

## Introduction to the 125<sup>th</sup> Anniversary Issue

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It is my great pleasure to introduce this issue of the *University of Tasmania Law Review* which celebrates the 125<sup>th</sup> anniversary of the Faculty of Law of the University of Tasmania. Our faculty is the fourth oldest law school in Australia — established as it was in 1893 with the teaching of law commencing in 1894 — and we are proud of our history and the many contributions of our alumni to the promotion of justice and respect for the Rule of Law.

However, the University of Tasmania was built on the land of the *muwinina* people, who belong to the oldest continuing culture in the world. The *muwinina* cared for and protected their beloved Country for thousands of years. They knew this land, they lived on the land and they died on these lands — from the upper reaches of the Derwent estuary down the western side of the river including the area around *nipaluna* (Hobart) and their beloved mountain, *kunanyi*. They developed their own legal traditions and found ways to resolve disputes — internally within their own tribe and externally in their relations with other tribes and nations. We honour them and pay our respects to their past elders. We also lament the fact that their dispossession was so violent, so overwhelming and so comprehensive that we are unable to pay our respects to present and emerging elders of the *muwinina*, because that once proud tribe no longer exists. Fortunately for Tasmania, with great resilience and determination, a remnant of our Aboriginal community survived on the islands of the Bass Strait in the north-east. Those ancestors faithfully preserved and handed down to successive generations their cultural, linguistic, spiritual and legal traditions. Now we have a thriving Aboriginal community in *lutruwita/trowunna*, and our society is richer for their many contributions. These words of acknowledgement to country will be linked to legal education, as will become evident below.

On 6 October 1893 the Council of the University of Tasmania resolved to establish a law school, and on 14 March 1894 the three founding professors of the new Law School — Andrew Inglis Clark, James Backhouse Walker and the inaugural Dean, William Jethro Brown, conducted their first faculty meeting. Classes commenced soon after and so began an institution which was to develop into an internationally recognised faculty with a world-class ranking.

In the 19<sup>th</sup> Century (and earlier), formal legal education was conducted largely on the job through a system of articled clerks. Jethro Brown<sup>1</sup> was part of a group of academics who, late in the 19<sup>th</sup> century, sought to establish legal education as part of the university curriculum, a move that was only fully cemented in the 1950s. Brown had a strong commitment to social justice, expressed through his extensive writings, his work in a settlement in the West End of London and in his judgements as President of the Industrial Court of South Australia. This deep commitment to social justice has been a strong thread running through the Law School's history. In the recent period, it has been expressed through a social justice program which facilitates students gaining hands-on experience in a variety of practical contexts. The Law School has established and/or supported a number of initiatives aimed at pursuing social justice in the context of prisons, refugees, welfare rights, women's refuges and law reform.

Brown also had a commitment to feminist issues, reflected in his unpublished play entitled *Who Knows?*<sup>2</sup> and in his decisions of the Industrial Court of South Australia. The Law School, up until the 1960s, had very few women staff or students. Things began to change, and since the 1970s eight female alumnae of the Faculty of Law have subsequently become law deans in Australia. These include Professor Kate Warner, who became the first female Dean of the Faculty in 1993 and who more recently has become the first female governor of Tasmania and Professor Margaret Otlowski, who served as Dean from 2010 until 2017, moving into a Pro Vice Chancellorship in 2018. Kate Warner was not the first female graduate of the Law Faculty to become the Dean of a law school. That distinction was achieved over 20 years earlier by another Law Faculty alumna, Professor Enid Campbell, who in 1971 took up the position of Dean of Law at Monash University, becoming Australia's first ever female Dean of Law. Professor Kate Warner has acknowledged the encouragement she received from Professor Don Chalmers, who was Dean of the Law School for 11 years from 1985–1996 and again in 2000 until 2009, a record amongst Australian law school deans! Fittingly, this issue of the Law Review touches upon a number of feminist issues, including a note on the high-profile sexual assault case of *Lazarus*,<sup>3</sup> as well as reviews of *Alternative Dispute Resolution and Domestic Violence: Women, Divorce and Alternative Justice*<sup>4</sup> and *Online Misogyny as Hate Crime: A Challenge for Legal Regulation?*<sup>5</sup>

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<sup>1</sup> Michael Roe, 'Brown, William Jethro (1968-1930)', *Australian Dictionary of Biography* (Web Page, 1979) <<http://adb.anu.edu.au/biography/brown-william-jethro-5393>>.

<sup>2</sup> William Jethro Brown, *Who Knows?* (Unpublished, 1923).

<sup>3</sup> *Lazarus v R* [2016] NSWCCA 52; *R v Lazarus* [2017] NSWCCA 279.

<sup>4</sup> Dafna Lavi, *Alternative Dispute Resolution and Domestic Violence: Women, Divorce and Alternative Justice* (Routledge, 2018).

<sup>5</sup> Kim Barker and Olga Jurasz, *Online Misogyny as Hate Crime: A Challenge for Legal Regulation?* (Routledge, 2018).

Back to our three founding professors: Jethro Brown taught international law as part of the compulsory curriculum in the Law School. So began a further theme in the history of the Law School, with a string of distinguished international lawyers teaching at the Law School in the 1980s and 90s, including Muthucumaraswamy Sornarajah, Martin Tsamenyi (Dean 1991–92), Sam Blay and Richard Piotrowicz.

Andrew Inglis Clark, the second of the founders of the Law School, was one of the most renowned public figures in Australia during the 1890s. He was a ‘primary architect’<sup>6</sup> of the Australian Constitution, being described as ‘...an Australian Jefferson, who, like the great American Republican, fought for Australian independence; an autonomous judiciary; a wider franchise and lower property qualifications; fairer electoral boundaries; checks and balances between the judicature, legislature and executive; modern, liberal universities; and a Commonwealth that was federal, independent and based on natural rights.’<sup>7</sup>

Inglis Clark was also a Supreme Court Judge and is renowned for his Hare-Clark system of electoral representation which bears his name. As Attorney-General of Tasmania, he played a key role in shepherding the legislation which established the University of Tasmania through the Tasmanian Parliament.<sup>8</sup> Inglis Clark was a tireless law reformer who introduced a large number of pieces of humanitarian legislation. There is a strong theme of constitutional law in this issue, which begins with Jemimah Roberts’ fascinating reflection on the legacy of United States Supreme Court Judge Anthony Kennedy. Roberts compares Kennedy J’s use of foreign law in interpreting the American constitution to the role of foreign law in Australian constitutional jurisprudence. In addition, a review of Dylan Lino’s timely and insightful book *Constitutional Recognition: First Peoples and the Australian Settler State* nods to one of the most pressing and controversial constitutional issues today.<sup>9</sup>

Both the commitment to constitutional law and law reform have been strong themes through the history of the Law School. In recent years, the Law School has taught constitutional law based on the practice centric model. The Tasmanian Law Reform Institute (‘TLRI’) was established within the Faculty of Law in 2001 and has had a major impact on a wide variety of areas of law reform, involving reports drafted by staff members and postgraduate students. As the State’s official law reform body, the TLRI has had a major impact on legislation in Tasmania through its work

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<sup>6</sup> *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104, 172 (Deane J).

<sup>7</sup> Helen Irving, *To Constitute a Nation: A Cultural History of Australia’s Constitution* (Cambridge University Press, 1997) 35.

<sup>8</sup> Richard Davis, *100 Years, A Centenary History of the Faculty of Law University of Tasmania 1893–1993* (University of Tasmania, 1993) 1.

<sup>9</sup> Dylan Lino, *Constitutional Recognition: First Peoples and the Australian Settler State* (Federation Press, 2018).

focusing on modernising, simplifying, consolidating and repealing the laws of Tasmania as required. The law reform tradition has also manifested itself in the creation within the Law School of a number of specialist centres which have become powerhouses of applied research, including in proposals for law reform. These include the Centre for Law and Genetics and climate change geoengineering (The Australian Centre for Climate Intervention and Governance) and the Climate Justice Network.

The third founding professor, James Backhouse Walker,<sup>10</sup> was a solicitor who drafted the act establishing the University of Tasmania and became its second vice-chancellor. Through his position as secretary for the Hobart Working Men's Club, Walker fought for improved conditions for workers. Walker is today honoured with the James Backhouse Walker Prize for the top graduating student who showed the greatest proficiency throughout their law degree. Walker, like the other lecturers, was also a practitioner. This relationship between practitioners and the University of Tasmania has continued to this day. For instance, the Tasmanian Legal Practice Course and the University of Tasmania have a close and ongoing relationship with each other, and many lecturers at the Law School are either current or past practitioners.

Sadly, the importance of Indigenous issues to legal education has only been recently recognised in Australia and in Tasmania. Indigenous perspectives are gradually being incorporated into various parts of the curriculum, coinciding with a concerted push by the University of Tasmania to indigenise curricula across the University and a commitment by the Council of Australian Law Deans to promote Indigenous perspectives in all law schools. We have relatively few students who openly identify as Aboriginal studying law at the University of Tasmania, and we are working with the Riawunna Centre for Aboriginal Education to provide incentives and pre-tertiary preparatory pathways to rectify this. The Law Society of Tasmania has offered to work closely with the Law School to help establish scholarships for Indigenous students to study law, and one longer-term goal is for us to be able to appoint our first ever Aboriginal academic staff member. Much remains to be done, but we have some outstanding role models amongst our Tasmanian Aboriginal alumni, including Heather Sculthorpe, Michael Mansell, Rosie Smith and Leah Cameron.

From its origin, there have been challenges in the Law School serving the whole state while being physically located in the South. Students from regional areas, including the west, north-west and north, have had to relocate to Hobart to complete their study of an LLB. We are working towards more flexible delivery of law units, particularly those in the Legal Studies major of the Bachelor of Justice Studies, to students around the

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<sup>10</sup> Neil Smith, 'Walker, James Backhouse (1841–1899)', *Australian Dictionary of Biography* (Web Page, 1976).

State, and we look forward to working with the legal profession in regional areas of Tasmania to help build an effective and meaningful Law School presence outside of Hobart.

I commend this issue of the *University of Tasmania Law Review* and look forward to a thriving future for the *Review* as the Law School undertakes the next phase of its illustrious history.