

*Mark Livesey**

OPENING ADDRESS TO STUDENTS AT THE COMMENCEMENT OF THE 140TH YEAR OF THE ADELAIDE LAW SCHOOL

I INTRODUCTION

Welcome and congratulations on your acceptance into the Adelaide Law School.

I understand that for many of you this is your first week at university. That you are here, attending in person, is a very good start. Now that the pandemic has abated, I encourage you all to come into the Ligertwood Building during your degree whenever possible. You will be surprised at how much more you will pick up interacting in person, compared with interaction over a backlit screen.

It is only fair to warn you — whilst there is a great deal that you know you do not know anything about, there is much, much more that you do not know that you do not know. As United States Defence Secretary Donald Rumsfeld said in February 2002, when asked for evidence that Saddam Hussein tried to supply weapons of mass destruction to terrorist groups:¹

There are known knowns — there are things we know we know ... We also know there are known unknowns — that is to say, we know there are some things we do not know. But there are also *unknown* unknowns, the ones we don't know we don't know.

As new law students, there is a lot to learn. I will try to assist you with some of the unknown unknowns. I will speak to you today about the creation of the Law School, its close connection with the legal profession of South Australia, particularly the Supreme Court, as well as some of its remarkable alumni. I will conclude with some reflections and observations for you to consider about the future.

* President of the Court of Appeal of South Australia.

This is an edited version of the opening address given to commencing students of the Adelaide Law School in February 2023.

¹ Dan Zak, “‘Nothing Ever Ends’: Sorting Through Rumsfeld’s Knowns and Unknowns”, *Washington Post* (online, 1 July 2021) <https://www.washingtonpost.com/lifestyle/style/rumsfeld-dead-words-known-unknowns/2021/07/01/831175c2-d9df-11eb-bb9e-70fda8c37057_story.html> (emphasis in original).

II A BRIEF HISTORY OF THE ADELAIDE LAW SCHOOL

This year we celebrate the 140th anniversary of the establishment of a law school in the University of Adelaide on Tuesday, 3 April 1883. This is amongst the oldest law schools in Australia, having opened after the Melbourne Law School but before the Sydney Law School, and not quite 10 years after this university was founded in 1874.

When the Adelaide Law School was established in 1883, the colony of South Australia had been founded less than 50 years previously when in 1836 around 500 colonists came to the Adelaide Plains where the Kurna People, the traditional owners whom we acknowledge and to whom we pay our respects, had lived for thousands of years.

The *Constitution Act 1934 (SA)* (*‘Constitution Act’*) has, since 2013,² recognised that when the Parliament of the United Kingdom in 1834 passed a Bill to erect South Australia into a British Province and to provide for its colonisation and Government, by Letters Patent dated 19 February 1836, this all occurred without proper or effective recognition, consultation or authorisation of the Aboriginal peoples of South Australia.

Needless to say, that was not a consideration for many in 1883.

Nonetheless, the establishment of a law school was a milestone for the legal profession and the people of South Australia.

The years 1850 to 1880 were turbulent and dramatic.

With the passage of the *Constitution Act* in 1855, the colony achieved self-government and a degree of suffrage that was remarkable for the time. It was in this period that the notorious Justice Benjamin Boothby started to question colonial laws and the appointment of local Queens Counsel, before he was removed from office. The population of the colonists in this period doubled to around 250,000. Mining and wheat exports were profitable to a degree that was hard to imagine in a colony which verged on bankruptcy during the early 1840s. The first German immigrants had arrived and commenced winemaking in, amongst other regions, the Barossa Valley. Many of the fine buildings that now adorn North Terrace were built to house the new Parliament, the State Library, the Art Gallery and the Mitchell Building, then the centrepiece of the University of Adelaide.

The establishment of a law school was a clear sign of the pride, prosperity and confidence of South Australians. All of this was soon to be tested by the financial crises of the late 1880s and early 1890s — as Federation was being discussed — a century before similar problems re-emerged in the wake of the crash of the State Bank of South Australia in 1991.

² *Constitution (Recognition of Aboriginal Peoples) Amendment Act 2013 (SA)* item 3.

The establishment of the Adelaide Law School represented a remarkable achievement for Sir Samuel Way, who served as Chief Justice between 1876 and 1916.

Way was the University's Vice-Chancellor between 1876 and 1883 and, from 1883 he served as Chancellor until his death in 1916. It is Way's statue that greets you at the North Terrace entrance to the Law School. The Sir Samuel Way building on Victoria Square houses the District Court and most of the serious criminal proceedings in this State.

It was Way and the other two Supreme Court judges — Sir James Penn Boucaut and Richard Bullock Andrews — who had negotiated with the University Council regarding the structure of the degree from late 1882.

Within only a few months the lecturers were appointed, the course was designed, the timetables were set, and the law library was acquired. Before the first 24 law students climbed the stairs to the first floor of the Mitchell Building just before 9:00am on 3 April 1883, the legal education of South Australian lawyers, as regulated by the Supreme Court, had comprised five years of articles followed by a handful of examinations. After a transition period, the new degree of Bachelor of Laws spanned three years, backed by another three years of articles.

Way is famous for rejecting an invitation to join the new High Court. He had said derisively that the High Court 'was no more needed than the fifth wheel to a coach'.³ When he refused a seat on that Court in 1906, he explained that he was not prepared to 'tramp about the Continent as a subordinate member of the itinerant tribunal'.⁴ It is ironic that since Way's refusal nearly 120 years ago a South Australian has not yet been appointed to the High Court. Way was much more interested in his appointment to the Judicial Committee of the Privy Council, where he heard appeals from India, China, South Africa, Jamaica and New South Wales in 1897, as well as the baronetcy he was awarded in 1899.⁵

It is a notable feature of the connection between the University and the Supreme Court that for most of the period between 1883–1983, the Chancellors of the University were all Chief Justices, being Way, Sir George Murray (1916–42), Sir Mellis Napier (1948–61) and Dr John Bray (1968–83). If you are interested, you can see their portraits on the eastern wall of Courtroom One of the Supreme Court on the southern side of Victoria Square. The Ligertwood Building is named after Sir George Ligertwood, a Supreme Court judge and Chancellor of this University during the 1960s before Bray.

³ J J Bray 'Way, Sir Samuel James (1836–1916)' *Australian Dictionary of Biography* (Web Page, 2006) <<https://adb.anu.edu.au/biography/way-sir-samuel-james-9014>>.

⁴ Ibid.

⁵ Ibid.

From the outset, all of the Supreme Court judges were members of the Law Faculty and they approved the appointment of examiners. The close relationship with the Supreme Court ensured that the degree had a ‘thoroughly practical character’.⁶

All law students were expected to have matriculation standard Latin, a requirement until the late 1950s, and their first year featured Roman Law and Property Law, the second featured Jurisprudence, Constitutional Law and Obligations (including the Law of Contract). The final year students studied International Law, Wrongs (both civil and criminal) and Procedure.

The formal connection with the Supreme Court remained until the Faculty of Law was abolished in 1996.

It is difficult to imagine it now, but for a very long time there was only one full-time law professor who was assisted by visiting lecturers, usually judges and members of the legal profession. The law students were educated in this way in the Mitchell Building until 1959. Numbers in the Law School varied between 20 and 50 students.

The active role of the legal profession in the formal education of lawyers remained a consistent feature until the Law School’s rapid expansion in staff and students during the 1960s and 1970s when the faculty moved to the Ligertwood Building.

Notable visiting lecturers included Chief Justices Sir George Murray and Dr John Bray, as well as Dame Roma Mitchell, Dr Howard Zelling and the Hon Andrew Wells. These lawyers later enjoyed distinguished careers on the Supreme Court. There were many, many other visiting lecturers.

Whilst women attended the Adelaide Law School from its early days, it was not until 1917 that Mary Kitson graduated and was admitted to the Supreme Court. It was not until the 1960s that Dame Roma Mitchell became the first female silk and then the first female Supreme Court judge in Australia. Later she served here as the first female Chancellor and State Governor.

The first Indigenous woman to graduate was Professor Irene Watson, now Pro Vice Chancellor: Aboriginal Leadership and Strategy at the University of South Australia.

By the mid-1980s, there were more women than men studying law here. That remains the case.

I recall being in a similar position to where you all sit today. Professor Simon Palk was the Acting Dean who welcomed the new students in 1982 with the warning that the law was a wonderful profession but there were no jobs. Fortunately, there were plenty of jobs by the time I finished my training in 1986 when I commenced as a

⁶ Victor Allen Edgeloe, ‘The Adelaide Law School: 1883–1983’ (1983) 9(1) *Adelaide Law Review* 1, 3.

Judge's Associate in the Supreme Court. There are now many job opportunities here in a wide range of careers.

When I attended this Law School during the 1980s, the Hon Kevin Duggan was a visiting lecturer in Criminal Procedure. Kevin is an urbane, stimulating speaker, who wittily brought to life what might otherwise have been a dry topic. As with a number of the other lecturers I have mentioned, he too was appointed to the Supreme Court where he served with distinction.

Whilst I studied law at Adelaide, we celebrated the Law School's centenary in 1983.

A memorable aspect of that centenary year was the residence of the Hon Gough Whitlam. My recollection is that he lectured on Constitutional Law for one term. By the time he was lecturing in 1983, he had only left politics five or six years before. Whitlam was a distinguished lawyer and silk before he entered politics. Lectures by a former Prime Minister of Australia were very popular. They were delivered without notes to a packed audience in the Elder Hall. Whilst Whitlam was an expert in Constitutional Law, he concentrated on his Government, the 1975 dismissal and the perfidy of Sir John Kerr. He was a commanding presence and a brilliantly entertaining speaker.

Other lecturers during my time at the Law School included Professor Horst Lücke, a tall, imposing man with a deep German accent who lectured on contracts in an academic gown. Another was Professor Alex Castles who published widely on legal history and media law. Professor John Keeler, an Englishman, lectured and published widely on torts; he was keen to tell us that he decided to remain in Adelaide because of Coopers Ale.

Many of the lecturers at this Law School have enjoyed brilliant careers. They include Sir John Salmond, a New Zealander who wrote treatises on *Jurisprudence or the Theory of Law*, the influential *Law of Torts: A Treatise on the English Law of Liability for Civil Injuries* and *Principles of the Law of Contracts*.⁷ These books are still in the library.

Another Dean was Sir Richard Blackburn, who left academia here to join the Supreme Court of the Northern Territory. Later, he was appointed Chief Justice of the Australian Capital Territory. He was a well-respected jurist who wrote *Milirrpum v Nabalco*,⁸ which represented a starting point for the later decisions of the High Court in *Mabo v Queensland*⁹ and *Wik Peoples v Queensland*.¹⁰ Those cases recognised the native title of Aboriginal peoples.

⁷ He has been ranked with Pollock in England and Holmes in the United States: HK Lücke, *A Short History of the Adelaide Law School* (Unpublished Manuscript) 5.

⁸ (1971) 17 FLR 141.

⁹ (1988) 166 CLR 186; *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

¹⁰ (1996) 187 CLR 1.

Blackburn was, with Sir George Lush and Andrew Wells, later appointed by the Australian Government to be a Parliamentary Commissioner in a Special Commission of Inquiry to investigate the conduct of Justice Lionel Murphy, who was accused of attempting to pervert the course of justice whilst a member of the High Court.¹¹

Another famous lecturer was Professor Daniel O'Connell, after whom a portion of the Law Library has been named. O'Connell was a major figure in international law around the world, who later taught at Oxford. The same is true of Professor James Crawford, who later became the Whewell Professor of International Law at Cambridge. Crawford was one of my lecturers here. He was truly formidable. He expected his students to have read the materials before tutorials. Be warned, some lecturers and tutors still expect that of students.

Crawford later supervised the final year of Dr Chris Bleby's Doctor of Philosophy ('PhD') thesis at Cambridge. Justice Bleby is now a judge on the Court of Appeal and remains involved with the University in the Law Reform elective.

After Sir Percy Spender, Crawford was the second Australian to be appointed to the International Court of Justice.

More recently, Adelaide Law School academics have developed enviable reputations in Constitutional Law and Legal History, Professor John Williams, and in Space Law, Professors Melissa de Zwart and Dale Stephens worked with academics in the United Kingdom and the United States to develop the Woomera Manual, which determines how terrestrial laws apply in times of armed conflict in outer space.¹²

After Natalie Wade left this Law School, she was awarded Australian Young Lawyer of the Year for her work on the South Australian Child Protection Systems Royal Commission. Heading her own firm, she won the 2021 Disabled Women in Business, People's Choice Award. Another recent graduate, Ben Mylius, has enjoyed a stellar academic career, gathering a Master of Laws from Yale. At Columbia he was awarded a Master of Arts and a Master of Philosophy and is currently undertaking a PhD while teaching environmental political theory with a focus on how to use stories to pursue a just, resilient and dynamic climate future.

As you may have gathered, historically this Law School has supplied most of the judges appointed to the Supreme Court, the Adelaide-based Federal and Family Courts and most of the members of the new Court of Appeal of South Australia, including its first President, the Hon Trish Kelly, and the current Chief Justice, the Hon Chris Kourakis.

¹¹ Sir George Lush, Sir Richard Blackburn and Andrew Wells, 'Parliamentary Commission of Inquiry: Re The Honourable Mr Justice Murphy' (1986) 2(3) *Australian Bar Review* 203.

¹² Peter Rathjen, '135 Years: Reflections on the Past, Present and Future of Adelaide Law School' (2019) 40(1) *Adelaide Law Review* 47, 51.

The former Chief Justice, the Hon John Doyle, was an outstanding student at this Law School before being awarded the Rhodes Scholarship, which took him to Oxford. His daughter, Rachel Doyle, is a leading silk in Melbourne. His son, Sam, took silk at an early age and is presently a judge on the Court of Appeal. John's youngest son Ben, a King's Counsel, is in private practice at the Bar here in Adelaide, as is his youngest daughter, Hannah. All came from this Law School.

An alumnus who may surprise you is comedian and television personality Shaun Micallef. Shaun studied law here in the 1980s. I worked with him at an Adelaide law firm, Ward & Partners, during the late 1980s and early 1990s before fame lured Shaun away from the law. A surprising number of Shaun's productions portray his legal background.

Although the phenomenon of the lawyer-politician has waned, there are many former law students from this Law School who have distinguished themselves in politics.

At a state level, they include four Premiers — Henry Barwell, the Hon Don Dunstan, the Hon John Bannon and the Hon Jay Weatherill. The Hon Vickie Chapman became South Australia's first female Attorney-General and Deputy Premier. Apart from introducing the reforms which resulted in the establishment of the Court of Appeal, she was instrumental in reforming laws relating to discrimination, assisted dying and prostitution.

This Law School trained Australia's first female Prime Minister, the Hon Julia Gillard, as well as Australia's first female Foreign Minister, the Hon Julie Bishop, and Senator Penny Wong, the Foreign Minister and the Government's leader in the Senate. Senators Amanda Vanstone and Robert Hill studied here before serving as Federal Ministers.

The Hon Catherine Branson studied here. She is the current Chancellor of this University. She and the Hon John von Doussa were not only Chancellors of this University but they were both distinguished judges of the Federal Court who later presided over the Australian Human Rights Commission.

III ADELAIDE LAW REFORM

A particular feature of this Law School has been its contribution to law reform.

A former Dean, Professor Arthur Rogerson, was active in law reform after arriving here from Oxford in the 1960s. He assisted with Consumer Law reform which was taken up by the then Attorney-General and later Chief Justice, the Hon Len King. Rogerson ensured that a law school academic was on the Law Reform Committee and, after Rogerson was appointed to the District Court of South Australia, David Kelly and Alex Castles were founding members of the Australian Law Reform Commission during the 1970s.

Just over 10 years ago, the South Australian Law Reform Institute was established here under Professor John Williams and David Plater. It has published influential reports, including on LGBTIQI discrimination¹³ and surrogacy. This work allows students a unique experience. Similarly, law students have enjoyed the opportunity to work with me and other judges in intern placement programmes where they get to see how cases are considered, heard and decided by the courts.

IV CONCLUDING REMARKS

Whether you view your law degree as a starting point for practising the profession of the law, joining academia, going into politics or business, or simply getting a useful start in life, it will equip you with the means to do a great deal more than just earn a living. A law degree will help you to think critically and to communicate effectively.

A law degree will set you apart. That is so whether or not you ever practise law. I encourage you to recognise that being here, being in this Law School, is more than just about watching lectures online at double speed and cramming for exams, punctuated by the occasional ‘pub crawl’. Consider why you are here, and what you expect from the experience.

You have the opportunity to understand and master aspects of the law. Do not expect that this will come to you easily or by osmosis. Learning to read, think and reason effectively takes effort and work, but it is worthwhile. You must recognise that the education you receive and the skills you learn here represent very powerful tools. The better skilled you are, the better you will wield those tools. When speaking or writing, strive to do so simply and clearly. Mooting and mock trials are worth trying because they help you to learn these skills under pressure.

You will become equipped to serve the community in a wide range of roles. Being able to guide and help others, whether clients, colleagues or friends, represents an important exercise in power. You are learning how to assist people to resolve some of life’s most fundamental challenges and problems. You will have an opportunity to make a positive difference. You will, I expect, get great satisfaction from assisting others.

Do not overlook cultivating interests outside of the law, whether in the arts, or in literature, history, sport or whatever it is that interests you. This University offers many opportunities to do that. You have access to millions of resources through the Barr Smith Library and the Law Library. Go to these libraries. Exploit their resources. I urge you to take up opportunities to speak with your lecturers and tutors. You will find that most of them are only too willing to engage.

¹³ ‘Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex’: Australian Institute of Family Studies, *LGBTIQA+ Glossary of Common Terms* (CFCA Resource Sheet, February 2022).

Do not forget — each of the notable alumni I have mentioned were in exactly the same position as you are now, first year law students who are more than a little unsure about what comes next.

You are at the threshold of a number of exciting opportunities. There are many employment opportunities here in South Australia, as well as interstate and overseas, for hard working and able people. Whether it is in legal practice or elsewhere, taking on challenges in developing areas such as space law, gender equality, disability or climate change, you really are in a privileged position.

The Adelaide Law School and the University have a lot to offer. You will learn a great deal and make life-long friends. You should enjoy your time here but recognise that you should not waste your opportunities. You will enjoy your time more if you are able to take up these opportunities.

Since ancient times, the law has attracted bright and talented people.

I have had the privilege of seeing a number of students from this Law School over the years, whether when occasionally lecturing or when judging moots and other advocacy exercises. I must tell you that I have usually been very impressed. The calibre of the students I have seen coming into the profession has given me confidence and pride. There are some very talented and capable people moving through this Law School.

Make no mistake, you have a bright future. Again, congratulations and welcome to the Adelaide Law School.