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JEFF SHAW MEMORIAL LECTURE 2022

PSA HOUSE, 160 CLARENCE STREET, SYDNEY
10 OCTOBER 2022

JEFF SHAW: ADVOCATE, PARLIAMENTARIAN,
ATTORNEY-GENERAL, JUDGE AND PROUD
ALUMNUS OF PUBLIC EDUCATION

The Hon. Michael Kirby AC CMG

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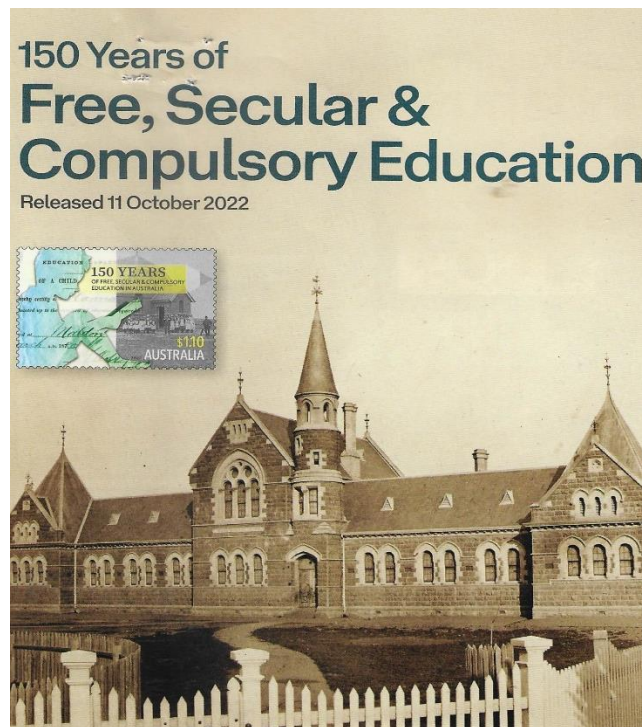
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EDUCATION

The Hon. Michael Kirby AC CMG*



In this memorial lecture, I will start at the beginning. Jeff Shaw was born in Sydney on 10 October 1949 to William John Shaw and his wife Gladys May.

* Deputy President, Australian Conciliation and Arbitration Commission (1975-83); President, NSW Court of Appeal (1984-96); Justice of the High Court of Australia (1996-2009). The image of the stamp released on 11 October 2022 derives from *Philately News* (Australia Post).

His paternal family derived from Scotland. His grandfather, Jock, came to Australia from there and never lost his pleasing accent. His father, known as John, was a printer and later a foreman printer. Subsequently, he worked for the PKIU and AJA in helping injured workers to recover compensation.

Under the *Workers' Compensation Act 1926 (NSW)*, a great legacy of the Lang Labor Government, the organised Labor movement adopted a project to support, and help to fund, the provision of compensation to needy workers. Jeff Shaw was a beneficiary of his family's engagement with compensation litigation. His first steps in the legal profession, after he was admitted as a solicitor on 19 September 1975, were in the legal firm, W.C. Taylor and Scott. However, the most important beginning of the legal career of Jeff Shaw must be traced back to events that long preceded his birth: the establishment, in colonial times, of public education.

Exactly 150 years ago, legislation was enacted by the Victorian Parliament (soon copied in New South Wales and other colonies) for the creation of public schools across the continent. This happened first with the passage on 17 December 1872 of the *Education Act 1872 (Vic)*.¹ It picked up a theme imported into the Australian colonies from the birthplace in Ireland, of NSW Governor, Richard Bourke. In Sydney, Bourke had sought to copy the "national schools" project in Ireland. National schools were those designed to provide free education at public expense. Moreover, reflecting the deep problem of denominationalism in Ireland, the Australian counterparts proposed schools that would be available to all children, Protestant, Catholic

¹ M. Walton, "The Hon. Jeffrey William Shaw QC (1949-2010), *Bar News* (Winter 2010), 138 at 139.

and otherwise. The aim was to replace the schooling system that had originally sprung up in Australia, based on religious affiliations. Churches fought against this innovation, at first successfully. However, the idea of secular schools was planted. Occasional public schools were established in the colonies before the comprehensive system was adopted by enacted laws.² However, the dream of an Australia-wide system of public education had to wait a little longer.

The passage of the Victorian Act through the colonial parliament saw one of the first systems of general education in the world, compulsory for all students not otherwise attending an approved school. The Victorian Act, started the rapid move towards the objective of schools that were “free, secular & compulsory”. The Victorian Act was substantially copied in New South Wales by the *Public Instruction Act 1880* (NSW).³ This replaced the *Public Schools Act of 1866*, which was repealed.⁴ By the Act of 1880, compulsory attendance was ensured by section 4, commencing from the child’s attainment of the age of 6 years.⁵ The requirement for government subventions to be voted by Parliament, created a system of schools that were publicly funded and known as “public schools”.⁶

The requirement of secularism in the courses and conduct of such schools was required by section 7 of the NSW Act. By that provision it was enacted that “the teaching shall be strictly non-sectarian”. This provision was not

² Such as Newcastle East Public School (estd. 1816 by Henry Wrensford, a convict on conditional pardon) and Fort Street School (estd. 1849): R.S. Horan, *Fort Street*, Honeysett Publications, 1989, 11-15.

³ Act Number 45 Vic 10, 23 (“An Act to make more adequate provision for Public Education”).

⁴ *Ibid*, s1. *Public Instruction Act 1880* (NSW)

⁵ *Ibid*, s4(a)

⁶ *Ibid*, s5.

meant to prevent instruction in “general religious teaching as distinguished from dogmatical or polemical Theology”. The three pillars of public education were thus established in New South Wales by the 1880 Act.

Still, credit for the first jurisdiction in Australia, and one of the first in the world, providing free, secular and compulsory education for every child must go the Victorian Act of 1872. This is why, on 11 October 2022, a stamp to be issued by Australia Post will celebrate 150 years of free, secular and compulsory education in Australia. The system spread to all states of the newborn Commonwealth by 1908. Jeff Shaw’s entire school education was, like my own, in public schools. His entire university education was in the University of Sydney, a public university which also observed the same principle of secularism. In practice, for Jeff Shaw and me, the university also provided free education through the Commonwealth Scholarships Scheme. That scheme had been federally by the successive Chifley and Menzies Governments. University education in Australia is not yet compulsory. Nor should it be. But the establishment of free and compulsory school education provided the impetus for similar aspirations to be applied in the expanding field of tertiary education, of which Jeff Shaw and I were also beneficiaries.

Jeff Shaw’s schooling was successively at Boronia Park Public School; Chatswood Public School; and Hunters Hill High School in Sydney. My own school education was at Strathfield North Public School, Summer Hill OC class; and Fort Street High School. The last 50 years have seen many celebratory occasions to mark the centenary of the creation of public schools. In my own case, the centenary of Strathfield North Public School falls on 12 November 2022. It was established in 1922. My brothers Donald, David and

I will be attending. My late sister Diana also attended the same school. She will be with us in spirit. So also will be our parents who enrolled us and my teachers: Ms Pontifex (1A); Mrs See (2A); Miss Godwin (3A); and Mr Casimir (4A). Those of us, like Jeff Shaw and I, who enjoyed the privilege of public education, have a moral duty to speak in praise, and to support its cause. In his lifetime, Jeff Shaw did so.

Relevant to this occasion, his family have established an appeal to support the Public Education Foundation by public donations received on occasions such as this to address; and subsequently to reflect on, the debt of most Australians for the creation of public schools, welcoming us to the world of education.

Jeff Shaw was thus a proud son of Australia's public education system. Solely on his ability, he won advancement in education. It did not come from family wealth or influence. Nor did it flow from religious advancement or denominational connections. Public education instilled in him a knowledge of his own capacities with a sense of his obligation to repay its gifts. As a memorial plaque in my own secondary school reminded us: *Pro tanto quid retribuamus?*⁷ I will return to suggest an answer to that question.

At the University of Sydney, Jeff Shaw gained degrees in Arts and Law. He studied at the Old Law School in Phillip Street, Sydney. Public schools tend to teach their pupils the value of diversity. In the modern age, and in Australia, there are few lessons more important.

⁷ How can we ever repay so much? This is an inscription on a memorial board at Fort Street High School, Sydney. An identical inscription is found in the clock tower entrance to Sydney University.

INDUSTRIAL ARBITRATION AND THE LABOR MOVEMENT

Having graduated with legal qualifications, Jeff Shaw, in 1974, married Elizabeth Bryant. They raised two children, James and Jonathan. More interested in the Australian system of industrial arbitration than the lucrative, but somewhat repetitive, world of damages and workers' compensation cases, Jeff Shaw joined the NSW Bar on 28 May 1976.⁸ At that time, Sir Harry Gibbs was the Chief Justice of the High Court of Australia; Sir Nigel Bowen was the Chief Judge of the Federal Court of Australia; Sir John Moore was the President of the Australian Conciliation and Arbitration Commission; Sir Laurence Street was the Chief Justice of New South Wales and the President of the Industrial Commission of New South Wales was Sir Alexander Beattie.⁹ In 1975, I was appointed to the federal Arbitration Commission, and soon after to be the inaugural Chairman of the Australian Law Reform Commission. In my time as a barrister (1967-1974), I also received many briefs in the Industrial Commission of NSW.

Both Jeff Shaw and I both became increasingly emersed in the work and culture of the Industrial Commission. It was a successor to the Court of Arbitration, the first body in New South Wales, specifically established with high judicial status to resolve intractable industrial disputes between employers and employees concerned with wages and work conditions. It had grown out of the disastrous nationwide maritime strikes that plagued Australia in the 1890s. The NSW Commission was influenced by earlier

⁸ *Law Almanac*, 1983, 117.

⁹ L. Wright, "Jeffery William (Jeff) Shaw, 10 October 1949 – 10 May 2010", 99 *Labor History*.

institutional experiments in New Zealand.¹⁰ A Court of Arbitration was established in NSW in December 1901, with a judge of the Supreme Court of NSW as its President.¹¹ In 1908 that body was replaced by the Industrial Court¹² and later by the Court of Industrial Arbitration.¹³ Ultimately, in 1926, the Industrial Commission was created by the *Industrial Arbitration (Amendment) Act 1926* (NSW). This was eventually replaced by an Industrial Commission, predecessor to the Industrial Relations Commission of New South Wales. This was the lineage of the old Commissions in which, in our youth, Jeff Shaw and I cut our teeth. It is where we gained much training as advocates and would-be social engineers.

Later, Jeff Shaw who was a skilled historian, interested in notable careers, captured the ethos of the old Industrial Commission in a brilliant tribute he wrote about the doyen of advocates in that tribunal, Jack Sweeney QC.¹⁴ Jack Sweeney, like Jeff Shaw and me was also an *alumnus* of public schools. He was mentor to us both and to Lionel Murphy, Neville Wran, Bill Fisher and many others who repeatedly practised in commission proceedings. There we found fine judges, mostly of a liberal and independent temperament.

Eventually Jack Sweeney was appointed to the Commonwealth Conciliation and Arbitration Commission and in 1983, to the Federal Court of Australia.¹⁵ It was an optimistic time in industrial relations. Jeff Shaw quickly acquired a

¹⁰ *Industrial Conciliation and Arbitration Act 1894* (NZ). It established the Employment Court of New Zealand.

¹¹ *Conciliation and Arbitration Act 1899*, No.3 (NSW). See also *Industrial Arbitration Act 1901* (NSW).

¹² *Industrial Disputes Act 1908*, No.3 (NSW).

¹³ *Industrial Arbitration Act 1912* (NSW).

¹⁴ J.W. Shaw, "John [Jack] Sweeney QC: Trade Union Lawyer" (2006) 91 *Labour History*.

¹⁵ *Ibid*, 52.

strong reputation. He established a new set of barristers' chambers in Sydney: H.B. Higgins Chambers. These were opened by me, at his request, on 4 September 1987.¹⁶ The members of his chambers played a leading role in cases involving industrial law; workers' compensation; and civil liberties disputes. Sir Alexander Beattie's successor, President Bill Fisher, was reported as having said that "Jeff was the most able counsel and the best mind that ever appeared before him".¹⁷ This was a view widely held by judges, lawyers and trade union officials.

Jeff Shaw's later political life included significant work on improving the legislation on the system of industrial arbitration. As Justice Michael Walton wrote, in an obituary:¹⁸

"His passion for this area of the law came with his understanding that it could be a force for the betterment of [the lives of] ordinary working women and men. What was foremost in his thinking was the pursuit of fairness and, ultimately, social justice. He was a compassionate person and he had a great empathy for ordinary people... [He gave] support for trade unions and particularly at an international level, for the protection of trade unionists."

In 1986, Jeff Shaw was appointed a Queen's Counsel. Soon after, in 1990, he was elected to the NSW Parliament. He became a member of the Legislative Council, in the interests of the Australian Labor Party. Between

¹⁶ M. Walton above n.1, 138.

¹⁷ Ibid, 139.

¹⁸ *Loc cit.*

1991-1995 he served as Shadow Minister for Industrial Relations and Local Government. By then, with his Party in Government, between 1995 and 2000, he served as Attorney-General for the State of New South Wales. This was a time of many political and legal achievements. A number of them were recorded in the affectionate review of his life published by Hon. Lance Wright QC, another earlier President of the NSW Commission aware of its important history. I will add to his record of Jeff Shaw's service to industrial relations by pointing to another distinctive contribution to public life. Jeff Shaw was a noted historian, public intellectual and discerning biographer. He was fascinated by the role that individuals played in Australia's public life.

A PUBLIC INTELLECTUAL

Less well known than Jeff Shaw's long service in the judiciary and industrial tribunals was this interest in those institutions themselves and in the people who served in them. In 1986, he wrote in the public journal of the Australian legal profession, the *Australian Law Journal*, a discerning, but practical article, on the interpretation of trade union constitutions and rules.¹⁹ This drew both on his professional and political interests. The tasks of interpretation were complicated at the time by the close organisational integration of federal and state industrial organisations, awards and rules with the federal counterparts for those state bodies. Organisationally and institutionally, the activities tended to be closely related, to a degree that those working in and with them sometimes tended to confuse the separation of federal and state legal entities and treat the bodies as, in practice, as the

¹⁹ (1986) 63 ALJ 690.

same. Eventually this legal error was exposed, resulting in legal purity but much practical inconvenience within the union movement.²⁰

In 1994, Jeff Shaw wrote a critical review of the federal *Industrial Relations Act* 1988 (Cth). Curiously perhaps, he did not make reference to the virtually unique non-reappointment of Deputy President Jim Staples in the handover of the appointees and business from the federal Arbitration Commission to the federal Industrial Relations Commission.²¹ This presented an unfortunate clash between political conduct and legal principle. If Jeff Shaw found disturbing what had occurred, he kept his opinions to himself, like the prudent politician he was becoming.²²

In 1997, Jeff Shaw wrote a sensitive obituary of Justice John Clancy of the Supreme Court of New South Wales.²³ Clancy had been appointed a Supreme Court judge by the post-War Labor Government. It was determined to lift the effective blockage against elevating Catholic lawyers to the superior courts. Clancy's appointment was highly criticised at the time, within the legal establishment. However, whilst acknowledging that Clancy's judicial decisions were not particularly memorable, Jeff Shaw described him, fairly, as a level-headed, shrewd and fair-minded judge who went on to become the first Chancellor of UNSW in Sydney. Perhaps the only hint of criticism in the article was a reflection on Clancy's sharp criticism of what he saw as the inadequacy of the statutory punishment provided by Parliament for

²⁰ The so-called problem of *Moore v Doyle*. See *Re McJannelt; ex parte Australia Workers' Union of Employees* (Qld) (1997) 189 CLR 654. See also [1973] UQ LJC 2.

²¹ Obituary J.F. Staples, (2016) 90 ALJ 679-680.

²² J.W. Shaw, "The Industrial Relations Act 1988 – A New Era for Resolution of Industrial conflict", 64 ALJ 680.

²³ J.W. Shaw, "John Sydney James Clancy", (1992) 66 ALJ 738.

homosexual conduct (“deplorable”). The obituary is an insightful essay on judicial qualities that Shaw valued. Given his own elevation, shortly thereafter, to State Attorney-General, with responsibilities for judicial appointments, the article reveals some of the features that the author regarded as more important than others.

In 2000 Jeff Shaw wrote a vignette about another judge, brilliant and fiercely agnostic, F.C. Hutley.²⁴ Although Justice Hutley appeared on a number of important occasions (sometimes with me in tow) in the industrial tribunals, federal and state, he was firmly opposed to ‘socialist’ thinking. However, Shaw’s review of his judgments in the Court of Appeal of NSW was a model of balance and fair comment.

In 2000, nearing the conclusion of his service as State Attorney-General, Jeff Shaw wrote another article “On the Appointment of Judges”.²⁵ This contained some reflections that showed elements of caution in selecting lawyers for promotion to the Bench. He does not emerge from the article, or from his practice, as a rabid politician, dedicated to appointing judges purely on perceived ideological grounds. On the contrary, his article reflects his commitment to intellectual excellence and cerebral inquisitiveness.

Jeff Shaw did not have to write any of the preceding biographical and jurisprudential articles or others published elsewhere and later. At the time that most of them were written he was busily engaged in parliamentary, political and other activities in a reformist State government. His liberal

²⁴ J.W. Shaw, “F.C. Hutley’s Jurisprudence “A Note” (2000) 24 ALJ 175.

²⁵J.W. Shaw, (2000) 74 ALJ 461.

temperament and his basic decency in dealing with other people were reflected in his contributions to parliamentary debates on several measures designed to improve the civic equality of sexual minorities in Australian society. Until relatively recently, LGBTIQ citizens were outcasts, criminalised and subject to discrimination which Justice Clancy regarded as proper and appropriate. However, such attitudes were alien to Jeff Shaw's personal and political stance. In the debates over the *Property (Relationships) Legislative Amendment Act 1999* (NSW) he insisted upon views that were enlightened and fair-minded. Indeed, his own temperament and commitment to understanding other human beings found reflection in the Legislative Council in which he sat. As Attorney-General, speaking in the debates on the Bill affording equal protection to the property rights of people in same-sex relationships, he said:²⁶

“In an open and liberal society, there is no excuse for discrimination against individuals in our community based on their sexual preference. To deny couples in intimate and ongoing relationships within the gay and lesbian community the same rights as heterosexual defacto couples is clearly anomalous.”

This looks fairly standard now. But in the political mood of 1999, it was courageous, candid and forward-thinking.

²⁶ *NSW Parliamentary Debates (Legislative Council)* 13 March 1999, 228; see M.D. Kirby, *Through the World's Eye*, “Same-Sex Relationships: Some Australian Legal Developments”, The Federation Press, 2000, 64 at 70. His publications included: *Transforming Industrial Relations* (with M Easson) (1990); *An experiment in Deregulation: The 1991 Industrial Laws in New South Wales* (with M.J. Walton); and the editorship of *Federal Industrial Law* (with J.L. Trew and G.J. McCarry noted) (2003) 77 ALJ 579 at 580.

Jeff Shaw wrote many other biographical notes, especially in *Labour History*. He was fascinated by human beings and the variety of their lives. Although he was greatly successful in public life, one gets a feeling about his interests from the articles and books he wrote in his spare time. As Justice Walton observed in his obituary:²⁷

“Jeff was no ordinary man, though he behaved like the every man. He was neither lofty nor pompous. He was courteous, engaging and kind to those connected to litigation, even to opponents, and often, particularly in industrial matters, he would try to find a consensus.”

PUBLIC EDUCATION: CURIOSITIES

I now come back to the theme with which I began this tribute to Jeff Shaw, in praise and support of public education, reflected by the efforts of his family to establish scholarships in public education as the most appropriate way to honour his work and life.

Sadly, it is often the case of notable personalities, who have themselves benefited on the way up from instruction in public schools, their teachers and fellow students, they later turn their back on their debt to public education:

*Spurning the base degrees by which they did ascend.*²⁸

²⁷ M. Walton, above n.1, 138.

²⁸ W. Shakespeare, *Julius Cesar*, Act II Scene 1 (Soliloquy of Brutus).

So often politicians who owe their basic formal education to public schools turn the back on the great Australian experiment, in a continent-wide endeavour that began in earnest exactly 150 years ago. Yet research published by Dylan Barber²⁹ in 2013 propounded the suggestion that, contrary to superficial expectations, “the ALP is not the bastion of public education”.

Figures about the educational background of recent Prime Ministers, Labor leaders and those surrounding them, tend to show that, with some exceptions (Mr Howard who attended Canterbury Boys’ High School) and Mr Morrison (who attended Sydney Boys’ High School) most Coalition leaders have been educated in very expensive private and religious schools. Thus, Tony Abbott’s cabinet comprised 82% members educated in expensive private colleges. The appearance of his cabinet was not only dominated by those who had been educated there to an unusual degree. The schools attended were, with few exceptions, very high fee-paying schools, rather different from the public schools to which Jeff Shaw and I were educated.

Bill Shorten led a Labor Party team into the 2019 election. However, they did not reflect the composition of the majority of the community as a whole. Fifty three percent of Mr Shorten’s putative cabinet were educated in private schools. He was himself educated at Xavier College in Melbourne, an elite Catholic school.

²⁹ Dylan Barber, “Labor’s Front Bench too is a Mostly Private School Affair”, *Crickey*, 20 October 2013, 9.

Kevin Rudd and Julia Gillard led teams that were approximately 50/50: ie half from educational background in private schools. And half in public schools. This is also a disproportion when measured against the Australian population as a whole. In that population about 66% of future citizens are educated in public schools. I know this figure because, for most of my service on the High Court of Australia I was the only Justice of the Court whose entire school education had been in public schools (one in seven or 14.2%). From that background, one tends to notice these things.

Both Mr Rudd (substantially) and Julia Gillard (entirely) attended public schools. When it is pointed out that some private and religious schools are part of the poorer cohort of schools in Australia, this does not alter the fact that the majority of the heavy lifting in education of diverse and disadvantaged Australians takes place in public schools. In my earliest local school, within the public system, I sat in my class with students attending from a local orphanage together with a few from leafy parts of the suburb. Some of my schoolmates did not have shoes. For some of them, the Education Department's daily bottle of milk (left curdling in the sunshine, I remember) was possibly the first food on their school day. Of course, this was in 1944-49, in and after the War. However, it was diversity itself that is the special badge of public education.

Our present Prime Minister, Mr Albanese, attended St Mary's Cathedral School in Sydney. Annual fees today at that college are \$5,180. This is much below the cost of attending Scotch College in Melbourne (as Attorney-General Dreyfus did) or Geelong Grammar School (as Deputy Prime Minister Richard Marles did; with annual fees of \$32,000. Inevitably, if one is

educated at a local public school, even if later streamed to selective public schools, the badge of diversity is always present in one's mind. It is an equaliser to the attitudes to life. Similarity and privilege in parental wealth, in religious background or lack thereof; in supportive home environments; and in expectations about one's own life tend to colour one's view of the world. If one attended Geelong Grammar School (as did Rupert Murdoch, Kerry Packer, John Gorton and even, for a time, The King) it is much more likely that the student will emerge from school with strong conceptions about their future. It will ordinarily reflect a grand view of the possibilities before them in their lives. One cannot so easily expect to imbibe such a feeling of entitlement if one's schooling is in public schools chosen geographically. Egalitarianism, and a sense and appreciation of difference and diversity, come more naturally, I think, to those educated in public schools.

In recent years public education has been severely disadvantaged in the political posturing for votes evident on both main political groupings in Australia; but especially in the bargaining that affects federal election campaigns. The provision, since Mr Howard's Government, of very substantial, and hard-fought-for subventions to private and religious schools, has diminished, in the result, expenditure on the infrastructure (buildings, teachers and facilities) in public education.³⁰ Perceived political advantage and chasing success in key population groups has followed this departure from a specific and primary commitment to public education. Public

³⁰ M.D. Kirby, "In Praise of Public Education", address to graduation ceremony, University of South Australia, 27 April 2001. Cf M. Denney, "Parents want School Funds to go Public, Not Private", *The Australian*, 31 January 2001, 5. See also G. Burke and A. Spoull, "Education and Training – Centenary Article – Australian Schools – Participation and Funding 1901-2000, *Australian Bureau of Statistics, Year Book Australia 2001*, Table C7.4. See also tables C7.1, C7.2, and C7.3.

education may be one of our great national experiments. But it has been seriously damaged in recent years. The damage extends to the deterioration of buildings, infrastructure and facilities even in famous public schools, like my own (Fort Street High School, est. 1849). It is also be found in the high drift of minorities, such as Islamic students, to private and religious schools³¹ where they may not meet children from other diverse backgrounds, including different religious backgrounds. It should not be a source of surprise that children raised together in public schools will generally enjoy the benefit of keeping religion in a private space. Basically, it is in a private realm, not at school.

There is a further consequence of what has been happening in educational funding. Even well respected public schools, when they are found near expensive neighbourhoods make them targets for property developers. Such schools fall victim to the ambitions of investors and real estate markets. The disappearance of Vaucluse High School in Sydney, which produced a number of judges and other notable citizens, is a case in point. It was closed and sold off in 2006 to be developed as an aged care business in a prime location. The consequence was the effective loss of secondary public education for most people and their children for a period in the eastern suburbs of Sydney. Jeff Shaw knew about this danger. His own secondary school, Hunters Hill High School, produced him, Bret Whitely, Roger Woodward, and many other outstanding citizens. But it was only vigorous campaign to which former State Liberal leader, Kerry Chikarovski

³¹ Daniella White, “NSW’s Islamic schools surge in popularity as principals push for cap increases”, *Sydney Morning Herald*, September 4, 2022. <https://www.smh.com.au/national/nsw/nsw-s-islamic-schools-surge-in-popularity-as-principals-push-for-cap-increase-20220825-p5bctp.html> .

contributed, that stopped the sale of that school for private property development.

Of the 26 Prime Ministers of Australia only 7 were educated in public schools.³² This should give us pause. As well, for years, governments, Coalition and Labor, have appointed judges predominately educated in private and religious schools. I know this because it was the case in the High Court of Australia during my service there. Coalition governments tended to appoint candidates educated in expensive private and religious schools. Labor governments tended to appoint alumni of Catholic schools. These are not just theoretical observations. As Professor Julius Stone taught me long ago in law school, “Values in; values out”. Values derived by students from their parents and schools often remain with them all their lives. None of this is automatic. None of it is inevitable. Schooling is generally a decision made by parents, acting in an earlier generation. I honour all schools and all teachers in Australia. Not just in public schools. But I specially honour the diversity of public education and example of multiculturalism it assures.

Australia needs that diversity as fresh challenges to community values loom ever more powerfully than before.³³ We should be building, and investing in, the strength of public schools, as the Gonski report advocated.³⁴ Instead,

³² Andrew Hobbs, “Money Can’t Buy Power Like it Did”, *Australian Financial Review*, 14 April 2022. Per capita, Abigail Lewis, January 2019, *The Way In: Representation in the Australian Parliament*. See “Schooling” p. 10-14. Noah Yim and D. Carter, “Pathways to Parliament” (27 October 2021).

³³ Trevor Cobbold, “Morrison government to over-fund NSW private schools by nearly \$1 billion”, *Pearls and Irritations*, 20 April 2022; <https://johnmenadue.com/trevor-cobbold-morrison-govt-to-over-fund-nsw-private-schools-by-nearly-1-billion/>.

³⁴ Trevor Cobbold, “A review of “Waiting for Gonski””, *Pearls and Irritations*, July 25, 2022, <https://johnmenadue.com/trevor-cobbold-a-review-of-waiting-for-gonski/>; also see Chris Bonnor and Tom Greenwell, “Productivity Commission review ignores repressive structure of Australian school system”, *Pearls and Irritations*, <https://johnmenadue.com/the-productivity-commissions-review-of-school-reform-needs-much-reviewing/>

we confront regular news stories of expensive private schools, which sometimes appear to be substantially a profitable business, awash with taxpayer funding, whilst public schools and their teachers all too often go begging for their needs.³⁵

THE BENCH AND LIFE'S END

In 2000 Jeff Shaw retired from politics. He returned for a time to legal practice. He also assumed part-time educational and public pursuits. Eventually, he was appointed to the Supreme Court of New South Wales on 4 February 2003.³⁶ Like many others, I welcomed the opening of this new chapter in his talented life, with the highest of expectations. However, on 13 October 2004 he crashed his car near his home. Events unfolded that were greatly painful to his family and his many friends and admirers. They must be mentioned and do not need to be dwelled upon. It appears that the cause of the crash was related to alcohol. Jeff Shaw resigned as a judge on 12 November 2004. He had served a year and nine months on the Supreme Court Bench. The crisis that unfolded in his life was specially painful for those who knew and loved him. He received various new appointments. However the light of his stellar career had faded. He died on 11 May 2010.

³⁵ Lucy Carroll and Jordan Baker, “Anger at King’s School over plans to fly headmaster to prestigious British regatta”, *Sydney Morning Herald*, June 17, 2022; <https://www.smh.com.au/national/nsw/anger-at-king-s-school-over-plans-to-fly-headmaster-to-prestigious-british-regatta-20220616-p5au8g.html#:~:text=Lucy%20Carroll%20and%20Jordan%20Baker&text=An%20old%20boys'%20representative%20on,heads%20of%20Britain's%20top%20schools>. Also see “King’s School in Sydney under investigation over use of taxpayer money” *Australian Associated Press*, Friday 7 October 2022; <https://www.theguardian.com/australia-news/2022/oct/07/kings-school-in-sydney-under-investigation-over-use-of-taxpayer-money#:~:text=An%20elite%20private%20school%20that,attend%20a%20British%20rowing%20event>.

³⁶ *People in the Law* (G. Lindsay SC), NSW: Hon Justice J.W. Shaw (2003) 77 ALJ 579-580.

In a media release, after his passing, his death was attributed to “complications from old age”. Those who knew Jeff Shaw at his prime, commented on his calm demeanour; his loyalty to friends; his intellectual curiosity; and his love of his family and many others. He left a mark on our society and our lives. His contributions to the State, the legal profession and the law were notable. His friends can speak of him with gratitude and pride. That is what I have attempted to do.



Mrs Elizabeth Shaw, Jonathan and James Shaw and Michael and David Kirby