

The Forbes Flyer

The newsletter of the Francis Forbes Society for Australian Legal History

Autumn 2010

Stop press: Please see if you can help with the upcoming multimedia extravaganza “Documenting the history of the first 25 women in practice at the NSW Bar”. See how inside

History reports itself

An apology to Tony Earls, occasional correspondent for this organ and author of *Plunkett's Legacy* (2009, Australian Scholarly Publishing; www.scholarly.info). With all the energy that a Christmas party brings, I promised a review for this issue.

In fact, it was not the excess of light beer but something quite different which has delayed me. My wife spends much of her life scouring secondhand bookshops in the hope of finding undusted legal biographies which will keep me silent until dotage. Lo and behold, coincidence arrived in the form of her seasonal gift to me, Dr John Molony's 1973 work on Plunkett, *An Architect of Freedom*. Coincidental not only in the subject matter but because Tony had asked Dr Molony to do a foreword for his own 2009 work, and I thought that it would be an excellent – and relatively rare – opportunity to do a comparative review.

I still think this, and I am working to it. I have been sidetracked with a biographical note on Sir George Rich for the NSW Bar's biannual publication, *Bar News*. (Advertisement!) At least Tony has had the benefit of another comparative review, in the form of a book launch of his work with Andrew Tink's much needed volume on William Charles Wentworth, the overture being performed by distinguished jurist Keith Mason, who said of these near contemporaries “In very different ways each man was a giant in a very fascinating period in Australian history”. Keith's speech is reproduced in the journal *Legal History*, as to which more below. Tony, your time will come! As to the rest of you, please peruse this issue closely with pens primed for the diaries.

David Ash
Editor

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The 2010 Forbes Lecture

With our heritage of convict colonialism, it is apt that the ninth day of each November is World Freedom Day, as 9 November 2010 has been appointed as the date for presentation of the 2010 Forbes Lecture by Dr Lisa Ford.

Lisa's lecture will draw upon her recent publication *Settler Sovereignty* (2010) and her involvement in the ongoing research of the team of academics who brought us *The Kercher Reports*, as to whose publication see below.

Lisa proposes to explain the value of placing Australia's colonial legal history in global perspective. Drawing from her own work about the transformation of sovereignty and jurisdiction English-speaking settler societies after 1763, she proposes to demonstrate how a comparative

approach brings new questions to the Australian past. When we understand the convict colony of New South Wales as another iteration of British colonization, the legal status of indigenous people, local disputes about settler civil rights, even contests about convict legal status all take on new meaning.

John Joseph ('Mangrove') Murray

Philip Selth OAM will be giving a paper at the National Archives of Australia in Canberra on 13 July 2010 on the subject of the trials of John Joseph ('Mangrove') Murphy (1914 – 1997). Philip writes:

In early 1946 at Lae, PNG Captain John Joseph Murphy, a former PNG Patrol Officer and Coastwatcher on New Britain was tried by court-martial for having 'treacherously given intelligence to the Japanese' and under section 40 of the Army Act with 'conduct prejudicial to good order and military discipline' in that while a prisoner-of-war he gave to the Japanese more than his name, rank and number. The charges, two of which carried the death penalty, were based on a captured document purportedly a record of Murphy's interrogation when captured and statements taken by the Allies from Japanese soldiers at the end of the War.

Defended by his cousin, the Sydney QC Eric Miller, Murphy was honourably acquitted of all charges.

Murphy had spent more than a year as a prisoner of the Japanese at Rabaul. Only seven of the original 63 prisoners in the Tunnel Hill camp survived; Murphy was the only Australian. The court-martial arose from information Murphy allegedly gave the Japanese when he was captured in October 1943. At the court martial the defence argued that Japanese documents had been incorrectly translated and that others had given information to the Japanese under torture.

After the War Murphy returned to PNG, finishing his career as District Commissioner of the Gulf District, based at Kerema.

A film documentary is now being made on John Murphy's life. A radio program on the ABC is imminent. Attempts have been made to persuade the Government to posthumously recognise John Murphy's service as a Coastwatcher and in helping keep fellow prisoners alive in Rabaul.

But not everyone accepts the court-martial verdict.

Murphy was a well-regarded Administration officer. His actions in the Rabaul POW camps clearly saved lives.

For that alone he deserves recognition. But how can one explain the captured Japanese documents and testimony of Murphy's interrogators? Records now available show the case the defence mounted at the court-martial was in part flawed. The prosecution and conduct of the case, too, was flawed. Today, it is most unlikely the case would get to trial.

John Murphy does deserve public recognition for his time as a POW. But one cannot simply say the court-martial should never have been held. There were questions to be answered (although they should have been addressed by an inquiry rather than by a court-martial.)

Philip is authoring a biography of Eric Miller QC, having written his entry for the *Australian Dictionary of Biography*.

Documenting the history of the first 25 women in practice at the NSW bar

The NSW Bar Association has commissioned a multimedia slideshow record of the experiences of the first 25 female barristers to join the NSW Bar and to actively practise at the NSW Bar. It will be permanently available on a link on the NSW Bar Association website, while information collected during the project (including recorded interviews, photographs, newsclips, reminiscences) will be retained by the Bar Association library as a resource for future study.

A similar slideshow presentation was developed by the Victorian Bar in 2007 documenting the first 25 women barristers at the Victorian Bar. It can be viewed on <http://www.vicbar.com.au/wba>, clicking on the icon 'Victorian Bar Oral History' icon.

Ms Juliette Brodsky created the slideshow for the Victorian Bar and she has been commissioned to produce the slideshow for the NSW Bar. She will be visiting Sydney and undertaking interviews and research in the week from Saturday 26 June to Sunday 4 July 2010. Any assistance you can give *from now on* regarding the accuracy of the list and other useful information would be much appreciated.

If you have any information – photos, news clippings, stories, anything – in relation to any of the first women barristers in practice at the NSW Bar, please contact Ms Juliette Brodsky:

- E juliette_b@ozemail.com.au
- T 03 9682 4141 / 0410 456 561
- P 1 / 192 Bridport Street, Albert Park VIC 3206.

If you wish to discuss this project further please contact Julia Baird SC, Convenor of the Women Barrister's Forum on 02 9231 6731, or members of the WBF subcommittee responsible for this project: Jenny Chambers (02 9232 3752), Amy Douglas-Baker (02 9236 8650), Josephine Kelly (02 8224 3055) or Mandy Tibbey (02 9233 2339).

Draft list of first women barristers to be admitted to and actively practice at the NSW Bar

Mrs Sibyl Enid Vera Munro Morrison / Greenwell (nee Gibbs)
Miss Nerida Josephine Cohen (Mrs Nerida Goodman)
Miss Jean L Malor
Mrs Ann Bernard
Mrs Beatrice Bateman
Miss Bek McPaul
Miss Mary Helen Elizabeth Appleby Miss Zena Sachs
Mrs Klara Rudlow
Miss Elizabeth A
Miss Janet V Coombs
Mrs Kathleen M Trevelyan
Mrs Helen M Knox
Miss Susanne Elizabeth Schreiner
Miss Mary Cass
Miss Cecily Elizabeth Backhouse QC
Mrs Anna Frenkel
Mrs Helen Gerondis
Miss MA O'Toole
Mrs Margarita (Teddo) Adam
Mrs Beatrice A Gray
Miss JHH Blackman
Miss Mary G Gaudron
Miss AJ Palfreyman
Miss Jane H Mathews
Miss Naida J Haxton
Mrs P Flemming

The Osgoode Society presented...

On Thursday 25 March 2010 Professor Jim Philips (of the Osgoode Society for Canadian Legal History) presented a public lecture in the NSW Bar Association Common Room. It was entitled "*Manitoba Fisheries v The Queen: The Origins of Canada's De Facto Expropriation Doctrine*". It was a delight.

Professor Philips is a leading Canadian legal academic with a strong interest in legal history. For those interested in learning about his involvement in the Canadian legal history scene, his publications are listed at www.law.utoronto.ca

The journal *Legal History*

The Forbes Society has arranged with the publisher of the journal *Legal History* (edited by Professor Buck) to subscribe to the journal at a discount rate. Inquiries should be directed in the first instance to Professor Buck at andrew.buck@law.mq.edu.au. Two issues of the journal are published each year.

Issue 1 for 2009 contains an insight into that mercurial character Dr Ulrich Hubbe, the German immigrant to South Australia who may – or may not – have contributed more to the Torrens system than Sir Robert would want us to acknowledge. Hubbe's role is controversial, and Professor Greg Taylor, while firmly nailing his banner to the "less and not more" cause, gives us a colourful overview of a possible *causa causans*, the doctor's doctoral thesis, published – in part – as early as 1835.

In Issue 2 for 2009, there is an important historical contribution to an issue of ongoing importance, the jurisdictional fights which can arise when US servicemen are posted overseas. In this case, it is the US presence in Australia and specifically Queensland from 1941 to 1945, or "Scenes from a marriage of necessity", as author John McKerrow puts it.

Publication of the Kercher Reports

The Forbes Society (in conjunction with Federation Press) has published another important work on Australian history, *The Kercher Reports*, edited by Emeritus Professor Bruce Kercher and Brent Salter.

The work places before the public an authoritative report of the earliest court cases in Australia, from 1788 to 1827. In those days the dramas of local politics, society and law – pretty much in that order – were played out in rough-hewn courts. Publication of *The Kercher Reports* carries the potential to force a re-think about how Australian history in general (and Australian legal history in particular) should be viewed. Broad themes can be measured against particular cases. Adaptations of formal English law to the realities of early colonial life exposed fundamental debates about the meaning of law and its relationship with society.

Arrangements have been made by the Society with Federation Press for members of the Society to purchase copies of *The Kercher Reports*, and its companion volume *Dowling's Select Cases, 1822 to 1844* (edited by T D Castle and Professor Kercher), at discounted rates.

2010 Australian Legal History Essay Competition

The question for the 2010 Australian Legal History Essay Competition is “Can Australian history teach us anything about the role of altruism and personal responsibility in the law?” The competition offers an opportunity to explore the concept of a “duty of care” in the civil law of negligence; the idea, found in the criminal law of homicide, that, outside war, no person is entitled to save his or her life by killing another; and the notion of “Collective Wrongs” epitomised by the Australian Parliament’s apologies to “The Stolen Generations” and “The Forgotten Generations”.

The deadline for submission of essays is 15 November 2010. Conditions, guidelines and materials are on the Society’s website.

Information needed concerning NSW lawyers in World War II

Following on interest generated by research into the legal profession in WWI, Tony Cunneen seeks information on any members of the legal profession who served in WWII or were involved in war related activities (such as the Red Cross or War Crimes Trials).

This information may be used, first, to establish an Honour Roll of service men and women and then, at a later date, an historical account of their service. Anyone with relevant information is invited to contact Tony (at acunneen@bigpond.net.au) providing name, service information, fate, legal career and sources for further information.

The aim of the first part of this project is to draw together whatever information there is in various locations so as to establish a list of those who served and an indication as to what further material is available.

The NSW Law Society celebrates 125 years

This year the Law Society of New South Wales celebrates its 125th anniversary. Go to www.forbessociety.org.au/documents/125.pdf for some of the milestones.

The 29th Annual Australian and New Zealand Law and History Conference

The theme for this year’s conference is “Owning the Past: Whose Past? Whose present?” Hosted by the Australian and New Zealand Law and History Society (ANZLHS), the conference is set for 13 to 15 December 2010 in Melbourne. The site (www.waikato.ac.nz/law/anzlhs/) says:

The use and study of the past is constantly being refashioned and reinterpreted to construct meaning in the present, imparting understandings of a common but chaotic humanity. Because everyone and no one ‘owns’ history, the ownership of historical events and the right to speak of them remains deeply contested. What are the outcomes and practical challenges surrounding the construction of historical consciousness through and about law? Whose past is told and by whom? How does law’s past influence history’s present? And is there any such thing as the orderly evolution of legal ideas? This conference invites papers on the subject of ownership in history and law, and may include contributions on any of several broad themes: the contestation of memory; the ethics of representation and remembrance; the commoditization and consumption of traumatic pasts; transcultural and transgenerational trauma; new technologies of historical documentation; testimony and bearing witness; Indigenous knowledge; identity politics; citizenship; the ethics of reproducing historical narratives; colonialism and hegemony; ‘dark’ tourism and artefacts of law; and new legal imaginings and the contest with the legal past.

Richard Anstey and the Sackville inheritance

The Hon John P Bryson QC will deliver a lecture on "Richard Anstey and the Sackville Inheritance" at 5.15pm on Wednesday, 25 August 2010 in the NSW Bar Association Common Room in Phillip Street, Sydney. This Lecture is co-sponsored by the Selden Society and the Forbes Society, in conjunction with the Association.

Autumn Quarters¹

In autumn 1810

On 2 March 1810, Vincenzo G Pecci is born. As Leo XIII, he will become the 256th pope.

In autumn 1860

On 17 March 1860, the First Taranaki War begins.

In autumn 1910

On 31 May 1910, the Union of South Africa is founded as a union within the British Empire.

In autumn 1960

On 4 March 1960, Lucille Ball files for divorce from Desi Arnaz.

Endnotes

1. Usually, the Flyer draws the references from timelines.ws/.



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