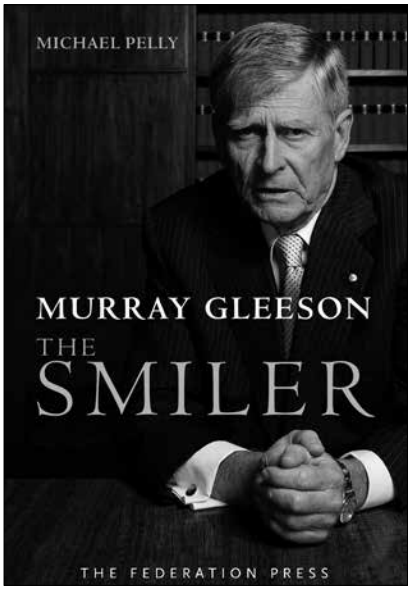
Murray Gleeson The Smiler

By Michael Pelly | The Federation Press | 2014

On 27 May 2014 the Hon James Spigelman AC QC delivered the following speech at the launch of Michael Pelly's book Murray Gleeson The Smiler before a full house in Queens Square.



I am constrained by the subject matter of this evening's event to be short, to the point, to eliminate subordinate clauses, restrict the number of adjectives and adverbs and abjure my propensity for repetition. I will also attempt to refrain from saying anything funny, unless it can be compressed into a single sentence that cuts to the core.

Any discourse on Michael Pelly's biography must observe the requirement so well expressed by Tennessee Williams in *The Glass Menagerie*, to consider only 'Things of importance going on in the world! Never anything coarse or common or vulgar.' Otherwise, in the presence of the subject of the biography, one risks being subject to *the stare*. This book contains numerous references to Murray Gleeson's capacity to convey his feelings, of disapproval or worse, wordlessly just by looking. As Roddy Meagher so memorably put it: 'Murray Gleeson likes flowers. He stares at them to make them wilt.'

Murray would have made a great actor in Kabuki theatre. Anyone who has experienced that genre will know that the Japanese audience will wait breathlessly for, say, the middle of Act 2 when the lead actor performs *The Look*. It is a great tribute to that nation's cultural unity that every member of the audience knows it is coming. If executed perfectly, *The Look* will draw shouts of encouragement from the audience – such as 'matte imashita' – 'We have been waiting!' – by way of applause. Murray was always content with a shudder.

To the 'stare' anecdotes in the book, I will add one. As chief justice, Murray sat as a trial judge in murder trials – something I never dared to do. As I recall the story, the first such occasion was in Taree, a triumphal return to his home district.

After the trial, Murray was asked, by a very experienced criminal trial judge, how he had dealt with objections to evidence. He replied: 'I never made any ruling on evidence. I stared at either the person asking the question or the person making the objection and, on every occasion, either the question or the objection was withdrawn.' As I recall the story, this trial ended in a hung jury. This is the only result from which there can be no appeal of any kind.

This is quite typical of the career so thoroughly set out in Michael Pelly's book. There was never a misstep along the way.

Pelly recites many tales which are familiar to the legal profession. However, there is much in this book that is new. He has done Australian legal history a great service by interviewing family, friends and colleagues whose reminiscences may not otherwise have been recorded.

As the book recounts, Murray Gleeson's professional trajectory is a chronology of the luminaries of the Sydney Bar: Garfield Barwick, Jack Cassidy, Jack Smythe, Nigel Bowen, Bill Deane, Tony Mason, Maurice Byers, Laurence Street, Michael Kirby, Michael McHugh, Roddy Meagher, Tom Hughes, Bob Ellicott, Mary Gaudron, Bill Gummow, Dyson Heydon, Dennis Mahoney, David Hunt, Ken Handley, Roger Gyles, Peter Young, Graham Hill, Terry Cole, Bob Stitt, David Jackson. Each person on this list features in the book as an actor; some as a commentator.

This extraordinary range of talent deserves emphasis. For it was out of this ruck that Murray Gleeson rose to pre-eminence as an advocate, as a leader of the profession and as a judge. Along his professional journey, he acquired the confidence and the respect of the entire legal profession, first in New South Wales and, then, throughout Australia.

To those of us who grew up in Murray Gleeson's professional shadow it is the early chapters of this book, about his family background and education, which provide the most new information. His verbal dexterity in court, like his physical dexterity on the tennis court may, in part, be explained by the inheritance of the skills his father Leo displayed as a graduate of the Arthur Murray School of Dancing.

The core of his future professional style was on full display – not merely in his outstanding high school achievements as a debater and orator but, we now learn, revealingly, in his approach to cricket. He was not known for the reckless indulgence of pull shots or hook strokes. It appears that his favourite – and most effective shot – was the low-risk, sublimely effective leg glance. More than

anything else, this batting style reflects the quality most essential for success at the bar and on the bench – the capacity for detachment.

The central spine of the narrative after these introductory chapters primarily consists of major cases in which Murray Gleeson was involved as an advocate and as a judge. From the thousands of such cases Michael Pelly, understandably for a journalist, has, primarily but not exclusively, selected those which achieved public prominence. There were many such.

As an advocate he was involved in landmark cases: on the corporations power in the Constitution; on the legality of abortions; on taxation law – including what became known as the Curren scheme – in the prosecution of Iain Sinclair; the Combe Royal Commission and the Paddington Bear Affair; the defamation of Kate Fitzpatrick; the *Fine Cotton* ring-in scandal; and the Tasmanian Dams Case.

As a judge there was a similar diversity from which to choose: allowing Nick Greiner's appeal against ICAC; requiring the New South Wales executive to provide information to parliament; giving finality to the Chelmsford Hospital affair; determining principles of when a criminal proceeding has miscarried because of the incompetence of counsel; accepting the battered wife syndrome principle; determining appeals in such publicly significant criminal trials as the Jeanine Balding murder, the Ivan Milat and Ananda Marga cases.

The New South Wales case that gives me most grief is the decision in which the New South Wales Court of Appeal allowed Channel 9 to gazump the ABC and take away its hitherto traditional broadcast of the Commonwealth Games. This marked the beginning of the end of the ABC's financial capacity to compete for major sporting events on television. As the current chairman of the ABC, this is a sad bit of history, but I felt worse at the time as the unsuccessful counsel for the ABC.

Many of Chief Justice Gleeson's judgments in the Supreme Court will stand the test of time. However, inevitably, it is the judgments in the High Court, as the court of final appeal, that will prove most influential in the decades to come. Pelly discusses many of the key cases on constitutional law – the corporations power, foreign affairs power, judicial power, the constitutional protection of political speech, the right to vote and one-off cases such as whether a British citizen has now to be treated as a foreigner. In addition there are numerous cases on the principles of statutory interpretation, particularly in the context of immigration appeals. There is also a wide range of criminal judgments on matters such as the principle of double jeopardy and the identification of miscarriages of justice. In the civil law there are important cases on the scope of negligence – restoring an appropriate focus on the personal responsibility of the injured. Further, the acute moral dilemmas of cases of 'wrongful birth' and 'wrongful death' have been resolved for purposes of Australian common law.

The story is filled out by references to Murray Gleeson's speeches. No one has ever articulated more forcefully or more effectively the social significance of the roles played by the profession and by the judiciary, in maintaining the rule of law and judicial independence. In addition, the book reflects the demands of leadership, particularly on issues which engaged public interest, such as the backlog of common law cases in the New South Wales Supreme Court, the suicide of David Yeldham, the judgment writing paralysis of Vince Bruce and the allegations made by Senator Heffernan against Michael Kirby.

The most novel content of the book for many lawyers is the information Michael Pelly has been able to obtain about the internal workings of the High Court with respect to the process of judgment writing. There is a great deal of detail, not all of it edifying. One of the most revealing aspects of Murray Gleeson's character in this biography, albeit unintentionally revealing, is the fact that not one piece of this new information comes from him.

The life that is celebrated in this biography is not only a legal life. Scattered throughout the book are observations which reflect a major transition in Australian society. I refer to his Catholicism. This was his mother's but not his father's religion. Nor was it the religion of his wife Robyn, who is quoted in the book as saying that if her father had been alive at the time he would never have allowed her to marry a Catholic.

Murray Gleeson is quoted as saying that, as the first Catholic ever appointed as chief justice of New South Wales, he was gratified that no one thought that fact was worthy of comment. However, as Gough Whitlam told him at the time: 'Until recently nobody with your name could have been appointed to that job.'

Gough Whitlam would have had in mind the election of Philip Lynch as deputy leader of the Liberal Party in 1973, the first Catholic to hold such senior office in that party, regarded as remarkable at the time. One only has to take a cursory look at the Abbott Cabinet to realise how much things have changed.

This was one of the great transitions in Australian life. For over a century the schism between Catholics and Protestants was the basic division of Australian society – in politics, commerce, class,

education, marriage and every form of social intercourse. When Murray Gleeson graduated most of the significant law firms in Sydney had either never had a Catholic partner or had never had a Protestant partner. It was no accident that he found articles at Murphy and Maloney. I presume Freehill, Hollingdale and Page had a preference for Riverview boys at the time.

Nothing better reflects this social division than the fact that the police commissioner of New South Wales had long been alternatively a Catholic and a Mason, a practice that continued until the late 70s. Unlike the office of the governor, premier or chief justice, that of police commissioner was much too important to allow either group to monopolise it.

This all-pervasive, century-old division disappeared within a decade or two, without conscious effort and without a trace. It was a definitive transition of the same general character that occurred in the middle of the nineteenth century when the previous tectonic division of Australian society – whether or not you had been a convict or a descendant of convicts – just dissolved. Nothing indicates the Australian capacity for tolerance better than such peaceful, unremarked abolition of long-standing social conflict.

This schism is reflected in the song which, according to Pelly, Murray Gleeson led the family in singing on the drive from Pymble to visit his mother in Wingham. The song was by the English comedy duo Flanders and Swann. It is not the one I remember – *The Hippopotamus Song* with its glorious refrain: 'Mud, mud glorious mud'. The song was entitled *Misalliance* about two kinds of creeper – the honeysuckle, which spirals clockwise; and the bindweed, which spirals anticlockwise. Growing on either side of a door, according to the songwriter, the two kinds of creepers wanted to meet and get married. However,

To the Honeysuckle's parents it came as a shock,

'The Bindweeds,' they cried, 'are inferior stock!'

They're uncultivated, of breeding bereft;

We twine to the right and they twine to the left.

The class-based distinction is clear in this passage. However, there is also a political message. Indeed class and politics were closely inter-twined throughout the Catholic/Protestant division era. When Murray Gleeson came to the Sydney Bar, his religion was a fundamental aspect of his career prospects. By the time he became chief justice of New South Wales it was just irrelevant.

In most nations in the world, divisions of this character fester for centuries. To the outsider they often appear as inane as the conflict triggered in Lilliput, as Gulliver recounts, between those who believe boiled eggs should be opened at the fat end and those committed to opening at the thin end. Murray's career personifies the extraordinary Australian capacity for peacefully dissolving tension.

For a person steeped in the principles of the common law, as Murray Gleeson was and is, his life in the law as an advocate and as a judge is, appropriately, analogous to the development of the common law, as manifest in the sequence of cases that constitutes the narrative structure of this biography.

As the great American Judge Learned Hand put it, in his review of Benjamin Cardozo's book *The Nature of the Judicial Process:*

> The … structure of the common law … stands as a monument slowly raised, like a coral reef, from the minute accretions of past individuals, of whom each built on the relics which his predecessors left, and in his turn left a foundation upon which his successors might work.[1]

Murray Gleeson's life and work – in the words of Judge Learned Hand, who shared Murray's philosophy of judicial restraint – is such a 'slowly raised monument' built on the work of his predecessors and he has 'left a foundation upon which his successors might work.'

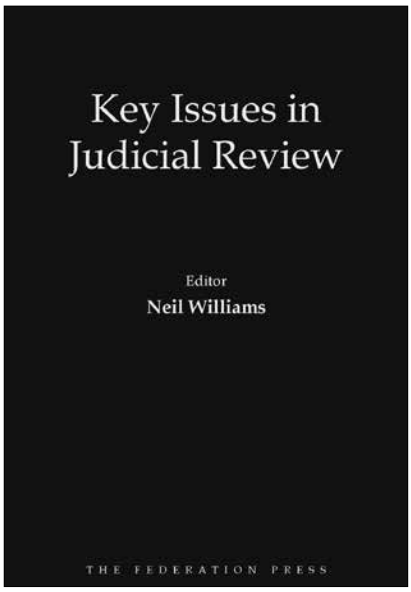
Both the monument and the foundation are wondrous to behold.

Endnotes

1. Book Review 35 Harv. L. Rev. [479, 479 (1922)]

Key Issues in Judicial Review

By Neil Williams (ed) | The Federation Press | 2014



This book comprises a collection of essays predominantly from members of the New South Wales Bar, as well as from judges and one from Peter Quiggan PSM, the first parliamentary counsel of the Office of Parliamentary Counsel. There are 13 essays in total. While one may be forgiven for thinking from the title of the work that it is a text or case book on judicial review, in fact it covers a variety of topics all of which bear upon and are important in a consideration of judicial review.

The book commences with reflections on the role of courts in public law by the Hon PA Keane. It is a helpful starting point for the rest of the work in that it reflects upon the nature and limits of judicial power, integral to an exercise of judicial review. Jeremy Kirk SC is the author of a chapter on the concept of jurisdictional error which will assist and interest administrative law practitioners and those with an academic interest in the topic alike. Among other aspects of the doctrine, the chapter examines privative clauses; and the significance of Kirk v Industrial Court (NSW) (2010) 239 CLR 531 in relation to the possible existence of constitutional limits protecting the supervisory jurisdiction of state supreme courts to grant relief for jurisdictional error in respect of decisions made under state enactments.

The Hon John Basten's essay on judicial review of executive action considers the impact of the High Court's seminal decision in Minister for Immigration and Citizenship v Li [2013] HCA 18 and how that decision contributed to the development in the law of the issues of rationality, reasons and reasoning and procedural fairness.

The concept of satisfaction as a jurisdictional fact is examined by James Hutton in view of the High Court's decision in Minister for Immigration and Citizenship v SZMDS (2010) 240 CLR 611. Hutton's essay examines the implications of treating a decision-maker's state of satisfaction as a jurisdictional fact to be determined by the court, and highlights some of the limitations upon such an approach.

Theresa Baw has examined another aspect of SZMDS: the availability of illogicality or irrationality as a stand-alone ground of judicial review; and she argues that the High Court's decision in Li has made unreasonableness a more accessible ground of review which in turn has influenced the nature of the illogicality or irrationality ground of review.

Integral to the process of judicial review is the task of statutory construction. The essay by Peter Quiggin PSM covers both statutory interpretation and statute-drafting in a rare and interesting insight into both aspects of statutory construction from a drafter's perspective. The essay that follows Mr Quiggin's is a comment on his paper by Justice Nye Perram. This paper helpfully considers some differences in approaches, between drafters on the one hand, and judges and barristers on the other, to the task of statutory interpretation.

Stephen Lloyd SC and Houda Younan have authored an essay on partial invalidity of both legislative instruments and, significantly, administrative instruments and decisions. They examine the basic principles in relation to reading down legislative instruments, considering cases which have applied principles of distributive reading down, then they consider related principles of construction before examining severance in relation to administrative instruments and decisions.

The essay on evidence in public law cases by Neil Williams SC and Alan Shearer will interest administrative law practitioners, as it provides a practical and thorough consideration of issues associated with the admissibility of extrinsic evidence, starting from preliminary evidence gathering, and considering the admissibility of various types of evidence according to the ground of review of the decision under challenge.

In an essay entitled 'Nothing Like the Curate's Egg', the Hon Alan Robertson has examined the 15 main recommendations of the Administrative Review Council's Report Federal Judicial Review in Australia published by the Administrative Review Council in September 2012. Justice Robertson's review of the recommendations is thoughtful and raises many questions for consideration in respect of them. The essay also examines the suggestion that the ADJR Act be repealed and the consequences should such a proposal be carried out.

The book also contains an essay by Kristina Stern SC entitled 'The Rationale for the Grant of Relief by Way of Judicial Review and Potential Areas for Future Development' which examines these areas by reference to the English position. Geoffrey Kennett SC and David Thomas have presented an analysis of constitutional and administrative law

aspects of tax, an area of fertile ground which will no doubt be of interest to both public law and tax practitioners.

The book concludes with an essay by Richard Lancaster SC and Stephen Free on the relevancy grounds in environmental and administrative law. Rather than setting out the fundamentals of the law in relation to this topic, the authors comment upon particular issues and trends in an impressive array of recent decisions, in environmental law specifically, and administrative law more generally.

Barristers who practise in administrative law, or who have an interest in public law more generally, will find this work an interesting and useful addition to their libraries.

Reviewed by Victoria Brigden

Mutiny on the Bounty

White Star Publishers | 2006

Mutiny on the Bounty is a compilation of works by William Bligh and others.

Captain Bligh and the flora-laden HMS *Bounty* were returning to England from Tahiti when, early on the morning of 29 April 1789, one of the officers, Master's Mate Fletcher Christian, mutinied with most of the crew members. The captain and 18 loyal members were set adrift in a longboat, with minimal food, clothing and essential supplies.

Loyalty counted for nothing. Christian had been a beneficiary of Bligh's assistance during his brief naval career. Three voyages with Bligh, the last at a time when any voyage, anywhere in peacetime, was a treasured jewel. As Bligh's star rose, so too did that of Christian. As second in command, Christian was extended officers' courtesies. The night before mutiny he had been invited to the captain's table. The invitation was declined. It was later evidenced that Christian had been drinking until midnight before the mutiny: grog for courage. As Bligh was manhandled over the side, Christian (talking of past benefits from his friend) exclaimed 'That – Captain Bligh – is the thing; I am in hell, I am in hell.' (Bligh's own memory). A Bligh loyalist witness, the ship's carpenter, at court martial deposed that Christian said to Bligh: 'Hold your tongue and I'll not hurt you; …I have been in hell for weeks past with you.'

It was reported that Bligh expected high standards of performance from his pupil (Christian), and humiliated Christian publicly in pursuit of same. One mutineer supported this by later, post court martial evidence. Another expressed to the contrary, also by post court evidence. Another (a Bligh loyalist) evidenced (post court martial) that Bligh did not ill-treat Christian. All officers were obliged to do their duty and Bligh had shown great professional care for Christian's development.

All that was behind Bligh and Christian from early 29 April 1789. With compass, quadrant and extraordinary seamanship and leadership, as well as the iron self and imposed discipline of the crew, the ejected *Bounty* crew landed in West Timor on 14 June 1789. One of his crew had been tragically killed by native attack on the first and only landfall in the Tahitian Islands after their ejection. The senior sailor had sacrificed himself to enable the others to escape an attack by hostile natives.

First landfall thereafter was Restoration Island (named by Bligh for their restoration, it being also the anniversary of restoration of Charles II) off the New Holland (Queensland) coast (29 May 1789). The days spent off and on the land of New Holland had been restorative. They had secured much needed fresh food and water. They showed a self protecting respect of the Aboriginal occupants, with Bligh ensuring that his party kept well distanced and alert.

After arrival in Dutch territory, the Dutch convened an enquiry into the loss of the *Bounty.* No Dutch vessels or citizens were involved, but, just as piracy was (and is) regarded as a scourge for all seafaring nations to address, so was mutiny. It was noted that four remaining on *Bounty* '… are deserving of mercy, being detained against their inclinations'. Such must have been based on the evidence of Bligh and his loyalists, and is a tribute to the integrity of the evidence. All four were acquitted at later court martial.

Unfortunately, two of Bligh's loyalists died of illness despite best Dutch efforts.

Captain Bligh landed back in England on 2 January 1790.

The court martial

Of 25 mutineers, 10 were tried at court martial on 12 August 1792 before an admiral and 11 captains.

Bligh himself had sailed by July 1792, and was not present. His statement, dated 18 August 1789 and written while in Timor, comprised the charge. It was a clinical, succinct narrative, deviating to acknowledge the untimely death of the sailor in Tahiti, and concluding with thanks to Divine Providence. The captain's statement named only Christian as seizing him in his cabin (post court martial he did publicly name others). Thus it was the evidence of his loyalists that led to findings of guilt, or to acquittals. A transcript of evidence was made and included in this book.

The first witness was Bligh's second in command in the longboat. A clear account of his seizure and ejection into the longboat. Questioned by the court, he showed remarkable balance and fairness in his answers. If he did not know, he said so. It was very much in the common law way – including *res gestae* based hearsay, conversations in the presence or hearing of some of the accused, and opinion on what was meant by what was attested as having been said by the mutineers (including Christian), and by Bligh.

Then it was the turn of the prisoners to question the witness. No prisoner was represented by counsel. Some asked, others didn't. The evidence-in-chief and in response to questions from the court must have been intimidating in its matter of factness and apparent honesty. The full import of that momentous morning is laid bare.

Six others of the Bligh loyalists also gave evidence of that fateful morning. One, in response to a question of the court 'Who were…under arms?' gave 17 names, followed by 'were under arms at different times'. The court was thorough in questioning, and was seeking to sieve out the principals in the first and second degree, from the mere observers, or unwilling actors.

A midshipman, probably in his mid teens during the mutiny, deposed as to events. Asked by a prisoner 'Do you remember calling on me to assist to retake his Majesty's ship?'

Answer: I have a faint remembrance of a circumstance of that nature.'

Court: Relate it.

A. It is so faint I can hardly remember it.

Court: Relate it.

And again later in the hapless junior officer's best attempts, there was a series of questions about 'your opinion' on whether particular *Bounty* members were being detained against their will. He named two, who were later acquitted. The midshipman was later promoted to lieutenant and was aboard HMS *Pandora*.

The incisiveness of the court calls to mind fictional court martial scenes. From the Hornblower series. From *The Caine Mutiny*. Contra, the laziness of the court as depicted in *Breaker Morant*.

Another young midshipman was convicted on the evidence of his being obviously closely associated with Christian on the mutiny morning; and enjoying a joke with Christian. This was in the face of his own statement in evidence – impliedly, that he was detained by the mutineers. He was condemned to hang but granted mercy and pardoned in November 1792. Perhaps the evidence that he had refused to drink (with fellow mutineers) the rum ration ordered by Christian saved him. The same prisoner had taken the extraordinary (if not brazen and astonishing) step of writing to Bligh's wife whilst awaiting court martial, hoping for 'an equitable tribunal to plead' his innocence. He had apparently known her before sailing on the *Bounty*. He had left her with power of attorney over his possessions. Following his pardon he wrote to the press alluding to the abuse by Bligh of Christian, and as to Christian's 'most worthy character'.

One prisoner was found to have no case to answer. He was not under arms and not assisting the mutineers. He assisted those ejected by putting equipment (incl a tool box) into the longboat. He wept when the longboat pulled away and asked that it be remembered he had no part in the mutiny.

One of those convicted and condemned to hang asked that the former (upon his acquittal) be allowed to give evidence for the latter. Denied. Judges reconsidered after the latter found guilty and condemned to death. The court concluded that it should have allowed the former to give evidence for the latter. Acquitted the latter. The latter was extraordinarily fortunate, because evidence was given by one witness of his being armed; two others did not attest that he was armed. Enough for a retrospective reasonable doubt. The versatility of the court's process is noteworthy, revisiting a ruling on procedure.

The fourth acquitted was not under arms and was observed to have assisted with readying the long boat.

The three convicted, condemned (no mercy commended), and hanged, were all evidenced to be under arms. It was attested that one of the three had jeered at the longboat crew, taunting them to live on meager daily rations. Another of the three was observed to have accompanied (whilst armed) Christian down below en route to seizing Bligh. The third was

observed at the helm of *Bounty* after Bligh was seized, to arm himself upon seeing Bligh under arrest, and to be standing close guard over Bligh.

The final three witnesses were Captain Edwards (of HMS *Pandora*) and two of his lieutenants, deposing to the arrests of the mutineers. The first to surrender did so before *Pandora* anchored in Tahitian waters. He was one of the acquitted. Climbing on board a moving vessel is cooperative, and it was deposed that he was ready to give the arresting party 'any information'. Even in those days, an early confession helped.

Post court martial, Edward Christian (brother of Fletcher Christian) consulted a senior barrister. He then conducted his own enquiry as to his infamous brother's conduct, and mounted a determined public relations campaign to restore Fletcher's name. He published his enquiry and Captain Bligh published a reply. Much of the post court martial evidence referred to above emerged during this enquiry and post enquiry period.

What of those who were not tried? In 1810 an American vessel arrived at Pitcairn Island. They found the sole surviving member of the *Bounty* mutineers (of the party which stayed on the Bounty after it left Tahiti for Pitcairn). The American captain, and a later visiting Royal Navy captain, and others, reported differently. What the accounts have in common is that Christian and eight fellow mutineers had left Tahiti with native wives, and native men. On arriving at Pitcairn Island, HMS *Bounty* was broken up in 1790. Settlement was established and cultivation pursued. A killing spree by native men left four mutineers only alive. One later suicided under the effects of newly distilled liquor. One was executed by his fellow mutineers for behaviour (interfering with a native woman contrary to her native husband's preference) that threatened the harmony necessary for survival of the settlement.

One of the two Pitcairn survivors died of natural causes, leaving one survivor as patriach of several women and children. Population circa 35 in1810. The community was supported by its own agriculture.

He was alive in 1814 when a British warship visited. He divulged his identity as a *Bounty* mutineer, but gave a false name (Adams). He was not arrested. The captain described him as an elderly man (in fact he was in his late 40s), of exemplary conduct in leading the island community, which spoke English and practised the Christian faith. He was extraordinarily fortunate that the British captain was most impressed by the community and its governance. A fine example of a public officer with the power of arrest exercising his discretion and leaving the suspect a free man. Nor did the captain proceed by way of summons. Moreover, the community was supplied with some comforts from the Royal Navy vessel prior to its departure. Adams's gravestone marks his death on Pitcairn Island.

Had he been arrested and court martialed he may well have been hanged. He admitted in his journal to standing guard over Captain Bligh, despite his initial rejection of the mutiny. He was the only mutineer to die of natural causes, happy in the South Pacific.

Telling, and ironic, words were recorded by an anonymous writer in this book. 'O happy people…in your sequestered state…May…no hoary proficient in swinish sensuality rob you of that innocence and simplicity which it is peculiarly your present lot to enjoy!' We now know that Pitcairn males degenerated into sexual predators.

Fourteen of the *Bounty* crew were located in Tahiti and removed by HMS *Pandora* in 1791. Four were drowned when *Pandora* sunk off the Queensland coast on 29 August 1791. There was no requirement to take prisoners to the nearest police station. They were on board during a three month search for *Bounty* prior to the ill-fated return voyage. Thirty-one of *Pandora*'s crew also drowned. It was the 10 alleged mutineer survivors who eventually faced court martial.

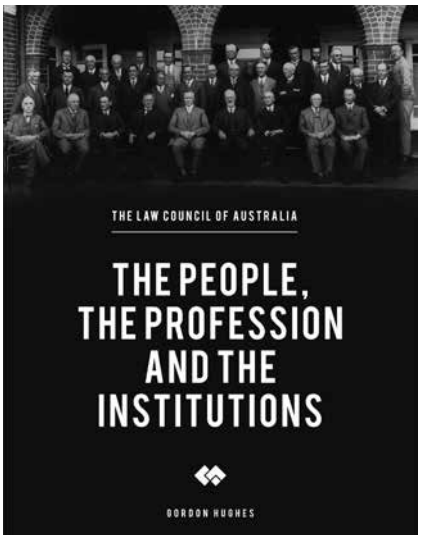
Of the remaining two *Bounty* crew, one was killed in Tahiti by a fellow mutineer (who had been made a chief) who was then himself killed by natives.

Was Bligh excessively strict? Recent literature suggests that Captain Cook was stricter. Interestingly, Bligh had served under Cook. The key, on balance, is the lack of character of Fletcher Christian.

Reviewed by Christopher Ryan

The Law Council of Australia: The People, the Profession and the Institutions

By Gordon Hughes | Halstead Press | 2013



...the work goes beyond a strict review of the structure and work of the Law Council itself to outline the history and development of many aspects of the modern legal profession in Australia.

This book traces the history and operations of the Law Council of Australia from its inception in 1933 to the present day in commendable detail, against the broader backdrop of Australian legal and political history.

Dr Hughes describes the social and political landscape of Australia in the early 1930s, arguing that in a climate of political upheaval (with every government in Australia changing between 1931 and 1934) and high unemployment in the aftermath of the Great Depression, the legal profession 'demonstrated a reassuring degree of stability and leadership' (at p.26). By 1933 there was a stable judiciary, three federal courts, a Supreme Court in each state, four long-established law schools, a number of law firms in the capital cities which were the forebears of today's large firms, and a well-established independent bar in each of Sydney, Melbourne and Brisbane. By 1927, it had been observed that the legal profession was one of the few professions or businesses in Australia without a federal organisation of some kind. Dr Hughes explains that it was felt that such an association would promote a united profession throughout Australia, at a time when an enhanced sense of national identity arising from the First World War and an enhanced social conscience following the Great Depression had just come into existence.

As one might expect, the book outlines the formation and structure of the Law Council, its contribution to practice regulation (for example in establishing uniform admission rules and requirements and uniform principles for assessing overseas qualifications) and its contribution to shaping law and policy in Australia. The work and major achievements of each 'section' of the Law Council is examined, and its response to broader political issues, for example, the council's opposition to the 'intervention' by the federal government in Northern Territory Aboriginal communities in 2007.

However, the work goes beyond a strict review of the structure and work of the Law Council itself to outline the history and development of many aspects of the modern legal profession in Australia. The history of the federal courts and tribunals, each of Australia's largest law firms, main law schools and the development of the independent bar in each state and territory are outlined. The book also examines developments which have contributed to change in the profession over time including the provision of legal aid, community legal centre services and pro bono representation, the introduction of corporate in-house counsel, the advent of alternative dispute resolution and the internationalisation of legal practice. Issues such as recruitment and retention of lawyers and equal opportunity in the workplace are also briefly analysed.

The book contains a number of historical points of interest, identifying the earliest lawyers in Australia, including the first convict transportees to Australia who were qualified legal practitioners, the first free legal practitioners, the first lawyers to fully complete legal training in Australia, the first native-born Australian admitted to practice as a solicitor and the first practitioners to be admitted as independent barristers.

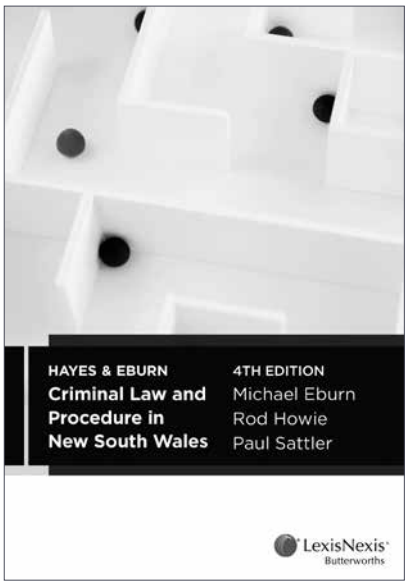
The author is certainly well-qualified to write this work. In addition to being a partner of Ashurst Australia, Dr Hughes was president of the Law Institute of Victoria from 1992 to 1993, president of the Law Council of Australia in 1999, president of LAWASIA from 2003 to 2005, and has been the chair of the International Law Section of the Law Council of Australia since 2008.

This book will undoubtedly appeal to those with an interest in the development and work of the Law Council of Australia and its constituent bodies, but should have broader appeal to anyone with an interest in the evolution of, and personalities within, the Australian legal profession over the twentieth and twenty-first centuries.

Reviewed by Victoria Brigden

Hayes & Eburn Criminal Law and Procedure in NSW, 4th edition

By Michael Eburn et al | LexisNexis | 2013



The 4th edition of *Hayes and Eburn Criminal Law and Procedure in NSW* is a well set out, helpful and up-to-date textbook on criminal law. It contains the usual and mandatory topics that cover this area of law as well as a few chapters on criminal procedure and evidence.

Chapter 1 sets out the general principles of criminal law, including the important issue of elements of a crime. (I note that it is good to see that the authors have included the Commonwealth criminal law on the elements of a Commonwealth offence). There is also an interesting discussion on the lack of a Bill of Rights and the European Convention on Human Rights, as well as the issue of 'discretion'.

Chapter 2 deals with murder and includes an interesting extract from the Model Criminal Code Officers Committee about murder and manslaughter. Chapters 3 and 4 deal with the complex law of manslaughter and chapter 5 is headed 'Non fatal offences against the person' which essentially means the law of assault including grievous bodily harm.

Chapter 6 deals with sexual offences, including a separate section on child sexual assault and the special evidential and procedural rules applying in sexual assault trials. It is good to see a separate chapter on this area of law as it is becoming more and more complex for criminal law practitioners. Chapter 7 deals with stealing and other property offences; and Chapter 8 deals with the important concepts of insanity, voluntariness, automatism and intoxication.

Chapter 9 deals with some of the defences relied upon in criminal law, i.e., duress, necessity and self-defence; and chapter 10 deals with the ever difficult law of attempt, conspiracy and complicity, including the distinctions between the various forms of accessorial liability.

Chapters 11 and 12 deal with criminal procedure and evidence, and this includes police powers of investigation, arrest and the law of bail, including commentary on the new *Bail Act 2013*. There is also the law relevant to procedure in a criminal trial, as well as summary matters, some of the basic law of sentencing; and appeals and some of the fundamental laws of evidence most relied upon in any criminal matter, i.e., the admissibility of confessions/admissions and the exclusion of evidence under Part 3.11 of the Evidence Act. The book concludes with an interesting discussion on the right to silence and of course the new s 89A of the Evidence Act.

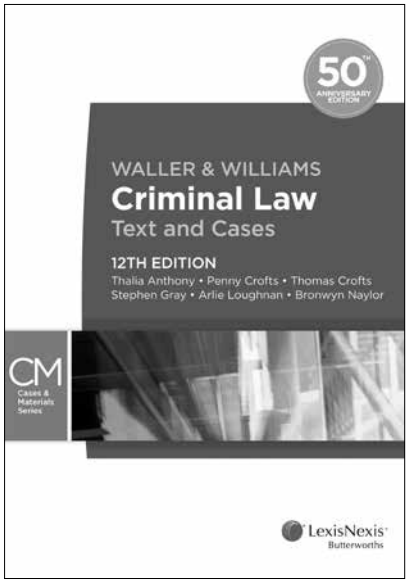
The commentary is interesting throughout and follows a logical order, which is easy to read. There are also extracts from cases as examples of the law, both the standard cases and examples of recent authority, which is most useful. In my view most of the basic issues relevant to the practice of criminal law are included, especially in relation to NSW crime. Although the book is obviously a textbook, with discussion questions at the end of each chapter suitable for the teaching of law, this book is still useful for criminal law practitioners.

I recommend this book as a useful addition to your criminal law library.

Reviewed by Caroline Dobraszczyk

Waller & Williams Criminal Law Text and Cases, 12th edition

By Thalia Anthony et al | LexisNexis | 2013



This is a very comprehensive criminal law textbook, in excess of 1,000 pages, mainly dealing with criminal law as it applies in NSW and Victoria.

Chapter 1 is headed 'Foundations' and deals with important topics such as 'What is a crime', the sources of the criminal law, how a crime can be committed (i.e., the different mental elements and physical acts needed), who can commit a crime, and an introduction to punishment, discretion and appeals among other things. Chapter 2 deals with assault and related offences such as stalking and affray, as well as an interesting discussion about ritual circumcision and the limits of consent in contact sports and some surgery.

Chapter 3 deals with sexual offences, including child sexual assault and sexual servitude. Chapter 4 deals with murder and chapters 5 and 6 deal with manslaughter, including an interesting discussion on industrial manslaughter. Chapters 7 and 8 deal with property offences in NSW and Victoria; and chapter 9 discusses drug offences, dealing also with the relevant Commonwealth legislation in relation to the importation of narcotics. Chapters 10 and 11 then deal with the law of attempting to commit an offence and the law in relation to the extension of criminal liability including the law of conspiracy.

Chapters 12 – 15 deal with the most common defences relied upon in criminal law including self defence, necessity, duress, mistake (and strict liability), mental impairment and intoxication.

As stated above, in my view the textbook is very comprehensive, covering all of the main areas associated with criminal law, although mainly concentrating on the state criminal laws of NSW and Victoria. The actual commentary is well written, easy to read and comprehensive. Most of the case law extracts are the standard authorities and there are some English decisions as well, but this is understandable given that the primary purpose of the book is for law students and therefore for teaching law.

This textbook would be useful and valuable to any criminal law practitioner.

Reviewed by Caroline Dobraszczyk

Crossword solution