
Obituary

DR DES O'CONNOR BA LLB LLM PHD, READER IN LAW (1922-2008)

Dr Desmond O'Connor passed away in February 2008, a few days before his 87th birthday. He was a gentleman, a wit and a scholar, and the founding editor of the *Criminal Law Journal*. He was one of the longest serving members of the Law Faculty at the Australian National University (ANU). When hearing of his passing, Justice Michael Kirby said to me: "I honour him. I worked closely with him in the first decade of the *Criminal Law Journal*, three decades ago. He was quirky, brilliant and set high standards."

Des made an enormous contribution to criminal law scholarship. He had a strong interest in philosophy, and especially the philosophy of mind. This suited and in some ways defined the golden years of his academic life, with its intense and abstract preoccupation with the subtle nuances of mental state words such as "intention", "foresight" or "volition". He was also a very sound common lawyer and had a strong interest in all the main areas of law, civil and criminal. He was very knowledgeable about the history of the common law. At his core, he was a very practical man, which drew him to criminal jurisprudence and served him well during his years as a Special Magistrate. In the Preface to the first edition, in February 1977, he wrote:

In every country there seems to have been an upsurge in interest in the criminal law over the past two decades. The interest has sometimes shown itself in complaints against the adequacy of the criminal law and the courts to control what is often described as a threatening increase in the amount of crime ... With the launching of this new journal it is hoped that some of the critical issues for Australian criminal law can be systematically discussed and debated. Lawyers concerned with every aspect of the criminal law are invited to contribute material to the journal in the form of articles and case note commentaries so that as wide a possible range of current law questions can be raised in its pages.

Des was General Editor for the first 12 volumes. In 1989, Peter Byrne took over for volume 13 and in 1990, Stanley Yeo and Stephen Odgers took over for volume 14. The strong editorial board attracted some of the best writers in criminal law and helped to establish criminal law as an area of serious scholarship. The Journal rapidly established itself as one of the foremost criminal law journals in the common law world. Des wrote most of the editorials, many of the case notes, and some of the articles and book reviews.

He had a strong and distinguished editorial board consisting of Dr GP Barton, Ian Leader-Elliott, Justice Fox of the Federal Court, Professor Richard Harding, Justice Michael Kirby, then Chairman of the Australian Law Reform Commission, and Ray W Whitrod, former Queensland Police Commission.

It is perhaps not surprising that the Journal was Canberra-based, where criminal law scholarship was especially strong at the ANU in the 70s. The criminal law team (as I recall) consisted of Des, Fiori Rinaldi, Peter Waight, Helen Gamble, and Charles Rowland. Peter's approach was moulded by experience as a prosecutor, Fiori taught criminal law with a philosopher's acumen, and Des offered the defence perspective. That was how law students saw it. Whether the reality matched perception I cannot say, and, although each stream was distinctive, students sat a common criminal law examination. This strong collaboration continued with the Journal. Fiori was Case Note Editor, and of course also edited the Australian Criminal Reports. Helen Gamble and Peter Waight served as Assistant Editors, ably supported by Charles Rowland on book reviews. By 1985, the number of assistant editors expanded to include Matthew Goode from South Australia and Mark Weinberg from Victoria.

After his retirement from the ANU, Des continued teaching, at the University of Newcastle and at the College of Law. In truth, he never retired from teaching and scholarship. In the last week of his life he was teaching at the University of the Third Age.

Although Des and I worked closely through the years, I never attended his lectures. They were, however, worth going to. Thieves, perverts, bashers and drunks, interred in the law reports, sprang to life in his lectures. And although criminal law can be just downright depressing, somehow he made it

uplifting. He saw the broader constitutional issues, the need for balance. He was a forgiving and insightful soul. It came from within and was always part of him. And he had that mischievous streak, for which the Irish are well known. This was well developed even in tender years. His brother John O'Connor gave a moving eulogy at St Mary's Church at North Sydney where Des was farewelled on 25 February 2008. I hope he and Des forgive me sharing it, but it illustrates what we loved about him.

When Desmond was seven he gave a clear indication that he was not overawed by those in positions of authority or by their uniforms or other trappings of office. No doubt this aspect of his temperament was invaluable later in life when at the Bar, he had to deal with bewigged judges on the bench and benighted policemen in the witness box.

As I was saying, he was seven and attending a convent school where our two older sisters, Betty and Rosemary had already established formidable reputations for academic achievement and exemplary behaviour. Consequently, much was expected of him. On this occasion, he was being admonished by a nun for some trivial breach of one of the many regulations then in force in such institutions. Imagine her towering over him, her head shrouded by a black veil, her stern face in the clutches of her wimple. Her black habit reaching to her toes. Directly in his line of sight, a broad black belt in which she toted a long barrel crucifix positioned for a lightning fast draw should evil appear in any form including that of a recalcitrant small boy. According to the nun's official report, when she had finished chastising him, he looked up at her with an angelic smile and said, "Come to my arms, you bundle of charms, and stick to my lips like chewy".

My personal debt to Des O'Connor is very great. But for his interest in my thesis topic, I may have languished in 1978 in the dreariness of a coursework Masters program in Phillip Street, rather than enjoying the beauty of Lake Burley Griffin on a wintry morning, with the freedom to roam where my thesis took me. He supported my candidature for postgraduate studies at ANU. Shortly after I arrived in Canberra, he left for London, his second home, where he spent a lot of time. All of his children were either born there or spent a significant part of their childhoods there. There he obtained his Master of Laws degree and his doctorate, of which he was justifiably proud. Few claimed the distinction of a doctorate in law in those days. For me, he was supervisor in absentia, but I never minded because he allowed me to use his comfortable ANU office for 12 months and I developed a taste for academia and a closet love for the national capital. Later we collaborated on a book on criminal law, a combination of his lecture notes and my thesis. Des and I worked on that book through three decades and three editions. My fondest memory is the week he spent at my house on the Gold Coast as we finalised the third edition in 1995. Des had long since retired but he continued to curb my rhetorical flourishes and gently correct my English. He was always kind, with eyes a-twinkle. (He would never have let that word or sentence through!) But for Des I may never have entered academe, or written anything worthwhile on the law. For many of us, his life personified all that is great and good about a life in the law, especially for those of us privileged to influence young minds. *Vale*, friend!

*Professor Paul Ames Fairall
Foundation Dean at the School of Law at the University of South Australia, and the author (with
Dr Desmond O'Connor) of Criminal Defence (3rd edition, Butterworths, Sydney, 1996).*