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ADELAIDE LAW: A HISTORY OF
THE ADELAIDE LAW SCHOOL

BY JOHN WAUGH
WAKEFIELD PRESS, 2024
VI + 333 PP
ISBN 9781923042391 (HARDCOVER)
ISBN 1923042394 (EPUB)

Quite a lot, actually, has been written about the story of the Adelaide Law School ('ALS').² All of it, though, was written before we began to realise how the English common law (taught in Australia, and all British colonial jurisdictions) ignored those who were already present long before the arrival of the British. Marcia Langton and Aaron Corn, in *Law: The Way of the Ancestors*,³ demonstrate the richness of the Indigenous Law that existed before the British invasion of the Australian continent and its violent suppression of the laws of Australia's Aboriginal and Torres Strait Islander Peoples. Fernanda Pirie shows, in *The Rule of Laws: A 4000-Year Quest to Order the World*,⁴ that there is, indeed, more than one way to understand law. Manifold in nature, law can only be understood as temporally and contextually specific. Viewing the imposed law of the coloniser through these lenses forces us to consider afresh its nature, status, and validity.

So it is with *Adelaide Law: A History of the Adelaide Law School*,⁵ the first comprehensive scholarly treatment of its subject, written by John Waugh, the dean of

* Bonython Chair in Law and Professor of Law, Adelaide Law School, The University of Adelaide.

¹ The title is an adaptation of Alex Castles, Andrew Ligertwood and Peter Kelly, *Law on North Terrace: 1883–1983* (Faculty of Law, University of Adelaide, 1983).

² See: Helen Mills and Charles Bagot, 'The Early History of the Law Faculty' (1968) *Obiter Dicta* 32; Victor Edgeloe, 'The Adelaide Law School 1883–1983' (1983) 9(1) *Adelaide Law Review* 1; Castles, Ligertwood and Kelly (n 1).

³ Marcia Langton and Aaron Corn, *Law: The Way of the Ancestors* (Thames & Hudson, 2023).

⁴ Fernanda Pirie, *The Rule of Laws: A 4000-Year Quest to Order the World* (Profile Books, 2022).

⁵ John Waugh, *Adelaide Law: A History of the Adelaide Law School* (Wakefield Press, 2024).

Australia's law school historians,⁶ to focus not only on 'the narratives of progress',⁷ but also, and much more importantly, on those who were either left entirely out of the story, or who only entered it comparatively recently, 'reflect[ing] ... changed perspectives and new sources'⁸ to offer a fresh account of a history that people thought they knew. Earlier histories of the ALS fall into two groups: those adopting a 'light' tone⁹ resulting in 'a colourful, unofficial, history in magazine format',¹⁰ or those, while demonstrating great rigour, that nonetheless remain an 'administrator's history'.¹¹ Still, each of those earlier histories offer glimpses of substance, with the recollections of graduates and faculty members revealing lasting themes in the interpretation of the Law School's history. Among them is the importance of compulsory university study, unusual in the common-law world in the 19th century; the transition from lecturers who were practising lawyers to full-time teaching staff; patterns of student life; and the long-delayed entry of women into the law course.¹² But Waugh's history adds important structure to those glimpses of substance, providing 'a fresh look at the themes of earlier writing, with particular attention to controversies, broader contexts, and the way the Law School was run.'¹³

This very brief review presents the highlights of the 141-year story Waugh tells. Dividing the account into seven stages or eras, *Adelaide Law: A History of the Adelaide Law School* examines: (i) foundations, from 1883 to 1896; (ii) the arrival of scholars between 1897 and 1925; (iii) the building of community from 1926 until 1957; (iv) physical movements between 1958 and 1967; (v) fights over curriculum from 1968 to 1979; (vi) the role of the Law School as gatekeeper to the profession from 1980 to 1989; and (vii) the transition from faculty to school after 1990. Rather than examining each in detail — for those either already familiar with the story as they think it has been told, or those coming new to it through Waugh's masterful telling — this review merely pauses over seven turning points, eclectically selected, from each of those stages.

I TURNING POINTS

The first and obvious turning point, about which the ALS can be justifiably proudest, is simply the 1883 establishment itself. In the late 1870s, South Australia made it compulsory to complete a Bachelor of Laws ('LLB') for admission to practice

⁶ John Waugh has now written definitive histories of each of the first two Australian law schools, the first being John Waugh, *First Principles: The Melbourne Law School: 1857–2007* (Melbourne University Press, 2007).

⁷ Waugh (n 5) 3.

⁸ *Ibid.*

⁹ *Ibid* 1–2.

¹⁰ *Ibid* 2.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid* 3.

law — this was a rarity in legal training in the common-law world. It was foreign to the English legal system, from which the colonial laws of South Australia were derived; English legal education was instead provided largely outside the universities. In Australia, only Victoria (since 1872) made all new local entrants to the profession study at university, and the University of Melbourne had the country's only law school, in the sense of educating students to become practitioners.¹⁴ It is this requirement that hastened the establishment of a law school at the University of Adelaide, becoming only the second Australian university to do so, making it the second oldest law school in Australia today. This foundation represents one of the 'firsts' for which the ALS is recognised.

Near the end of the first stage, and ushering in the second, the ALS took a step which placed it again among 'firsts' in Australian university legal education: the establishment of the Chair of Law, making Adelaide the third Australian university to have such a chair. The other chairs were established at the University of Melbourne in 1889 (Edward Jenks was its first holder) and at the University of Sydney in 1890 (William Pitt Cobbett).¹⁵ As Waugh recounts, in December 1890, the university attached its seal to this 'grandiloquent commission':

Confiding in your learning, ability, and integrity the University of Adelaide aforesaid by virtue of the above mentioned Act, and by virtue of the Statutes made & passed thereunder, and by virtue of all other enabling powers doth nominate and appoint you the said Frederick William Pennefather to be Professor of Laws in our University.¹⁶

In 1926, during the tenure of the chair's sixth holder, Arthur Lang Campbell, it was endowed by a gift of Sir John Langdon Bonython, converting it to the Bonython Chair in Law.¹⁷ Frederick William Pennefather — Irish-born and educated at Trinity College, Cambridge, taking a Bachelor of Arts in Theology, and a Master's Degree in Law, and later the Doctor of Laws — arrived in Adelaide in 1887 as a lecturer, and was elevated to the chair on its establishment.¹⁸ By the time Pennefather left in 1896,¹⁹ he had given the ALS its motto — '*Fiat justitia ruat coelum*' ('let justice be done though the heavens fall')²⁰ — and opened the way for significant changes in legal education that would follow, as well as significant legal scholarship by the chair's second and third holders, Sir John Salmond and Coleman Phillipson. The establishment of the chair heralded the emergence of a community of scholars that would clearly delineate the second and third eras of the Adelaide Law School's history, and which has continued unbroken to the present day.²¹

¹⁴ Ibid 14.

¹⁵ Ibid 40.

¹⁶ Ibid.

¹⁷ Ibid 101.

¹⁸ Ibid 33–6.

¹⁹ Ibid 53.

²⁰ Ibid 51.

²¹ Ibid 99.

The third era, it must be said, contains a part of the story that does not place the ALS among the firsts of university legal education in Australia: the failure to admit women to the LLB degree. While women were admitted as students in the university from 1876, and the first two LLB students enrolled in 1903 (Emily Meredith Moulden) and 1911 (Doris Egerton Jones),²² ‘the first woman to complete the law course was Mary Kitson (later Mary Tenison Woods), whose LLB was conferred in 1916. She enrolled in law in 1912, the year after legislation confirmed women’s eligibility to enter the profession.’²³ It would take 33 years, then, from the establishment of the ALS for the first woman to graduate LLB. Any sense of achievement that can even be taken in that long-delayed accomplishment is offset by the treatment women received in those early days, with ‘the hostility of some male students ... displayed for all to see’ — ‘the most confronting disadvantage for women law students ... their exclusion from the Law Students’ Society’.²⁴ John Waugh writes that ‘women responded to their exclusion from the LSS by forming the Women’s Law Students’ Society, in 1932’ in which they were supported by Arthur Lang Campbell.²⁵ While it cannot discount the long delay of their admission to study, and in no way excuse their treatment once they were, before too long, women were graduating and winning ALS prizes, as were their counterparts at other Australian law schools.²⁶ Sadly, though, it would take another fifty years before Roma Mitchell became the first female appointed to the academic staff, and it would take until 1986 for the appointment of the first woman professor, Marcia Neave.²⁷

Physical movement marks the fourth era. From 1958 to 1967, the School would occupy three of its four homes. In 1958, Waugh writes:

The Law School had been housed for seventy-five years in the university’s original building, soon to be named after the former vice-chancellor, Sir William Mitchell. Its tenure there was precarious, as the central administration, the Law School’s immediate neighbour, sought room for expansion. Law had moved from the basement to the top floor, after an extension gave the university some badly needed additional space in 1912. Reconfigured after the Barr Smith Library moved to its ornate new home in 1932, the Law School’s accommodation consisted of a lecture room and the Law Library, which had a partitioned office for the professor and a cubicle for the Law School’s secretary–librarian.²⁸

From there, the ALS took up a home in the newly opened Napier Building. The change of home coincided with other changes: increasing enrolments, changes in curriculum, the establishment of the *Adelaide Law Review* (in 1960), and an

²² Ibid 78–9.

²³ Ibid 80–1.

²⁴ Ibid 82.

²⁵ Ibid 83–4.

²⁶ Ibid 146.

²⁷ Ibid 146, 210.

²⁸ Ibid 142.

expanding law library.²⁹ All of that, though, meant that the School was bursting at the seams in the overcrowded Napier. And so, in 1967, the School moved into ‘the glorious new building’, as the president of the Law Society put it at the time, named by the council, at the School’s request, after Sir George Ligertwood, who had recently retired as the University’s Chancellor.³⁰ Two upper floors were added in 1990–91, but it was not until 2015 that the ALS occupied the entire building.³¹

The ALS community, ensconced in its new Ligertwood home, continued to expand in both staff and students throughout the fifth period of its history, which brought with it greater democratic governance, in varying degrees and with mixed success.³² It seems that with greater agency and greater numbers, tension increased among members of academic staff. The workload of administration, until this period borne entirely by the dean of law, began to weigh too heavily on one person and so, in 1971, the deanship was split from the headship.³³ Changes to the University governance structure renamed department heads as ‘chairmen’, with diminished authority.³⁴ Rotation of the deanship would mean that from 1970 to 1991 there were no fewer than twelve different deans.³⁵ Most significant during this period was the ‘first class fight’ waged between the ALS and the Supreme Court over the place of history and theory in the LLB curriculum. What might surprise modern readers, however, is which camp held the relevant positions: it was ‘the judges [who] opposed the diminished role for history and jurisprudence[.]’³⁶ Many today would no doubt expect the combatants to line up rather differently.

The sixth stage of the ALS’s development, Waugh’s ‘gatekeeping’ of 1980 to 1989, bears witness to some minimal and long overdue redress for the greatest injustice of Australian history: the European treatment of Australia’s Aboriginal and Torres Strait Islander Peoples. The centenary of the Law School, in 1983, coincided with a change, long delayed, in its relationship with the First Nations of the University’s home. Indigenous people were powerfully affected by the laws taught at the Law School, including the legal foundations of colonisation, which rejected their laws, and the colonial law of property, which supported the expropriation of their lands. They had no access to the Law School as students, still less as staff, with limited access to higher schooling and other patterns of discrimination making entry to tertiary education difficult or impossible. First Nations people sought access to schooling despite these obstacles. Education was among the opportunities that drew Aboriginal people to Adelaide from the 1940s onwards.³⁷ Waugh writes:

²⁹ Ibid 142–58.

³⁰ Ibid 160.

³¹ Ibid 162–3.

³² Ibid 170.

³³ Ibid 179–80.

³⁴ Ibid 180.

³⁵ Ibid 181.

³⁶ Ibid 183.

³⁷ Ibid 206.

the Law School's first Indigenous graduate was Irene Watson, of the Tanganekald, Meintangk and Boandik peoples of the south-east of South Australia. Working at the Aboriginal Legal Rights Movement sparked her interest in law. Watson enrolled in the law course in 1979, after completing a diploma in Aboriginal studies at the South Australian College of Advanced Education.³⁸

Still, as women had experienced when they entered the ALS three-quarters of a century earlier, mere admission did nothing to overcome the discrimination Watson encountered at the Law School as an undergraduate, which was expressed as racism:

Can you say an openly polite racist way? ... It was the colonial frontier. It was hostile, it was aggressive, it was doing me a favour, enabling or allowing an Aboriginal woman to enter the Law School and to sit amongst them, study them. ... It was the kind of general Aussie ocker racism of the time, you know, but it had a kind of refined way of being within, you know, Adelaide establishment law school.³⁹

Irene Watson graduated LLB in 1985 and would later gain a PhD in Law for a thesis on First Nations Law and the impact of colonialism which would win the Bonython Prize for legal research in 2000 and form the basis of a widely influential book.⁴⁰ Irene Watson led the way, and throughout this period

the number of Indigenous students grew, particularly after the commencement in 1988 of an Indigenous special entry scheme and, in 2012, a pathway into the LLB course through the Aboriginal Law Program at the vocational education provider TAFE SA. In 2018 the Law School had twenty-seven Indigenous students, mostly in the LLB program.⁴¹

The seventh and final stage of the story told by Waugh began in 1990. Various changes to curriculum and university governance interacted and overlapped during this time, but above all, the ALS's projects of 1998–99 showed imagination and ambition. In some ways, they were ahead of their time. They identified growing trends in legal education: the harnessing of information technology; the teaching of dispute resolution beyond the technical details of litigation; and the integration of practical experience into legal study. The Law School's early commitments to the use of technology had lasting effects. An anonymous student of the 2010s wrote: 'Having had various overseas study opportunities, I am astonished at how well IT facilities were integrated into the Law School — both physically within the

³⁸ Ibid 207.

³⁹ Ibid 208, citing 'The History of a Lie: The Mabo Case after 30 Years', *Countersign* (Countersign, 31 May 2022) <<https://countersignisapodcast.com/podcasts/the-history-of-a-lie-the-mabo-case-after-30-years/>>.

⁴⁰ Waugh (n 5) 208, referring to Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge, 2015).

⁴¹ Waugh (n 5) 209.

building and in terms of the curriculum.⁴² Yet, not every innovation proved an unmitigated success — the vision and the ambition was often bold, but resources hampered delivery. Perhaps, though, this interplay between vision and reality is one of the best ways to think of the entire span of the ALS's history — the very idea of university-based legal education itself required a bold vision that was not always easy to implement and led, as at many institutions, to growing pains. And yet, the ALS finds itself here, 141 years later, 'a reassuring sign of continuity'⁴³ between the original bold vision of university legal education, sometimes imperfectly realised, yet still seeking to deliver on the idea that as 'a matter of the highest importance for the welfare of the community[,]. . . law should be treated, not as a trade, but as a science.'⁴⁴

II SEEING THE FUTURE THROUGH THE PAST

These turning points cannot do justice to the story Waugh tells — there is simply not the space to detail all that he reveals. But, then, trying to do so would be bound to fail, for the story, with its subtlety and nuance, can be told no better than by Waugh. And it needs to be known to answer questions about the future; now more than ever. For what will the impending merger of the ALS's parent university, the University of Adelaide, with the University of South Australia, hold for the future of university legal education in South Australia? The words of physicist Niels Bohr seem apt: 'Prediction is very difficult, especially if it's about the future!' We can, though, see the past, and that provides lessons for how the future might look. How clearly we can see the past depends on our guide. The only way to see the ALS's past, to know that story, to know that history, is to take John Waugh as our guide.

⁴² Ibid 259–60, citing Anonymous Response to Adelaide Law School History Questionnaire, 2019.

⁴³ Waugh (n 5) 270.

⁴⁴ Ibid 13, citing Sir William Jervois, 'Opening of the New University Building' *South Australian Advertiser* (Adelaide, 6 April 1882) 5.