

## INTRODUCTION

Peter Johnston, who died in January 2015, made a unique contribution to the Law School of this University, and to the law in Western Australia. Unique, firstly, because his continuous connection with the Law School dated back to the days when he was a member of the last class to be taught constitutional law by Professor Frank Beasley, who had established the Law School in 1928, and so provided a link to the earliest days of the Law School. Unique, secondly, because he was not just a teacher, a mentor and a scholar but also a High Court advocate, in some phases of his career a judge and a holder of public offices, and much else besides.

Peter entered the Law School as a student in 1960, completing an honours degree in Law in 1963 and graduating in 1964. He stayed on to complete a BA, majoring in philosophy, and an LLM by research, the latter undertaken mainly part-time while he spent a few years based in Canberra. (Much later, in 2005, he was one of the first graduates to be awarded the Doctor of Juridical Science degree.) In 1974 he came back to the Law School to fill a temporary vacancy as a teacher of constitutional law and joined the staff on a permanent basis in 1975, the start of a long career as a full-time academic. Even after appointment as a Deputy President of the Administrative Appeals Tribunal he remained associated with the Law School in a part-time capacity, ultimately as an Adjunct Professorial Research Fellow. All this amounts to a continuous association with the Law School extending over a period of 55 years.

Peter's contribution to the Law School, and to the law and the legal profession generally, was also exceptional because of the large number of different roles he played. In the words of his good friend Robert French, the Chief Justice of Australia, who delivered the eulogy at his funeral service and is a contributor to this volume, "Peter Johnston was a legal omnivore. He had an enormous appetite for all areas of the law in which he was involved." Peter's Law School class, generally recognised as being of exceptional quality, numbered many who went on to distinguished careers as lawyers or judges: some made their mark in more than one area, such as Daryl Williams, who not only became a QC but was for a time a politician and Commonwealth Attorney General, and Nicholas Hasluck, who was a Supreme Court judge but much

more widely known as a writer,<sup>1</sup> but probably none of his contemporaries had so diverse a career and acted in so many capacities as Peter. This was demonstrated early on. After doing articles at Robinson Cox (now Clayton Utz), and being admitted to practice in 1965, he spent some years as a solicitor in the Crown Law Department advising the State government, working under Ronald Wilson QC, the State Solicitor General, later Sir Ronald Wilson and Western Australia's first High Court judge. (Wilson - one of a number of leading barristers who used to give lectures at the Law School - had been one of Peter's teachers, and had already acted as a mentor in other capacities, for example encouraging him to become involved in the Australian Student Christian Movement.) Peter then spent some years in the Advising Division of the Commonwealth Attorney General's Department in Canberra - an especially stimulating time from 1972 onwards, during the period of the Whitlam Labor government, with Lionel Murphy as Attorney General and all sorts of new initiatives being taken in areas which were traditionally regarded as within the purview of the States. *Robinson v Western Australian Museum*,<sup>2</sup> the case about the treasure found in the wreck of the *Vergulde Draeck* (Gilt Dragon), a Dutch shipwreck off the coast of Western Australia, provides a good example. Peter told me how he first encountered Mr Robinson as a client at Robinson Cox, was involved at one time or another with advising first the State Government and then the Commonwealth government about various aspects of the resulting legislation dealing with historic shipwrecks, and finally taught the case to his constitutional law classes. When he and I were jointly responsible for the organisation of the Australasian Law Schools Association Conference in Perth in 1978, we completed the process by taking a group of constitutional law teachers to view the coins which by then were on display at the Maritime Museum in Fremantle.

When Peter returned to the Law School to become a full-time academic, he became responsible for the teaching of constitutional law, and continued to teach this subject for many years, sometimes together with advanced classes in constitutional problems. He was also regularly involved in the teaching of administrative law and public international law. However, his area of competence was extremely wide and at one time or another he taught human rights, mining and energy law, environmental law, criminal law and taxation.

<sup>1</sup> Peter later wrote a commentary on the jurisprudential issues involved in one of Hasluck's novels: see Peter Johnston, *Afterword: Exploring the Bellarmine Jug* in Nicholas Hasluck, *Legal Limits* (2013), 204.

<sup>2</sup> (1977) 138 CLR 283

Peter was a very successful lecturer. To quote Robert French again, “He brought to his lectures an intellectual adventurousness, coupled with real world perspectives, that enlivened his class and engaged his students” – all this laced with subtle touches of humour. I can endorse all this from personal experience. Newly arrived from England, I sat through Peter’s constitutional law lectures during my first full year on the Law School staff, it having become very clear to me during the time when I had been a visiting lecturer that I was painfully ignorant of Australian constitutional law: in response to a question from a student in my comparative law class about section 92, I had replied “of what Act?”. The knowledge gained from my lecture attendance was never personally put to the test, but a friend of mine who had been too busy teaching to attend many constitutional law lectures managed to pass her supplementary exam on the basis of my lecture notes.

Peter’s influence on students was of course not confined to the lecture room. Many students who had been drawn to public law as a result of his lectures came to him to discuss possible honours topics, and during his years at the Law School he must have supervised hundreds of honours theses, almost certainly many more than anyone else. Peter also acted as faculty adviser to the Jessup International Law Moot teams between 2001 and 2003. This was perhaps his most important achievement at UWA: during each of his three years in charge, UWA reached the international finals in Washington, becoming world champions in 2003. This provided the foundation for UWA’s continuing success in this competition. The honours students and the mooters became Peter’s protégés: many went from Law School to the Crown Law Department (later the State Solicitor’s Office), as professional assistants – a scheme he had helped to set up – or became associates to Supreme, Federal or High Court judges, in due course proceeding to successful careers at the bar, on the bench or in law school, in Australia and overseas. Several came back to the Law School as faculty members.

Peter was also deeply involved in carrying out research in his various fields and produced a considerable volume of scholarly publications – a list can be found elsewhere in the present volume. He was responsible for many articles, not just in this and other law reviews but in journals such as the *Australian Parliamentary Review* and *Public Policy*, and chapters in books. He often wrote in collaboration with others, including some of his former students. He was especially productive during the last few years of his career – slowing down was not an option he ever seriously considered – and it is a great pity that his death

prevented some of his most recent research projects, for example, a projected article on France's claim to Western Australia in 1772, from coming to fruition.

Peter, being Peter, did not want to be *just* an academic. In order to expand his knowledge of the subjects he was teaching, and further the insights he had gained in his earlier career, he wished to practise as well. Having obtained the blessing of the then Chancellor of the University, Sir Lawrence Jackson, who also happened to be the Chief Justice of Western Australia, Peter joined the Perth independent bar. In due course, he developed a practice in his specialist areas, such as constitutional law, so that he could say to his students, "We don't just teach constitutional law here, we make it". Often, he acted pro bono. He appeared in the High Court for the first time in 1976, as junior to the State Solicitor General, Ronald Wilson QC. It was round about this time that Peter developed an alliance with Robert French, then a young lawyer who was developing a reputation for taking complex and novel cases (and was giving constitutional law tutorials at the Law School in his spare time). The French-Johnston team tackled a number of cases over the next few years, before Robert French went to the Federal Court bench in 1986. The most notable was *Western Australia v Wilsmore* in 1982, in which they mounted a High Court challenge on behalf of Peter Wilsmore, a prisoner in Fremantle jail, arguing that an amendment to the State *Electoral Act* in 1979 which deprived him of his right to vote was invalid because it had effected a change to the State Constitution. (The case came to Peter via the student advice centre at 47 Fairway, set up by a number of Law School staff members including Peter.) The challenge succeeded in the Full Court, and Wilsmore's legal team also succeeded in repelling the State's attempt to appeal to the Privy Council, but the State then obtained leave out of time to appeal to the High Court where it was ultimately successful.<sup>3</sup> Peter subsequently appeared in the High Court on a number of other occasions, including acting for a group of Aboriginal plaintiffs in the *Native Title Act* case,<sup>4</sup> the 'one vote, one value' challenge to the State *Electoral Act* brought by Jim McGinty (a former student, by then a State Labor MLA),<sup>5</sup> a challenge to the validity of the repeal in 1907 of a provision of the State Constitution requiring one per cent of State revenues to be paid to the State's indigenous inhabitants,<sup>6</sup> and the attempted extradition of Charles Zentai, a former Hungarian soldier

<sup>3</sup> *Western Australia v Wilsmore* (1982) 149 CLR 79.

<sup>4</sup> *Western Australia v Commonwealth* (1995) 183 CLR 373.

<sup>5</sup> *McGinty v Western Australia* (1996) 186 CLR 140.

<sup>6</sup> *Yougarla v Western Australia* (2001) 207 CLR 344.

who had been an Australian citizen for nearly sixty years, for alleged war crimes.<sup>7</sup> His last High Court appearance was in a family law case involving constitutional issues.<sup>8</sup>

I was privileged to know Peter personally for nearly forty years. He was foremost among the Law School staff members who gave me a friendly welcome when I arrived in 1977 for what was originally intended to be merely a six-month visit. This early experience influenced my decision to stay longer – indeed, for a lifetime. Peter took me to the Swan Valley to introduce me to Australian wine, a subject in which he had a great interest and a considerable knowledge. In those early days the Handford and Johnston families spent a good deal of time together. Peter lent us a car and organised an expedition to the south west. Later, by mutual agreement, we rented the house he was building when he went to Arizona on study leave. Peter's youngest son Jeremy took to the law, and it was a proud moment when Peter moved his admission in 1998, thus creating a dynasty of Johnstons spanning three generations – Peter's father had been admitted in WA in 1952. Jeremy is one of the contributors to the present volume. In recent years Peter knew much happiness with his second wife Vicky, as they divided their time between Melbourne and Perth.

Peter and I also shared a close professional association, both at the Law School and elsewhere. Many years ago, we were the Law School staff representatives on a committee to appoint to a Chair in Law, a knife-edge affair that closely resembled something out of CP Snow's *The Masters*. Later, when I was the Director of Research of the Law Reform Commission of Western Australia, Peter was a member for four years (1984-1988), and Chairman in 1986-87. He had an important influence on several of the Commission's projects during that time, notably judicial review of administrative decisions, the scheme that became the *Spent Convictions Act 1988*, the reform of the *Justices Act 1902* and the reform of the *Police Act 1892*. This was just one of the statutory offices which Peter held at one time or another: he was Deputy Chair of the Environmental Protection Authority from 1985 to 1990, Deputy President of the Administrative Appeals Tribunal from 1990 to 1993 and a Hearings Commissioner of the Commonwealth Human Rights and Equal Opportunity Commission in 1996.

Peter's talents were by no means confined to the law. In his younger days

<sup>7</sup> *Zentai v Republic of Hungary* [2008] HCA 14; *Minister for Home Affairs of the Commonwealth v Zentai* [2012] HCA 28.

<sup>8</sup> *Stanford v Stanford* [2012] HCA 52.

he was an athlete – President of the UWA Athletics Club, team captain and a half-blue in the 200 and 400 metres sprints; he played hockey for many years, eventually as a member of the State Veterans XI; and as a cricketer he was a good enough bowler to be considered for selection at first grade level. Another continuing interest was music. Peter had a great knowledge of music, and a good bass voice, and sang in choirs for many years, starting with David Tunley's A Cappella Choir at UWA during his student days, and continuing with the University Collegium Musicum (quickly recruiting me as a member when he discovered I shared this interest) and the Chapel Choir, which sang at his funeral service. Justice Michael Kirby, when giving lectures to students at UWA, has often recounted his own experience as a student when, on his first visit to the UWA campus to attend a meeting of Student Council Representatives, he wandered into the Winthrop Hall where a forty-voice choir was rehearsing Bach's *St John Passion*. He was moved not only by the architecture but by his first encounter with Bach's choral music, which he described as a spiritually uplifting experience. Peter, a member of the choir on that day, said that he was pleased to have been in part responsible.

By a happy accident, I completed this Introduction on the day of the 800th Anniversary of Magna Carta. Peter would have approved, since this was the foundation of everything to which he devoted his life's work. This is perhaps an appropriate way to end this tribute to a remarkable, many-sided man, and one who over half a lifetime was a valued friend and colleague.

*Peter Handford*

*Law School, University of Western Australia*

*15 June 2015*