

Adrian John Bradbrook FAAL Bonython Chair in Law and Professor of Law Emeritus

IN MEMORIAM: ADRIAN JOHN BRADBROOK FAAL, 1948–2024

I Introduction

In the European history of Australia, only a few scholars can be said to have shaped the very nature of Australian property law and so of the Anglo-Australian law itself: scholars like B A Helmore, T P Fry, Peter Butt, Carol Sappideen, R T J Stein, Susan V MacCallum, and Anthony P (Tony) Moore. Counted among their number in this select *numerus clausus* of the most eminent Australian property scholars was Adrian John Bradbrook, who passed away in Adelaide on 23 June 2024. A scholar of immense ability, in a career that spanned over 50 years, including 36 years as a member of the Adelaide Law School, Adrian had a towering international reputation in property law, energy law, and environmental law, both as a scholar and as a leader of law reform.

Adrian John Bradbrook was born in Portsmouth, England, the only child of Arthur and Edna Bradbrook, on 21 April 1948. He received most of his early education at The Portsmouth Grammar School, before going up to the University of Cambridge in 1966. There, he won a Foundation Scholarship and went on to graduate BA with a first in the Law Tripos, later promoted to MA by seniority in 1972. While fed on the usual fare of law subjects at Cambridge, it was Roman Law that clearly influenced the course of his later career. While he initially decided to take the subject because he had studied Classics (Latin and Greek) in his A-levels, it made such an impact on him that he enrolled also for the Advanced Roman Law subject. Moreover, it

Bonython Chair in Law and Professor of Law, Associate Dean of Law (International), Adelaide Law School, The University of Adelaide. We are deeply grateful to Judith Gardam for conversations which she had with P T Babie as we were writing this tribute, and for her support and encouragement. Our warmest thanks also to Frances Cartwright, Ustinia Dolgopol, John Emerson, Robert Fowler, Paul Leadbeter, Ian Leader-Elliott, Horst Lücke, Kathleen McEvoy, Rosemary Owens, and Alexandra Wawryk for offering their thoughts and recollections. This tribute also draws upon Paul Babie, 'The Wily Quadruped Meets a Saucy Intruder: How Life and Law Intersect' in Paul Babie and Paul Leadbeter (eds), *Law as Change: Engaging with the Life and Scholarship of Adrian Bradbrook* (University of Adelaide Press, 2014) 1, 1–21, including two interviews with Adrian Bradbrook (P T Babie, Adelaide, 21–22 February 2012).

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See, e.g., Ken Mackie, Elise Bennett Histed and John Page, *Australian Land Law in Context* (Oxford University Press, 2012) liv.

gave him a chance to use his Greek, forcing him to focus his attention to detail, and proving to be very good training for a future in legal scholarship.

In 1970, Adrian earned an LLM at Osgoode Hall Law School, York University in Canada, followed by two degrees at the University of Melbourne: a PhD in residential tenancy law in 1975, and an LLD for his thesis on solar energy law in 1987. On the strength of his scholarship in property law, Adrian earned a second PhD, by publication, from Cambridge in 1994. His final academic credential came in 2001, when he was awarded the Dr iur (honoris causa) by the University of Mannheim.

Adrian began his career in the academy as an Assistant Professor of Law at Dalhousie University in Canada from 1970 to 1972, before taking up a Senior Lectureship at the University of Melbourne from 1972 to 1979, and later being promoted to Reader in Law at Melbourne in 1980. He joined the Adelaide Law School as a Professor of Law in 1988 at the age of only 40, and went on to hold the John Bray Chair in Law from 1991 to 1995. In 1995, he was appointed the sixth holder of the Bonython Chair in Law, which he held until his retirement in 2011. The Chair in Law of the University of Adelaide was established in 1883, and later endowed by the Hon Sir John Langdon Bonython KCMG in 1926 as the Bonython Chair. Adrian became the eleventh holder of the Chair in Law of the University, and the sixth holder of the Bonython Chair in Law. On his retirement in 2011, Adrian was conferred the title of Bonython Professor of Law Emeritus.

In 1977, Adrian met Judith Gardam, whom he would marry in 1980. They spent the next 46 years together, with their four daughters from previous marriages — Fiona, Frances, Georgia, and Selena — and became proud grandparents to Nessa, Freyja, Levi, Ella, Bleue, and Phoenix. Like Adrian, Judith would also become an internationally recognised scholar in her own right, first at the Melbourne Law School and later at the Adelaide Law School, establishing herself as an expert in international law.

II SCHOLARSHIP

Adrian's LLM thesis on child custody law at Osgoode offered the first glimpse of the intellectual power he would bring to bear on any area of law he explored. In assessing the traditional way of resolving child custody cases, Adrian argued that rather than showing any objective rules, the guiding principles were in fact very subjective. The keystone chapter of his thesis surveyed judges of the former Ontario High Court of Justice on their attitudes towards child protection law. Using an early form of qualitative empirical legal research, Adrian concluded that the outcome of such disputes depended not on any identifiable legal criteria, but on nothing more significant than the judge assigned to the case. Ultimately published in the *Canadian Bar Review*,² this realist conclusion is founded upon one of the earliest

Adrian Bradbrook, 'An Empirical Study of the Attitudes of the Judges of the Supreme Court of Ontario Regarding the Workings of the Child Custody Adjudication Laws' (1971) 49(4) Canadian Bar Review 557, which was an abridged version of Adrian

examples of qualitative empirical legal research in Canadian or Australian legal literature. It remains influential to this day.³

In 1980, following his arrival in Melbourne, Adrian co-authored a book with Marcia Neave on easements and restrictive covenants. And while he would edit a casebook on tax during his time at Melbourne, it was in the area of real property that Adrian would have his most significant and lasting impact on Australian law. His book *Poverty and the Residential Landlord–Tenant Relationship*, published in 1975 as part of the Commonwealth Commission of Inquiry into Poverty, led to the gradual enactment of residential tenancies legislation and the establishment of Residential Tenancies Tribunals in Australia, which were later subsumed into the modern generalist civil and administrative tribunals. In fact, it was Adrian's work that created this entirely new field of law, until then regarded as simply a part of the law

- Bradbrook, 'The Inter-Parental Conflict Over Ownership of Children: Judicial Discretion versus Behavioral Science' (LLM Thesis, York University, 1970).
- See, e.g.: Elizabeth Sheehy and Susan B Boyd, 'Penalizing Women's Fear: Intimate Partner Violence and Parental Alienation in Canadian Child Custody Cases' (2020) 42(1) *Journal of Social Welfare and Family Law* 80, 81; Suzanne Williams, *Through the Eyes of Young People: Meaningful Child Participation in BC Court Processes* (Report, International Institute for Child Rights and Development, 2006) 184.
- Published the following year as Adrian J Bradbrook and Marcia A Neave, Easements and Restrictive Covenants in Australia (Butterworths, 1st ed, 1981). It is now in its third edition and, such is the influence of the title, it is now named in honour of Adrian Bradbrook and Marcia Neave: Adrian J Bradbrook and Susan V MacCallum, Bradbrook and Neave's Easements and Restrictive Covenants (LexisNexis Butterworths, 3rd ed, 2011).
- Yuri Grbich, Adrian Bradbrook and Kevin Pose (eds), Revenue Law: Cases and Materials (Butterworths, 1990). Owing to demand, it was reprinted by Butterworths in 1994 with a supplement prepared by Yuri Grbich. See Yuri Grbich, Revenue law: Cases and Materials Grbich, Bradbrook and Pose. Supplement 1994 / prepared by Yuri Grbich (Butterworths, 1994).
- Adrian J Bradbrook, *Poverty and the Residential Landlord–Tenant Relationship* (Australian Government Publishing Service, 1975). This was the published result of his doctoral research: Adrian Bradbrook, 'The Law Relating to the Rights and Duties of Landlords and Tenants Concerning Residential Premises: A Re-Assessment' (PhD Thesis, The University of Melbourne, 1975).
- See, e.g.: Ronald Sackville, 'Law Reform Agencies and Royal Commissions: Toiling in the Same Field?' in Brian R Opeskin and David Weisbrot (eds), *The Promise of Law Reform* (Federation Press, 2005) 274, 277; Adrian J Bradbrook, 'Residential Tenancies Law The Second Stage of Reforms' (1998) 20(3) *Sydney Law Review* 402, 402–5. It seems fitting that it was the Dunstan Labor Government in South Australia, where Adrian would ultimately find his home, which led the way in adopting the majority of the Commission's recommendations and enacting them in the *Residential Tenancies Act 1978* (SA) (later repealed and replaced by the *Residential Tenancies Act 1995* (SA)): at 404. The Hon D H L Banfield, in his second reading speech for the Residential Tenancies Bill 1978 (SA) noted that '[i]n particular, the Bill relies upon the recommendations of the report of A J Bradbrook, MA, LLM, entitled "Poverty and the Residential Landlord–Tenant Relationship" prepared for the Australian Commission

of leases. While not a few people criticised him as being anti-landlord, for Adrian it was simply a matter of doing justice and ensuring a level playing field. And it revealed his passion for working in areas that contained what he called a substantial 'human factor'. This work alone established Adrian as a leader, law reformer and outstanding scholar — both nationally and internationally.

Perhaps, though, Adrian will be remembered by most as one of the first authors, with Susan V MacCallum and Tony Moore, of *Australian Real Property Law*, now in its seventh edition. 8 Its companion volume, *Australian Property Law: Cases and Materials*, 9 is now in its fifth edition. Both are found on lawyers' and law students' bookshelves around the country, known simply as 'Bradbrook, MacCallum, and Moore'. Similarly, his book *Commercial Tenancy Law*, 10 now in its fifth edition, and *Bradbrook and Neave's Easements and Restrictive Covenants in Australia*, 11 now in its third edition, have both become standard references for practitioners. Add to this his more recent textbook with Rosemary Lyster, *Energy Law and the Environment*, 12 and Adrian's enormous contribution to the teaching and practice of law is clear. By the time of his retirement, Adrian had published 24 books — including several new editions of his most significant works in property law — and well over 100 articles and book chapters, not to mention talks, papers, public lectures, and countless other forms of scholarly work and service. 13

It was through his research into easements that Adrian discovered the American law relating to solar access easements, and it was that project that would occupy much of his time in the latter part of his career; he would go on to take the same approach to wind energy and, finally, to geothermal energy. This opened his interest in energy efficiency as part of a state's economy and in international law. He published extensively in these fields, as he had in property law, and was the recipient of major Australian Research Council Discovery and other grants for his work. As with residential tenancies legislation, in energy law, and especially solar energy law, Adrian's work again drove the development of both scholarship and law reform, not only in Australia, but globally. In an effort to show the way for legislative reform protecting solar access, Adrian explored the common law easement and

of Inquiry into Poverty, and the Law Reform Committee of South Australia in its 35th report relating to standard terms in tenancy agreements': South Australia, *Parliamentary Debates*, Legislative Council, 22 February 1978, 1706 (D H L Banfield).

- Anthony Moore, Scott Grattan and Lynden Griggs, *Australian Real Property Law* (Thomson Reuters, 7th ed, 2020).
- Adrian Bradbrook et al, Australian Property Law: Cases and Materials (Thomson Reuters, 5th ed, 2016).
- Clyde E Croft, Robert S Hay and Luke Virgona, *Commercial Tenancy Law* (LexisNexis, 5th ed, 2023).
- 11 Bradbrook and MacCallum (n 4).
- Rosemary Lyster and Adrian Bradbrook, *Energy Law and the Environment* (Cambridge University Press, 2012).
- See the Select Bibliography that follows this tribute.

the equitable restrictive covenant as possible means of legal innovation. Regulatory reforms have since followed his lead. 14 Perhaps the most important recognition of Adrian's undoubted international reputation and leadership in energy and climate law came when he was appointed Chair of the Working Group on Energy Law and Climate Change for the International Union for Conservation of Nature ('IUCN', formerly the World Conservation Union) and through his work on a number of UN projects relating to energy law. 15 Prior to his retirement, Adrian would also join with his wife Judith, to combine their formidable talents and expertise to consider the human rights implications under international law of access to energy. 16

To mark Adrian's retirement in 2011, his distinguished contributions to scholarship and teaching were honoured by his colleagues in a *Festschrift* published by the University of Adelaide Press.¹⁷

III SERVICE

Adrian's relaxed manner belied his manifold talents, and he made major contributions to service at every institution he served, as well as to the wider scholarly community. His first experience of decanal administration came at Melbourne when he served as Deputy Dean from 1978 to 1979 and from 1984 to 1988. During the first of those terms, the Dean of Law at Melbourne, Colin Howard, nominated Adrian as Head of the Australian Law Teachers Association, the first non-decanal holder of that post. And at Adelaide, Adrian served in a range of administrative positions, most notably as the 29th Dean of Law from 1991 to 1995. His deanship was marked both by innovation — taking a more sustained approach to research, and internationalising both the focus and the status of the Adelaide Law School 19

For a survey of such progress, see generally Adrian J Bradbrook, 'Solar Access Law: 30 Years On' (2010) 27(1) *Environmental and Planning Law Journal* 5.

See, e.g.: Adrian J Bradbrook, 'Promotion of National Legislation for Energy Conservation: Advocacy for Market Transparency and Sustainable Development' in Economic and Social Commission for Asia and the Pacific, Guidebook on Promotion of Sustainable Energy Consumption: Consumer Organizations and Efficient Energy Use in the Residential Sector, UN Doc ST/ESCAP/2207 (April 2002) 50; Adrian J Bradbrook and Richard L Ottinger (eds), Energy Law and Sustainable Development (Paper No 47, IUCN, 2003); Adrian J Bradbrook and Eva Maria Duer, 'Energy, Renewable Energy and Nuclear Energy' in United Nations Environment Programme, Training Manual on International Environmental Law (9 February 2006) 341.

See, e.g.: Adrian Bradbrook and Judith Gardam, 'Energy and Poverty: A Proposal to Harness International Law to Advance Universal Access to Modern Energy Services' (2010) 57(1) *Netherlands International Law Review* 1.

Paul Babie and Paul Leadbeter (eds), *Law as Change: Engaging with the Life and Scholarship of Adrian Bradbrook* (University of Adelaide Press, 2014).

Email from Ustinia Dolgopol to P T Babie, 7 July 2024.

Email from Horst Lücke to P T Babie, 4 July 2024. Sadly, Horst Lücke passed away on 26 September 2024 and, as such, it was not possible to obtain his permission to use this comment.

and by unfailing kindness, generosity, and straightforwardness.²⁰ Every subsequent Dean has continued Adrian's approach and expanded his pioneering work.²¹

While most of his working life was spent in the academy, Adrian never lost sight of the practical impact of legal scholarship in the practice of law and in the wider community. While at Dalhousie, Adrian completed articles of clerkship with Stewart, MacKeen & Covert, then Atlantic Canada's largest law firm, and was admitted to practice in Nova Scotia. And in 1992, he was elected a Fellow of The Institute of Arbitrators Australia, serving as a Grade 2 Arbitrator. He took this opportunity to further serve the community by spreading his knowledge of arbitration law through offering suggestions on how best to teach arbitration to non-lawyers;²² providing a clear overview of the commercial arbitration legislation;²³ and offering suggestions for further reforms.²⁴ Adrian also served as a member of the Residential Tenancies Tribunal of South Australia — a body his law reform work had helped create — for 20 years from 1991 to 2011.²⁵

Adrian's enduring international stature in every field of his expertise is evidenced by his fellowship and membership of various boards of editors and in his visiting

Email from Kathleen McEvoy to P T Babie, 4 July 2024.

Dolgopol (n 18).

See Adrian J Bradbrook, 'Teaching Arbitration to Non-Lawyers' (1999) 17(3) The Arbitrator 173.

See Adrian J Bradbrook, 'The Commercial Arbitration Legislation' in Vicki Waye (ed), *A Guide to Arbitration Practice in Australia* (Institute of Arbitrators and Mediators Australia, 2nd ed, 2001) 55.

See Adrian J Bradbrook, 'Section 27 of the Uniform Commercial Arbitration Acts: A New Proposal for Reform' (1990) 18(4) Australian Business Law Review 214, republished as Adrian J Bradbrook, 'Section 27 of the Uniform Commercial Arbitration Acts: A New Proposal for Reform' (1990) 9(3) The Arbitrator 107.

²⁵ Adrian served on the Residential Tenancies Tribunal of South Australia from 12 July 1991 until 1 April 2011, except for a sabbatical in 1997: 'DPCA, 90/16/81' in South Australia, South Australian Government Gazette, No 81, 4 July 1991, 204; 'PCA 8/1993CS' in South Australia, South Australian Government Gazette, No 61, 30 June 1994, 1966; 'MCNA 8/93CS' in South Australia, South Australian Government Gazette, No 74, 29 June 1995, 2979; 'OCBA 8/93CS' in South Australia, South Australian Government Gazette, No 125, 16 November 1995, 1343; 'OCBA8/93CS' in South Australia, South Australian Government Gazette, No 129, 23 November 1995, 1413; 'OCBA 008/93CS' in South Australia, South Australian Government Gazette, No 125, 31 October 1996, 1460; 'OCBA 008/93 CS' in South Australia, South Australian Government Gazette, No 2, 8 January 1998, 4; 'OCBA 008/93CS' in South Australia, South Australian Government Gazette, No 169, 26 November 1998, 1601; 'ATTG 7/99CS' in South Australia, South Australian Government Gazette, No 182, 16 November 2000, 3197; 'OCBA 013/02CS' in South Australia, South Australian Government Gazette, No 124, 7 November 2002, 4043; 'ATTG 0057/03CS' in South Australia, South Australian Government Gazette, No 21, 13 March 2003, 864; 'OCBACS 002/05PT2' in South Australia, South Australian Government Gazette, No 9, 16 February 2006, 548.

appointments. He was, for instance, a member of the boards of the *Journal of Energy and Natural Resources Law*, the *Australasian Journal of Natural Resources Law and Policy*, the *Journal of Renewable Energy Law and Policy*, and the *Australian Property Law Journal*. At various times, Adrian held prestigious visiting professorships at the University of Calgary, the University of Poitiers, Paris-Descartes University, the University of Mannheim, and the University of Marburg. He also held visiting research positions at Queens' College, Cambridge, McGill University, the former International Academy of the Environment in Geneva, the University of Colorado, and the University of Hong Kong.

IV REFLECTIONS

One could be forgiven for thinking that the pace and quality of Adrian's scholarship and service left little time for personal pursuits. In fact, over the course of his life, he also pursued musical interests at an advanced level. His grandmother, herself a concert pianist, nurtured his interest in the piano, an instrument he continued to play until he was 15. While he might have gone to London and the musical academy, musical pursuits were placed on hold for 30 years until, in his early forties, he took them up again. This time, he concentrated on the flute and then the saxophone, before coming full circle to the piano. His musical interests added to the richness of his presence in the law school setting and in the wider community.²⁶

Adrian's contributions to legal scholarship and to the Adelaide Law School were truly colossal. But all of that cannot even begin to capture what Adrian was as a person: kind, generous, and available always to provide wisdom and guidance when it was needed most. Yet all of this was done with a grace, a dignity, and an approach that always made a companion feel at ease. This allowed him to have a profound impact on so many scholars whose careers were launched under his mentoring. As Paul Leadbeter remembers: 'Adrian was a supportive colleague who gave me a number of opportunities to be involved in activities he was involved in'. And many, including one of the authors of this tribute, remember well Adrian's sage scholarly advice: 'Never write a presentation without turning it into an article!' His rationale was that having done all the work to prepare the paper for presentation, one should then go the extra step and publish. Many early career researchers today would do well to heed that advice!

All of which made it very easy to enjoy Adrian's company, so much so that it was easy to forget that when in the presence of Adrian, one was in the presence of true greatness. As Peter Richings, a fellow Old Portmuthian, put it:

²⁶ McEvoy (n 20).

Email from Alexandra Wawryk to P T Babie, 4 July 2024.

²⁸ Ibid.

Email from Paul Leadbeter to P T Babie, 2 July 2024.

³⁰ Ibid

[Adrian] had been a regular at our relatively frequent lunch meetings of [Portsmouth Grammar old scholars] living in Adelaide ... He had an illustrious career ... and to our embarrassment we hadn't realised the extent of his qualifications while we still had an opportunity to discuss them. He will be remembered by us for the lively discussion we frequently embarked on and the good natured way he engaged with us setting us correct in all matters of law!³¹

For all who knew him,³² this perhaps best captures who Adrian was: both 'the quintessential academic, deeply devoted to his research and scholarship'³³ with an 'extraordinary academic career'³⁴ and, perhaps more importantly, as a colleague, mentor, and friend, with so very many accomplishments and interests.³⁵

Adrian's loss is so deeply felt by all who knew and worked with him, in so many ways. Still, we are comforted by the knowledge that for a time, which now seems so brief, we had the privilege to bask in the warmth of that light that burned so brightly for so many.

We offer Judith, Fiona, Frances, Georgia, Selena, Nessa, Freyja, Levi, Ella, Bleue, and Phoenix our very deepest sympathy and heartfelt condolences. To them, Adrian was not only a scholar, but a beautiful person and a loving husband, father, and grandfather.³⁶

Vale Adrian John Bradbrook.

Peter Richings, 'Club News: Adrian Bradbrook', *PGS Connect* (Blog Post, 7 July 2024) https://www.connect.pgs.org.uk/news/club-news/235/235-Adrian-Bradbrook>.

Email from John Emerson to P T Babie, 4 July 2024; Email from Ian Leader-Elliott to P T Babie, 4 July 2024.

Email from Robert Fowler to P T Babie, 4 July 2024.

Email from Rosemary Owens to P T Babie, 1 July 2024.

³⁵ Ibid; Leadbeter (n 29).

Email from Fran Cartwright to P T Babie, 6 July 2024.

The Late Emeritus Professor Adrian John Bradbrook FAAL

Dr iur (h c) (Mannheim) LLD (Melbourne) PhD (Cantab) LLM (York) MA (Cantab)

Bonython Professor of Law Emeritus in the University of Adelaide 2011–24
Dean of the Faculty of Law in the University of Adelaide 1991–95
Bonython Professor of Law in the University of Adelaide 1995–2011
John Bray Professor of Law in the University of Adelaide 1991–95
Professor of Law in the University of Adelaide 1988–91
Reader in Law in the University of Melbourne 1980–88
Senior Lecturer in Law in the University of Melbourne 1972–79
Assistant Professor of Law in Dalhousie University 1970–72

Sometime Visiting Professor of Law in the University of Calgary, à l'Université de Poitiers, à l'Université Paris Descartes (Paris V), an der Universität Mannheim, and an der Philipps-Universität Marburg

Sometime Researcher in Law in Queens' College in the University of Cambridge, in McGill University, in the University of Colorado, in the University of Hong Kong, and in the International Academy of the Environment

Former Barrister and Solicitor of the Supreme Court of Nova Scotia Former Barrister and Solicitor of the Supreme Court of Victoria

Former Fellow of the Australian Academy of Law
Former Fellow of the Center for Environmental Legal Studies in Pace University
Former Fellow and Member of the Board of Directors of the International
Energy Foundation

Former Fellow of the Australian Institute of Energy
Former Member of the International Bar Association's Academic Advisory Group
to the Section on Energy, Environment, Resources and Infrastructure
Former Fellow of The Institute of Arbitrators Australia

Former Consultant to the United Nations (UN-DESA, UNEP, UNDP)

Former Chair of the International Union for Conservation of Nature (IUCN)

Former Member of the Board of Editors of the Journal of Energy and Natural Resources Law, the Australasian Journal of Natural Resources Law and Policy, the Journal of Renewable Energy Law and Policy, and the Australian Property Law Journal

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