

William & Lives in The Law - Ep 39

Professor Dan Meagher

Voiceover [00:00:04] Welcome to William and Lonsdale, a podcast about the legal ecosystem and the fascinating people who make it tick. Today, your host, Michael Green, speaks with Dan Meagher, professor and chair of law at Deakin University. As we'll hear, despite studying law and doing his articles, Dan initially tried fairly hard to avoid a life in a law until he found academia, or perhaps more accurately, until it found him. Dan specialises in constitutional law lecturing, studying and publishing in the topic all over the world. And in the lead up to this year's referendum, it is truly enlightening to hear his insights on the proposed Indigenous Voice to Parliament.

Dan Meagher [00:00:45] The second part of the proposed amendment says this body to be called The Voice, may make representations to the Federal Parliament or the Government of the Commonwealth. May means that they may offer a view on policies or issues that affect Aboriginal or Torres Strait Islanders. Most importantly, that provision or that proposed provision is completely silent as to what the Parliament or the Government do with those representations made. And that's significant because the proposed amendment places no obligation whatsoever on the government of the day or the Australian Parliament to do anything with the representations made. Of course, the idea is for those who are proponents of it, is that they will listen to the view offered by the Voice and then make their own judgements about what they do with it. But there's no legal but no legal or constitutional obligation on the Parliament or the government to do anything because it's not a legal obligation on them. And then the chances of there being the flood of litigation which has been which has been suggested, I think, borders on the fanciful to be honest.

Michael Green [00:02:22] Good morning and welcome to Lives in the Law. Our guest this morning is Dan Meagher, the professor in constitutional law at Deakin University. Good morning Dan. This morning then we're going to learn about how an ordinary Geelong kid who was more into sport, music and his mates having a good time, came to become a constitutional lawyer and hold a chair in that subject. So, let's start at the beginning. Although I said an ordinary Geelong kid, in fact you had a bit of a leg up. Mum and dad were lawyers. And even more surprisingly, your grandmother was a lawyer.

Dan Meagher [00:02:54] That's right.

Michael Green [00:02:54] So tell us about the family.

Dan Meagher [00:02:57] So my dad was a, as you mentioned, Michael, a lawyer. That's why we end up in Geelong. He stayed up at ANU and in order to get some work, to be honest, he moved to Geelong. He'd just married Mum. Mum had actually become a lawyer or graduated before Dad and Mum was working in the law office of her mother, my grandmother. Ma, as I used to call her, began an all-female law firm in Williamstown in the I think it was around the mid 1930s and that was the first all-female law firm, I understand, in Victoria.

Michael Green [00:03:29] And beyond that, at that time it would have been very, very few female lawyers in Victoria. In Australia.

Dan Meagher [00:03:35] I think that's right. And funnily enough, when I spoke to Mum about it, Ma was apparently the 13th female admitted in Victoria. Yeah, so yeah, it was quite groundbreaking in many respects.

Michael Green [00:03:47] Siblings, your siblings, lawyers there?

Dan Meagher [00:03:50] Yes. I've got a sister, Susie, who's a couple of years younger than me. She's a lawyer by training, although she never practiced. I've got another brother, younger brother Ben, who's not a lawyer. Thankfully, he's done something practical. He's a in the building industry. And my youngest brother, who's a lot younger than mine, indeed, 16 years younger than me, John. He's not a lawyer either. He's more into advertising and marketing.

Michael Green [00:04:16] But there's still a strong legal stream in the family there.

Dan Meagher [00:04:18] There is.

Michael Green [00:04:19] You do your law at Monash coming from Geelong. You live in the residential college Mannix. What was life like there, living in a college?

Dan Meagher [00:04:27] It was great. It was in those days, and maybe it's quite similar now, I ended up at Monash because my HSC mark, you know, equated to getting into law at Monash. I knew nothing about Monash Law School. Mum and Dad suggested I stay in a college at Mannix and Mannix is great because there's only unlike say, Melbourne Uni where there's a whole series of colleges, whole group of colleges, there's really only one at Monash. Being Mannix And so you get a real cross-section of people and it was wonderful, great. In fact, probably my closest friends still are those that I met and studied with at Monash. So, no, Mannix is a great place we were at obviously in Clayton, so you're not right in the thick of it in Carlton, so you kind of make your own fun a little bit out there, which we managed to do quite successfully.

Michael Green [00:05:11] When I was at university. Those who lived in colleges tended to make their own fun for about two and a half or three terms, right? And then halfway through the third term, it was head down and backside up and study like hell to pass your exams.

Dan Meagher [00:05:26] That's right.

Michael Green [00:05:26] Was Mannix the same?

Dan Meagher [00:05:27] Very much so that in those days and maybe when you studied law as well. Michael most of the subjects were yearlong. So, you actually had the... I hesitate to say this, but you had the opportunity to really enjoy yourself for about six or eight months of the year. And as long as you realised that you had to work hard for a couple of months, you can do okay. Of course, these days at universities everything's semester long and the longest unit you'll have is 11 weeks, which makes it far more difficult for people like myself and maybe others to have successfully got through law school and had a good time doing it as well.

Michael Green [00:06:09] You're a professor now on constitutional law, so you're really into the black letter law side of law. Did it immediately interest you when you start university doing the initial subjects? Did it grab you straight away?

Dan Meagher [00:06:21] No, not at all. And this is probably doesn't reflect so well on me, but it was really a matter in those days. My mark, as I said, to quite a to Monash Law. I went there. Obviously, I had parents who were lawyers, but I really didn't give it much thought. And indeed, in the first couple of years whilst I got through, I didn't work terribly hard. I wasn't very engaged. It was only really in the last, probably really last two years where I did a couple of subjects which I enjoyed. As a consequence, I probably put more work into it and was interested, and so did the reading and the sort of the penny dropped that there were aspects of it I really did enjoy, but it was really only at the back end of my degree, which that occurred.

Michael Green [00:07:03] Were there any influential lecturers or professors who grabbed your attention and grabbed your interest and made you see there was something in this which really appealed to you?

Dan Meagher [00:07:11] Yeah, there was one in particular, the professor who's still active, a guy called Geoff Goldsworthy. Geoff taught me constitutional law and that was probably met third year I think, and he was quite softly spoken, but very, very intelligent, also very engaging and also empathetic. So, he didn't make you feel, he didn't make you aware of what you didn't know. He instead encouraged you for on those things that he realised that you did have an interest in. So that was really the first time I had a lecturer that I felt really engaged with and the material interested me. And he was a very good lecturer and it's been very happy coincidence that with my career Geoff has been still very instrumental in it and we remained good friends too, to this day.

Michael Green [00:07:59] It wasn't all law or studying law, of course. I remember watching you play amateur football and you're a good footballer and you took a break in the middle of your degree to play football.

Dan Meagher [00:08:08] That's right. So, I had finished... I did economics as well. So that took three years and I finished that and I was largely disinterested in that. So, when I finished economics, I took the year off and I was going to Perth to play football.

Michael Green [00:08:25] With an amateur team? Or WAFL?

Dan Meagher [00:08:28] A WAFL team. Danny Corcoran, who you probably know arranged a connection with Fremantle. And so, I, I and two other friends drove over in a Kombi, then enjoyed ourselves as we drove over and I arrived for the first training session of the year and promptly snapped my knee in the first try and the first training session. So that was that wasn't the greatest movie of all time.

Michael Green [00:08:53] But it was at the end of your football career.

Dan Meagher [00:08:56] It was, yeah. I tried to had a number of operations and I had problems, degenerative knees and so on and so forth and couldn't quite get right. So yes, it was a short and sweet career.

Michael Green [00:09:07] But what did you do? You've driven to Perth, you've left Monash behind you. Yes. What you've wrecked your knee, you've had medical intervention. How long do you hang around for in Perth?

Dan Meagher [00:09:17] Funnily enough, I had a very minor procedure so I could walk. I wasn't prepared, I wasn't quite ready to go home. I probably should have come straight home and got it operated on. But it was at the beginning of a, you know, a yearlong trip. So, I ended up spending about six or eight months, not in Perth, just I was in Perth for a couple of months, did a little bit of work, made some money and then travelled around the rest of Australia for the remainder of the year.

Michael Green [00:09:40] You go back to Monash and finish your law degree. And by that time, courtesy of Geoff Goldsworthy, the law has interested you and does interest you. And so, you give it all your attention. And work hard.

Dan Meagher [00:09:53] Yeah. The last couple years I did.

Michael Green [00:09:54] But didn't do your articles when you finished get admitted straight away.

Dan Meagher [00:09:57] No, I didn't. Now again, I was sort of a little bit of wanderlust. I wanted to travel overseas, so I travelled to the UK and at the end of my degree and spent a year working and travelling and seeing the world.

Michael Green [00:10:11] Not working in law?

Dan Meagher [00:10:12] All. Not working a lot at all. Now, I was a night porter. I used to work in and strangely enough I thoroughly enjoyed it. I used to work at night. I worked at a hotel in Drury Lane in London, so I'd have seven days on sort of four days off and made quite good money for, you know, a kid of that age and was able to then travel throughout the UK and through Europe and also over to the States. I had a good time.

Michael Green [00:10:37] It sounds pretty good.

Dan Meagher [00:10:38] Yes, it was good fun.

Michael Green [00:10:40] You come back. What about articles? Did you get out your minutes, so you must've got out articles.

Dan Meagher [00:10:45] Yeah, so when I came back, I still to be honest, I can't exactly remember why I didn't immediately do them, but my mum was at that point in time involved at the beginning of the Deakin Law School. Deakin Law School got off the ground, I think in around 1992. So, I'm thinking it's probably about 1994 at this stage 95, and they had some work, which is casual work as a tutor. And so, I got home, I had no money. And so, I did some tutoring work, just casual work, and quite enjoyed it. Again, it was because it was casual. Not a lot of money, but I was living cheap to live down the coast near Geelong at the time and quite enjoyed it and did it for a year or so and I got to an end of that year I thought, okay, I've, I've mucked around enough, but it's probably time to do articles and then see what happened. So, I did those in around 96 I think.

Michael Green [00:11:32] Can I just get back to tutoring? I thought as a student a long time ago, being a tutor was sort of beneath being a lecturer and probably a lot easier was just a bit of a chat about the subject. That's not actually correct?

Dan Meagher [00:11:45] Well, no. Funnily enough, like the more I've done of it, I find. I mean, I still get nervous before every lecture, but I get far more nervous when I deliver a

tutorial or they call them seminars now. And there's something about being in a room around a smallish table or a small group, and if the group are informed and engaged, that's a far more taxing form of teaching. I find most lectures now are delivered to quite large groups. So, in a sense it's more of a performance and it's ... not as much as I'd like engagement, I suppose it's a delivery of information, but in a tutorial or a seminar especially, the students are prepared. I've always had it far more challenging in fact, in terms of teaching.

Michael Green [00:12:24] And in fact, reading through your career when you when you first tutored, maybe the students are actually older than you.

Dan Meagher [00:12:31] They were.

Michael Green [00:12:32] Yeah, it was more experience.

Dan Meagher [00:12:33] They were. It was a real baptism of fire. And in hindsight it was a really great introduction to, I suppose, academia. I taught the first couple of years of students who admitted to the Deakin law degree, and I don't know why this was the case. It was a small group around 20 to 25 in the entire year, and they were for the most part experienced in the sense they weren't school leavers. So, I presume it must have been a conscious decision by the law school when it first got established so that that first group or those first two years, they were really, really smart students and more experienced than I, both in life and in work. So that was a significant challenge. And so, it wasn't just a matter of learning the material, but having to learn the material to the extent that I was able to hopefully coherently answer as many of the questions and there were millions of questions. But that was a really good beginning because it made me realise that the only way you can teach well is if you prepared as well as well as possible.

Michael Green [00:13:41] From what I've read, I think maybe the only time you practiced law in the traditional sense was when you did your articles.

Dan Meagher [00:13:47] Yeah. I did my articles at McPherson and Kelley. I then practiced for one year after that and I was lucky enough to have a friend of mine from university was a partner at M and K, He organised the articles. But I was aware that my interests probably didn't align with the firms in the sense that they were predominantly commercial or focused. But they said that we'd like you to do articles and if you can develop a public law, criminal law practice, we would support that. But it's difficult when you're when you're young, when you don't have the connections. I suppose at that age it became apparent to me that it was far more difficult or too difficult for me solely to try to develop my own practice in that regard, at M+K, they were very supportive. But there were, you know, cost pressures as you'll be well aware, and it became apparent that that just wasn't feasible.

Michael Green [00:14:38] So but also practicing law in that manner didn't really engage you.

Dan Meagher [00:14:42] No, it didn't, but I suspect it was probably because of the material in the sense I was it was mainly commercial law focused. I wasn't terribly interested in it. I suspect I wasn't terribly good at it either. And so, it was that feeling of insecurity. When you're speaking to clients and thinking, I'm a bit of a fraud here, so that made me very uncomfortable. And the firm were supportive and said, you can grow and learn and so on and so forth. But I just didn't have the interest in the material. So, at the end of that second year, I suppose I resigned.

Michael Green [00:15:15] To be fair to you, Dad, and to all young lawyers, from my experience, everyone has that feeling of being a fraud and mouthing what they think they meant to mouth. Yeah, but not really knowing what's behind, not just hoping.

Dan Meagher [00:15:29] No, that's right. It's not a very good feeling. And you know, you realise that these are people are they, you know, they've got employment and commitments and they've got a legal issue and I'm sitting there and supposed to be the font of all wisdom and I fell far from it.

Michael Green [00:15:47] So after that first year as an admitted solicitor, then you resigned from McPherson and Kelly? what did you do?

Dan Meagher [00:15:54] Well, a friend of mine who I'd been to school with, Michael O'Sullivan, his brothers ran a computer business in Carlton called CSI, and they said, Look, you can drive the van for us delivering computers, which I did. And at the same time, I had a bloke that Luke was playing football with at Carlton. His girlfriend at the time worked at a place that sold bottled water, Split rock. So, I took up two jobs, one delivering computers and the other delivering bottled water.

Michael Green [00:16:23] So assuming at this stage, you're about middle 20s.

Dan Meagher [00:16:26] That's right, yeah.

Michael Green [00:16:27] You're admitted solicitors, but you don't practice law. Yeah. And so, everything in front of you is blue sky.

Dan Meagher [00:16:33] In a way. I mean, I was really nervous because I had no money. And as you say, I was mid-twenties and I had a few degrees and I was admitted to practice, but I was a little bit unsure. I really didn't know what I wanted to do. So, I was, you know, I was nervous. It wasn't as if I was terribly gung ho about it, but I had to work and I was living in Melbourne. And so, I drove these vans and funnily enough was there and he did it for about six or so months. I thoroughly enjoyed it because it gave me an opportunity. I'd listen to music, I drive around Melbourne, I'd meet people and I suppose I had, you know, none of the kind of pressures that come with working in a law firm. So, I look back on that time quite fondly. Funnily enough.

Michael Green [00:17:11] You wind up back at Deakin.

Dan Meagher [00:17:12] Yeah, so that was again just fortuitous and that was really again due to my mother. Mum at that point was an administrator in the law school at Deakin and what had happened is that at the end of that year that I was driving the water van, they had a lecturer lined up, an American guy to come out to teach criminal law and he literally didn't arrive and he left them in the lurch. And so, they were scrambling around desperately trying to get somebody to teach this subject of criminal law. And the dean and my mum were quite closely together. And the dean said we would Dan give it a go? He contacted me and said, look, could you would you be prepared to teach the unit? And I said, Well, I'll give it a go. And so that's how it.

Michael Green [00:17:56] And this was on the traditional basis of keep a week ahead of the student.

Dan Meagher [00:18:00] Pretty much just.

Michael Green [00:18:01] Read the book.

Dan Meagher [00:18:02] Absolutely. It was very much awake ahead. And it was it was in those days. Deakin used to teach at night at Burwood, and I was based in Geelong or based on Jan Juk at the time. And so, I drive to Melbourne and I'd teach, I think from 6 to 9 the lecture.

Michael Green [00:18:19] In the evening?

Dan Meagher [00:18:20] In the evening.

Michael Green [00:18:20] Of course.

Dan Meagher [00:18:21] And then the following night I'd do four or five tutes and then I'd drive home.

Michael Green [00:18:25] So you stay in Melbourne that night.

Dan Meagher [00:18:27] That's right, yeah.

Michael Green [00:18:27] And then the four or five tutes and then.

Dan Meagher [00:18:29] And head back out.

Michael Green [00:18:30] Head back.

Dan Meagher [00:18:31] Yep.

Michael Green [00:18:32] For five days before you started again. So, you've mentioned Jan Juk a couple of times in my riding, assuming five days of surfing, it's a lot for why it was good.

Dan Meagher [00:18:41] Well if possible, yes. Yeah. And those days, Jan Juk was very sleepy, rents were very cheap and so we lived quite well. We lived in nice houses on the beach and it was a good lifestyle. I had no commitments other than the one subject I taught, and that was quite a full time because as you say, I was in a sense trying to relearn criminal law, which I did, which I'd done four or five or six years ago, and to try to, you know, load it to a level that I could, I suppose pass as a criminal law lecturer and do so in a way that, you know, was coherent and not obvious that I was only just one week ahead, than maybe it was.

Michael Green [00:19:17] Dan I come from a family of teachers, my mother, my wife, my sister, aunts, cousins and therefore I highly value teaching and teaching skills and I believe it is a particular skill. It's not something any person can just go and do. Did you have then and do they now provide teacher training to lecturers?

Dan Meagher [00:19:36] It's a really interesting question. When I started no, no training at all, it was literally in fact it wasn't even discussed. So, when I started tutoring, it was literally the first time I'd ever taught was when I first walked in that first class - same with lecturing. And so no, until relatively recently, probably in the last decade or so, a person is

expected to do like a... I think it's called an associate diploma of Teaching. But ironically, most people who do the associate diploma, they will have started teaching. They just have to do it. They have to since tick the box. So, I'm sure it's probably of some use, but I think you're right. I think you either have a knack for it or not. You can, of course get better and hopefully get better the more you do it. But it's yeah, it's a particular skill, I think.

Michael Green [00:20:20] And did you look at the good lecturers you'd had and think I'll do what they did and look at the poor lectures you had and think I won't do what I did.

Dan Meagher [00:20:28] Yeah that's probably right. Yeah that's exactly right. And I tried to, I tried to teach in as fair as possible. I certainly my style of teaching was maybe a little bit unconscious, but thinking back, it was very much a style which was reflective of what I thought was a good teaching style to me, which was mainly The Socratic method, which is just a fancy word for really engaging with the students, asking questions, getting them to ask me questions, and trying to deliver the material in that way. So, I always found the best, or the classes I enjoyed the most I was engaged with. So, I have tried to, I suppose, carry that over into in terms of the way I teach.

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Michael Green [00:21:35] I wanna now get to constitutional law, which has been the major part of your career. Why constitutional law now, I mean, again, all I can go back to is my own study of 50 plus years ago. No idea. Read the book, try pass. And in the day to day life of a lawyer. Yeah, I guess the Constitution affects all of us. In. In. But in. You know, when you're working in an office looking after clients affairs, you know, less than 1% of laws and everything to do with the Constitution.

Dan Meagher [00:22:02] Absolutely.

Michael Green [00:22:03] How come it grabbed you? How did you get a job lecturing in it?

Dan Meagher [00:22:06] So in terms of what grabbed me, I think it's a couple of reasons. It's a little bit it's a subject which I think has a number of different strands going through it. It's part history, especially in Australia, where we have a constitution that was written in the 1890s. So, it's part historical. It has that connection with the English Common law, which is, you know, over 500, 600 years old. So that interested me the historical aspect. But it's also about politics. It's about politics and power. And so that political aspect interested me as well. The constitutional law cases, which I found fascinating, were mostly battles between states and the Commonwealth. So, in a sense it sounds quite dry, but it was often about big ticket items, you know, building of dams or non-building of dams, whether you can say certain things and be prosecuted for defamation laws and so on and so forth. So, there was this political aspect to it as well, which I found fascinating. It's also part and parcel of constitutional law is about interpretation. So, whilst most lawyers, of course engage interpretation with wills and contracts and the like, in some respects the stakes are a little bit higher with the Constitution. So, I find that aspect interesting. This task that lawyers and judges in particular have of trying to read and apply a document that was written in the 1890s to new and unforeseen circumstances, so that I find intellectually quite

interesting, but I'm also very respectful of the challenge it must pose for the judge. So, all those strands together I think might find my interest in the area of constitutional law.

Michael Green [00:23:43] So how do you get a job? Did it fall into your lap?

Dan Meagher [00:23:49] Pretty much, I have been lucky right now in this discussion Michael I realise how fortuitous I've been. Again, it was after I'd done that one subject of criminal law the next year they said they'd like to get me on in criminal law and the constitutional law lecturer resigned and went to another university. So again, it was a situation of having to plug a hole really at the last minute. And for better or worse, I thought I was the person to plug that hole. So that was again, just luck, it was being in the right place at the right time. And I taught it for the first time in about 1998 or so.

Michael Green [00:24:25] You've made the point that constitutional law, one of the major strands in it is politics. Yeah. Is it therefore appropriate to teach it in a political fashion?

Dan Meagher [00:24:35] Yeah, that's a really interesting question. Controversial in our sort of... In my field, I don't think it is. I try so far as possible to deliver the materials in a way which allows the students themselves who are intelligent and engaged mostly to form their own views. And sometimes that's difficult because some of the High Court cases can deal with very, very difficult. Sometimes moral issues are the areas of migration law can be raised, those sorts of thorny issues. But I have tried to teach it in a way which the students are not aware of my own political views. They could probably guess, I'm sure, but I want them to, I think it's important, one, it's law and there is whilst there's an overlap sometimes in constitutional between law and politics, it's still law. It's not politics. And so, I see my duty is to try to teach the law of the Constitution as well and as value free as possible to the students. But being cognizant of the fact that they're intelligent, often young people who will be forming their own views and I want to give them the space and the intellectual freedom to do so. So, there are certainly lecturers who would teach constitutional law, I think in far more political fashion, if I might say so, and that I find problematic because it's often the case that the politics is a more progressive politics rather than a conservative politics. And I don't see that as part of my role in terms of teaching the law of the Constitution. And I want the students to form their own views, which they do.

Michael Green [00:26:07] You said it's might lead to a progressive outlook or I guess I'm a more left wing outlook on politics. But you've also said that it's led to you being legally conservative. Yeah. What do you mean by that?

Dan Meagher [00:26:20] So I have a reasonably firm idea of the role of law and the role of politics. I have very strong views like everybody else about views of politics and moral issues, but I don't see in most cases, I don't see it the role of judges to try to further a particular political and moral point of view through their interpretation of the judgements. I see that as a role for Parliament, and so I have a probably quite a traditional orthodox view of law. And I think it's important that the distinction so far as possible between law and politics is maintained and that also I think energizing for the democratic sphere as well, that when there is or when there are important moral issues like same sex marriage, that those things are dealt with and engaged with through the Australian public and into our democratic institutions, rather than having a High Court or any court decide those issues for us. So that's what I mean. I think law is a distinct body of knowledge and a discipline and a profession, and I think it's important that that that distinction so far as possible between law and politics is maintained.

Michael Green [00:27:33] Does that mean that in interpretation, judges should be trying to be true to what parliament intended rather than what they may think is appropriate?

Dan Meagher [00:27:43] Yeah, absolutely. Absolutely. I mean, people disagree about this, but my own view is that statutes of legislation are enacted by a democratically elected parliament. They enact legislation for a particular purpose or purposes. And the job of the judge so far as possible is to facilitate that purpose. And of course, judges will be faced with situations, especially in the high courts, probably quite regularly, where they might disagree with the policy of the legislation. But their role is to give or is to further that and allow in the democratic sphere. But if there's going to be changes to it, that that is done in a democratic fashion. And I think that's important for our politics. I think it's important respect for democracy, for Australian people. But of course, judges, especially in the senior appellate courts, would face very difficult questions in that regard. And sometimes law does run out as well. So, something has to guide them. But so far as possible, I think that's absolutely right that they their job is to further the goal or the purpose or the intention, as you said, of legislation and give effect to it.

Michael Green [00:28:51] So then you've now been at Deakin for a few years, on and off. But you've been casual. There's been no permanency to your position. A, how did it become permanent. And B, have you got a family by now? Are you married? You got kids? Are you earning enough to survive on? I mean, I've always assumed that junior academics don't get paid much.

Dan Meagher [00:29:09] They don't. So, it was a year after I'd done the first year of constitutional law, Michael. The next year out was probably around 99, 2000. They offered me a permanent position. But you're right at the lowest level and didn't pay a lot. But back in those days, especially, say, in the Geelong area, you know, the sort of cost of living pressures that are bearing down on people now just didn't exist. So, I didn't make a lot of money, but I didn't need a lot of money to survive. I wasn't married at that point in time, so I think I'd probably had my first permanent position round 19, 1999, 2000. I end up getting married three or four years later, and I had a son in 2002, so I know the son first and then the marriage later, which of course, raised eyebrows in my particular family.

Michael Green [00:29:56] So you got a permanent position? But surely plain LLB, even if you had honours, isn't enough to be a permanent academic.

Dan Meagher [00:30:03] No, so straight away, when I was offered the permanent position, these days you would never get a permanent position in academia in any law school unless you had postgraduate degrees. So, you know, I was lucky in that regard. But soon as I was offered a permanent position, I was told that to continue on, I had to study, do postgraduate study. In those days, it wasn't so much of an obsession with PhDs. So, I began a master's degree and did that for part time for a year or two. And so that got me on the way.

Michael Green [00:30:35] But a PHD followed?

Dan Meagher [00:30:37] So by the end of that time, when I completed my master's law schools, mainly in Australia, not so much overseas, started to really expect the younger lecturers to either have or have begun to a PHD. So, I completed my master's after a couple of years and was told that was encouraged in inverted commas, that it would be useful for my career to begin a patch day, which is at the time was quite daunting.

Michael Green [00:31:03] What was your thesis? What was the topic of your thesis for your PHD?

Dan Meagher [00:31:06] The topic was the constitutional validity of racial vilification laws... Question mark... I suppose I was interested in freedom of speech issues and around that time, so I'm talking sort of early 2000s. It was the first raft of what I suppose you call hate speech or racial vilification laws were enacted in a handful of Australian jurisdictions. So yeah, that was my thesis.

Michael Green [00:31:31] Sometimes theses are published and can stimulate debate in the general community or the political community. Did your thesis have some wide application than just qualifying you?

Dan Meagher [00:31:44] I suppose. I mean in the sense that it was the thesis decided or argued that the laws were constitutional but then moved in the second half of the thesis to be a more evaluative analysis, i.e. are they a good idea or not? Do they work or not? That was a little bit uncomfortable territory for me because I wasn't a practicing lawyer, so I spoke to a lot of barristers here and lawyers on the ground and also police officers and their view were that criminal racial vilification laws, said to be important, symbolic symbol, but were very practically difficult to prosecute. So, they were usually ordinary type of criminal offences, assaults and the like. But then you had to prove intent that the act was done to with a racial or racist motive. My thesis basically said they're a good idea for symbolic reasons, but were practically difficult to enforce as to whether it had a wider application or probably informed some debate, but really probably within the legal communities and parliamentary. So, I don't think my thesis had any direct effect on the shape of the laws, but maybe some in legal and policy circles as to their usefulness or not.

Michael Green [00:32:54] You use the word symbolic. Can you see value? And this could be currently topical, of course. In symbolic laws?

Dan Meagher [00:33:01] Yeah, absolutely. Yeah. So, it's interesting when I think there seems to be a presumption that when you say it is symbolic that it's somehow less than whole or tokenistic. And no, I don't think that is the case. So yeah, I do believe that say the area of racial vilification laws, the measure of their success or otherwise is not just how many prosecutions you have. And it's important symbolically because you're saying to often vulnerable minorities, racial and religious and otherwise that you're valued and that certain conduct is beyond the pale and is unlawful. So even if there is no... If there's limited practical enforcement of those laws, the fact that they're on the statute book themselves, in my view, is an important statement to the community, to the courts, to police officers that these are important, these people matter, and we are not going to tolerate as a society certain conduct directed towards their abuse or otherwise. So, yes, I do think there is a role for. Of course, you'd hope that the laws may be more than just symbolic, but the symbolic role of, say, racial vilification laws, I think is a really important one.

Michael Green [00:34:18] Another part of being an academic is publishing papers.

Dan Meagher [00:34:22] Yes.

Michael Green [00:34:22] And I understand that's an ongoing thing. You must continue to publish. Well, back then, when you started as a young academic. How did you deal with that?

Dan Meagher [00:34:33] So that was that was quite frightening because all of a sudden, you're... and still frightening in the sense that part and parcel of your career or your success or otherwise of your career is getting things published. So, I did it in two ways when I did my master's the assessment tasks were usually writing a 10,000 word paper. So that gave me the opportunity to try to refine those assessment tasks and try to get them published. And I was lucky. I got a couple of published reasonably early on, and I quite enjoyed the process. It's still quite harrowing, harrowing, probably a little bit dramatic, but it's quite a lonely process. And you write something, you research it and you send it out and for people to criticise and that's still the case.

Michael Green [00:35:12] We all have an ego about criticism.

Dan Meagher [00:35:14] That's right. And so, I thought I would as I got older, that I'd get easier, but only if I think I've got thinner skinned as I've got older. I used to be able to take criticism more 20 years ago than now, so I chose to, even with my thesis, my PhD thesis, I sort of reluctantly started it for career reasons, but my supervisor, a guy called George Williams, suggested, Look, treat the thesis as a group of articles, connected articles. That way it becomes manageable. And also, you might then have the opportunity to publish those chapters in modified form as articles. So that's what I did. And that got that got me going. So, I was able to publish some things, get some runs on the board and get some experience as to how the process worked.

Michael Green [00:36:00] And publishing goes on, and there's Melbourne University Press, I guess all the Universities have a press, they're the sort of places in which you publish.

Dan Meagher [00:36:08] Yeah, there's a range of law journals in Australia, but also thankfully with a being a common law jurisdiction, I can publish and do publish overseas in the United States and the UK and indeed in New Zealand as well. And books you can provide chapters in books or books themselves.

Michael Green [00:36:24] So speaking about egos and fragile egos, what about rejection? I mean, so we all read about authors of fiction, particularly, I guess, who write and put out their book to 20 publishers and get knocked back. And occasionally they get one who turns out to be a hit or something. But do you face rejection with you? And might you put up a manuscript and be told, No, we think there's nothing in this.

Dan Meagher [00:36:46] Regularly, I think more often than not, unfortunately. Michael yeah, it's still the hardest part of the job because you are researching something and take some time and things we write say for a journal article will run between, say, 8 and 15,000 words and then you send it out to a journal. And in Australia it's quite different. You can only send the article to one journal in the United States, you can send the article to as many journals that you like and it becomes like a competitive thing. Here, you must wait on the decision of the single journal that you've sent it to, and often it's unfavorable. Very rarely do you get an acceptance with no changes. The best results I tend to get are what you might call a provisional acceptance, i.e. it's all right, but it's fundamentally flawed and needs to be rewritten significantly. And then sometimes more often than not, it'll be rejected. And so, the process starts again.

Michael Green [00:37:40] Who are the people making that decision now in the general publishing world with fiction or non-fiction, you've got editors who are experienced people,

and but we know more about writing matters than the author. But in the legal world, yeah. Who's got the right to tell you a professor that you got it wrong?

Dan Meagher [00:37:57] I'd like to say they haven't.

Michael Green [00:37:58] Who are they??

Dan Meagher [00:37:58] So basically people like me. What will happen is that the journal I'm sorry, the article will be sent to the Journal. The Journal will then contact people that they consider other legal academics who are experts in the area. And they if they agree to review the article and it'll be reviewed by two or three, they will then provide a report or review anonymously. So, in an ideal world it's going to be peers who are similarly hopefully expert in a subject matter that you've written the article on. But sometimes it's, you know, it's not a perfect world. Sometimes I will get reviews that are very, very good and constructive. At other times, maybe not so.

Michael Green [00:38:42] So then you do your PHD and while doing a PHD and subsequently you're publishing on freedom of speech hate speech for about ten years. Then you become interested in something called the principle of legality, and you publish in this area. I've been in the law for 50 plus years and I've never heard that phrase the principle of legality. Before reading your background, what is it?

Dan Meagher [00:39:03] Well, it's a fancy new phrase, Michael, for a technique of statutory interpretation that judges both in Australia, in the United Kingdom, have done for literally centuries. And it's a technique which at its most fundamental level interprets statutes in a way to try to protect fundamental rights or freedoms. Judges have always done it. For a long time, they did so, for example, to protect interests which they considered to be paramount. And those interests usually were property rights. And so that's why we had for a long time in both the UK and Australia, judges interpret tax statutes narrowly. The idea that it was proper to try to protect the property rights of the citizen and one way of doing that was to read these tax statutes narrowly. So, the phrase the principle of legality has been around for about 20 years or so. It's a snappy new phrase and it sounds very loyal and very high sounding. But it's really an it's a description or phrase for a technique that's been used for a long time by judges.

Michael Green [00:40:05] Did they use it to expand beyond protecting property rights or protecting other rights?

Dan Meagher [00:40:10] Interestingly, the around probably the mid-seventies or so, our High Court used this technique to read tax statutes narrowly and copped quite significant flak for doing so, both from the political arms of government but other sectors of society. So interestingly, and sort of the technique, this interpretive technique fell away, wasn't used so much, but then I suppose around the mid to late eighties, our courts started to use that technique again. But to protect a whole new range of fundamental rights or freedoms, maybe more progressive human rights type interests like freedom of speech, court access, religion and so on and so forth.

Michael Green [00:40:52] To my recollection, this has shown me to be more limited knowledge of the law. Those rights aren't mentioned in our Constitution?

Dan Meagher [00:40:59] No, they're not. And that's an important point. These rights in Australia, what I'm calling rights known as common law rights, common law, fundamental

freedoms. So, they are rights or freedoms or interests that the judges themselves have developed in case law over time. And why it's important is that, as you mentioned, they're not mentioned in the Australian Constitution, so they are court or judge generated rights and freedoms, and it's through the technique of statutory interpretation that those rights and freedoms are protected. But of course, as common law rights and freedoms, they remain susceptible to abrogation or diminution by parliament, by statutes.

Michael Green [00:41:44] We don't have those rights in our Constitution. There was debate, I'm going to roughly say 20 years ago, quite significant public debate about us having a Bill of Rights, which set out fundamental rights. It never got off the ground for you in five of us having a Bill of Rights or not having a Bill of Rights, and maybe compared, I guess, to the American situation where they do have the Bill of Rights.

Dan Meagher [00:42:05] Okay, they do. Yeah. So, there's probably there's two models are the American model where the Bill of Rights is part of their high law constitution. There was a move or there's been various times where there's been attempts to try to do something similar in Australia. But you're right, it failed. Personally, no, I'm not in favor of an entrenched higher law, American style Bill of Rights. In brief. The reason for that is that ultimately it leaves to the decision of our highest court decisions are on issues which are really deeply and fundamentally moral and political decisions, which I'm not necessarily sure it's wise to have a group of very smart lawyers, but non-elected judges nonetheless making those decisions. Ultimately for us, as is the case in the United States and for example, in Australia, we have same sex marriage as legalized, but that was a consequence of the Federal Parliament doing so.

Michael Green [00:43:02] And it's not in our constitution.

Dan Meagher [00:43:03] It's not in our constitution, no. And by way of contrast, in the United States, it was the American Supreme Court who decided that the parliaments or Congresses must recognize same sex marriage. And I think that the difficulty I have with it all, the discomfort I have with it, is that ultimately, I think people, they might disagree with a decision by Parliament, but it's been made by a Democrat through a democratic process. Whereas I having a final court of appeal, like the High Court of the American Supreme Court, decide those issues, I think people who are on the losing side are less accepting of. That. And so personally, I'm not in favour of a constitutional bill of Rights. We do have, though, there is an alternative model, what's known as a statutory bill of rights. So, for example, in Victoria we have the Victorian Charter of Human Rights. There's an equivalent in the United Kingdom. There's also in ACT and in Queensland that sets out very similar kinds of rights in the American Bill of Rights, but it's in an ordinary statute. So, what it's saying is to the parliaments, we want you to legislate in a way that is furthers or protects these rights. But at the end of the day they can override them. That's up to Parliament. So, I suppose in simple terms, a statutory bill of rights leaves the parliaments themselves to determine finally these questions, not the courts. In my view, that that strikes the right balance.

Voiceover [00:44:40] William and Lonsdale are brought to you by Greens list, one of the leading multidisciplinary barristers lists in Australia. Greens list believe in promoting conversation around the ideas and issues that shape not only our legal system but our wider community.

Michael Green [00:44:58] We as outsiders, may think that one of the perks of being an academic is the opportunity to travel and work overseas.

Dan Meagher [00:45:05] You'd be right.

Michael Green [00:45:07] I thought it might have some substantial benefit in opening up your mind and exposing you to different people of different ways of thinking and working in different legal systems. You've done a lot of that. Tell us a bit about it. Where have you been? What have you done? And what have you learned from being in these places and being exposed to these different systems?

Dan Meagher [00:45:27] So one of the real joys of academia is being able to spend time either interstate or overseas at a different institution and undertaking research. So, in academia, we call them sabbaticals. And the first time I became eligible for one to become eligible was really just you serve three years in the one law school.

Michael Green [00:45:46] Can I please draw attention to the fact sabbatical means once every seven years?

Dan Meagher [00:45:52] Well, thankfully not in my law school.

Michael Green [00:45:55] Well I think any Latin scholar would agree with.

Dan Meagher [00:45:58] Well, you're right. So, the first time I got the opportunity, I'd spoken to colleagues at other universities in the constitutional law field, and they encouraged me that you must go overseas. And I remember thinking, I will. I will. I didn't need much encouragement. And a guy who's now passed, University of New South Wales, George Winterton, said, you really, really must go overseas and remove yourself from your usual workplace and your usual commitments. You'll find it really, really worthwhile and valuable and you will probably write some good things. And I remember at the time thinking I'm more than happy to take him up on that offer, the opportunity to go overseas. But it did work that way. Once you get to a different place, being in different geographical environment, surrounded by different things, different people not having ordinary work commitments and family commitments, things do change. You do think different thoughts and you're freed up, I suppose, in some way from the ordinary day to day life. And I was surprised to find out that yes, it was really, really beneficial and beneficial for research and just meeting different people as well. So yes, it's it is a perk in the sense that it's a really nice thing to be able to do, to have the opportunity to go and live somewhere different and work and research. But it's really, really valuable.

Michael Green [00:47:18] Has it only been common law jurisdictions or have you been in a European university law school where, of course, it is not a common law jurisdiction?

Dan Meagher [00:47:26] My own, my personal ones have only been in common law jurisdictions, but that's been mainly to do with going to places where there were people who were experts, real experts in the area that I was researching in. There's no reason and plenty of my colleagues who travelled to European, so for example, an expert in international law makes good sense that they go to Germany or other European institutions. In my own life it's been or my own experiences have been common law jurisdictions. Americans sort of don't consider themselves now common law jurisdiction, but in a sense, they were they were founded by the common law.

Michael Green [00:48:02] I thought they were like us. They're bound by the doctrine of precedent.

Dan Meagher [00:48:05] They are so but with the American Revolution and the ejection of the British, the enacting of the Declaration of Independence and the creation of the United States Constitution, in a sense, it was considered legally almost like a clean slate. But interestingly, of course, it can't be a clean slate. And they passed laws saying that so far as possible, aspects of the English common law will continue until we decide to change it.

Michael Green [00:48:33] In being exposed to these different universities. In my recollection, the US, UK, New Zealand, South Africa.

Dan Meagher [00:48:39] That's right.

Michael Green [00:48:40] Yep. How do our law school stand up against the law schools in other places?

Dan Meagher [00:48:44] Really, really well in Australia there are universities and law schools that have far more resources than others and they tend to be the old sandstone universities. And so those law schools are far bigger and far better resourced. But in terms of our students and in terms of the quality of the academics, surprisingly well, when I say surprisingly well, what I mean is that in the United States, for example, the better law schools are really big, extraordinarily well resourced institutions, and they produce brilliant students and have brilliant academics. But the more I've travelled and the more I've engaged with their student body and also with their academics, I realize that, you know, we're punching in the same sort of divisions.

Michael Green [00:49:27] So we'll leave the perks and the overseas travel and get back to the daily life of an academic. As a professor, do you do much teaching?

Dan Meagher [00:49:35] That's all dependent, and this is relatively recent Michael, but in terms of the amount of teaching you do now, it's quite formulaic and really boils down to the more you published and the so-called better places you publish in, the less teaching you do. So, it really turns on a year to year basis. If I publish quite a lot, I do less teaching. I always teach a course and constitutional law. But that division of labour, I suppose, is dependent largely upon how much you publish.

Michael Green [00:50:03] You are director of research at Deakin Law School. Yep. What does that entail? I mean, I. I'm assuming you're supervising other people who are doing research. How much of your time does that take up?

Dan Meagher [00:50:13] Yeah, so almost in terms of time wise, it's probably maybe half a day, sometimes a day, a week as a variety of different roles. It's part administrative and part sort of academic. The administrative side of things. The university gives every school an amount of money to support research related activities. So, for example, if somebody wants to go to a conference, they make an application. The application comes to me for a certain amount of money and I approve it or just reject it. So that's the administrative side of things. Maybe the more important academic side of things, as I said, is trying to foster a research culture in the school. So, we do that. But I've tried to do it by two, two ways. The first is that we have a law school seminar program, so every fortnight we have a speaker mostly from within the law school to discuss and debate a work in progress. And so, I got that off the ground when I first became the director of research. And that's really important thing because it allows people to come together. We have we have a meal.

Michael Green [00:51:17] Student, not students, just staff?

Dan Meagher [00:51:19] Just academics, just staff, and other people from law schools are most welcome to join us as well. And of course, now with the ubiquitous zoom, they can do so remotely. So that part of the role I consider really important because it's fostering a research culture, allowing people the opportunity to discuss their work in progress, get feedback in a constructive forum, especially for the young, for the younger members of our staff. So, my role there, I say, is it's a mentors too strong, but trying to foster a culture, especially with the young or new members of staff, to give them the opportunity and the support to undertake research and get things published, to get their careers going as well.

Michael Green [00:52:05] Let's bring ourselves right up to the moment and a political issue, the biggest political issue in Australia at the moment, and is the forthcoming referendum on the voice to Parliament for Indigenous people, there's an argument against the voice that it will clog the court with litigation. Do you think that's likely?

Dan Meagher [00:52:21] I think it's highly unlikely, actually, Michael. The proposed amendment states that the voice, the body to be established, called the voice may make representations.

Michael Green [00:52:31] Can I just clarify the point there? I think I'd be guilty, like most people, of not thinking of the voice as a body, an actual institution. I think it in terms of some ephemeral thing, like as a voice. Right. But in fact, it is a constituted body. Is it nine people?

Dan Meagher [00:52:48] They haven't determined that yet. So, the proposed wording in the first subsection says there shall be a body called the Voice in terms of its composition and in terms of its functions and powers. That will be if that referendum is successful, will be determined by the Parliament through legislation. But there are certain design principles that are on the table now and which the Albanese Government have supported or have said they support. So, the idea would be that the voice would be comprised of Aboriginal and Torres Strait Islanders from each state and territory and from each geographic aspect of that state and territory. So that still it remains not, not an unknown, but its precise composition will not be determined until by the Parliament. So yes, it is an institution and maybe importantly as well, it's a constitutional institution. And what I mean by that is that it's in a sense like the High Court or the House of Representatives, it's a body that is established by the Australian Constitution. It will require legislation by the Parliament to establish it, to get it going, but it's a constitutional institution. The second part of the proposed amendment says this body to be called to voice may make representations to the Federal Parliament or the Government of the Commonwealth. Now, as most lawyers would remember, maybe in their first week of law school, you do a little bit of statutory interpretation and one of the words that looms large is often may, may or shall. May means that - that they may offer a view on policies or issues that affect Aboriginal or Torres Strait Islanders. Most importantly, that provision or that proposed provision is completely silent as to what the Parliament or the Government do with those representations made. And that's significant because the proposed amendment places no obligation whatsoever on the government of the day or the Australian Parliament to do anything with the representations made. Of course, the idea is for those who are proponents of it, is that they will listen to the view offered by the Voice and then make their own judgements about what they do with it. But there's no legal but no legal or constitutional obligation on the Parliament or the Government to do anything. There's no

legal obligation on them. And then the chances of there being the flood of litigation, which has been which has been suggested, I think, borders on the fanciful, to be.

Michael Green [00:55:16] Honest, and you'd be agreeing with it. I think the former High Court justice, Ken Heiner, said the same, I think. And yeah, former Chief Justice Gleeson I guess said the same also.

Dan Meagher [00:55:25] So there will be litigation, of course people will litigate, but the litigation, if it's in the form of trying to force the government to take on the view of the voice or the representation offered, there simply doesn't seem to be a hook for that litigation to be successful. But of course, you can't stop people litigating and neither should be.

Michael Green [00:55:44] What about the suggestion that every piece of legislation is potentially will have an effect upon Aboriginal and Torres Strait Islander people and therefore everything indeed a piece of tax legislation, whatever may generate a recommendation from the voice.

Dan Meagher [00:55:58] Yes, that's a really interesting point because the proposed amendment very much leaves it the ball in the Voices court as to what issues or policies they make representations about. So, does that in theory mean they can make a representation on any proposed legislation? The answer's yes. But we've got to think about the institution itself. It will be have a limited number of people, a limited amount of funding and resources. And also, maybe the most important thing is they want to use their political capital wisely. So, I for example, if the voice did do that and made representations on completely unrelated policies or proposed laws, their political capital is depleted quite quickly. So, I think it just it would defy common sense for the voice, a particular voice to do that. Of course, if it does happen, then those persons who comprised that particular voice could of course be replaced or the institution refined. So, it relies on the goodwill and good faith and good sense of the institution itself. And I suppose that the understanding that to make frivolous or completely irrelevant claims to Aboriginal or representations to Aboriginal or Torres Strait Islanders would quickly diminish their own political capital. So, I consider that probably unlikely.

Michael Green [00:57:17] One of the other potentially controversial parts of the proposal, as I understand it, is the use of the phrase executive government. I'm not clear what that means. Could you give us your expert opinion on what it means and is it likely to be something which creates a problem?

Dan Meagher [00:57:33] So the Executive government, I suppose, is the administrative side of government. The head of our executive government formally, in fact, is the king of Australia, but top of our executive government in Australia is the Governor-General. Then it's all the government departments, so what we call the public service. So, there is some angst in some quarters that... Does that mean the voice is going to be sending memos to public servants in Canberra constantly? And in that way, I suppose hamper the machinery of government. Again, I think it's highly unlikely. We don't necessarily know yet how the representations will be fed into the political and legislative process, but you could probably understand that most likely what will happen is that the representation would be made to say, the responsible minister on a particular policy or the secretary of the particular government department. So, there will be a mechanism that Parliament themselves choose to ensure that the representations made do reach the relevant government departments. So that's what we mean by the government, the Executive government of the Commonwealth. Do I think it's going to be problematic? No, I don't. And indeed, it is the

role properly so in my view, for Parliament to determine what the used or to what use the representations made by the voice will be put. So, Parliament might say the executive government, not government department, must listen or at least acknowledge the representation. But what they do, what they do with that will be up to the relevant Minister. So, it's Parliament that will ultimately have the final call as to what the use to which those representations will be made.

Michael Green [00:59:15] Am I right in assuming that in making representations to a relevant minister or department that I would be one of only many bodies who are interested in a particular piece of legislation or prospective piece of legislation to make representations?

Dan Meagher [00:59:29] Yeah

Michael Green [00:59:30] Typical thing happening in government all the time.

Dan Meagher [00:59:32] That's a really, really good point. And maybe it's not a point that has been emphasized enough by proponents of divorce. The notion that a body, a representative body would provide some input to a process about a law or a policy that affects them, happens the whole time, is an absolute commonplace part of government and a good part of government. So, what's different, of course, is that it is a constitutional body, but the process itself is something that good governments happened the whole time. The proposed tax is flagged. The Business Council of Australia and other representative bodies, trade unions will make representations and appropriately so. But ultimately it will be the political arms of government, Parliament and the executive government that decide or make the final decisions. And so, to what effect that they give, if any, to those particular representations made.

Michael Green [01:00:29] Dan, thank you for coming in this morning. It's been absolutely enlightening to me to hear you. Tell us about your career and about constitutional law. If you'd been a lecturer 55 years ago, it would have been a far better law. I am sure I have known far more about the Constitution and its application to our daily life. It's been really interesting and I've loved. Thanks for coming in.

Dan Meagher [01:00:50] Thanks very much, Michael.