

The Forbes Flyer

The newsletter of the Francis Forbes Society for Australian Legal History

Winter 2012

History reports itself

For many years, the first thing seen by drivers coming off Sydney's Cahill Expressway as they entered Wollomooloo was a building bearing the name "Plunkett Street Public School". Sitting in the back of the Kingswood, I often wondered who Mr or Mrs Plunkett was.

That was then. We have since had the benefit of John Molony's 1973 work and Tony Earl's more recent study. Now, the Forbes Society is delighted to host the inaugural Plunkett Lecture in September 2012. This and the Forbes Lecture form a core of the Society's commitment to a public dialogue about Australian legal history. Both lectures are publicised below.

The school still exists, suitably enough in Forbes Street. In fact, the original Plunkett Street ran between Bourke and Dowling Streets, with Forbes Street in the middle. Apt enough for Plunkett's early life, I suppose. One has to get either to Sydney's CBD or to Paddington for a Gipps Street, and FitzRoy Street cuts the other end of Bourke. Of a Wentworth Flyover or Lowe Cul-De-Sac, there is no sign.

David Ash
Editor

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Upcoming lectures

AUSTLII – A public lecture [July 2012]

On the evening of Wednesday 25 July 2012, Professor Graham Greenleaf will deliver a public lecture examining the future of law reporting and legal research in an electronic age. It could prove to be an event of significance for the entire legal profession as part of what is a critical debate

about future forms of delivery of Australian legal literature generally. NSW Attorney General Greg Smith will chair the lecture. The lecture will commence at 5.15 pm in the Common Room of the NSW Bar Association and conclude by 6.30 pm.

The King of Torts – A public lecture [August 2012]

On the evening of Thursday 9 August 2012, Professor Mark Lunney will deliver a public lecture under the sponsorship of the Society in the Common Room of the NSW Bar Association, commencing at 5.15 pm and concluding no later than 6.30 pm. The title of the lecture is “Fleming’s ‘Law of Torts’: Australian-made or foreign import? Australia’s role in making the ‘King’ of Torts”. The President of the New South Wales Court of Appeal Justice Allsop chairs the lecture.

Professor Lunney is a former Forbes Lecturer. After a period of service as the Director of Research at the ANU College of Law he will be returning to the University of New England at the end of this month.

The inaugural Plunkett Lecture [September 2012]

NSW Attorney General Greg Smith has accepted the Forbes Society’s invitation to present the Inaugural Plunkett Lecture on Tuesday 11 September 2012. This public lecture will be held in the Common Room of the NSW Bar Association, Phillip Street Sydney commencing at 5.15 pm and concluding no later than 6.30 pm. This lecture is to be an annual event, to be delivered by the Attorney or his or her nominee.

The Forbes Lecture 2011 [October 2012]

Mr Tony Cunneen has accepted the Society’s invitation to present the Forbes Lecture on Wednesday 31 October 2012. This public lecture will be held in the Common Room of the NSW Bar Association, Phillip Street Sydney commencing at 5.15 pm and concluding no later than 6.30 pm. NSW Chief Justice Bathurst will chair the lecture.

The subject is Sir William Cullen, a former NSW chief justice and a worthy successor to the mantle worn by Forbes himself, learned, liberal and broadminded. The Lecturer has provided a summary of the man and his time:

It is just over 100 years since Sir William Portus Cullen was

appointed Chief Justice of New South Wales. He was a talented Renaissance man who was a pivotal figure in the development of this state’s legal profession. His personal history echoed that of the emerging nation. He was the first Chief Justice to be both born and entirely educated in Australia. His career saw the New South Wales legal culture change from its nineteenth century, English character to a more local, twentieth century form. During his time on the bench legislation was passed that allowed women to become lawyers, while parliament also set a compulsory retirement age for judges.

Sir William Cullen had broad interests in addition to his legal career. He was active in a range of social, academic and political environments throughout his life. Prior to his elevation to the bench he had held academic positions at the University of Sydney and been involved in the politics of Federation. He also exercised his keen interest in a variety of causes through such social activities as attending Rose Scott’s legendary salons in the Eastern Suburbs of Sydney.

As Chief Justice and Lieutenant Governor Sir William Cullen maintained a high public profile - despite his naturally diffident character. He was more comfortable in the quiet contemplation of the Australian bush land environment than the ebullient world of post-colonial public life. Both he and his wife, Lady Cullen (Eliza), became leading figures in this state’s commitment to the First World War. In addition, he was Chancellor of the University of Sydney during the period in which its Law School became the primary seat of education for generations of Australian barristers and solicitors.

Sir William Portus Cullen was a fascinating character whose career reflected the broader political, legal and social forces of his time. The 2012 Forbes Lecture will cover Sir William’s leadership in a range of fields and will draw on a wide variety of primary and secondary sources. The lecture will also include an outline of Lady Cullen’s activities as leader of the Red Cross and other activities. By looking at the career of Sir William Portus Cullen we can gain a greater understanding of the legal profession of today.

The lecturer welcomes any comments on Sir William Cullen or related topics. Please contact acunneen@bigpond.net.au or 0409089696.

Keynote Lecture of the ANZ Law and History Society Conference [December 2012]

Professor Philip Gerard of Canada will present the Keynote Lecture of the ANZ Law and History Society Conference on Monday 10 December 2012. (There is more about the conference below.)

The lecture will be held in the Common Room of the NSW Bar Association, Phillip Street Sydney commencing at 5.15 pm and concluding no later than 6.30 pm.

Receiving Laws/ Giving Laws: The 31st Annual Conference of the Australia New Zealand Law and History Society, December 2012, UTS, Sydney

Paper proposals due 31 July 2012

The 31st Annual Conference of the Australia New Zealand Law and History Society will be held at the University of Technology, Sydney (UTS), 10-12 December 2012.

- Keynote speaker: Professor Philip Girard, Dalhousie – “Colonization, Culture, Continuity: The Role of Law”
- Plenary speaker: Professor Christopher Tomlins, UC Irvine – “Debt, Death, and Redemption: Toward a History of the Turner Rebellion”
- Keynote Panel: “Receiving Laws / Giving Laws: Three Takes” - Professor Anne Orford, Melbourne, A / Prof Katherine Biber, UTS, Dr Damen Ward, Crown Law, Wellington

More information, including on the conference theme, can be found at <http://www.law.uts.edu.au/research/conferences/index.html>

Inquiries or paper proposals - including a title, brief abstract and brief biography - should be sent to shaunnagh.dorsett@uts.edu.au by 31 July 2012. While papers on the conference theme are encouraged, abstracts can be submitted on any legal history topic.

All proposals will be assessed, and successful submitters contacted at the end of July. Conference registration, accommodation and other information will be posted to the conference webpage in August.

UTS is the most centrally located law school in Sydney, situated next to Central Station, on the edge of China Town, three minutes by monorail from Sydney's central shopping district and a short trip to the harbour by direct train or bus.

The 2012 Forbes Society legal history reading group

Our meetings will be held between 5.30 and 7pm in the Bar Association in Phillip Street.

- 25 July: Graham Greenleaf on AUSTLII's new legal history project (common room) [see above; note 5.15 pm start on this occasion]
- 29 August: Philip Selth on The court martial of Captain John Joseph Murphy (common room)
- 19 September: John Hamilton on Mining Commissioners (conference room 3)
- 20 November: James Watson and Justin Gleeson re the Legal History Course and their new book of essays on Australian Legal History (common room).

Meetings are open to all the Society's members and friends.

Judges and Judging in the History of the Common Law and Civil Law From Antiquity to Modern Times

Edited by Paul Brand (University of Oxford) and Joshua Getzler (University of Oxford), the publisher's site says:

In this collection of essays, leading legal historians address significant topics in the history of judges and judging, with comparisons not only between British, American and Commonwealth experience, but also with the judiciary in civil law countries. It is not the law itself, but the process of law-making in courts, that is the focus of inquiry. Contributors describe and analyse aspects of judicial activity, in the widest possible legal and social contexts, across two millennia. The essays cover English common law, continental customary law and *ius commune*, and aspects of the common law system in the British Empire. The volume is innovative in its approach to legal history. None of the essays offer straight doctrinal exegesis; none take refuge in old-fashioned judicial biography. The volume is a selection of the best papers from the 18th British Legal History Conference.

The edition includes Susan Priest's 'Australia's early High Court, the Fourth Commonwealth Attorney-General and the 'strike of 1905'.

It is in the Abbey's catalogue at <http://www.abbeys.com.au/book/judges-and-judging-in-the-history-of-the-common-law-and-civil-law-from-antiquity.do>.

Making Legal History – Approaches and Methodologies

Edited by Professor Anthony Musson (University of Exeter) and Professor Chantal Stebbings (University of Exeter), the publishers say:

Drawing together leading legal historians from a range of jurisdictions and cultures, this collection of essays addresses the fundamental methodological underpinning of legal history research. Via a broad chronological span and a wide range of topics, the contributors explore the approaches, methods and sources that together form the basis of their research and shed light on the complexities of researching into the history of the law. By exploring the challenges posed by visual, unwritten and quasi-legal sources, the difficulties posed by traditional archival material and the novelty of exploring the development of legal culture and comparative perspectives, the book reveals the richness and dynamism of legal history research.

Included is Wilf Prest's paper "Lay legal history". Further details at the Abbey's catalogue, <http://www.abbey.com.au/book/making-legal-history-approaches-and-methodologies.do>.

Judge Advocate - Ellis Bent – Letters and Diaries 1809-1811

Edited by Paula Jane Byrne, Federation Press summarises this work, published with the Society's assistance, as follows:

Ellis Bent was the son of a London merchant trading to the West Indies. He was appointed Judge Advocate to the colony of New South Wales in 1809 and travelled with Governor Macquarie and the 73rd Regiment on board the Dromedary troop ship to the colony. On board ship he kept a journal, wrote sketches of Porto Praya, Madeira and Rio de Janeiro, and was careful to copy all letters he sent to his family. He

also wrote from the Cape of Good Hope and from New South Wales until 1811.

Ellis Bent has a merchant's eye for detail and these documents give us a remarkable insight into the manners, customs and power play of the early nineteenth century including the customs of sea faring ships.

The book may be ordered from the publisher's catalogue at <http://www.federationpress.com.au/bookstore/book.asp?isbn=9781876861100>,

Winter Quarters

In winter 1812

On 18 June 1812, the War of 1812 began as the United States declared war against Great Britain and Ireland. The term "war hawk" was first used by John Randolph in reference to those Republicans who were pro-war in the years leading up to the War of 1812.

In winter 1862

On 1 July 1862, Czar Alexander II granted Jews the right to publish books.

In winter 1912

On 30 July 1912, Emperor Meiji died.

In winter 1962

On 5 August 1962, Nelson Mandela was arrested for incitement and illegally leaving South Africa.



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