson, ‘Professor Phillipson’s Departure’, *The Register* (Adelaide, 6 August 1925) 15.

<sup>151</sup> Letter from Eleanor Wemyss to Coleman Phillipson, 22 April 1925 (University of Adelaide Archives, series 280, item 369).

<sup>152</sup> Interview with John Qualtrough Ewens (Barr Smith Library, University of Adelaide, 8 March 1982) University of Adelaide Law School Oral History Archives.

<sup>153</sup> Cyril MA Brown, *William Jethro Brown: A Personal Biography and a Bibliography* (CMA Brown, 1983) 50.

<sup>154</sup> ‘Obituary’, *The Register* (Adelaide, 23 March 1926) 9.

<sup>155</sup> Coleman Phillipson, *The Trial of Socrates: With Chapters on His Life, Teaching, and Personality* (Stevens & Sons, 1928) v–vi (‘*The Trial of Socrates*’).

immoral purposes.<sup>156</sup> The appointment of Joshua Ives as Professor of Music was not renewed in 1901 following numerous complaints about Ives himself and about the Elder Conservatorium.<sup>157</sup> Robert Langton Douglas, Professor of Modern History and English Language and Literature, was forced to resign in 1902 after his wife divorced him on the grounds of desertion and adultery.<sup>158</sup> Read and Douglas were both Anglican priests and may have been held to higher standards as a consequence; Read's troubles began with a complaint to the church.<sup>159</sup> Questions of personal morality dominated Australia's longest and most acrimonious nineteenth-century debate over the removal of a professor, that concerning George Marshall-Hall, Professor of Music at the University of Melbourne from 1891 to 1900.<sup>160</sup>

The size of the fees Phillipson was willing to accept probably intensified reactions inside and outside the University. The amount offered to him by John McLeay, £250, was a substantial, even startling, amount of money, as much as many people earned in a year. It was far more than the total fees a student paid for the LLB course (about £66) but comparable to the premiums paid to obtain articles of clerkship.<sup>161</sup> In 1931, Dorothy Somerville estimated the premium payable for articles at about 200 guineas, or £210.<sup>162</sup> McLeay was not questioned about his motives for offering such a large sum, and they remain obscure. If his offer of £250 inspired Phillipson to ask for large fees from Hardy and the Rymills, its magnitude added to the surprise, and probably the suspicion, with which his actions were viewed. Phillipson himself gave no indication that he saw these large sums as anything other than an appropriate recognition of his expertise and the value of his time. The habits of insecure employment may have stayed with him. Before his Adelaide appointment, Phillipson was essentially a freelancer, picking up work as a barrister, author and editor where he could. Opportunities to supplement his income became his downfall.

Nothing indicated that Phillipson had gone ahead with any private coaching or received any money from parents. His offence was his willingness to do so, coupled with what the subcommittee saw as a lack of candour. His voluble response to the allegations against him, found in his testimony to the subcommittee and the lengthy documents he sent to its Chair, veered between denials, attacks on other witnesses, and fatal concessions of key points. If his second visit to Hardy was an attempt to

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<sup>156</sup> *Australian Dictionary of Biography* (online at 15 April 2021) 'Read, Henry (1831–1888)'; Letter from A Russell to W Barlow, 5 June 1878 (University of Adelaide Archives, series 169, item 91).

<sup>157</sup> 'Ives, Joshua (1854–1931)' (n 94).

<sup>158</sup> Prest (n 52) 8; 'General Cable News', *The Register* (Adelaide, 29 March 1902) 5.

<sup>159</sup> *Crockford's Clerical Directory for 1898* (Horace Cox, 1898) 385; Letter from A Russell to W Barlow, 5 June 1878 (n 156).

<sup>160</sup> RJW Selleck, *The Shop: The University of Melbourne 1850–1939* (Melbourne University Press, 2003) 404–28.

<sup>161</sup> *Calendar of the University of Adelaide for the Year 1925* (n 78) 149, 174.

<sup>162</sup> Dorothy Somerville, 'Vocations for Girls: Law', *The Advertiser* (Adelaide, 8 December 1931) 14.

influence his recollections of their earlier discussion, it was a failure, and his efforts to conceal his conversations with Hardy and AG Rymill hint at guilty knowledge.

The controversy ended quickly. Once he had resigned, Phillipson could do little more than protest to the newspapers that the University had acted unfairly and that it had lost an eminent member of staff. Without access to the subcommittee's report, he could not challenge its findings, and the Council presented a very small target. Strictly speaking, all it had done was to receive the subcommittee's report and record a notice of motion for his dismissal. Phillipson had sympathisers, but there was no campaign on his behalf, and he was without defenders in positions of influence when he needed them. Crucially, he had no supporters in the Council. Its minutes record no dissent from its actions on his case, and there is no reason to doubt the Vice-Chancellor's statement that the members were unanimous. Perhaps, too, Phillipson's status as a newcomer and an outsider left him more vulnerable, despite the friendships his family had formed. His repeated citing of the compliments of famous men suggested insecurity as well as vanity.

After leaving Adelaide, Phillipson published two works: in 1928, a reverential study of the trial of Socrates, and, in 1933, a substantial introduction to a translation of Gentili's *De Jure Belli Libri Tres* (*Three Books on the Law of War*), commissioned 11 years earlier.<sup>163</sup> They were noteworthy books, but the contrast with Phillipson's earlier productivity is puzzling. A remark he had made about Cesare Beccaria became true of Phillipson's own career:

The later portion of his life did not correspond to his earlier promise, which was so strikingly shown in his literary achievement. Whether he was satisfied to rest on his laurels, or had come to the end of his capabilities and talent, or had reached the conclusion that all is vanity and that a 'dolce far niente' is best, it is difficult to say.<sup>164</sup>

Phillipson continued to be listed as a London barrister.<sup>165</sup> His sense that he had been treated unjustly was still evident in a chance encounter in Italy with the South Australian artist, Arthur d'Auvergne Boxall, in 1930. A report of Boxall's meeting appeared in the press:

He approached a man he thought to be a rather voluble Italian, who spoke English well, and discovered after a few minutes' conversation that it was Professor Coleman Phillipson, formerly of the Adelaide University. His wife was wintering in the Riviera, he explained. He was engaged in writing a series of trials to show the difference between Roman, mediaeval, and Rabbinical law. The three trials were those of Jesus Christ, Julius Caesar, and Joan of Arc. 'Perhaps,' he added,

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<sup>163</sup> Phillipson, *The Trial of Socrates* (n 155); Alberico Gentili, *Three Books on the Law of War*, tr John C Rolfe (Clarendon Press, 1933) vol 2, 9a; 'Personal News', *The Express and Telegraph* (Adelaide, 29 March 1922) 1.

<sup>164</sup> Phillipson, *Three Criminal Law Reformers* (n 86) 20–1.

<sup>165</sup> *The Law List 1930* (Stevens and Sons, 1930) 233.

with a sardonic smile, 'I may be permitted to write my own some day and show the ideals of modern justice.'

He evidently felt that an injustice had been done him in Adelaide, and he pointed out that he had thought private work was a natural corollary of his acceptance of the post of Law Professor at the University here.<sup>166</sup>

When he died in 1958, on England's south coast, Phillipson was given the most prominent of *The Times's* daily obituaries, thanks to his writings on international law, but the newspaper said nothing about his life after 1920.<sup>167</sup> Some of his earlier renown, or his talent for publicity, remained. The year before his death, Phillipson's local newspaper reported on the 'leading international jurist' living, unrecognised by his neighbours, in Torquay, and said that his work was now to be extracted for study by the armed forces of the United States.<sup>168</sup> The report harked back to Phillipson's glory days, when he served the government during World War I and mixed with the famous at the Paris Peace Conference.

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<sup>166</sup> 'Outstanding Women: Studied Grace of Queen Mary', *The Advertiser* (Adelaide, 27 May 1930) 14.

<sup>167</sup> 'Obituary: Dr Coleman Phillipson', *The Times* (London, 18 December 1958) 12. See also 'World Law Expert Dies at Torquay', *Herald Express* (Torquay, 16 December 1958) 7.

<sup>168</sup> 'Torquay Writer Quoted in the US', *Herald Express* (Torquay, 4 April 1957) 3.

