

MICHAEL WILL ADDRESS: CLOSING REMARKS

*Michael Will**

I am very conscious that this is *the* Michael Will Address, not the address *by* Michael Will, so I will be brief. Thank you very much, Hilary, for your thoughtful and entertaining presentation.

It is not often that an administrative law issue makes the mainstream media, but I noticed this item in the *New York Times* last week. It is about the new acting Attorney-General of the US, Mark Whitaker. The paper reported that, when he sought the Republican nomination for senator in Iowa in 2014, Mr Whitaker criticised the foundational 1803 US Supreme Court decision in *Marbury v Madison*, which established that Court's power of judicial review and which has been cited by our High Court for the same proposition. 'There are so many' bad rulings, Mr Whitaker said. 'I would start with the idea of *Marbury v Madison*. That's probably a good place to start and the way it's looked at the Supreme Court as the final arbiter of constitutional issues.' I wonder who he considers should be the final arbiter.

Chief Justice Marshall in that case famously stated that 'It is emphatically the province and duty of the judicial department to say what the law is'. Those words are inscribed into the walls of the Supreme Court building in Washington. I think they may well outlast Mr Whitaker.

I would like to thank four people today. In doing so, I am mindful that I am not specifically naming and thanking a lot of other people, but please accept that I am very grateful to all of you, members of the judiciary and tribunals, fellow practitioners and members of my firm, for coming today. The four people I want to mention and thank are all professors of law, teachers, writers and practitioners, and they have all had a significant and lasting effect on my study and practice of administrative law, mainly, I think, because of that important combination of academic and practical experience with the law. I am particularly pleased that two of them, Robin Creyke and Dennis Pearce, are in the audience today.

The first is Emeritus Professor Robin Creyke. Robin taught me, and many others, administrative law at the ANU and subsequently we worked together at Phillips Fox and also served together on the National Executive of this Institute and the Administrative Law Committee of the Law Council of Australia. Thank you, Robin.

The next is Professor John McMillan, who taught me Principles of Constitutional Law, or what used to be called 'kiddie con', at the ANU law school (Leslie Zines taught me Commonwealth Constitutional Law). John was an excellent teacher of a fundamental public law subject which I always thought was an essential one for new law students, and I would strongly argue for its return to the syllabus.

* *Michael Will is a lawyer with HWL Ebsworth. Michael Will made these closing remarks in response to inaugural Michael Will Address, which was delivered by the Hon Justice Hilary Penfold QC at the 2018 Annual General Meeting of the Australian Institute of Administrative Law.*

I was also taught by Emeritus Professor Dennis Pearce but not in a public law subject. He taught me Industrial and Intellectual Property — not an area in which I have professed much professional expertise since that time. Dennis too was an excellent teacher, and it was my great pleasure to serve with him on the AIAL National Executive and also to work with him directly in practice, including at my current law firm HWL Ebsworth, where he is still a consultant. Dennis sometimes, somewhat embarrassingly for me, refers to me in company as his boss. It is the other way around, Dennis!

Finally, I would like to thank Professor Margaret Allars SC, at the Sydney Bar, whom I have briefed in a number of administrative law matters over the years and with whom I have also served, over very many years, on the Administrative Law Committee of the Law Council. Margaret has always been a real pleasure to work with as counsel and is a sound and tenacious advocate. I would also like to thank the National Executive of AIAL for today's presentation and, in particular, Geoffrey McCarthy for his role in bringing it about and for his very kind words today.

As a final comment, I was particularly pleased to note that the Institute chose not to insert the word 'memorial' into the title of today's event. Thank you again to all for coming.