

The Law Foundation of South Australia: Fellow Report

Fiona McDonald, Law Foundation Fellow 2017

It gives me great pleasure to be able to report to the Foundation on the outcomes of my study. The Foundation's Fellowship supported me to undertake a Master of Laws at the London School of Economics and Political Science (colloquially, 'LSE') in the 2018-2019 UK academic year.

The Experience

Landing in bustling London a couple of weeks before the program started, with my life packed into a rucksack and a suitcase, I was filled with excitement and trepidation in equal measure.

The take-home message from my orientation week at LSE was that I was in one of the most diverse communities of gifted legal brains imaginable. With only a handful of students in our 308-strong cohort hailing from the United Kingdom, it was in an incredible melting pot of students from all over the world that I found myself. This quality of LSE remains one of those that I treasure most. It drew out complexities, depths and perspectives in every discussion that would simply be missing without a room full of people with such vastly diverse backgrounds and views. This obviously enriched our learning environment immeasurably, but it also gave me lifelong friendships with people all over the world, and the kind of personal insights that can only come from forging close bonds with people who see the world through an entirely different set of life experiences.

If 'diversity' was the take-home message from orientation week, then 'daunting intellectual challenge' was the take-home from week one of the substantive program. I soon learned that my teachers were truly world-leading professors in their area, that my student peers were over-achievers of the highest order, and that I would need to work long and hard to try to keep pace with the sheer enormity of the academic challenge ahead. Soon enough though, I realised that I in fact relished the reading, thinking and discussion that felt so difficult sometimes I was sure I could feel my brain being stretched and remoulded. To me, that feeling – of having a stretched and remoulded brain, with broader horizons and a whole set of fresh new lenses with which to view the world – is the (incredible) feeling of my LLM at LSE.

There were many reasons why LSE was my first-choice institution for undertaking further study (and I had not even realised it offered rooms from which I could watch the sunrise over St Paul's Cathedral!). In addition to possessing one of the top-ranked law schools in the world, in one of the great global cities of the world, it presented a unique opportunity for me to develop my expertise in the issues arising at the intersection of criminal justice, constitutional and human rights law, and public law generally. As well as offering an array of criminal justice and public law subjects, the LLM at LSE allowed me to study subjects that engaged directly with the interplay between those spheres.

With this pursuit in mind, I undertook the following course-work subjects over the year of my LLM:

- Terrorism and the Rule of Law
- Security and Criminal Law
- Explaining Punishment: Philosophy, Political Economy, Sociology
- International Criminal Law: Core Crimes and Concepts
- Constitutional Theory
- Theory of Human Rights Law
- UK Human Rights Law

In each subject, the interaction between the law, political communities, governance and harm-perpetration was engaged. I had the privilege of being taught and challenged by incredible professors. In particular, my criminal justice professor and dissertation supervisor, Prof Peter Ramsay, inspired and pushed me to rethink some of the central political assumptions that underpin our society's contemporary approaches to crime and criminal justice policy.

The program at LSE emphasises the use of interdisciplinary approaches. Thus, whilst I selected many courses with a heavy orientation to legal theory, that legal theory was often directly supplemented by, or contrasted with, the contributions of disciplines such as political science, sociology, anthropology, philosophy and political economy. The requirement to engage substantively with these disparate disciplines, and to square them with the legal paradigm under consideration, was immensely challenging but also utterly game-changing. Perhaps more than anything, I consider the educational value of my LLM experience to lie in

the way it radically altered my perspective on the big issues sitting at the epicentre of public and criminal law.

For my eighth and final subject, I wrote a dissertation entitled *Understanding Precautionary Detention*. I took the opportunity to write a dissertation that sought directly to connect some major trends in criminal justice policy concerning preventative detention, with some broader public law notions about the dynamic between state and citizen. My interest was to attempt to explain why preventative detention regimes continue to expand, often receive bipartisan political support, and might sometimes feel intuitively necessary or warranted, notwithstanding the serious moral and political concerns that such regimes patently raise. For my mind, unless we can understand the underlying mechanisms driving the expansion of such schemes, no amount of moral or academic criticism is likely to resist that expansion. By deconstructing the logic underpinning South Australia's legislative scheme for the indefinite detention of serious sexual offenders, I sought to give practical grounding to my claim that the rise of precautionary detention derives from a reconfiguration of moral responsibility for crime, with the state recast as blameworthy for a failure to prevent.

The Outcomes

I am honoured to be able to report that I achieved the highest overall mark in the program, and have therefore been awarded the *Lawyers Alumni Prize for the Best Overall Mark on the LLM*. In addition, I was fortunate enough to be awarded the highest grade of the cohort in five of my eight subjects, and to achieve the highest available classification ('distinction') in seven of my eight subjects. I have therefore been conferred with a Master of Laws (Public Law) with the Class of 'Distinction'.

That said, the 'real' results of my LLM at the LSE are the ways in which it has developed me as a person and a lawyer. Cliché as it may be, my horizons are now wider, my thinking now deeper, and my perspective now far more multi-dimensional. My year in London has forever changed me.



I cannot wait to use the passion and learning that has so invigorated me this past year, to try

to advance the quality and nature of the conversations in South Australia surrounding the difficult criminal justice, human rights and constitutional governance issues that face our community. I believe that our legal profession can play a major role in helping recast some of the most difficult questions of contemporary governance in a way that will produce more constructive dialogues within the community, and between the community and the arms of the state, in order to produce better, fairer and more just outcomes for all.

I also want to continue to advance those interests directly in my practice of the law. I have resumed my role as Counsel Assisting the Solicitor-General for the State of South Australia. This gives me the great privilege and responsibility to use my learnings to provide frank and fearless legal advice to the South Australian government, to inform and guide the kind of large-scale community impact achievable only through government law reform and policy. As an advocate, the Counsel Assisting role also enables me to play my part in the development of significant constitutional and criminal jurisprudence, by both the High Court of Australia and the Supreme Court of this State.

In the result, it has been my absolute honour to represent the Foundation, and an absolute privilege to have the opportunity to develop my public and criminal law expertise through an LLM at LSE. I have never before felt so inspired, and simultaneously so capable, of making a genuine impact on the law in South Australia and, through it, the lives of all South Australians. For this, I extend my most heartfelt gratitude to the Foundation, and in particular to Justice Kelly, for their support. Thank you.