

# The Francis Forbes Society

For Australian Legal History

**There are two Legal history tutorials after Easter:**

**Professor Peter Gerangelos AM** (Professor of Constitutional Law at Sydney Law School) on **11 April 2023** *"An Historical Constitutional Approach' and the General (Non-statutory) Executive Power of the Commonwealth - History as Method: 'Ancient' Solutions to Current Problems"*.

On **18 April 2023**: *"Art and the Law: The Archibald prize case of 1944 and beyond"* by **Dr Peter Edwell and the Hon Keith Mason AC KC**. When the dispute over the award of the Archibald Prize to William Dobell went to the Supreme Court of NSW in 1944 it made headlines around Australia. With Garfield Barwick as counsel for the relators and Frank Kitto acting for the respondents, the legal arguments and tactics employed in the case took centre stage in one of Australia's most famous court dramas. Behind the scenes, art and the law were strongly connected with the influential figure of Lionel Lindsay playing an important role in the case and possessing strong links with business, political and legal powerbrokers, especially Chief Justice Frederick Jordan. This lecture investigates some key aspects of the case and the influences at play on Barwick and Kitto. It also examines connections between Lionel Lindsay and Chief Justice Jordan together with the controversy behind the creation of Mary Edwards' portrait of Jordan that hangs in the Banco Court today.

Keith Mason served as Solicitor-General of New South Wales (1987-1997) and President of the NSW Court of Appeal (1997-2008). In 2019 he published the first biographical study of Chief Justice Frederick Jordan (*Sir Frederick Jordan: Fire under the Frost*) and has published other material on Jordan and his connections to the art world in the 1940s.

Peter Edwell is Senior Lecturer in the Department of History and Archaeology at Macquarie University. His most recent book, *The Case that Stopped a Nation: The Archibald Prize controversy of 1944*, deals with the controversy surrounding the award of the Archibald Prize to William Dobell for his portrait of fellow-artist Joshua Smith. It is the first detailed study of the controversy and court case and was short-listed for the Prime Minister's Literary Awards in 2022.

The Society is very grateful to Chief Justice Bell for his support of the Forbes Society's activities and generous permission to use Supreme Court facilities.

Please direct any questions on the night to [treasurer@forbessociety.org.au](mailto:treasurer@forbessociety.org.au) / [secretary@forbessociety.org.au](mailto:secretary@forbessociety.org.au).

**The Francis Forbes Fund:** One of the Society's objects is to encourage and promote research into Australian legal history, and it maintains a fund for that purpose to which donations may be made – the Francis Forbes Fund.

Grants from the Fund for **2022** will support the following projects:

- the University of Adelaide - Associate Professor Robert Foster 'Reconciling with the Frontier', which is to produce a digital map of frontier conflict in 19<sup>th</sup> century South Australia, including First Nations stories and oral history accounts
- the Australian Catholic University - Dr Jessica Lake 'The Slander of Women', which will examine why and how the Australian colonies reformed defamation laws in the nineteenth century to make it easier for women to bring claims and better protect their reputations
- the University of Sydney - Megan Cameron: an examination of the work of magistrates in early colonial New South Wales (from 1788 until 1835).

- the University of New South Wales - Associate Professor Marina Nehme, 'A study of the legal history of proprietary companies', examining the legal and policy motivations behind the introduction of proprietary companies in Victoria through the enactment of the Companies Act 1896 (Vic) and the key legal features of these companies back then and how they compared with public companies, studying three proprietary companies registered under the Companies Act 1896.

In **2021** grants from the Fund included the support of projects at a number of universities: *University of New England* Dr Patrick Graham – 'Sir John Latham and constitutional autochthony'; *University of Southern Queensland* Professor Antony Gray and Associate Professor Marcus Harmes – 'The History of Judicial Independence in New South Wales', exploring the history of the separation of powers principle in the Australian Colonies in the 19<sup>th</sup> century; *University of Sydney*: Digitisation of letters from solicitors, barristers and law students to the University of Sydney Law School Comforts Fund during the Second World War (Tony Cunneen); further support for 'Dynamic and Principled: The Influence of Sir Anthony Mason' (Professor McDonald, Dr Chen, Dr Gordon); *Monash University* Professor Tamara Walsh and Associate Professor Dominique Allen – a research project about the history of human rights complaints in federal law.

In **2020** grants from included the support of projects at Macquarie University: by Dr Kate Gleeson, Sinead Ring, Kim Stevenson "Legal Responses to Historical Child Sexual Abuse: Critical and Comparative Perspectives" and by Dr Henry Kha "The Unification of Australian Divorce Law under the Matrimonial Causes Act 1959" and at Sydney University: Professor Barbara McDonald, Dr Ben Chen, Dr Jeffrey Gordon, "Dynamic and Principled: The Influence of Sir Anthony Mason".

In 2019 the Society was able to support through the Fund:

- Digitisation of the notebooks of Sir Keith Officer and Sir Robin Sharwood – a proposal from Professor Mark Lunney (UNE), Dr Tanya Josev (Melbourne Law School) and Ms Carole Hinchcliff (senior law librarian at Melbourne). The notebooks have now been digitised ( <https://digitised-collections.unimelb.edu.au/handle/11343/236008> ). Professor Lunney advises that in addition to what was planned, a notebook of KH Bailey, originally thought to be from his time at university in Melbourne but now thought to be from his first year in Oxford, has also been included. The final stage of the project was to involve some summaries and synopsis of the content of a selection of the notebooks
- A Biographical Dictionary of Barristers and Solicitors in Early NSW, 1824-1861 (Peter Moore, through the University of Adelaide)

The Society supported the publication by the 2019 Forbes lecturer, Professor Anne Twomey (Sydney University) of Pitt Cobbett's grand opus 'The Government of Australia' through the Fund. The book *The Constitution and Government of Australia, 1788 to 1919* by William Pitt Cobbett and edited by Anne Twomey was published by Federation Press in October 2019.

The Society encourages **donations** to the Francis Forbes Fund to enable us to continue to support such worthy projects. All donations to the Forbes Fund of \$2.00 or more are tax deductible.

There is provision for a donation on the membership renewal / application form: [2022-23 Francis Forbes Membership](#) (to be returned to the address on the form) or by email to [membership@forbessociety.org.au](mailto:membership@forbessociety.org.au) - a separate form for donations is [Fund Donation Form 2022](#), also available on the web site [forbessociety.org.au](http://forbessociety.org.au) at DONATIONS.

### **Dates for the Diary**

- 11 April 2023    *"'An Historical Constitutional Approach' and the General (Non-statutory) Executive Power of the Commonwealth - History as Method: 'Ancient' Solutions to Current Problems"* by Professor Peter Gerangelos AM (Sydney Law School)
- 18 April 2023    *"Art and the Law: The Archibald prize case of 1944 and beyond"* by Dr Peter Edwell (Senior Lecturer in the Department of History and Archaeology at Macquarie University) and the Hon Keith Mason AC KC (Solicitor-General of New South Wales, 1987-1997, President of the NSW Court of Appeal, 1997-2008; author of *Sir Frederick Jordan: Fire under the Frost*, 2019)
- 24 May 2023    *"The effect of the American Civil War on the law of contract"*  
by Michael Adams, a PhD candidate at Columbia Law School and the current Counsel Assisting the NSW Solicitor General.
-