

AN AUSTRALIAN IN ENGLAND

James Crawford arrived in Cambridge in the autumn of 1992, with the internet and globalisation, to take up the position of Whewell Chair of International Law and a Fellowship at Jesus College. I had come to know him five years earlier, at the 1987 meeting of the Institut de Droit International in Cairo, when he engaged actively with the secretariat on which I served. He was a razor-sharp and open Australian, direct, engaged and humorous.

For twenty-one years James's academic work has centred on the law faculty in Cambridge. This second life has included three years as Chair and two stints as Director of the Lauterpacht Research Centre for International Law (characterised by long hours spent in an office that is now on the first floor, regular visits to the kitchen and library on the ground floor and a work ethic so 'punishing' that the word does not begin to do justice to his personal style).

The Cambridge years have spanned both undergraduate and LLM teaching, across a range of international law subjects, and also embracing a remarkable *fifty-seven* doctoral students (not a typographical error). The engagement with the classroom reflects an undying commitment to the power of nurture and encouragement, irrespective of creed or culture or politics. The body of protégés crosses all these barriers, although it must be said that young Australians interested in international law are attracted to him like bees to honey (does any country today have more international lawyers per capita, or a greater proportion of its GNP devoted to international legal scholarship and other services?). Many of James's pupils have entered academic life across the UK and Australia and beyond, allowing the Crawford effect – international law as an 'open system', as he likes to put it, that is real and modern – to spread well beyond the Fens. His impact at Cambridge is hard to overstate: international law was already a central part of the life of the law faculty, but somehow it has expanded even further, a thriving part of the life of the faculty. The

classroom credo is not revolutionary transformation, but incremental change over time and subject area. The teaching style – understated and humorous, with a touch of irreverence and a recognition of the limits of the subject in the real world of power and politics – has been widely attractive. I am yet to meet a single person anywhere in the world who has complained about James as a teacher.

Over these two decades James has also managed to complete the odd book or ten, along with innumerable articles and publications the citation of which would exhaust my permitted word limit. The standouts surely include the second edition of *The Creation of States in International Law* (which appeared in 2006), and the eighth edition of *Brownlie's Principles of International Law* (in 2012), a minor miracle produced with a small orchestra of willing and able assistants, to whom credit is offered in full. The book offers longevity to the work's originator (and James's teacher), whilst maintaining its characteristic ethos.

Elsewhere, the Crawford world of international law has expanded to encompass water, people, rights, courts, investments and responsibility (a recurring theme), amongst many other subjects. It has also touched, on occasion, the realm of theory, although James will be the first to recognise that the world of practice and process offers particular attractions. This is reflected in the general course on international law offered at The Hague Academy in the summer of 2013, *The Course of International Law*. It was a characteristic feature of his industry that he was able to hand over the entire manuscript at the end of his final lecture, notwithstanding his concurrent role as senior counsel for Australia, arguing against Japan's 'scientific whaling' in the Antarctic.

James's arrival in Cambridge coincided with his election to the International Law Commission, and summers in Geneva. This was no sinecure. The Commission had spent five decades working on two subjects of keen importance and growing interest – the idea of a statute for an international criminal court, and a set of articles on State responsibility – and there was little prospect of an end in sight when James arrived. He brought his special forensic and diplomatic skills to bear on what might have seemed a fruitless task, and a unique ability to create a sense of collegiality and common purpose. He served as Rapporteur on these efforts, bringing both to completion to a standard and quality that ensured the product would find traction in the practical world. The draft articles on an international criminal court paved the way for the creation of the International Criminal Court, just four years later; the draft articles on State responsibility are probably amongst the most cited texts in modern international law

(assisted by a commentary of crisp and concise prose that is characteristic of James's style).

Such contributions as those already touched upon might be thought to be sufficient for most living souls, but not for James. The Cambridge years have somehow allowed time to engage in the odd case, prepare an occasional advice or opinion, and sit as arbitrator and judge. In 2000 he was a founder member of Matrix Chambers, and has contributed to the life of the international and English bar as international law increasingly permeates domestic and European law.

There have been cases in Hamburg, Washington, Paris and Istanbul, not to mention the second home that is The Hague. There have been more than two score cases at the International Court of Justice alone (James is not a 'numbers' person and would object strongly to the totting up), and dozens in other places. It might be said that James has been midwife for the transformation of the international justice system. His unique ability to get to the nub of the central legal issue in any case, and to roll up his sleeves and immerse himself in the muck of facts, makes him the principal public international lawyer of our age. To international litigation he has brought a distinct style of advocacy – referred to by some as 'the Australian way' – that is direct, subtle and fearsome. In one hand a surgeon's knife, in the other a sledgehammer. The arguments are relevant, efficient and humorous.

This was encapsulated for many in an early effort, made on behalf of a group of four Pacific island countries, when he sought to persuade a somewhat sceptical bench that the use of nuclear weapons was unlawful in all circumstances. There's a difference between deterrence and the actual threat to use weapons to achieve one's ends, he told the Court, adopting an approach that surprised some. 'Mr President', he said boldly, looking straight in the eye at the diminutive, older gentleman who sat before him, 'I may be big enough and strong enough to hurt you, if you punch me in the nose . . . but I am not threatening you, not in the event that you do not punch me on the nose – it is simply a fact.' The look on the judge's face – was it awe, or incomprehension? – remains embedded in the memory of many who were present.

He has served as arbitrator and judge, displaying fearsome independence and collegiality in the struggle for consensus. Occasionally this might generate a sense of frustration on the part of the party that appointed him, yet it will be overcome by the knowledge that his presence on the tribunal invariably leads to a judgment or award that ticks the quality boxes. It might be said that he is generous in the extreme as to

the assumptions about the uses (and abuses) to which a decision might be put (yes, dear James, many *still* find it hard to swallow aspects of the decision of the annulment committee in *CMS Gas Transmission Company v. Argentine Republic*).

James likes litigation, and litigation likes him. He's a natural and highly effective, even after a twenty-four-hour flight (who else would take in trips to Europe, South America and Australia in *a single week*, and then be willing and able to appear in an international court?). To be gently savaged by him in the course of a hearing is a badge of honour, a pleasurable rite of passage. As many have learnt, to seek to savage in return, and to do it well (or even not), invariably catalyses a generous and warm word of appreciation after the hearing, a pat on the shoulder and perhaps an invitation for a beer.

James's arrival in Britain coincided with a transformation in the international law scene in his adoptive country. International law came into the mainstream of legal life in the United Kingdom (a country the future make-up of which he may have contributed to by the opinion he prepared on Scottish independence, following on from his work in relation to Quebec and Canada), and to a significant extent its political life too. Cause or effect? It will always be difficult to know, and James would never seek to overstate (or even state) his influence. But many others have recognised his impact. That he put his name and weight to a March 2003 letter to the then British prime minister, warning him of the illegality of using force in Iraq without an explicit Security Council Resolution, undoubtedly added to its authority and effect. It reflected a characteristic willingness to do the right thing, to jump out of the ivory tower and get his hands dirty with the great issues of the day. As so often, his leadership made it easier for others to join. The same may be said of his efforts in challenging the Bush administration on its legal policies in the aftermath of 9/11. 'The American Society of International What?', he asked, sitting on a panel in Washington, with a great grin on his face, when it was put to him that the Society should avoid becoming embroiled in such delicate matters. Less than a decade later the society honoured him with the prestigious Manley Hudson Medal, one of the growing number of prizes and honours that reflect the reach of his ideas and imprint.

What are the qualities that have informed this global recognition? They have rightly catalysed the respect of legal rags, for which he would have little regard, which refer (no doubt to his considerable embarrassment) to his 'profound influence on the development of international law' and to the observable facts that public international law 'forms part of his

DNA' and that he is 'the most brilliant performer of his generation'. The intellectual qualities are widely noted, but there is something else. It's a personal style and human qualities that are brought to bear across the range of his activities, both academic and professional. There is, for a start, a generosity of spirit and humility that stands out in a world often marked by self-importance. There is the openness to ideas, even if they are not ones to which he is himself attached, and irrespective of their individual provenance. It is the substance that matters, not the messenger. These are disarming qualities that allow the force of the intellectual arguments to extend their reach, cutting through political and cultural opposition. There is, too, a driving belief in the rule of law and its reach, a commitment to the system of international law *for all*, individuals, associations, corporations and States.

'Why does he take on so much?' is a frequent question. Because he loves it and because he cares, is the only possible answer. The personal characteristics inspire a sense of affection and collegiality that allows things to get done, results to be achieved, sacred cows to be destroyed. It is true too that beyond the love of international law – and the encyclopaedic store of information – there is an understanding that there is more to life (a point more often appreciated perhaps in the lives of others), that the law has its limits and that one should be sanguine about the prospects and possibilities of one's own actions or impact.

There is too a particular sense of humour, invariably attached to words and language. The emails are short and to the point, and often generate a laugh. A personal favourite amongst the numerous 4.00 a.m. emails relates to proceedings that Bangladesh brought against India and Myanmar, on the delimitation of the Bay of Bengal. Bangladesh opted for two separate cases: one, against Myanmar, went to the International Tribunal for the Law of the Sea (and on which sat the Indian judge P. C. Rao) and the other, against India, went to an Annex VII arbitration tribunal. The day after India appointed as arbitrator its former legal adviser P. S. Rao, James sent a short email, the subject header of which said: *Two Raos, One Dispute*.

Nothing really goes to the head. A tad more stretched, he is as generous and open as the day he arrived in Cambridge, as committed to making things right, as kindly irreverent and unwilling as ever to defer to sacred cows. There is, finally and forever, that commitment to his Australian roots (and passport). This has not been without its cost, namely hundreds of additional hours forced to stand in line waiting to get through the non-EU immigration lines at European airports. This price he has willingly paid to open the door to (an even fuller) life in The Hague (Tom Bingham once

told me that he saw no reason why an Australian – well, this Australian – might not succeed the former British judge at the court). It is fitting that he reaches the likely end of this stage of his career – a second grown-up life – in the year that Australia retained the cricket Ashes with a crushing – nay, humiliating – victory against England, and in which he was made Companion of the Order of Australia in the Australian Queen's Birthday Honours List.

James's arrival in England made life different for a great many people, myself included. He was, I believe, the first non-UK national to take up the Whewell Chair, a sign of changing times, encouraging new areas to explore and a new style to apply. In the first case on which we worked together, two decades ago, as team leader he encouraged all in the room to express their views, on facts and law, even to challenge his views, dispensing with any vestige of formal hierarchy in the team. Of course, he told us, at the end of the day it would be for him to decide what advice to give the government client, but to be able to do so he wanted to hear from all what their ideas were. It was not a style I was used to, as a junior academic, or at the English bar. James has brought to us the qualities of openness and listening. Deference to the existing order, to following patterns of behaviour simply because that is how things have always been done, was to be cast aside unless justifiable on their merits. For that, for the humour, for the generosity and for the sheer power of the intellect we have reason to be very grateful that this Australian came to England.

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