



The importance of strong and enduring institutions

Monash University Law Review 51st Annual Dinner

Chief Justice Richard Niall

State Library Victoria

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Good evening. I begin by acknowledging the Traditional Owners of this land, the Wurundjeri People of the Kulin nation. I pay my respects to their Elders, past and present, and to First Nations people here this evening.

Thank you, Isabelle, for the introduction. I extend my thanks to the Monash University Law Review for inviting me to speak at your Annual Dinner. I acknowledge the academics and faculty members in attendance this evening, the Editorial Committee of the Law Review, fellow judges and other distinguished guests.

Academics are an integral part of the Australian legal community, alongside practitioners and the judiciary. Last year, Chief Justice Helen Bowskill of Queensland reflected on the significance of academic work to the development of Australian law in her Honour's address to the Australian Academy of Law.¹ Your work in educating the thinkers and leaders of the future is also invaluable.

¹ Chief Justice Helen Bowskill, 'Bridging the Gulf – the Role of the Academy in the Development of the Law' (Annual Patron's Address, Australian Academy of Law, 31 October 2024).

Tonight is a celebration of the 51st volume of the Monash University Law Review and its first year as an online-only publication. As student editors and faculty advisors who work on the Review, you should be immensely proud to contribute to such a prestigious publication which receives national and international acclaim.

It is always a pleasure to visit the State Library Victoria. Established in 1854 as the Melbourne Public Library, it is the oldest public library in Australia, and one of the first free public libraries in the world.²

It is situated on land that has been home to rich indigenous knowledge systems for generations and its collection includes traditional cultural knowledge belonging to indigenous communities in Victoria and Australia.

Despite its imposing stature, the State Library strives to be an inclusive place for all members of the community to access information. It is Victoria's library of record and home to the State Collection. An institution with a mission to 'enrich the cultural, educational, social and economic lives of all Victorians.'³

This evening, I wish to reflect on the importance of strong and enduring institutions in our society, which are underpinned by the rule of law, as well as some of the challenges we face as a society and the role of the justice system in addressing them.

² State Library Victoria, [*History and vision, Our history*](#).

³ State Library Victoria, [*Strategic plan 2022-26*](#).

Political and economic institutions

When we span the globe, we see that the quality of life varies considerably between nations. There are various ways to measure the ‘success’ of a nation. These range from economic (like GDP and the employment rate), to social (such as access to education and housing, health outcomes).

The Nobel Prize winning economists Acemoglu and Robinson hypothesise that the long-term economic and social welfare of nations depends not on geography, climate or culture, but rather on the existence of inclusive economic and political institutions.⁴ That is, its institutions comprising the social, economic, legal, and political organisation of a society are the primary determinant of economic performance. If this theory is correct it has obvious significance in the current world in which we seem to respond to threats such as that to the climate and environment by undermining or abolishing institutions when in fact it is those very institutions that could provide the best prospect of meeting those challenges.

Let me start by exploring their hypothesis.

Economic and political institutions have a symbiotic relationship. According to Acemoglu and Robinson, economic institutions determine a nation’s wealth, but political institutions determine what economic institutions develop.⁵

What do they mean by inclusive institutions?

⁴ Daron Acemoglu and James A Robinson, *Why Nations Fail* (2012, Profile Books).

⁵ Ibid 43.

Inclusive economic institutions are those which advance economic activity, productivity growth and economic prosperity. They:

allow and encourage participation by the great mass of people in economic activities that make best use of their talents and skills and that enable individuals to make the choices they wish. To be inclusive, economic institutions must feature secure private property, an unbiased system of law, and a provision of public services that provides a level playing field in which people can exchange and contract; it also must permit the entry of new businesses and allow people to choose their careers.⁶

There are two key aspects to inclusive political institutions:

1. a centralised, powerful state; and
2. political power that is broadly distributed in society.⁷ Inclusive political institutions and pluralism are closely connected.⁸

Both economic and political institutions create incentives for members of society and influence their behaviour.

Acemoglu and Robinson distinguish between inclusive economic and political institutions and their counterparts, which they describe as extractive.

Extractive economic institutions are designed to extract income and wealth from one section of society to benefit another.⁹ While inclusive institutions encourage economic growth,

⁶ Ibid 74-5.

⁷ Ibid 80.

⁸ Ibid.

⁹ Ibid 76.

extractive institutions impede it.¹⁰ Extractive institutions ‘keep poor countries poor and prevent them from embarking on a path to economic growth.’¹¹

The authors seek to test their hypothesis by comparing various colonial societies, drawing a distinction between the inclusive and the extractive.

Their thesis is not designed to praise colonisation. It is self-evident that colonial powers have been highly destructive of the societies of the original and existing inhabitants. And the establishment of these institutions in the era of colonisation obviously came at a devastating cost, the consequences of which still reverberate today.

In their book, ‘Why Nations Fail’, Acemoglu and Robinson explore the nature of political and economic institutions in different parts of the world and chart their development. They seek to explain why some nations have prospered while others have failed.

In the United Kingdom, the authors record the slow but steady process by which the rights and privileges of the elite were distributed amongst various groups within society. They mark the Glorious Revolution of 1688, which was led by a broad coalition of merchants, industrialists, the gentry and members of the aristocracy, as a transformative time leading to the development of inclusive political and economic institutions, and the emergence of the rule of law.¹²

Acemoglu and Robinson write that:

The Glorious Revolution limited the power of the king and the executive, and relocated to Parliament the power to determine economic institutions. At the same time, it opened up the political system to a broad cross section of society, who were able to exert considerable

¹⁰ Ibid 83.

¹¹ Ibid 398.

¹² Ibid 190-7, 211, 302-8, 458-9.

influence over the way the state functioned. The Glorious Revolution was the foundation for creating a pluralistic society, and it built on and accelerated a process of political centralization. It created the world's first set of inclusive political institutions.

...

The government adopted a set of economic institutions that provided incentives for investment, trade, and innovation. It steadfastly enforced property rights, including patents granting property rights for ideas, thereby providing a major stimulus to innovation. It protected law and order. Historically unprecedented was the application of English law to all citizens. Arbitrary taxation ceased, and monopolies were abolished almost completely. The English state aggressively promoted mercantile activities and worked to promote domestic industry, not only by removing barriers to the expansion of industrial activity but also by lending the full power of the English navy to defend mercantile interests. By rationalizing property rights, it facilitated the construction of infrastructure, particularly roads, canals, and later railways, that would prove to be crucial for industrial growth.¹³

The authors show why the development of inclusive institutions leads to a virtuous circle in which the distribution of power is itself seen as a desirable outcome that avoids the old absolutism so that one narrow elite is not replaced with another but a broad coalition emerges. Importantly for my purposes, the rule of law emerged as a byproduct of this process because it was natural to have laws and constraints applicable to all to sustain broad distribution of power. The rule of law makes no sense in an autocratic regime in which power resides in the few.

As these institutions grew, they became pivotal to economic growth and encouraged the distribution of wealth as a result of political and economic power sharing. There is a crucial

¹³ Ibid 102-3.

symbiotic relationship between the rule of law and prosperity and economic growth. That process is ongoing.

By contrast, Acemoglu and Robinson describe various colonial societies in which there was no incentive to distribute power and the continued concentration of power in elites had no call for, and in fact was plainly inconsistent with, the rule of law. Thus for example they compare the relative progress and position of North Korea and South Korea and seek to explain how the economic and social fortunes differ so markedly. Although in the aftermath of the Second World War, South Korea was ruled by authoritarian presidents, a market economy incentivised work, innovation, investment and trade, and education was available, which meant that power was ultimately disbursed.¹⁴ By contrast, North Korea lacks inclusive political and economic institutions which would support the rule of law; power has been retained by an elite.¹⁵ Similarly, in those colonies which provided an inhospitable environment, the colonising power tended to extract value without any attempt to develop inclusive and pluralistic institutions. Many of those countries have never recovered, lacking as they do the institutions which underpin an equitable society.

The rule of law

In that framework let me now focus on the rule of law, ‘the doctrine that all people are equal before the law, and that the government is subject to the law.’¹⁶

Satterthwaite, Sydow and Polk write that:

¹⁴ Ibid 71-4, 93.

¹⁵ Ibid 71-4, 388-9.

¹⁶ *Macquarie Dictionary* (2025) ‘rule of law’ (def 1).

... independent judiciaries play a bedrock role in democracies by safeguarding free and fair elections, facilitating peaceful transfers of power, upholding human rights, and ensuring that the law is applied equally to all people, including State officials.¹⁷

...

Democracy demands more than the election of lawmakers; it also requires that the laws they pass are applied fairly and consistently.¹⁸

Being economists, Acemoglu and Robinson's central concern is the market and how the structure of the relevant society has advanced or inhibited inclusive and fair markets based on secure property rights.

Lawyers and judges tend to focus on the rule of law in terms of its social and political value rather than its economic outcomes. In a paper on law and economics which Sir Anthony Mason delivered to the Monash Faculty in 1992 (and which was published in the *Law Review*) the then Chief Justice of Australia explained why courts could not consistently with their role decide cases based on the desirability of economically efficient outcomes as opposed to legal principle.¹⁹ This dichotomy between the law and economics can also be seen in the language in which the rule of law is discussed. But that does not mean that we ought not examine the value of courts from an economic perspective.

For my part, a crucial but underplayed part of the thesis is the role that independent and impartial courts play in the economic prosperity and sustainability of a society. In addition to ensuring the equal and fair treatment of all people, and providing a check on the power of

¹⁷ Margaret L Satterthwaite, Katarina Sydow and Ben Polk, 'Unchecking power and capturing courts: How autocratization erodes independent judicial systems' (2024) 76 *Rutgers University Law Review* 1147, 1149 (citations omitted).

¹⁸ Ibid 1153.

¹⁹ Sir Anthony Mason 'Law and Economics' Monash Law School Foundation Lecture (25 March 1992) – (1991) 17(2) *Monash University Law Review* 167.

political institutions, the World Bank recognises that efficient judicial systems promote economic development.²⁰

Importantly, a nation with an independent judiciary and laws that are fair, transparent and consistently applied, facilitates stability, innovation, investment and economic prosperity. The point being not that the courts should work to economically efficient decisions, but that the application of the law, by independent and impartial courts, provides an essential framework in which markets exist and wealth can be generated.

There are several layers to this. The security of property rights and the ability to enforce contractual obligations are key facets of commercial operations that serve to reduce transaction costs and promote economic development. Independent and efficient court systems provide this not just in the cases they hear and determine, but the existence of effective court remedies discourages breaches in the first place. The common law was instrumental in the development of the economy with its focus on objective theory of contract and the need for certainty.²¹ The impact of any statutory developments of the rules around corporate matters depend on there being courts that can hear and determine disputes about the norms of conduct which Parliament prescribes.

John Coffee Jr, a Professor of Law at Columbia, said: ‘The US has long been known for its lower cost of capital, and I think that is down to its higher level of transparency and the ability of shareholders to go to court for remedies.’²²

²⁰ Erica Bosio, ‘Improving the efficiency of courts can boost a country’s economic growth’, *World Bank* (Blog, 23 January 2025).

²¹ Lord Hodge, ‘The Contribution of the Common Law and the Courts to Economic Prosperity’ (Speech, Supreme Court of Brunei Darussalam, 25 February 2025).

²² Stephen Foley et al, ‘Donald Trump tilts balance of power from investors to CEOs’, *Financial Times* (online, 16 September 2025).

Courts also form part of the integrity infrastructure. As a check on the exercise of government power, they deter corruption. Corruption is not only a moral hazard, but also a drag on economic development. Corruption risks within a state impact investment decisions, particularly those which fuel long-term growth.

Challenges to the rule of law

I firmly believe that Australia is home to inclusive economic and political institutions. It follows that attacks on the courts have a corrosive effect on society but also on the economy.

When I look across the judicial landscape in Victoria and across Australia, I see a system of outstanding quality. Judicial officers who are independent, impartial and highly competent in their respective fields of expertise. But I rarely hear people outside the legal system sing its praises. Public discussion of the work of the courts is so often confined to stories about terrible crimes and whether the sentence imposed was too low.

Why is that?

Let me offer a few possible reasons and then tentatively proffer some solutions.

First, sub-optimal, declining trust in institutions.²³

The results of surveys indicate that the levels of trust and confidence in democracy, government and institutions of justice are not as high as we might expect. I will cite just a few statistics.

²³ See, eg, TF Bathurst 'Trust in the judiciary' (2021) 14(4) *TJR* 263.

Results from the 2022 ANU project ‘What Australia Thinks...’ provided that:

By and large, Australians consider our institutions of justice and law to be declining in trustworthiness. How these institutions – the police, the courts, prisons, the public service, and the Federal Government – fare differs depending on our age and gender, among other demographics.²⁴

There was 48 per cent overall trust in courts. Courts were trusted less than police (75.7 per cent) but more than the Federal Government (38.2 per cent) and prisons (47.6 per cent).²⁵

The 2025 Edelman Trust Barometer, a global survey, provides that in Australia the average per cent trust in business, government, media and NGOs is 49 per cent.²⁶ Last year it was 52 per cent and in 2023 it was 48 per cent.²⁷

The findings of the Australian McKinnon Index were released earlier this week. One of the questions asked was ‘How much do you trust courts and the judicial system?’ 53.7 per cent of respondents indicated high trust, 12.4 per cent neutral, 31.7 per cent low trust and 2.2 per cent not specified.²⁸

35.9 per cent of respondents had high trust of federal politicians and 38.8 per cent had high trust of state politicians.²⁹

²⁴ ‘[Do we trust our criminal justice system?](#)’ *What Australia Thinks* (14 September 2022).

²⁵ Ibid.

²⁶ Edelman Trust Institute, [2025 Edelman Trust Barometer](#) (Global Report, 2025) 6.

²⁷ Edelman Trust Institute, [2024 Edelman Trust Barometer](#) (Global Report, 2024) 6.

²⁸ McKinnon Institute, [McKinnon Index](#) (Annual Dashboard of Democratic Health, 2025).

²⁹ Ibid.

This is a worldwide phenomenon.

Second, human nature: the negative is more powerful and often generates more engagement than the positive; negative headlines achieve more clicks.³⁰ The demand for negative stories reflects the power of bad events over good ones. Bad emotions, bad parents, and bad feedback have more impact than good ones and that information is processed more thoroughly.³¹

Third, simple is more attractive than complex, and easier to communicate. In an increasingly online world, algorithms create echo chambers where people do not necessarily hear a range of perspectives or considered, respectful challenges to ideas. The proliferation of misinformation and AI-generated content, which imitates reality, are likely to be ongoing challenges.

Fourth, perhaps reflecting the last two items, there is a constant focus on crime and cheap content. The media has undergone enormous change in recent years with the rapid rise of social media's influence and scarcer resources and investment in long-form journalism. Content which is quick to produce and will generate more engagement often has the edge. The courts provide free and daily content of interesting and salacious stories.

Fifth, cost and delay. These are the most common and understandable criticisms of our justice system and ongoing challenges based on available resources.

Sixth, we rarely make the case for the economic value of courts. The courts and tribunals provide great economic and social value to society, but this is rarely discussed.

³⁰ Joel Suss, 'Bad news: there's more of it about', *Financial Times* (online, 9 September 2025).

³¹ Roy F Baumeister et al, 'Bad is Stronger than Good' (2001) 5(4) *Review of General Psychology* 323.

Seventh, and relatedly, the system has few, if any, champions.

Let me develop some of those points.

One of the problems in a mature system is that we assume that the underlying premises on which society operates, including the rule of law, once established, will endure without any care or attention. That is, we tend to take things for granted. We may not consider that we need to examine the economic and social value of courts because the rule of law is already fully entrenched and because we have independent and impartial courts. So, for example, although the ability to enforce a contract and the rules of contractual interpretation which are based on objective meaning are critical to the economy, we rarely pause to think that a commercial court is as essential to our wellbeing as a criminal court. We tend to assume that people understand and will respect the underlying norms of commercial life but that assumption depends on there being strong, independent and robust courts to deal with disputes. Courts act as an important deterrent against deviating from previously signed contracts or established norms of conduct, but again this depends on access. There are many studies which show a correlation between judicial independence and economic performance.³² For example, in times of economic downturn the quality and availability of court-supervised and controlled insolvency is critical to recovery.

It is evident that we cannot afford to take the public's trust and confidence in our justice system for granted. It is not all or nothing – the strength of institutions can be degraded over time.

³² See, eg, Kenneth W Dam, 'The Judiciary and Economic Development' (John M Olin Program in Law and Economics Working Paper No 287, 2006).

The courts and tribunals provide great and varied value to society, but we lack champions. We value community engagement, but we do not self-promote or respond to criticism, even when it is factually incorrect. The government and public sector rarely mention us. The private sector is generally silent as well.

Meeting the challenges

When it comes to tackling these issues, we should recognise and celebrate the value of our legal system, and I mean value in all its dimensions. I find it helpful to consider our assets and reflect on how we adapt and address our weaknesses.

What can we do?

Excellence in all that we do.

The intellectual capacity and dedication of the members continue to be the greatest asset of the courts and tribunals. They are institutions of great integrity and fierce independence. The quality of decision-making is high and impartiality unquestioned. We must continue to pursue excellence and recognise the importance of our work, while also recognising the value of humility and self-reflection.

Promoting understanding, consistent engagement.

In addition to maintaining excellence in our core work, communication and education also have a critical role to play. Part of that is explaining the value of courts both in terms of economic value and in upholding the values which underpin the rule of law.

The economic and social value of courts which I have discussed are an essential product of the rule of law. It is important that we recognise that the rule of law is not a 'nice to have' once we have a sufficiently prosperous or successful society, but rather is an essential ingredient for the

maintenance of a prosperous and harmonious community that must be fostered and supported. It is important that we see courts as part of the fabric of the society and the community. This takes both understanding and investment. Investment in ideas and investment in people and infrastructure.

One of the great challenges in recognising value and seeking investment lies in measuring the performance of courts. We tend to be assessed by reference to individual outcomes in high-profile cases or bland and incomplete statistics which show only part of the picture. We have not yet managed to identify measures of performance which adequately address the varying complexity of cases. We need measures which adequately capture both qualitative and quantitative data in order to explain our work and identify the resources and needs that are required in order to meet the very high expectations which the community rightly has.

The courts must also play a role in promoting a narrative which seeks to respect and value institutions.

The courts are capable of gaining and holding public attention. The more that the public are able to see and hear for themselves, the greater their appreciation of court processes, the law and why it matters. Some of the greatest ambassadors for the courts are those who have sat as jurors. That tells you something. It is certainly not the cramped conditions or the instant coffee that wins hearts and minds.

Innovation.

The courts do need to adapt to become more accessible. This requires investment, both monetary, and in terms of ongoing community engagement. Courts do not control the sword

or the purse. We are always considering ways to improve the system and make it more accessible.

The recent opening of the Wyndham Law Courts, the largest court and tribunal complex outside the Melbourne CBD which was designed with inclusivity and accessibility front of mind, is an example of investment allowing the courts to serve Victoria's growing population.

Investment in technology and digital innovation is also front of mind for Victorian Courts and Tribunals, including AI. Technology has the potential to increase access and efficiency but we must use it in appropriate, considered ways. We have a proud culture of embracing digital innovation and have adopted new technology to great effect. For example, our eFiling systems, and our transition to online hearings in response to the COVID-19 pandemic.

What can you do?

At times it can be easy to feel pessimistic about the various challenges we face as a society, but as legal thinkers and members of the Australian legal community, your optimism is vital.

As academics and educators, you play a key role in communicating the vital role of legal institutions and the rule of law in our society.

As decision-makers and leaders, present and future, you are champions of justice and can shape the nature of our institutions and the perception of them. For those of you in civil or commercial law, I encourage you not just to think of your work in terms of disputes about money, but recognise the importance of your work to the rule of law.

The Supreme Court

Let me return to Acemoglu and Robinson's thesis and make the point that the Supreme Court is one of the great institutions that allows our society to thrive.

The Supreme Court is undoubtedly a strong, enduring and inclusive institution. Established in 1852, just two years before the State Library, both institutions have a grand presence. The Supreme Court was fundamental in the establishment of the rule of law in this country. The work that takes place in the Supreme Court and in the other Courts and Tribunals across Victoria continuously serves to uphold the rule of law and human rights.

In some respects it has not always been inclusive.

This evening we gather in the Isabella Fraser room, which is named in honour of the first female Library staff member on the public service lists.³³ She began working at the Library in 1908 and was appointed to the role of 'Assistant' in 1924.³⁴ It is quite likely that she undertook the work of a librarian although she was not granted the title.³⁵

The Supreme Court's first Chief Justice, William a'Beckett, and the other judge appointed, Redmond Barry, sat for the first time on 10 February 1852.³⁶ It was not until 1993 that the Court appointed its first female judicial officer when the Honourable Kathryn Kings was appointed as a Master of the Supreme Court (today known as an Associate Justice).³⁷ In 1996,

³³ Ana-Maria Traian, ['Isabella Fraser, a library pioneer'](#), *State Library Victoria* (Blog, 22 August 2023).

³⁴ Ibid.

³⁵ Ibid.

³⁶ Supreme Court of Victoria, [Our history](#).

³⁷ Ibid.

the Honourable Rosemary Balmford became the first woman to be appointed as a judge of the Court.³⁸

Today, 21 of 48 Supreme Court Judges (43.75 per cent) are female. We have seen great strides in the diversity of the legal progression and courts but there is still significant progress to be made before the Court truly reflects the diversity of the Victorian community.

Of course, the Court is not perfect and neither is our legal system. Prohibitively high legal costs and significant delays are common criticisms, and ongoing systemic challenges. But we are truly fortunate to live in a democracy in which the rule of law is overwhelmingly valued and respected.

We must never become complacent and take this as a given. Beyond Australia's borders there are plentiful examples of judicial independence being threatened and undermined, including in subtle ways.³⁹

This year, the World Justice Project Rule of Law Index found that the rule of law has declined globally for the eighth consecutive year, and that the rule of law recession is accelerating, with 68 per cent of the 143 counties and jurisdictions evaluated declining.⁴⁰ Australia is ranked 11th overall globally and 2nd in our region;⁴¹ that is encouraging but we must not be complacent.

In order to prosper, courts require continuity and change. We must learn from the past, hold fast to fundamental values and principles which underpin the rule of law, while also adapting

³⁸ Ibid.

³⁹ Satterthwaite, Sydow and Polk (n 17).

⁴⁰ World Justice Project, [Rule of Law Index, Insights](#) (2025).

⁴¹ Ibid [Rankings](#).

with the community we serve. This is reflected in the development of the law and our increased understanding of various challenges and how we might address them.

Thank you.