

The Forbes Flyer

The newsletter of the Francis Forbes Society for Australian Legal History

Winter 2008

History reports itself

World Youth Day, the promotional event for youth hosted by the Roman Catholic Church, hits Sydney in July 2008. This is of interest to civil libertarians, with the WYD entry in Wikipedia noting¹:

Further criticism has been levied at the event by revelation that police will be granted extraordinary new powers to ensure order during proceedings. At over 40 city locations, including popular tourist spots the Sydney Opera House and the Harbour Bridge, as well as at numerous public transport stations and schools, members of the public will be subject to vehicle and baggage searches. More controversially, officers to arrest or fine, up to \$5,500 those believed to be annoying or inconveniencing pilgrims. This move has been heavily criticised by several civil rights and legal groups, who suggest that members of the public may be arrested or fined for handing out condoms or wearing irreverent or blasphemous t-shirts.

...

Additionally, the NSW Bar Association has called the new powers an "unreasonable interference with people's freedom of speech and movement" while calling out the government for bypassing normal parliamentary scrutiny, while Greens MP Lee Rhiannon suggested that the powers are "about shutting down protests and quarantining the Pope and visiting Catholics away from messages that World Youth Day authorities don't approve of."

It is also of interest for legal historians. While the main event is to be at the racetrack in the Sydney suburb of Randwick, there is plenty afoot in Hyde Park in the city. Those who know the Park will know that St Mary's (Roman Catholic) Cathedral is to its east, while the Supreme Court and the Parliament are to its north.

In the park's northeast corner, looking between the cathedral on the one hand and the secular symbols on the other and standing just near where the WYD merchandising tent has been temporarily erected, is

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a statue of one William Bede Dalley. The plinth reads "Scholar, Patriot, Statesman". He was each, yet he is forgotten. Who was he? A short note follows.

David Ash
Editor

Membership 2008-2009

Applications for membership and for membership renewal are NOW OPEN. Go to www.forbessociety.org.au/forbesapp.pdf or to www.forbessociety.org.au/documents/FFSMembershiprenewal0809.pdf respectively.

For those wondering about what we are, the society (officially, The Francis Forbes Society for Australian Legal History (ACN 099 158 620)) is a registered public company, limited by guarantee. The aims of the society, as expressed in its constitution are to:

- encourage the study and advance the knowledge of the history of Australian and Indigenous law;
- publish and promote, for the benefit of the public, books, journals, periodicals and other literary publications;

- arrange and promote, for the benefit of the public, continuing education; and
- promote the compilation of authentic records relating to Australian and Indigenous law.

Apply to become a member by completing the application form and sending it, with your payment to the secretary.

William Bede Dalley

The northeast corner of Sydney's Hyde Park has a statue of William Bede Dalley. When it was unveiled in 1897, some nine years after his death, 10,000 people gathered.

Who was this man, whose plinth is styled "Scholar, Patriot, Statesman"?

As a scholar, he was a founding member of the Athenaeum Club, a regular critic and sometime poet, and a fervent patron of the arts. As a patriot, he was the man who, as acting premier, saw New South Wales send troops to the Sudan, the first time that a colony had acted in such a way in support of empire. As a statesman, he was one of the recognized leaders of parliament and, eventually, Australia's first homegrown Privy Councillor.

He was one of Sydney's leading barristers and sometime Attorney-General. He was one of Sydney's leading

Catholic laymen, vital to the church for two reasons. First, as a strong supporter of the building of St Mary's Cathedral. Secondly, as a symbol of tolerance and the need to compromise in an often vicious sectarian age.

(His relationship with Sir Henry Parkes, the well-remembered father of federation, was prickly. Parkes, of course, had no difficulty in promoting anti-Catholicism one day and linking arms with as many Catholics as he could the next, depending on whether it suited his goal of the getting in and the maintenance of power. Whoever was the better at dealing with the realities of this social poison, I have to give Dalley the better quip, when he said of his oft-bankrupt opponent that 'If Parkes lives long enough he will rule over a nation, not of admirers and friends, but of—creditors'.)

Dalley was enormously popular in his life, identifying on the whole with liberal causes but making friends with peoples of all shapes, sizes and beliefs. That he is not better remembered may be explained by many things. First, he was never healthy. He resisted prolonged tenure in high political office and twice rejected a request that he assume the chief justiceship, for this reason. Secondly, he was hard affected for a time by his wife's death. Thirdly, a result of the first two, he died young. Fourthly, the thing he might have been remembered most for – showing by the Sudan venture that colonies were givers to empire as well as takers – was soon eclipsed by federation and, ultimately, by the war.

For those interested in finding out more about Dalley, there is an informative biography online, authored to a predictably high standard by Bede Nairn and Martha Rutledge², and an engaging recent hardcopy biography by Robert Lehane.³

Lord Rosebery

When reading Robert Lehane's biography of Dalley (see above), I came across the following, on page 264:

Unlike many British Liberals of the time, Rosebery was a committed imperialist. 'There is no need for any nation, however great, leaving the British Empire,' he declared in a speech in Adelaide in January 1884, 'because the British Empire is a commonwealth of nations.' This is credited as the first use of the term British 'Commonwealth'.

In his biography of our first prime minister, Geoffrey Bolton says of Lord Rosebery, on page 43⁴:

It was left for Rosebery [at a dinner in his honour on 10 December 1883] to declare: '... if you have any sort of federation, we have some sort of united voice to answer... the broad voice of united Australia which is entitled to respect not merely in Great Britain but in the civilised world. (Cheers)'. He also proclaimed, amid more cheers,



that 'the destiny of Australia was to be the trustee of the Pacific'. It was the visiting British aristocrat, and not the native Australia who thus defined the vision of the Australian federation.

Rosebery managed his three aims, to win the Derby, to marry an heiress, and to become prime minister. But he has, it seems, a real relevance to us in Australia, the more so when a former federal cabinet minister spoke out strongly against federation. Is it time for federation itself to become legal history? Or does it have quiet strengths hidden beneath its obvious inefficiencies?

2008 essay competition

The Forbes Society is pleased to announce that the 2008 essay competition is now open. The aim of the competition is to promote interest in and an awareness of Australian legal history. The question for this year's competition is:

How can a lawyer defend somebody he or she "knows" is "guilty"?... What is it to "know" that somebody is "guilty"?... Okay, to be more precise: What are, or should be, the ethical obligations of a lawyer acting for a client who, after being charged with a crime, makes a confidential confession of guilt?

Discuss this question from the perspective of a member of the community (who is not a lawyer) using examples drawn from the Dean Controversy (1895-1896) and/or Tuckiar's Case (1932-1934).

The competition is open to all students enrolled, at any time during 2008, in an Australian secondary school or their first undergraduate course (including a combined law course) at an Australian university. It is not confined to students enrolled in formal courses of study in history or law.

For further details, go to www.forbessociety.org.au

Winter quarters

In winter 1808

On 3 June, Jefferson Finis Davis, the first and only president of the Confederate States of America was born in Christian County, Kentucky.

In winter 1858

On 14 July, Emmeline Pankhurst was born.

In winter 1908

On 2 July, Thurgood Marshall, the first black US Supreme Court justice, was born. His name originally was Thoroughgood.

In winter 1958

On 16 June, Imre Nagy, symbol of Hungary's uprising against the USSR, was hanged.

Endnotes

1. en.wikipedia.org/wiki/World_youth_day [10 July 2008].
2. www.adb.online.anu.edu.au/biogs/A040008b.htm [10 July 2008].
3. Robert Lehane, *William Bede Dalley – Silver-tongued pride of old Sydney*, 2007, Ginninderra Press.
4. Geoffrey Bolton, *Edmund Barton – The one man for the job*, 2000, Allen & Unwin.

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