TANULMÁNYOK

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REFLECTIONS ON THE FOUNDING OF THE UNIVERSITY OF MELBOURNE'S LAW SCHOOL

This study attempts to survey certain aspects of the founding of the University of Melbourne and its law school in the British Crown Colony of Victoria (the present-day Australian State of Victoria). This includes looking at the historical background and impetus behind the establishment of these institutions. Furthermore, the paper has a certain migration studies aspect, specifically discussing the important role of certain Irish Protestants in the early history of Victoria's legal profession, the University of Melbourne and its law school.

Keywords: Colony of Victoria, Irish Protestant migration to Australia, legal profession and training, Melbourne Law School, University of Melbourne

A tanulmány a Victoria brit koronagyarmaton (Ausztrália mai Victoria államában) tevékenykedő Melbourne-i Egyetem és annak jogi kara megalapítása egyes fontos aspektusait igyekszik áttekinteni. Vizsgálja az intézmények létrehozásának történelmi hátterét és folyamatát. Az írásnak a migrációkutatás vonatkozásában is van bizonyos jelentősége, amikor kiemeli egyes ír protestáns személyiségek fontos szerepét Victoria állam jogi hivatásrendjeinek korai történetében, valamint a Melbourne-i Egyetem és jogi kara sorsának alakulásában.

Kulcsszavak: Victoria gyarmat, ír protestáns migráció Ausztráliába, jogi szakmák és oktatás, Melbourne-i Egyetem, jogi kar Melbourne-ben

Introduction

One fundamental element of British settlement in Australia was the transplantation of a whole legal system to that land, which also included a legal profession. One institution that came into being for the purpose of training its members was Victoria's University of Melbourne Law School, which created the first ever law course in Australia in 1857.[1] Since that time both the University of Melbourne and its law school have grown in stature and reputation, the former now being ranked as Australia's leading university and the latter being ranked in the top 10 law schools in the world.[2] Here there shall be a short study of certain aspects of Melbourne University and its law school's early years, including an overview of the background to their founding. It shall also be seen that in its formative years there was an important Irish Protestant element at the University and the legal profession of Victoria more generally.

Historical Background and Foundation of the University of Melbourne

With the coming of British settlement to the Australian continent from the late eighteenth century onwards came the transplantation of a whole new civilization to that land which had been inhabited by its indigenous population for around 65,000 years.[3] The British had not been the first Europeans to make contact with the territory, the first documented instance being when the Dutch explorer Willem Janszoon landed at the Cape York Peninsula in 1606.[4] (In fact the continent was initially known to Europeans as New Holland, after the various Dutch explorations of the continent.[5]) However, it was ultimately the British that come to possess the territory, making their first settlement at present-day Sydney in 1788.[6] Here it should also be remembered that the present-day Commonwealth of Australia, brought into being in 1901, is a federation of what were originally 6 British colonies previously established in different

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[1] "Establishment", *Melbourne Law School,* https://law.unimelb.edu.au/about/history/establishment-of-mls#:~:text=In%201857%20the%20University%20of,established%20Australia's%20first%20 law%20course, accessed 30.09.2024.

[2] "Rankings", *Melbourne Law School,* https://law.unimelb.edu.au/about/at-a-glance/rankings, accessed 30.09.2024.

[3] "Evidence of first peoples", *National Museum Australia,* https://www.nma.gov.au/defining-moments/ resources/evidence-of-first-peoples, accessed 30.09.2024.

[4] "Who was the first European to land on 'Terra Australis'", *National Library of Australia,* https://www. nla.gov.au/faq/who-was-the-first-european-to-land-on-australia, accessed 30.09.2024.

[5] "Where did the name 'Australia' come from?", *National Library of Australia,* https://www.nla.gov. au/faq/how-was-australia-named#:~:text=It%20was%20the%20English%20explorer,National%20 Library%20holds%20a%20reproduction. accessed 30.09.2024.

[6] "Exile or opportunity?", *National Museum Australia,* https://digital-classroom.nma.gov.au/defining-moments/first-fleet-arrives-sydney-cove, accessed 30.09.2024.

parts of the Australian continent.[7] Among these was the Crown Colony of Victoria (the present-day State of Victoria) with its capital of Melbourne, which shall be the focus of this study.

European settlement began in the territory in the 1830s, with the area of Melbourne being settled in 1835, led by the Port Philip Association.[8] This was a group of Tasmanian graziers led by John Batman, who landed with his ship the *Rebecca* on 2 June 1835 in what is now the present-day Melbourne suburb of Williamstown.[9] Other settlers followed and eventually an official system of governance was created there under the authority of the Governor of New South Wales.[10] In November 1850 Queen Victoria assented to the area's separation from New South Wales, becoming the Colony of Victoria, which formally occurred on July 1 1851.[11] The colony's capital of Melbourne developed rapidly, experiencing massive population growth, expanding from 77,000 to 540,000 inhabitants in just ten years beginning from 1851.[12] This coincided with the gold rush at that time, the metal having been discovered in the colony, leading to an influx of fortune seekers coming in from all over the world.[13] To illustrate this, in 1852 more tickets were bought to travel to Melbourne by immigrants from the UK than for any other location.[14] The gold rush brought great wealth to the colony, leaving its mark particularly with the grand buildings that inhabit the city of Melbourne.[15] By the 1880s, it even attained the status of the British Empire's second largest city, being known as "Marvellous Melbourne".[16]

It was in this broader context that the University of Melbourne came into being, the gold rush providing the wealth for such a development.[17] Its creation signified the importance that the Colony of Victoria had achieved, with the prospering community seeking to raise its cultural and moral standards through the establishment of such an

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[7] "The Federation of Australia", *Parliamentary Education Office,* https://peo.gov.au/understand-our-parliament/history-of-parliament/federation/the-federation-of-australia, accessed 30.09.2024.

[8] Geoffrey Blainey, *A History of Victoria* (Melbourne: Cambridge University Press, 2006), 19.

[9] Marc Fiddian, *In the King's Name: A History of Williamstown* (Williamstown: Williamstown News, 2013), 8.

[10] Ibid, 8.

[11] "The Separation of Victoria – A Brief History", *Governor of Victoria,* https://www.governor.vic.gov.au/all-news/separation-victoria-brief-history, accessed 30.09.2024.

[12] "Gold Rush Melbourne", *Old Treasury,* https://www.oldtreasurybuilding.org.au/the-gold-vaults/gold-rush-melbourne/, accessed 30.09.2024.

[13] "Gold rushes", *National Museum Australia,* https://www.nma.gov.au/defining-moments/resources/gold-rushes, accessed 30.09.2024.

[14] "Marvellous Melbourne", *Melbourne Museum,* https://museumsvictoria.com.au/melbournemuseum/resources/marvellous-melbourne/, accessed 30.09.2024.

[15] Ibid.

[16] "Melbourne panorama", *National Museum Australia,* https://www.nma.gov.au/explore/collection/highlights/melbourne-panorama, accessed 30.09.2024.

[17] Cate Elkner, "University of Melbourne", *eGold,* https://www.egold.net.au/biogs/EG00073b.htm, accessed 30.09.2024.

institution.[18] The impetus for its creation came from Melbourne's professional class.[19] There was also a degree of competition in the move, as Sydney had already established a university, and so there was a desire that Melbourne should also possess a similar institution.[20] Subsequently, on January 22 1853 the bill establishing the University of Melbourne was given royal assent.[21] Sir Redmond Barry, a figure that will discussed below, in his inaugural address as the first Chancellor of the University of Melbourne stated that the institution wished *"to promote sound learning in the colony of Victoria"* and that it was *"'open to all classes of Her Majesty's subjects', who are freely invited to enter"*.[22] Initially, only an Arts degree was offered at the University.[23] Teaching at the new institution began in 1855, however the number of students was quite low.[24]

Establishment of the Melbourne Law School

During the early years of the Colony of Victoria its inhabitants were already noted for their penchant for utilizing the law, with one commentator referring to the colony in 1863 as "our litigious state".[25] A number of lawyers moved there from England and Ireland, particularly in the first half of the 1850s.[26] Here it is also worth noting the important role played by a member of the legal profession, Joseph Tice Gellibrand, during the earliest phase of European settlement in the territory. Gellibrand had practiced as a lawyer in England and was appointed Attorney-General of Van Diemen's Land (present-day Tasmania) in 1823.[27] However, he had a difficult relationship with Lieutenant-Governor George Arthur and lost his position in 1826.[28] He later played an important role in the Port Philip Association in the 1830s, which, as already mentioned, pioneered European settlement in what is now present-day of Victoria.[29]

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[18] Ibid.

[19] Stuart MacIntyre and R.J.W Selleck, *A Short History of the University of Melbourne* (Melbourne: Melbourne University Press, 2003), 1.

[20] Ibid, 1.

[21] "Key 1: The University Act and Royal Assent 1853", *Archives and Special Collections*, https://library.unimelb.edu.au/asc/collections/archives/resources/research-guides/keys-to-the-past/keys/key-1, accessed 30.09.2024.

[22] Ann Galbally, *Redmond Barry: An Anglo-Irish Australian* (Melbourne: Melbourne University Press, 1995), 91.

[23] MacIntyre and Selleck, *A Short History of the University of Melbourne,* 3.

[24] Ernest Scott, *A History of The University of Melbourne* (Melbourne: Melbourne University Press, 1936), 39.

[25] Ruth Campbell, *A History of the Melbourne Law School 1857 to 1973* (Melbourne: Faculty of Law, University of Melbourne, 1977), 1-2.

[26] Ibid., 1-2.

[27] P. C. James, "Joseph Tice Gellibrand (1792-1837)", in *Australian Dictionary of Biography,* https://adb.anu.edu.au/biography/gellibrand-joseph-tice-2088, accessed 30.09.2024.

[28] Thomas James Rogers, *The Civilisation of Port Philip: Settler Ideology, violence, and rhetorical possession* (Melbourne: Melbourne University Press, 2018), 44.

[29] Ibid., 44.

The Port Philip Association had been formed in 1835 in Hobart and aimed to settle the area.[30] It negotiated a treaty with the indigenous inhabitants of the territory with the legal advice of Gellibrand, however the British government did not recognise it.[31] He would later disappear while on an exploratory expedition in 1837.[32] His memory is preserved in the name of Point Gellibrand in the Melbourne suburb of Williamstown.[33]

As mentioned above, the first years of the University of Melbourne's existence was characterized by low student numbers. It was in this context that it was felt that the teaching of law could help to increase the number of students at the young institution.[34] Thus, the University's Chancellor Sir Redmond Barry established the University's law course, which was in fact the first course of legal education in the country.[35] With this move the number of students enrolled at the University more than doubled.[36] An important defining characteristic of the Melbourne Law School was what may be termed "diploma privilege", with graduates from the very beginning being exempted from the Supreme Court of Victoria's exams for entry into the Victorian legal profession.[37] It should be noted here that at the time of the founding of Melbourne Law School, the majority of common-law lawyers had not attended university, with the rules of admission generally not requiring a university education.[38] Eventually, Victoria became one of the first common law jurisdictions in the world requiring university training in order to qualify as a lawyer.[39]

Irish Protestant Connection

Though the early history of the Crown Colony of Victoria encompassed migration from all the various peoples of the British Isles, regarding the legal profession of that area and the founding of the University of Melbourne and its law school more specifically, the Irish Protestant element played a particularly important role. The impact of Irish immigration to Australia has always been of great importance to that country, and until 1914 the Irish and their descendants formed between 20 and 30 percent of the Australian population.[40] These immigrants were overwhelming Catholics,

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[30] James Boyce, *Van Dieman's Land* (Melbourne: Black Inc., 2008), 245.

[31] Ibid., 245.

[32] James, "Jospeh Tice Gellibrand (1792-1837)".

[33] Fiddian, *In the King's Name,* 14.

[34] Campbell, *A History of the Melbourne Law School,* 2.

[35] "Establishment", *Melbourne Law School.*

[36] John Waugh, *First Principles: The Melbourne Law School 1857-2007* (Melbourne: The Miegunzah, 2007), 7.

[37] Ibid., x, 7.

[38] Ibid., 1.

[39] "Establishment", *Melbourne Law School.*

[40] "Irish in Australia background", *National Museum Australia,* https://www.nma.gov.au/exhibitions/not-just-ned/background, accessed 30.09.2024.

with Protestants composing only a small percentage of Irish immigrants to Australia and in the population as a whole in the nineteenth century.[41] However, despite this they played an important role in the nation's development.[42]

Regarding the legal profession specifically, a large number of Irish lawyers immigrated to the Australian colonies, establishing their careers there and in a number of cases attaining the highest judicial offices.[43] The early Melbourne Bar had a prominent Irish element, and except for a period of 5 years, during the first eighty years the Chief Justices of Victoria were Irish.[44] In order to illustrate this influence within the colonial Victorian legal profession, it is worth quoting one of Melbourne's founding fathers and early pioneers, John Pascoe Fawkner, who wrote in 1865 that *"No court. St Patrick's day. Irish tastes rule here – Irish judges, Irish Attorney-general, Irish barristers, Irish clerks of Court…and Irish Holy days"*.[45] It is also worth remembering that the building of Victorian Supreme Court was modelled on Dublin's Four Courts, which, it has been noted, acts as a suitable memorial to the important role of the various Dublin gentlemen in the judiciary of the Colony of Victoria.[46]

One prominent example of this influence both in the legal profession and politics of Victoria, but also in the development of Melbourne University, was the figure of Sir William Stawell, who was born in Ireland in 1815 into an Anglo-Irish Protestant family.[47] A graduate of Trinity College Dublin and a barrister, he moved to the then Port Philip District and was admitted to the Bar there in 1843.[48] He served both as Victoria's first Attorney-General and second Chief Justice of the Supreme Court, and was one of the founding members of the University of Melbourne's Council, even briefly serving as its Chancellor from 1881 into 1882.[49] Another major Irish Protestant figure in colonial Victoria was the Dublin-born George Higinbotham, also a graduate of Trinity College Dublin, being trained as a barrister at Lincoln's Inn, later moving

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[41] Richard Brown, "Australia and Irish settlement: after the Famine", *History Zone,* https://richardjohnbr. wordpress.com/2015/02/19/australia-and-irish-settlement-after-the-famine/, accessed 30.09.2024.

[42] Ibid.

[43] Stefan Petrow, "Foreword", in John Kennedy McLaughlin, *The Immigration of Irish Lawyers to Australia in the Nineteenth Century* (Federation Press, 2024), v, https://federationpress.com.au/wp-content/uploads/2024/02/McLaughlin-Irish-Lawyers-Foreword-for-Website.pdf, accessed 30.09.2024.

[44] Galbally, *Redmond Barry,* 135.

[45] Petrow, "Foreword", vi.

[46] "Supreme Court Library", in *Victorian Heritage Database,* http://vhd.heritage.vic.gov.au/search/nat-trust_result_detail/65872, accessed 30.09.2024; "Victorian Courts", *The Prosecution Project,* https://prosecutionproject.griffith.edu.au/other-resources/victorian-courts/#:~:text=The%20current%20Supreme%20Court%20building,have%20been%20collected%20since%201854, accessed 30.09.2024.

[47] "Stawell, William F.", *University of Melbourne Archives,* https://archives.library.unimelb.edu.au/nodes/view/61131, accessed 30.09.2024.

[48] Charles Francis, "Sir William Foster Stawell (1815-1889)", in *Australian Dictionary of Biography,* https://adb.anu.edu.au/biography/stawell-sir-william-foster-4635, accessed 30.09.2024.

[49] Ibid.; "Stawell, William Foster (1815-1889)", in *The University of Melbourne Perpetual Calendar,* https://umpc.esrc.unimelb.edu.au/biogs/E000005b.htm, accessed 30.09.2024.

to Melbourne, where he practiced at the Bar.[50] He later served as Attorney-General of Victoria and then as the Chief Justice of the Supreme Court of Victoria.[51]

Bronze statue of George Higinbotham outside the Old Treasury Building, Melbourne

Arguably the most notable representative of the Protestant Anglo-Irish element in early Melbourne was Sir Redmond Barry, the County Cork-born Trinity College Dublin graduate and barrister already mentioned above.[52] He arrived in Victoria in 1839, and eventually became a judge of the Victorian Supreme Court, and was also a major figure in Melbourne society, supporting many causes and projects, including being the main figure in the establishment of the Melbourne Public Library (which later became the State Library of Victoria).[53] Regarding the University itself, he was
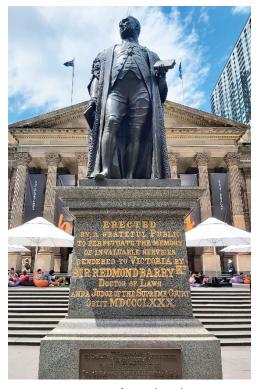
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[50] Gwyneth Dow, "George Higinbotham (1826-1892)", in Australian Dictionary of Biography, https://adb.anu.edu.au/biography/higinbotham-george-3766#:~:text=George%20Higinbotham%20(1826%2D1892),1849%3B%20M.A.%2C%201853, accessed 30.09.2024.

[51] Ibid.

[52] Charles Manning Hope Clark, *A History of Australia, IV: The Earth Abideth for Ever 1851-1888* (Melbourne: Melbourne University Press, 1982), 89.

[53] Clark, *A History of Australia*, 89; Peter Ryan, "Sir Redmond Barry (1813-1880)", in *Australian Dictionary of Biography,* https://adb.anu.edu.au/biography/barry-sir-redmond-2946, accessed 30.09.2024.

elected its first Chancellor in April 1853,[54] and has been described as the "prime founder" of that institution.[55] Additionally, as already mentioned above, it was he who established the law course at Melbourne University.[56]

Bronze statue of Sir Redmond Barry
in front of the State Library of Victoria, Melbourne

Relating more specifically to this Irish influence in the early Melbourne Law School, mention must be made here to William Hearn, another Trinity College Dublin-educated Protestant Irishman.[57] A classicist and barrister, he had been a professor of Greek at Queen's College, Galway, and then was chosen as one of the four original professors of the University of Melbourne.[58] A remarkable polymath who lectured at the University in variety of areas such as classics and history (in addition to being a member of the Victorian Parliament for a time), he was appointed the first Dean of the

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[54] Clark, *A History of Australia,* 89.
[55] Ryan, "Sir Redmond Barry (1813-1880)".
[56] "Establishment", *Melbourne Law School.*
[57] Waugh, *First Principles,* 30.
[58] J. A. La Nauze, "William Edward Hearn (1826-1888)", *Australian Dictionary of Biography,* https://adb.anu.edu.au/biography/hearn-william-edward-3743, accessed 30.09.2024.

Melbourne Faculty of Law, where he lectured on such topics as constitutional law and jurisprudence.[59] His lectures, with their wide breadth of learning, were very popular with the students.[60] Here it is also worth mentioning that one of Hearn's objectives during the course of his career was to codify the law of Victoria.[61] As a member of the Victorian Parliament's Upper House, he introduced three bills which sought to codify laws regarding individual duties, obligations and criminal law which were sent to the Victorian Parliament's Lower House.[62] After going through a period of debate and revision, these were never actually adopted by the Victorian Parliament, part of the problem being the difficult and abstract nature of the whole enterprise.[63]

Conclusion

The foundation of the University of Melbourne and its law school is one important example of the transplantation of British and European civilization to the Australian continent in the 19th century. In addition to Victoria, it should be noted that a number of other universities were founded around that time throughout Australia, which have come to be known as "sandstone universities", referring to the material from which the university buildings were made.[64] In relation to the Irish Protestant element surveyed here and its influence on early Melbourne, it is an interesting case study of how even relatively small migratory groups can play a significant and vital role in their new societies and communities, the early Victorian legal profession as well as the University of Melbourne and its law school being a testament to this.

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[59] Ibid.

[60] WAUGH, *First Principles,* 31.

[61] Gregory C. G. MOORE, "A Biographical Sketch of William Edward Hearn (1826-1888): A Slightly 'Irish' Perspective", in *34th Annual Conference of Economists,* 37, https://researchonline.nd.edu.au/cgi/viewcontent.cgi?article=1015&context=bus_conference, accessed 30.09.2024.

[62] Ibid., 37.

[63] Ibid., 38.

[64] Along with the University of Melbourne, the University of Sydney, University of Adelaide, University of Tasmania, University of Queensland and the University of Western Australia are included within this category. See "Sandstone universities", *Unipage,* https://www.unipage.net/en/universities_australia_sandstone, accessed 30.09.2024.