

**UNIVERSITY OF SYDNEY
GREAT HALL**

**HONOURING THE LIFE OF HIS EXCELLENCY
JUDGE JAMES CRAWFORD AC SC FBA**

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Introduction

We so often judge people's lives, and our own, on their moments.

The life of Professor Crawford, throughout all the moments, contributed and created something greater than himself.

I last joined James in an extended "conversation", in a Q&A session we presented to the Australian Bar Association conference in London in July 2017.¹

But my earliest memory of James is from 1989, when I attended my first class in *Constitutional Law*.

With those bookends, I recall his easy but respectful familiarity. Insightful turns of phrase. Each comment designed to inform and entertain, as if we were guests at his cosy dinner party.

In the in-between years, I came to share many moments with James, which I treasure with much fondness.

That said, as in many good friendships, it got off to a bit of a rocky start. What with my complaint about his election as Dean of Law.²

¹ <https://dhdsc.com.au/news/2021/1/7/in-conversation-with-international-court-of-justices-judge-james-crawford-ac-sc>

² *Honi Soit*, Issue 23, 19 September 1989, p 5, 'Letter of the week' (the letter included the following 'students should by now realise that rigid and even archaic practices pervade the Law Profession, so perhaps it is unfair to expect such qualities to be absent from the Law Faculty of Sydney University').

In a typically gracious response to my *Honi Soit* campaign, published under the less gracious byline ‘*legal gerrymander*’, James conceded my complaint as to the disenfranchisement of student representatives in his election was ‘*entirely justified*’.³

‘*Indeed*’, he explained:

“the situation is worse than she describes, in two respects – first, untenured law teachers were also not eligible to vote; and secondly, the same position applies to all Faculties which elect their Dean (not just Law)”.

He promised:

“At the meeting which elected me as Dean for the next 3 years, the Faculty resolved to seek amendments to the By-Laws to remedy this situation. As soon as the new By-Laws are in force, I propose to resign and recontest the position on the basis on the reformed electorate’.

I left resolution of that polite - perhaps politic - riposte to others.

I’d commenced at the university in 1988, the Bicentenary year, marking 200 years since the First Fleet of British convict ships arrived in Sydney Harbour.

It also marked commencement of a new law curriculum, developed after several years of careful planning.⁴

From its earliest days, the Law Faculty had produced outstanding scholars and eventually lawyers who joined the busiest legal centre in our nation.

Introducing the new curriculum, the Faculty explained that it sought to produce graduates:

³ Compare Letter to the Editors dated 27 September 1989 from James Crawford, Dean-elect, Faculty of Law (original in my possession) with *Honi Soit*, Issue 24, October 10, 1989, p 4.

⁴ B Fisse, *The Sydney Law School Reports*, Vol 1, no 2, 1989, p5.

‘... who are legally imaginative and creative, with a high level of critical and analytical ability, historically sensitive and socially perceptive, as well as being competent technical lawyers ...’

The statement balanced an aged old tension: between the teaching of practical subjects and the study of the law ‘as a liberal art’;⁵ between the demands of the legal profession and the aspirations of the academy.

The impact of the education we received from the late Professor Crawford proved mighty.⁶

He was not simply an educator in the theory of constitutional and international law; but of their practice and pragmatism, their idealism and morality. James was firmly independently minded. He was never parochial in his consideration of Australian experience. He knew a basic technical training in law would not suffice to prepare lawyers for their service to the community. In turn, James’ leadership enhanced the community standing of our profession.

Women and the University

In 1990, more women were enrolled than men - for the first time in our University’s history.⁷

Women were first allowed to enter in 1881. We were now some 12,000 in number in 1990.⁸

⁵ K Llewellyn, “The Study of Law as a Liberal Art” (1960), reprinted in *Jurisprudence: Realism in Theory and Practice* (1962), 376.

⁶ In a 1990 reflection for the *Australian Law Journal*, A C Castles observed that there was ‘no measure of the impact of legal education and its surrounding environment on the working of the law. But in one way or another, by anecdote, myth, sometimes far more concrete evidence, it is possible to discern the influence of educational preliminaries on later professional thinking, particularly in the case of those who come to hold judicial office’: A C Castles, “Law Schools Old and New and Their Impact on Australian Law” (1990) 64 *ALJ* 147.

⁷ Women now comprised 53 percent of the university’s students: K Bishop, “Women Overtake Men at University”, *Sydney Morning Herald*, 3 September 1990.

⁸ That growth was significant in both statistical and absolute terms, since with the *Dawkins* reforms to higher education that year, the University’s enrolments had doubled overnight. However, it was the amalgamation of female dominated institutes, such as the Institute of Nursing Studies and the Sydney College of Education, which was partly responsible for the change.

The influence of women on the university culture had undergone a similar change over the years. Between 1980 and 1990, women had begun to take on leadership positions traditionally occupied by men.

1990, the year in which I commenced as President of the University of Sydney Union, was the *second* year that the union president, the president of the Students Representative Council and the student representative on the University Senate, had *all* been women.

Importantly, the number of women enrolled in traditionally male areas such as medicine had increased to 39 percent, and in economics and law, it had increased to 42 percent.⁹

And not before time, since 1990 also marked the centenary of the Law School.

Of course, it had only been in 1918, with the passing of the *Women's Legal Status Act*, that it was even possible for women to practise law in this State. The prohibition had been a powerful deterrent to entry to the Faculty. By 1918, only 24 women had graduated in the 32 years of Professor Pitt Cobbett's Deanship of the Law Faculty.¹⁰

But by 19 May 1990, on the happy occasion of now Dean Crawford's address to the graduating class,¹¹ the hottest issue remaining was *where* to locate the Law School, not whether there were enough women to fill it.

Indeed, by the time I finished in 1992, more than two-thirds of the honours graduates in law were us women, our top 3 were women, including the University medallist.

Jessup Moot

⁹ But their numbers remained low in the more technical areas of science, engineering and agricultural science.

¹⁰ See *The Sydney Law School Reports*, Vol 2, No. 1, 1991, 9. As former Dean John Mackinolty and his academic wife Judy remarked in their publication *A Century Down Town: Sydney University Law School's First Hundred Years*, the legislation opened neither 'the floodgates' to the Faculty or the profession.

¹¹ Reprinted in *The Sydney Law School Reports*, Vol 1, no 3, 1990.

One way that James encouraged our life beyond the lawbooks was the Jessup Moot Court Competition.

During our London conference conversation, James noted proudly - but modestly - that “*Australian teams have been formidable in the Jessup*”. James had been a coach of the Adelaide University team, and later assisted Sydney University teams.

Now, the Australian leg of this competition runs in February, culminating in a final in the High Court. So Australia’s Jessup teams must prepare their written memorials and oral arguments over the long Summer break.

For many of us, Jessup became *both* a lifestyle and a calling.

And in that, our life lessons from James marked the importance of not just juggling but combining ones’ interests and priorities.

So, my teammate now Professor of Law at Macquarie University, Dr Cathy Sherry remembers James “*pausing his explanations of international law to listen to the cricket score on ABC Radio*”.

“*So Sydney summer*”, she says. “*Cricket and Jessup.*”

Another Jessup mooter, Dr Simon Evans, now Deputy Vice-Chancellor of the University of New England, says:

“my strongest memory of James happens to be not at all academic or legal: him driving our Jessup team back from a dinner, with Mahler’s Symphony No 2 on the stereo and him conducting along as he drove”.

The Bar

James’s understated and insightful questioning of our Jessup Team helped refine our presentations. They also nurtured an attraction for a career at the Bar. James himself had been called to the NSW Bar in 1987. He was later appointed Senior Counsel in 1997.

James' time at this University marked the beginning of his international law practice. Between 1989¹² and 1992 James undertook his first case as counsel, for *Nauru* against Australia in a case concerning phosphate lands, eventually winning \$103 million in damages and costs for that tiny nation.¹³

Indeed, James' first appearance before any court and the first time he stood up in a court¹⁴ was in the International Court of Justice in that case on 19 November 1991,¹⁵ when he argued alongside his former doctoral supervisor and soon to be rival, the Professor of International Law at Oxford, Sir Ian Brownlie QC.¹⁶

The Court delivered its Judgment on preliminary objections¹⁷ not long before James departed for Cambridge. And in the finest traditions of the Bar's cab rank rule, before departing he also accepted a brief from Australia in the *East Timor* case against Portugal. In our conference conversation in 2017 he emphasised that Australia won that case '*on a technicality*'.

Scholarly Works

During his life, James produced a prodigious body of scholarly work.

In 1991, James published a seminal article for the *Sydney Law Review*, "The Constitution and the Environment"¹⁸. The lesson of his careful study was that the Commonwealth has, one way or another, legislative power over most large-scale mining and environmental matters. He demonstrated that the extent of the

¹² Application instituting proceedings was filed on 19 May 1989. The Memorial of the Republic of Nauru was filed 20 March 1990.

¹³ *Certain Phosphate Lands in Nauru*.

¹⁴ Dingle, Q32.

¹⁵ See Verbatim Record, Public sitting held on 19 November 1991 at 9.30am at the Peace Palace, President Sir Robert Jennings presiding in the case concerning Certain Phosphate Land in Nauru (*Nauru v Australia*), CR91/20, 24-42.

¹⁶ James' DPhil was subsequently published as *The Creation of States in International Law* (1979), a text to rival Brownlie's own *Principles of International Law*, which James himself later took up in its 8th and 9th editions.

¹⁷ On 26 June 1992.

¹⁸ (1991) 13(1) *Sydney Law Review* 11. His paper's discussion of the possible application in the area of environmental matters of specific heads of Commonwealth legislative power was cited by the Full Court of the Federal Court in *The Australian Heritage Commission v Mount Isa Mines Limited* [1995] FCA 1689 (Black CJ, Beaumont and Beazley JJ) at [4].

Commonwealth's power over the environment was neither a narrow nor remote issue.

This was a work that echoed decades later through the hearings of the Royal Commission into National Natural Disaster Arrangements in 2020, and underpinned the calls for all levels of government to respond more urgently to Australia's alarming disaster outlook.¹⁹

Also amongst James' work was the 3rd edition of *Australian Courts of Law*.²⁰

As James explained, the writing of the book was “*an acknowledgement of my desire to be a practitioner*” and his solution “*to write about courts if I couldn't practice in them*”.²¹

In the *preface* to the edition, James acknowledged several colleagues at the Sydney Law School who had read and made helpful comments.²²

Fellow law student Nicole Abadee²³ and I were employed as James' research assistants on this project (and others), and he kindly acknowledged us, too.

A Lasting Influence

But we were the ones who owed him the debt of gratitude. From our foundational experience working with him, we were privileged to be recommended by James to then NSW Chief Justice Murray Gleeson to work as his Research Director.

¹⁹See www.naturaldisaster.royalcommission.gov.au.

²⁰ In the 3rd edition, James sought ‘*to reflect both the continuing debates about the structure, personnel and functioning of the Courts, and the many changes in detail*’.²⁰ He incorporated additional material on constitutional and other aspects of court-annexed arbitration and other forms of alternative dispute resolution (Chapters 3, 10 and 14), a full account of the new cross-vesting scheme and its operation (Chapter 6), the new admiralty jurisdiction (Chapter 7), what he described as the ‘*renovation*’ of the Family Court and the introduction of the child support scheme (Chapter 10), and finally, an account of the 1988 Industrial Relations Act and the many related developments at state level (Chapter 11): J Crawford, *Australian Courts of Law* (Oxford University Press, 3rd edn, 1993), Preface, xiii.

²¹ L Dingle & D Bates, ‘A Conversation with Emeritus Professor Judge James Richard Crawford Part 1: Early Life and Career’ (3 May 2018) Q23-Q24

²² In particular Patrick Parkinson, and Professors Terry Carney and Brent Fisse.

²³ Nicole shared James' great passion for ‘books, books books’, and she is now a literary consultant and books writer for the *Good Weekend* and *Australian Book Review*.

James also inspired us to pursue postgraduate study of international law, and when we later returned to Australia, to try a career at the Bar.

James's international perspective inspired many others to look beyond our shores for postgraduate education. Like me, James inspired Craig Carracher, the 1990 Law Medallist and later co-founder of university accommodation provider Scape, to pursue not only the Jessup Cup but the Bachelor of Civil Law at Oxford. This was notwithstanding that James "*would have much preferred [both of us] attended Cambridge*". He conceded as consolation that I studied with Brownlie.

Nicole and other colleagues from Law School and the NSW Bar, including Dr James Renwick CSC SC, and Dr Christopher Ward SC, followed James to Cambridge. There they were fortunate to witness up close James at his most charismatic, as he built his reputation as Australia's greatest international lawyer.

Amongst the many qualities shared by Professor Crawford and Chief Justice Gleeson, were their hopes that the better opportunities and prospects for *women* in the law would be enjoyed in the experience of their daughters.

Indeed, in my experience of working with them both, their daughters were never far from their thoughts or our discussions.

The 1993 edition of *Australian Courts of Law* was dedicated to James' eldest daughter, Rebecca, with the words "*starting out*".

Just last weekend I found a fax from James, written to me at Oxford in February 1994, from his Rose Cottage in Cambridge.

Following a mixture of chastisements and entreaties to keep in touch, James concluded his letter:

"My daughter Rebecca is just starting Law-Arts 4 at UNSW, with increasing enthusiasm for law. She reminds me of you in many ways – she is heavily engaged in student activity ..."

He continued: "*If you have time to give her a ring just to say "keep at it", I'm sure she would appreciate it*".

To my regret, I'm not sure I did do that.

But we have all of watched with a knowing pride the great commitment and successes of James' daughters Rebecca and Emily. They are as inspiring, energetic, and accomplished as their late father, and most importantly, they have achieved success independently of his reputation, and in their own right. Like their father, they desire much to help those of their generation who are willing to desire help.²⁴

Conclusion

James possessed an '*incredible breadth and depth of learning*'. It was the greatest of compliments to read in our correspondence of his pleasure that my own "*intellectual interests were broad and developing*".²⁵

I last met privately with James when I visited him at the Peace Palace in the Hague in 2017. We shared lunch in the Judges' Dining Room. I remember becoming quite emotional. I was just so *pleased* for him: to have made it all the way from distant Adelaide, to have achieved this, much longed for, success.

And in that quiet moment of private conversation, he encouraged me again, just as he had done for countless others in the halls of our old city Law School.

We are all the better for James' contribution.

His presence in each of us, that learned from him, remains.

²⁴ Poem, "A Representative Modern Agony".

²⁵ Scholarship reference from James, 27 August 1993.