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## ALEX CASTLES: AN ADELAIDE PERSPECTIVE

WILFRID PREST [\[\\*\]](#)

### I INTRODUCTION

We are met this afternoon to celebrate and praise a famous man, Alexander Cuthbert Castles, the doyen of Australian legal historians. I know that Alex himself modestly declines that title in favour of John Bennett, his senior and co-compiler of the *Source Book of Australian Legal History*. [\[1\]](#) But while respecting Alex' s proper sense of modesty, and wishing to spare some of his blushes, it is impossible for any reasonably non-partisan observer, such as myself, to condone this act of self-abnegation. If Alex Castles is not the doyen of Australian legal historians in chronological terms, so be it – he is, after all, a mere stripling of 67 years, having come into the world on 7 March 1933. But measured by other, more fundamental criteria, notably that of intellectual influence, whether crudely by weight and number of publications, or more indirectly attested through the on-going work of his disciplinary followers and pupils, the preeminent stature of the quondam Bonython Professor of Law at the University of Adelaide in the burgeoning field of Australian legal history can hardly be questioned – even by himself. So as a long-time former colleague of Alex' s, although even if from another department and discipline, I am particularly grateful to Ian Holloway for providing me with this splendid opportunity to say something about Alex, as human being and scholar, from the vantage point of Adelaide and South Australia (which for nearly all practical purposes may be regarded as the same thing).

This is a signal, and in my experience almost entirely unique occasion. We are not marking Alex' s retirement from active academic service, for although he joyfully took early retirement from the University of Adelaide in 1994, he immediately accepted a series of visiting appointments at Flinders University down the road, at Bond University, and still further afield, at Williamsburg and Sarawak. Nor are we engaging in a species of academic wake, honouring a scholar whose productive career is over, who has retreated from the arduous, pains and triumphs of research among the primary sources to eke out the remainder of his days in some form of more or less contemplative inaction. There is certainly no sign that Alex has been able to abandon the habits of a lifetime, and give up his assiduous pursuit of hitherto disregarded or insufficiently considered archival and bibliographical treasure trove in libraries and repositories around the world. Cynics – if any such are present here today – might possibly object that we have only Alex' s word for it that he is still actively engaged in numerous major projects, not least tracking down the truth behind the myth of Ned Kelly and his trial. Yet anyone who knows him will agree that Alex is a man of his word, not just of many words. And I am delighted to be able to provide some corroborative ocular testimony; for the last occasion when Alex and I met face to face was a few months back at the reference desk

of the Humanities Reading Room in the new British Library. This is not perhaps the first place one might have expected to find a scholar who has occasionally expressed some dissatisfaction with lingering imperial influences. But I know that he will not deny our meeting, and hope that he will permit me to refer again to that encounter in a moment or so.

Which brings me to mention, with whatever delicacy I can muster, one slight problem which has confronted me in preparing these remarks. Why are such occasions so few and far between? After all, it seems eminently desirable that those who are the worthy objects of our praise and admiration should be able to hear all the nice things we wish to say about them while they are still here and in full possession of their faculties. When such commendations have to take the form of posthumous memorials or obituaries, we are often given occasion to remember Dr Johnson's famous caveat: 'In lapidary inscriptions a man is not upon oath'. And that is precisely the difficulty – as well as the advantage – of our current proceedings: the subject is, happily, in no way removed from us, but fully able to hear and respond to what is said, to amplify or correct the record – as, being Alex, he undoubtedly will choose to do. Needless to say, I would not have it otherwise; but this occasion does serve to remind me that the task of the contemporary historian is in some respects more difficult than that of those of us whose subjects are generally in no position to answer back.

## II ALEX IN ADELAIDE

Alex Castles came to the Faculty of Law at the University of Adelaide as a Senior Lecturer in 1958. His original family circumstances were modest, but after attending Auburn South State School in outer suburban Melbourne<sup>[2]</sup> he was sent to Scotch College. Alex was then fortunate enough to go on a Commonwealth Scholarship to the Law School at the University of Melbourne, just after the demographic peak of the post-war ex-servicemen wave had passed, but while the intellectual and social excitement of their impact was still very palpable. Alongside a brilliant undergraduate academic career, Alex served his journalistic apprenticeship as university correspondent for two down-town newspapers, graduating from the more populist *Sun* to the sober broadsheet *Age* (although this in no way implied a conservative progression in his own views). He also co-edited the student newspaper, *Farrago*, from which position he was sacked for 'standing up for freedom of information' (his own words – I know nothing more about this episode). After graduating he proceeded to the University of Chicago, a somewhat unusual move at a time when Oxford, Cambridge and London were still the preferred destinations for postgraduate research by bright young Australians. Then after a year as assistant lecturer at the University of Pennsylvania he returned to Australia 'to do legal history' (as he has recently stated). There is certainly much more to be said about the influence of his American experiences on Alex's later work, but I'm afraid I don't have the evidence, and in any case it is rather outside my present brief.

What I can and must now do is to talk a bit about Alex in Adelaide, a subject on which I speak from first-hand knowledge, or at least memory – with all the usual caveats. In 1966 when I arrived in Adelaide the Law School was still temporarily quartered near the History Department in the lower Napier Building, before it moved into its own rather grand and spacious quarters (as they seemed in those days, despite the lack of air-conditioning). My boss Hugh Stretton (another Scotch College product) may well have introduced me to Alex, whom I faintly recall as a talkative pipesmoker – not all that much has changed – quite eager to meet another Melbourne person, if not much impressed by my early modern English historico-legal interests. Alex's promotion to a personal chair the following year, at the tender age of 37, caused a bit of a stir, especially among one or two disappointed senior colleagues of mine. They may not have appreciated how many significant publications in the legal journals young Professor Castles already had under his belt, besides his significant involvement and leadership at both State and national level in a variety of public interest lobbies and pressure groups, including the United Nations Association and the Australian Institute of International Affairs, and the International Commission of Jurists (which he served as both a vice-president and the Australian secretary). Alex had also become a major media presence, appearing regularly on South Australian television, both ABC and commercial channels, especially as an election-night political commentator. I recall being mightily impressed by his racy and articulate exposition of constitutional and political issues, especially at the time of the first Dunstan Labor government (1967-68) and the on-going clashes between Dunstan and the Liberal's Steele Hall.

I cannot remember Alex ever clearly indicating his party-political sympathies, if any, and unlike the economist Geoff Harcourt, another ex-Melbourne colleague, who played a formative role in the Adelaide anti-war movement of the late 1960s, I have no idea of Alex' s position on that most divisive issue. But in general terms he was plainly a small ' l' liberal, a defender of individual rights, always vigilant to detect and denounce abuses of authority, as well as a democrat, and leading proponent of the system of departmental government by elected chairs rather than appointed professorial heads which the University of Adelaide adopted in 1974. This anti-authoritarian, populist stance stands out most clearly in my recollection of a remarkable episode at a December end-of-year meeting of the University' s Education Committee (the former Professorial Board and senior academic policy-making body). This occasion also marked the final public appearance of Vic Edgeloe, the University' s long-serving and strong-willed Registrar, who had just reached retirement age. But far from joining in the predictable formalities on such an occasion, Alex (as Past-President of the Staff Association and Head of the Law School) used the final ' Any Other Business' section of the agenda to closely question the hapless Mr Edgeloe. His cross-examination elicited the following facts: the University' s mail office, suspecting that a member of staff was sending out his private letters (and/or Christmas cards) in university envelopes, had apparently gone so far as to open one or more of these communications. While Mr Edgeloe took responsibility for the actions of his subordinates, he was obliged to express regret that they had occurred, and to admit that such interference with the mails was not only a gross infringement of individual privacy, but possibly a criminal offence for which he might personally incur justifiably heavy penalties. Such holding to account of the University' s chief administrative officer before its senior academic policy-making body, is of course utterly inconceivable under our present dispensation, and may well seem entirely incredible. But it happened. I must admit to having felt a little sorry for Vic Edgeloe on this occasion – not quite the emotion I would have expected in relation to that redoubtable figure; yet it was also clear that Alex' s action had upheld an important principle, as well as delivering a salutary lesson to those responsible for administering the university' s business. His readiness to take on such causes, to defend the principle of academic freedom, and the interests of academic staff, was doubtless one reason why Alex Castles served as an elected member of the University of Adelaide' s Council from 1976 until his retirement. Nor was his role as an activist, a man of affairs and public life limited to the campus, for in these years he also served on two major national bodies, the Australian Law Reform Commission from 1975 until 1981, and as a member of the committee appointed by the Fraser government to review the ABC from 1979-81. Besides these demanding public responsibilities, Alex was pursuing an increasingly active and productive life of research and scholarship as a legal historian. But while that is our main concern today, I think it is important to recognize that Alex Castles is and was a man of many parts, and interests – not by any means a cloistered or ivory-tower scholar, but a public intellectual.

### III ALEX CASTLES AND LEGAL HISTORY IN ADELAIDE

I don' t want to steal Bruce Kercher' s thunder (even if such a theft were possible). But while Bruce will speak with deep and specialist knowledge of Alex' s contribution to our understanding of Australia' s legal past, my aim is merely to provide a jumping-off point for his and other papers, by reconstructing in barest outline the development of Alex' s Adelaide-based but Australia-wide legal-historical canon or oeuvre. And in attempting to understand the trajectory of Alex' s work, that duality is crucial. Despite editing a celebratory centenary history of *Law at North Terrace*, [3] serving for two decades on the University' s Council, and following Norwood football club, Alex has always felt himself to be an import, not a native Croweater. Thus his loyalties are both fiercely personal and local on the one hand (to friends, students and departmental colleges), and national or indeed international on the other. Anything but a South Australian chauvinist, or exceptionalist, Alex has also tended to adopt an increasingly critical view of Australia' s third oldest university; as early as 1982 the preface to his *An Australian Legal History* acknowledged:

assistance received from a special Law School fund with money not provided by the University. Even before recent limits on funding the University seems to have been unable to provide Adelaide Law School with elements of secretarial support which seem to be regarded as normal in many tertiary institutions... [4]

Yet even while systematically deprived of its due sustenance by (to say no worse) an unsympathetic and science-dominated administration, Adelaide's Law School did provide Alex with a supportive environment in which to develop his numerous intellectual, pedagogical, and public interests.

By his own account Alex returned from Chicago determined to 'do Australian legal history'. His early Adelaide persona seems also to have been that of an international and constitutional lawyer; we find him enthusiastically reporting the imminent establishment of an international law centre within the Law School in the first (1960) volume of the *Adelaide Law Review*, [5] on which he served as junior Faculty adviser, while his early journal articles include a still-quoted 1962 discussion of limits on the autonomy of the Australian states. And even after the appearance of his pioneering monograph *An Introduction to Australian Legal History*, [6] Alex's next book was *Australia and the United Nations*, [7] a slim text reflecting a longstanding commitment to the ideals of the UN. This dates back at least to his internship in New York in 1958 – which must have been an incredibly busy year, even for Alex Castles – and was further reinforced by his visiting fellowship at UNITAR in 1970. The 1974 volume, like much of Alex's writing, began as a joint project, but was completed by Alex following the premature death of his collaborator. Published by Longman Australia, it seems to have been aimed at the upper secondary school market, as may also have been the case with its successor, *Australia; a Chronology and Fact Book*. [8] But the appearance next year of a *Source Book of Australian Legal History*, [9] jointly compiled with John Bennett, marks the beginning of an unbroken stream of legal-historical writings (if we may include *Law on North Terrace* under that heading). *An Australian Legal History* [10] was in every way a far more substantial publication than its slim 1971 predecessor; the preface informed readers that 'despite some similarities with the previous book in some places, this volume has been newly written throughout'. [11] The sesquicentenary of South Australia in 1986 provided the inspiration for another bulky volume, *Lawmakers and Wayward Whigs: Government and Law in South Australia* [12] co-authored with Michael Harris, a Law School colleague. At this time Alex and I were also involved in a collaborative project, somewhat grandiosely entitled the *Australian Legal Records Inventory*; its first working paper [13] announced an equally ambitious aim: 'to survey and record in summary form all surviving manuscript and non-current legal records generated in this country from the time of European settlement onwards'. In fact we never managed to break out across the Murray or over the Nullabor, but we did generate five slim if quite meaty volumes, now published as a uniform set, which range from the holdings of the Supreme Court to those of the Police Historical Association via the Department of Correctional Services, various Public Collections, and an interesting variety of Intermediate and Minor Courts. Although he cheerfully devoted much time and effort to the task, this minor exercise in archival scholarship was little more than a sideshow for Alex, who had been working for a good number of years on a comprehensive bibliography of printed materials relating to the history of Australian law. His annotated *Bibliography of Australian Legal History* [14] is a major work of scholarship by any reckoning, and fully justifies the compiler's prefatory comment, 'that rushing in to print is not always the preferable way of publishing'. [15] While the Australian Research Council and its predecessor bodies have tended to scorn bibliographical projects on the grounds that they do not generate original knowledge, an exception was rightly made for this project, the outcome of which will continue to be used and blessed as long as the printed book remains an object of scholarly attention. Having become increasingly disillusioned with the direction of events in the University of Adelaide over the previous decade, Alex took advantage of an opportunity at the end of 1994 to leave the university's employment after 36 years' service; he immediately took up a part-time teaching position at the Flinders University Law School, and has subsequently accepted invitations to fill similar academic posts both in Australia and overseas. His association with Adelaide continued, however, as both professor emeritus and member of the inaugural editorial board of the *Australian Journal of Legal History*; the first number of the *AJLH* appeared in 1995 with a dedication to Alex as 'one of the founders of the discipline of Australian legal history', and paid tribute to his supervision of the work of 'an incredible number of legal historians', as witnessed by the long list of unpublished theses on legal historical topics included in that volume. Later the same year Alex published the fruits of his near life-long fascination with a gruesome episode from 1930s Sydney gangland, to which he had been first introduced by a former Melbourne teacher and Adelaide colleague, Norval Ramsden Morris, 'criminologist and law teacher extraordinaire', as *The Shark Arm Murders: the thrilling true story of a Tiger Shark and a tattooed arm*. [16] That book completes, for the time being at least, and pending the appearance of his volume on Ned Kelly, the list of Alex's major book-length

publications; if I were to include all the journals and newspaper articles, as well as the radio and television broadcasts which will appear in the bibliography of his publications currently being compiled by Katherine Hutchins, we might easily be here all afternoon.

Since Diane Kirkby is going to focus on Alex' s writings from the historian' s viewpoint, and because I am neither an Australianist nor a legal historian, I won' t attempt to evaluate either their impact or achievement. But I should like to say a little more about the cultural and intellectual background from which they came. Suzanne Corcoran' s editorial note to the first number of the AJLH bears the heading: ' A New Journal in an Old Discipline' . Yet in truth legal history is a rather new discipline. No doubt its antecedents may be traced back to the eighteenth-century British Enlightenment, or the fifteenth-century Italian renaissance, and perhaps even much further, should we regard the Old Testament as a primary source for the Mosaic dispensation. But if from our present vantage point we look at legal history as an academic discipline, a subject for scholarly research and teaching distinct from the study and practice of law (which in the Anglo-Australian common law tradition has usually had a quasi-historical or perhaps pseudo-historical dimension), then it is possible to fix a quite precise and relatively recent starting point: 1888, the year of Frederic William Maitland' s inaugural lecture as Downing Professor at Cambridge University on ' Why the History of English Law has not been written' (as Maitland' s most distinguished successor, John Baker, recently pointed out in his own inaugural lecture of 1998). So when Alex Castles was born in 1933, the discipline of legal history, at least in the Anglo-American common-law world, was less than fifty years old.

Alex' s great achievement has been to extend that discipline to Australia. His own initial exposure to legal history at the University of Melbourne was – must have been – dominated by the writings of Maitland, or Pollock and Maitland, and Holdsworth, perhaps together with their Australian interpreter and transmitter, Sir Victor Windeyer. This experience underlies his prefatory comment to *An Introduction to Australian Legal History*:

Too often, in the past, our Universities have concentrated almost wholly upon English legal history without showing the relevance of this history to the past and present operation of law in this country. [\[17\]](#)

It was presumably his exposure to a different, less exclusively Anglophile tradition at the University of Chicago, and the work of colonial American legal historians like Charles Homer Haskins and Julius Goebel, which pointed Alex towards the possibility of writing a legal history of Australia, and thereby ' in some small way to work towards the development of an Australian identity, separate from the influences of the United Kingdom' . I quote from Janet McCalman' s marvellously evocative *Journeys: The Biography of a Middle Class Generation 1920-1990*, [\[18\]](#) where Alex appears in the thinly-disguised persona of ' Another outstandingly successful man from Scotch ... the only child of a crane driver, [who] rose to hold a university chair in law' .

From our present enlightened cultural nationalist vantage point all this may seem too easy, too obvious, to be worth making a fuss about. But we should neither underestimate the massive combined strength of Anglophilia and academic inertia in post-World War II Australia, nor overlook the density of archival and bibliographical scholarship which underwrites Alex' s vision of Australian legal history (just as Maitland' s new discipline depended on systematic exploitation of the plea rolls and year books, institutionalised in the Selden Society' s publications). And if it may be assumed that we have now broken decisively with the notion that Australian law and legal institutions were or are merely an Antipodean expression of their English common-law source, some care is called for lest we find that we have wholly abandoned the baby with the bath water. At Chicago, Harvard, Yale and other great American law schools, English legal history continues to be studied as a vital part of the common-law heritage, alongside the history of American law and legal institutions. While there is a burgeoning history of Australian law, as well as a history of English law, these two threads or stories are so intertwined as not to be altogether separate, or even wholly separable – as indeed my recent British Library encounter with Alex may suggest.

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[1] J M Bennett and A C Castles (eds), *Source Book of Australian Legal History: Source Materials from the Eighteenth to the Twentieth Century* (1979).

[2] A relic of Alex's primary school days is his abiding loyalty to the VFL's Hawthorn Football Club.

[3] A Castles, A L Ligertwood and P Kelly (eds), *Law on North Terrace* (1983).

[4] A Castles, *An Australian Legal History* (1982) Preface.

[5] C H Bright and A C Castles, 'A New School of International Law' (1960) 1 *Adel LR* 339-42.

[6] A Castles, *An Introduction to Australian Legal History* (1971).

[7] A Castles, *Australia and the United Nations* (1974).

[8] A Castles (ed), *Australia: A Chronology and Fact Book 1606-1976* (1978).

[9] A Castles, above n 1.

[10] A Castles, above n 4.

[11] *Ibid* iii.

[12] A Castles and M C Harris, *Lawmakers and Wayward Whigs: Government and Law in South Australia 1836-1986* (1987).

[13] R Foster, A Castles and W Prest, *The Supreme Court of South Australia*, ALRI Working Paper No 1, Adelaide, 1988.

[14] A Castles, *Bibliography of Australian Legal History* (1994).

[15] *Ibid* viii.

[16] A Castles, *The Shark Arm Murders: the thrilling true story of a tiger Shark and a tattooed arm* (1995). 'Author's Note' ... Norval Ramsden Morris, 'criminologist and law teacher extraordinaire', as *The Shark Arm Murders: the thrilling true story of a Tiger Shark and a tattooed arm*.

[17] Castles, above n 4, v.

[18] J McCalman, *Journeyings: The Biography of a Middle Class Generation 1920-1990* (1993) 269.