



A marriage of **minds**

Jane McAdam and Ben Saul met as teenagers and started dating while studying arts/law at the University of Sydney. Partners for 18 years, they are globally recognised leaders in international law. The similarities in their career paths are quite remarkable and they share a strong sense of responsibility as advocates for the rule of law, especially in relation to international refugee law, climate change, forced migration and terrorism.

JULIE MCCROSSIN reports.



Photography: Jason McCormack

When Jane McAdam and Ben Saul greet me warmly in their home on Sydney's north

shore, surrounded by a much-loved garden and the sound of birds calling, the peaceful setting is in stark contrast to the jam-packed pace of the professional careers they lead.

McAdam and Saul have been called the "power couple of international law". They dismiss this media moniker with laughter. But the drive and scope of their parallel careers indicates "a marriage of true minds" that admits few impediments.

McAdam, 39, is Scientia Professor of Law and Director of the Andrew and Renata Kaldor Centre for International Refugee Law at UNSW. Saul, 37, is a barrister and Professor of International Law at the University of Sydney.

When I ask each of them to sum up the most significant elements in their legal careers, they both nominate their time at Oxford University as crucial. They each attended Oxford between 2001 and 2004, studying under the same supervisor, Professor Guy Goodwin-Gill, a barrister and Professor of International Refugee Law and Senior Research Fellow at All Souls College.

"Oxford was absolutely formative for me," McAdam says. "It was being exposed to some of the best minds in the world. I was working in international refugee law, specifically on 'complementary protection'. This involved looking beyond the Refugee Convention to examine the obligations countries have under human rights law not to send people back to harm."

McAdam's doctorate was published after her return to Australia in 2005, in a book, *Complementary Protection in International Refugee Law* (Oxford University Press 2007), and she played a central role in providing the scholarly research and intellectual framework for advocacy to reform Australia's domestic legislation.

"We've got clear international obligations not to return people to torture, arbitrary deprivation of life, or cruel, inhuman or degrading treatment or punishment," McAdam says. "Until 2012, Australia didn't reflect any of that in its domestic law."

"Eventually the *Migration Act* was amended so that now it contains a provision that when government officials are determining whether a person is in need of protection, they not only consider whether the person is a refugee – that is, whether they have a well-founded fear of persecution for reason of their race, religion, nationality, political opinion, or membership of a particular social group – but also whether they are at a real risk of torture or cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life."

By agreeing to become the Director of the Andrew and Renata Kaldor Centre for International Refugee Law at UNSW, which opened in October 2013, McAdam brings to bear her international and comparative law focus on legal developments in Australia.

She describes her connection to the benefactors Renata and Andrew Kaldor as "a meeting of minds" and believes that the independence academics enjoy gives them a "responsibility to call governments to account" when they ignore research, evidence and expertise.

"The purpose of the centre is to be a place of academic excellence, which is independent, has a public education role, and which, over the longer term, can help to achieve policy and legislative change so that Australian law better aligns with international law," she says.

"International refugee law does matter and it is not good enough to simply say, 'We take a different interpretation in Australia', especially when the vast body of opinion, including by other governments, reveals the Australian Government's position to be at odds with the law." Saul strongly supports this role for academics, adding: "It's important for academics not to be just like non-government organisations. We mustn't just denounce and criticise governments. We must be honest about what the law is."

He points to a joint article Saul and McAdam wrote in June 2012 for *The Australian* as an example of this independence of mind. The headline was "*Assange's asylum bid is baseless and Ecuador's motives are suspect*" and it outlined four key reasons why Assange's asylum request was legally doubtful.

Saul's time at Oxford also led to his involvement in significant developments in Australian law.

"My career started with getting a doctorate in international law at Oxford," he explains, speaking with rapid precision. "Oxford exposed me to the best learning in international law but also to how it can be practical, in a real way, through courts and international organisations in Europe and London. Oxford set me on a path to a career in international law."

Saul appears as a barrister in international and national courts and tribunals.

"One of the most recent ones is a case I took to the United Nations Human Rights Committee in Geneva," he says, to illustrate the kind of work he does. "We got a result last year. It was on behalf of 54 people Australia had recognised as refugees but whom ASIO had excluded from refugee protection in Australia because they have adverse security assessments. The problem is ASIO didn't tell them what they had done wrong and they didn't get a fair opportunity to defend themselves."

"We argued that Australia had breached international human rights law and the UN Human Rights Committee agreed, in the biggest decision ever against Australia. The 154 violations of international law included that Australia was illegally detaining the refugees, that Australia had not given them a fair hearing, and that Australia had deprived them of judicial protection."

"But also – very importantly – the Human Rights Committee found that their treatment was cruel, inhuman or degrading, including because they had been detained without charge indefinitely for almost five years at that point. Two cases were decided simultaneously for 46 people, *FKAG et al v Australia* and *MMM et al v Australia* on 20 August 2013, and there will be a third decision probably this year or next."

It is remarkable that, in addition to the law reform and case work on national and international refugee law, both McAdam and Saul are currently completing Australian Research Council Future Fellowships on hot-button topics – climate change and terrorism.

They each received one of these highly-prized four-year fellowships in 2011.

"These fellowships are quite rare," McAdam explains. "They essentially



Ben Saul in a Ugandan refugee camp interviewing survivors of the wars in Congo and Somalia.

relieve you of your teaching and administrative obligations so you can devote your time to top-quality academic research in a particular field.

"My research builds on work I had already done on climate change and forced migration, which examined how and why the impacts of climate change and natural disasters may force people to leave their homes, and what the legal gaps are."

"My present research examines migration as a form of adaption to slow-onset impacts of climate change, and the idea of community relocation in particular. I have interviewed people from communities that are at risk now, and communities that have relocated in the past, for example, in Tuvalu, Kiribati and remote islands of Fiji. The research also includes a lot of archival work looking at plans for large-scale movements of people in the 1920s and 1930s to determine what worked, what did not, and how this might inform policymaking now and in the future."

Does this work also look forward to the changes in international law that will be necessary in response to climate change? "That's right. Absolutely," McAdam responds quickly. "This work is connected with a number of international initiatives, such as The

Nansen Initiative on Disaster-Induced Cross-Border Displacement, which is an inter-governmental process founded by Norway and Switzerland on whose consultative committee I sit. I am also involved with projects being undertaken by UNHCR, the World Bank, and so on. A whole lot of international institutions are engaging with this issue."

McAdam has published widely on this topic, including a book *Climate Change, Forced Migration and International Law* (Oxford University Press 2012; paperback 2013) that conceptualises the connection between climate change and displacement and maps the scope of the existing international legal regime to respond. Saul's current research for his Future Fellowship is on an equally contentious topic. "It's about the whole international law of terrorism," Saul says. "The use of force, humanitarian law, the Geneva Conventions, human rights, UN sanctions, criminal law controls, the whole bit."

It's looking at all the case law, the international law and also the practice. "The field work involves interviewing current members or former members, of terrorist groups in 15 countries, asking this question: "What do terrorists think of law?"



What do they think of human rights? What do they think of the Geneva Conventions and the rules of war? “Our instinct internationally is to outlaw them as evil people who can’t be dealt with. I think that’s true for some of them. Maybe ISIS is in that category.”

“But most of these groups called ‘terrorists’ care about legitimacy, have constituencies, and have moral and religious codes of their own. Therefore, there are levers you can push to move them towards complying with international law.”

“When we just ban them and call them criminals, I think it pushes them into a corner and makes them worse.”

Which terrorist groups is Saul interviewing? “It’s a mix,” he replies. “Old timers like the ANC and IRA are in government now and are perfectly safe. Others have gone through recent peace agreements.”

“Last year I was talking with the Maoists in Nepal and some of their fighters in the bush, including Maoist judges who ran parallel courts that put people on trial.”

“The Free Aceh movement is another group I interviewed last year, where there is a peace agreement, but there is still a question of amnesty versus prosecution.”

“Most recently, I was in Jordan and Turkey on the Syrian border talking to people from the Free Syrian Army.”

“In September this year, we came across, by mistake, an ISIS medical facility on the border there. The Turkish border is completely open.”

“We walked into a place we thought was an NGO. There was a picture of the ISIS leader on their wall. The local police confirmed it was an ISIS hospital for their fighters. There were floors of young,



Jane McAdam with Ian Thorpe, both are Young Global Leaders in the World Economic Forum.

wounded men who were getting patched up, presumably go back to the fight.

“For human rights lawyers, ISIS is particularly difficult. On the one hand, ISIS is a massive threat to human rights in Iraq and Syria. They are slaughtering prisoners of war and enslaving and raping women. But if, as a human rights lawyer, you call for a military intervention on humanitarian grounds, there’s a whole lot of death and destruction that goes with that as well. These are debates you can’t just fudge, unless you are a pacifist. You have to speak out on these issues.”

Saul plans to publish a book on this terrorism research towards the end of 2015. The lists of publications on the university web pages of both McAdam and Saul are extensive. McAdam has published nine books and Saul 10, as well as enough articles and book chapters to clog the most effective printer.

Saul describes his most recent book, published early this year, as “a scholarly commentary on one of the two major human rights treaties that no-one has written on for the last 60 years”. This co-authored text, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials*, is published by Oxford University Press 2014.

He smiles ruefully as he remembers the time and motivation it took to write it.

“Last year I spent 10 months at my desk, 10 hour days, day after day, six days a week writing this book,” he says with a grin. “It was launched in London, Geneva, the UN in New York, Washington, Beijing and Sydney.”

The couple travels internationally for up to five months each year, including to remote locations for field interviews. While they generally work independently, some joint trips are possible.

“We can often co-ordinate to go to the same sorts of places and conferences, particularly the big hubs like Geneva, or New York or Washington,” Saul says. “We sometimes collaborate. We’ve written together. We did field work together in Bangladesh and published a book on climate change together.”

(*Climate Change and Australia: Warming to the Global Challenge* by B Saul, S Sherwood, J McAdam, T Stephens, J Slezak, Federation Press, 2012).

They obviously share a ferocious work ethic, but it’s not all they share.

While they come from very different backgrounds – Saul from a working class family in rural NSW and McAdam from a middle class family on the lower north shore – they have experienced a similar sequence of influential turning points in their lives. “We met through a German school exchange program,” McAdam says smiling. “At the end of Year 11, both of

us went on exchange to Germany for three months. I’m a couple of years older than Ben, so I was at university when I met him. He’d just turned 17 and I was 19. A few people said, ‘You two are really suited. You should go out.’ And I said, ‘As if – he’s at school. No way!’”

They also met in Saul’s school days at The King’s School in Parramatta, through debating. “Jane used to co-ordinate all the adjudicators and I remember she was there at our Year 12 final. Later, I became one of the adjudicators,” Saul recalls.

He also remembers calling McAdam on his boarding school telephone from King’s, surrounded by 80 boarders who listened to each other’s calls on the single phone available. McAdam interrupts his story to tease him.

“Ben’s only goal was to beat me in the HSC,” she says laughing. He ended up getting the same mark as she did – 99.95.

Saul believes a scholarship to Tudor House in Moss Vale, and then King’s, changed his life and gave him a passion for social justice. “From a very young age I grew up in the Snowy Mountains in Australia’s highest town, Cabramurra, in the middle of the Kosciusko National Park. Then the Blue Mountains and then Bathurst,” Saul explains.

“Dad worked for the Snowy Mountains Scheme. I was really lucky and won the Sir Frank Packer Scholarship funded by Kerry Packer. It was a means-tested scholarship that plucked kids out of obscurity in fourth class. You sit this test, and then he bankrolls you for the next eight years. I think that’s where my thirst for justice came. It made me very, very aware of social differences based on wealth and opportunity.”

McAdam believes her thirst for justice was inspired by her parents, who she says “were very involved in school communities and the wider local community” and her high school, Wenona, where the motto was, “That I may serve”.

“For me, this isn’t a job – it’s more like a calling,” she says of her work as an academic, adding that it “inspires and invigorates” her. Perhaps this is best illustrated by the fact that, for a number of years, McAdam travelled every July, in the mid-semester break in Australia, to teach at Oxford.

“A few people said, ‘Why are you doing that? Don’t you need some down time?’ But I found the experience so stimulating and enriching that it re-energised me – I loved it. I’m still a research associate at the Refugee Studies Centre at Oxford,” she explains.

As we wind up our conversation, I ask if they do anything about fitness to help manage the pressures of their workload. With self-deprecating laughter, they both pull up their sleeves to reveal they are wearing Fitbits to monitor their physical activity levels. The Fitbits are a new idea and Saul reports with horror that his average day is about 8000 steps short of the ideal goal. With this couple’s capacity for achieving goals, I don’t doubt the number of steps will steadily climb the upward curve. **LSJ**

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