

BE SUBSTANTIALLY GREAT IN THY SELF:
Getting to Know C.E.W. Bean;
Barrister, Judge's Associate, Moral Philosopher

by Geoff Lindsay S.C.



George Lambert, Charles E.W. Bean, 1925 oil on canvas,
90.7 x 71.7 cm Collection Australian War Memorial

“That general determination – to stand by one’s mate, and to see that he gets a fair deal whatever the cost to one’s self – means more to Australia than can yet be reckoned. It was the basis of our economy in two world wars and is probably its main basis in peace time. Whatever the results (and they are sometimes uncomfortable), may it long be the country’s code”.

C E W Bean, *On The Wool Track* (Sydney, 1963 revised ed.), p 132. [Emphasis added].

“Dr Bean’s achievements as historian, scholar, author and journalist are so well known that they need not be retold today.... He took as his motto for life the words of Sir Thomas Browne: “Be substantially thyself and let the world be deceived in thee as they are in the lights of heaven’. His wholeness lay in being at all times himself.... He believed that what men needed most were enlarged opportunities for work and service and that their failures and their wongheadedness sprang, not from the devil in them, but from lack of opportunity to do and to know better. From this belief came his lifelong interest in education. What a great headmaster was lost when he turned first to the law and then to journalism...”.

Angus McLachlan, a printed Address (Eulogy) distributed with the Order of Service for CEW Bean’s funeral held at St Andrew’s Cathedral, Sydney, on 2 September 1968, following his death at Concord Repatriation Hospital on 30 August 1968.

“In not a few important matters our history has run counter to narratives hitherto generally accepted; it therefore has to carry within its covers not merely our bare conclusions of fact, but also the evident proof of them, a result to be attained only by writing in detail. ...

To write in detail means to multiply the risk of error. ...”

CEW Bean, *The Writing of the Australian Official History of the Great War . Sources, Methods and Some Conclusions*+(1938) 24 *Royal Australian Historical Society Journal* 85 at 93 and 108.

“Probably every student of historical sources knows how, as he notes some point – a motive or an action, on or off the main stage – there comes to him in a flash the notion that this point eliminates some whole phase of his subject. He seems to see now why a certain conference was not held, or why some leaders urged delay. I constantly conceived these bright ideas, and found that they were nearly always wrong. After some keen reading in the direction indicated I would usually come, with a minor shock of disappointment, upon some unquestionable fact inconsistent with that bright interpretation. There was then nothing to do but to read more deeply and widely until in most cases one reached the conviction that, of the facts laid bare, there was only one reasonable explanation. I learned, too, that when one felt a momentary doubt as to the accuracy of a statement, it was never safe to ignore that doubt; again and again it was found to be justified... .”

CEW Bean, *The Technique of a Contemporary War Historian*+(1942) 2 *Historical Studies* 65 at 72.

AUTHOR'S NOTE

The primary research for this paper was undertaken in two periods. Work was initially undertaken in 2007. It was laid aside for three years under pressure of other work. It was resumed in late 2010, continuing into 2011. With the demands of a new law term, it must be laid aside again.

The legacy of C.E.W. Bean is too big a topic, and the primary records to be consulted are too vast not to be shared, generally and across disciplines, or to be debated from competing perspectives. The purpose of this paper is to make a small, but hopefully not insignificant, contribution to “Bean research”, and Australian legal history, from the perspective of a member of the NSW Bar.

As to Bean research: It invites Australians to ask questions of the Gallipoli Legend going beyond military history and mateship forged in the Australian bush and sanctified by experience of war. Recognising the importance of Bean’s legacy as a War Correspondent, it invites us to recognise the influence on him, and the nation, of what he called, “The Arnold Tradition in Australia”. It asks the question whether, through Bean, Australia’s preoccupation with “mateship” owes something to the influence of Dr Thomas Arnold’s Rugby School. It draws attention to the possibilities: first, that an Arnold connection was a factor in Bean’s early and consistent support for, and admiration of, WM Hughes; and, secondly, that school connections between Bean and those with whom he dealt were a significant factor in their dealings. Based on Bean’s life experience, as well as his disclaimer of the title, it asks rhetorically: What was (is) it to be a “religious man”? Finally, it highlights the richness of the Bean Papers held by the Australian War Memorial as a resource for social historians (not only historians of war) and invites attention to some of Charles’ forgotten writings; chiefly, his post-war “letters” to Australians, *In Your Hands, Australians* (1918 and 1919) and *War Aims of a Plain Australian* (1943 and 1945).

As to Australian legal history: The paper seeks to open up for review the first two decades of the 20th century (which have been largely ignored by legal historians in favour of the early 19th century); to remind Australians of how much our legal system has changed since Federation; and, in particular, to draw attention to the fading glory of the Crown in Australian legal theory, and abandonment of trial by jury as a mainstay of Australia's democratic engagement with the law. The brief legal career of CEW Bean facilitates an investigation of these themes because it provides a snapshot of a society in transition.

A particular reason for burdening the paper with detailed references is to invite correction or corroboration and to assist the research of others. Extensive extracts of some materials are set out in the paper, or appendices, because the materials themselves are not readily accessible. The appendices provide verification of facts asserted, opinions expressed and research methodology.

A big temptation in Bean research is to rely upon something written by the man himself without independent verification. He was habitually meticulous and honest in his purposes. However, some facts appear to have slipped through the net, and one suspects that his purposes coloured his observations. Ironically, the fact that he would have been likely to concede each of these points as highly likely may have encouraged us all to rely too heavily upon his version of events.

Any revised forms of the paper after first publication will be expressly designated by date.

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19 April 2011

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I. THE STORY IN OUTLINE: A THESIS ABOUT AUSTRALIAN HERITAGE

The Centrality of “The Arnold Tradition” in Bean’s Thought

Many Australians are fascinated by *personal* stories of men, women, children and entire families . all the sons and daughters of Australia - affected by the First World War (1914-1918) or the Second (1939-1945). Their focus on the perspective of real, identifiable people . often their forebears . struggling with human frailties, and fate, owes at least something to one of Australia’s most prolific story-tellers, (Dr) CEW Bean(1879-1968), whose optimism, determination and independence of mind continue as an Australian legacy.

CEW Bean made a substantial contribution to definition of Australia’s national character. That contribution was deeply influenced by his perception of the Rugby School Tradition of Dr Thomas Arnold (1795-1842) as much as anything he witnessed in the Great War (World War I), Gallipoli not excepted. It was a lens through which he saw the world.

Although Bean’s vision is generally assumed to have been coloured principally by his admiration for Australian bush+culture,¹ the Arnold Tradition+was more deeply embedded in his being². Its influence on him predated, and outlasted, his personal engagement with Outback+Australia. He inherited it from his parents. He associated it with the schools at which he was educated, or taught, and with which he stayed connected. It was central to his life-long concern with character+. It was as relevant to the city as to the bush, and to citizens living in peace time as to soldiers waging war. It remained with him long after he made his name writing about Australian bush culture and war experiences.

An examination of Bean’s brief career at the NSW Bar, and as a Judge’s Associate, between 1905-1908 demonstrates his lifelong preoccupation with the Arnold Tradition in Australia+as he later called it, the particular legacy of both parental influence and his (and his father’s) association with Clifton College (Bristol) and Sir Anthony Browne’s School (Brentwood, Essex) in England.

Given opportunities for advancement at the Bar that would have produced in any half ambitious young barrister an absorption with law, lawyers and legal practice, Bean’s mind instead remained preoccupied with the same large, moral questions (influenced by his perception of The Arnold Tradition) that had motivated him before his admission to the Bar, and continued to motivate him throughout his life.

¹ Eg, HM Green, *A History of Australian Literature, Pure and Applied* (Angus and Robertson, Sydney, 1961), Vol. 1, pp 738, 742-745 and 793-796; Rob Pascoe, *The Manufacture of Australian History* (Melbourne University Press, 1979), pp. 13-15, 20-21, 22 and 52.

² Section IV, below, contains an exposition of “The Arnold Tradition in Australia”, a term used by Bean in his *Here, My Son: An account of the Independent and other Corporate Boys’ Schools of Australia* (Angus and Robertson, Sydney, 1950), p. 3.

Bean's Experience of Law as a Profession

An exploration of his legal career, such as it was, requires study of Australian legal history. It demands consideration of what it was to be a new (%junior junior+) barrister in the early 20th century; the nature of a judge's workload at that time; and the institutional and social framework within which lawyers of all classes, and all levels of seniority, practised law in and beyond New South Wales.

Charles Bean thought himself unsuited to the rough and tumble verbal conflict he observed in the professional life of a barrister. He was a keen observer of himself, as well as those around him. Behind a friendly, open demeanour lurked a reflective, studious man not naturally attracted to public speaking. Had he remained at the Bar, these personal qualities might have destined him to a practice in Equity or appellate work. There his close attention to detail, his predisposition towards the written word and his careful, logical manner might have been turned to advantage.

However, such a practice could not have been acquired without a long apprenticeship at the Bar, which Bean did not stay to serve. He did not allow himself to learn law by doing. By circumstance or choice, he did not become case hardened by the emotional trials of a barrister's life. WA Holman, an established parliamentary debater of substantially the same vintage as him at the Bar, suffered nervous ailments (severe headaches and throat irritations) during a trial³. Nobody is immune from stress, however well it might be hidden or plausibly denied. Bean did not experience the highs or lows of a forensic calling. He did not really care to do so. He wanted to be a writer, not a barrister.

Having read for the Bar in England, where he was %called+to the Bar shortly before his return to New South Wales from an English education, he appears not to have undertaken any process of %reading+at the NSW Bar (something akin to apprenticeship) following his %admission+to practice in New South Wales (by the making of an Order of the Supreme Court of NSW entitling him to hold himself out to the public as an officer of that Court and to appear as a barrister in New South Wales courts).

He appears to have occupied a corner of Wigram Chambers in Phillip Street, Sydney, before and after his service as Associate to Mr Justice Owen, but a substantial part of his time in chambers appears to have been dedicated to learning the craft of a journalist. More than a few barristers supplemented their income in those days by writing, or reporting, for newspapers. That Charles wanted to do so would not, in itself, have excited attention. However, in his final months at the Bar, when he was hoping (expecting, really) to join the full time staff of the *Sydney Morning Herald*, his single-minded dedication to learning shorthand (and, on one account⁴, typing) was probably in a different

³ HV Evatt, *Australian Labour Leader: The Story of WA Holman and the Labour Movement* (Angus & Robertson Limited, Sydney, 2nd ed, 1942), p. 159, referring to court work undertaken by Holman in Wagga.

⁴ C Brunson Fletcher, *The Great Wheel: An Editor's Adventures* (Angus and Robertson, Sydney, 1940), p. 131

category. He appears to have been conscious of a need not to excite the suspicions of other barristers in Wigram Chambers about his long term intentions. He wrote to his mother from Chambers in September 1907 reporting his successes as a budding journalist (or so, in retrospect, it seems); recording his aspiration to go ~~on~~ staff+at the *Herald* if he could; and noting that he had not said anything in chambers about that possible career move⁵.

The judge to whom Bean was an Associate, (Sir) William Owen, fostered the young man's career by providing him with opportunities to observe a comprehensive range of the work of NSW courts, and the high drama of a politically charged Royal Commission into administration of the Lands Department, from the privileged perspective of an insider. A close reading of the published law reports of judgments of Owen J, and newspaper reports of circuit court sittings he arranged for Bean to attend, suggests that Bean was introduced by Owen to each of the major types of jurisdiction exercised by a judge of the Supreme Court of NSW: Common Law (criminal and civil), Equity, Probate, Matrimonial Causes and Appellate⁶.

Charles's preoccupation with the study of warfare manifested itself early in his legal career. He was proud that, before commencing practice in New South Wales, he had read for the English Bar with one barrister specialising in Admiralty Law and another in Marine Insurance Law (a specialised branch of Commercial Law). Many years later he explained to his wife Effie that he had hoped to specialise in ~~Sea-Law~~+ Sea-Law+. That was not a bad translation for a lay person of what a lawyer might better recognise as his English tutors's specialities.

Whilst new at the Sydney Bar, and within weeks of taking up work with Owen J, he wrote a learned article, first published in Sydney's *Daily Telegraph*, on naval aspects of the then-current Russo-Japanese War⁷. Whether the fact that Owen had had experience in Admiralty Law (as well as Equity and Commercial Law)⁸ drew Bean to him is not known. If Charles experienced something of the Admiralty jurisdiction in NSW or encountered marine insurance litigation, there is no trace of it to be found in the published law reports, confirming the character of that business as exceptional, rather than routine work in the New South Wales of that day. Major litigation of that character was more likely to have been conducted in London than in Sydney.

Although Bean appears to have had some exposure to Equity work, there appears (from the published law reports) to have been comparatively little of it. Most of the judicial work undertaken by Owen J when Bean was his Associate was as a member of the Full Court of the Supreme Court of NSW. Whether that was a reflection only of his status as the senior puisne judge (ie, the most senior judge after the Chief Justice) of the Supreme Court, or an arrangement made by the Chief Justice (Darley CJ) designed to lighten the judicial workload of a Royal Commissioner, is unknown. Owen J sat most often on the Full Court with the Chief Justice, with whom he

⁵ Letter dated 2 September 1907: AWM 38/3 DRL 7447/6.

⁶ See Appendix III.

⁷ 'The Approaching Sea Fight. Its place in Naval History. Why it will be worth watching', *Daily Telegraph*, 13 April 1905, p. 5.

⁸ *Cyclopedia of NSW* (1907), p. 296.

regularly concurred without delivery of separate Reasons for Judgment. Most of the appellate work performed by the Full Court took the form of procedural challenges (by Motions for New Trials) arising out of trials by jury. Those trials . an exercise of Common Law jurisdiction (including commercial cases) . constituted most of the work of the Supreme Court.

Charles Bean's most profound experiences of advocacy appear to have occurred when, on circuit in regional NSW, the judges he served (Rogers AJ and Fitzhardinge AJ, relieving Owen J of his workload in 1905, and Owen J himself in 1906) presided over a succession of jury trials. His personal reservations about his aptitude for Common Law work (both civil and criminal) may have led him to focus on the lay participants in those trials . parties, witnesses and their local communities . rather than the barristers (and their instructing solicitors) who more obviously occupied the central stage.

Necessarily speculative, such an assessment is consistent with Charles's general outlook on life and his literary bent. He had an empathy for the 'little man' from whose society, by cultural background and connections if not temperament, he necessarily stood apart, but whose life he told through idealised ('democratic') characters personified.

Examples of Bean Looking Away from the Law

In retrospect, Bean was comfortable with the idea that the life of a barrister was not naturally for him. An examination of the minutiae of his experiences as a Judge's Associate offers two particular illustrations of the correctness of that assessment. Both require a 'negative search' of Bean's extensive writings for confirmation.

The Balmain Ferry Case: You would never know he was there

The first relates to the apparent absence of any commentary by him on a *cause celebre* in which Owen J delivered a leading judgment, not upheld on appeals to the High Court of Australia and the Privy Council. It appears not to have distracted Bean from his personal preoccupation with military and naval affairs, the bush and Australian character; but the *Balmain Ferry Case* has fascinated students of Australian law ever since⁹.

There is no suggestion that CEW Bean ever appeared in the High Court as a barrister. Whether, and to what extent, he took an interest in its sittings in the period between 1905-1908 is unknown. This much, at least, can be said: during the period in which he served as Owen J's Associate (1 May 1905 - 30 April 1907) several judgments of the Full Court of the Supreme Court of NSW in which Owen J participated were reviewed by the High Court on appeal, and it may reasonably be supposed that Bean would have at least taken notice of those judgments, if not argument in the High Court. Of the judgments of Owen J reported in the *State Reports (NSW)* or the *Weekly Notes (NSW)*, five found their way into the *Commonwealth Law Reports*: *Ferris v Martin* (1905) 2 CLR 525; *Hay v The Australasian Institute of Marine Engineers* (1906) 3 CLR 1002; *The Balmain New Ferry Company Limited v Robertson* (1906) 4 CLR 379;

⁹ *Robertson v Balmain New Ferry Company* (1906) 6 SR (NSW) 195; (1906) 23 WN (NSW) 70; (1906) 4 CLR 379; [1910] AC 295.

Priscilla Trainer v The King (1906) 4 CLR 126; and *Perpetual Trustee Company Limited v Orr* (1907) 4 CLR 1395. The last of these was argued in, and decided by, the High Court in the month of 1907 within weeks of Bean's return to the Bar.

A sixth High Court judgment, in *Heydon v Lillis* (1907) 4 CLR 1223, related to proceedings associated with proceedings of the same name in which Owen J had delivered a judgment during Bean's Associateship. Charles might reasonably be expected to have taken notice of it as well.

Of all these proceedings, the one most likely to have attracted the attention of an Associate of Owen J interested in human interest stories and journalism was probably the *Balmain Ferry Case*. Darley CJ had sat at first instance with a jury. A summary of the case was published in HR Curlewis's *The Mirror of Justice* (Law Book Co, Sydney, 1906)¹⁰ after the Full Court judgment and before determination of a High Court appeal. Owen J presided in the Full Court. His leading judgment was overturned by the High Court. Robertson (a member of the NSW Bar)¹¹ had, disastrously, appeared for himself there. He then appealed unsuccessfully to the Privy Council¹².

The facts of the case, taken from the headnote of the CLR report of the High Court's judgment, were as follows:

"A ferry company placed over the entrance to their private wharf a notice stating that a fare of one penny must be paid by all persons entering or leaving the wharf, whether they had travelled by the company's boats or not. The plaintiff [Robertson], who was aware of these conditions, paid the fare of one penny and was admitted to the wharf through a turnstile. Having missed his boat, he attempted to leave the wharf by another turnstile which was the only means of exit except by water. As he refused to pay a second penny the company's servants endeavoured to detain him, but he eventually succeeded in forcing his way through a small opening beside the turnstile. He brought an action against the company for assault and false imprisonment, and the defendants [the ferry company] pleaded not guilty".

The High Court held that, as Robertson could have left the wharf by water, there was, under the circumstances, no imprisonment and that, having entered the wharf with knowledge of the conditions imposed by the ferry company, he must be taken to have impliedly agreed that he would not ask for egress from the wharf by land without payment of another penny, so that the company was justified in using such force as was reasonably necessary to prevent him from leaving that way without payment of his additional penny.

¹⁰ At pp. 166-168.

¹¹ A. Nugent Robertson was called to the Bar at Middle Temple on 9 February 1886: G Lindsay and C Webster, *No Mere Mouthpiece* (LexisNexis, Sydney, 2002), p. 337 (A List of NSW 19th century barristers compiled by LS Waddy).

¹² Mark Lunney, *Federal and Beyond: What the History of Australian Tort Law can tell us* (2010) 33 *Aust Bar Rev* 77 at 85-90.

Quite apart from any technical, legal significance the case may have had, Robertson's folly . . . all over a penny . . . has been cited to law students ever since as a moral lesson against those who insist upon their day in court to vindicate a matter of principle.

As reported in the *CLRs*, all six of the cases that had involved Owen J were heard and determined by the High Court sitting in Sydney. The proceedings were conducted near where Bean lived and worked.

Had he been interested in the law, one could reasonably have expected him, at some stage, to have written a line or two about the *Balmain Ferry Case*. He appears never to have done so.

No Interest in the Wild Men of Sydney

The second illustration of his lack of aptitude for the Bar relates to his apparent failure (as a lawyer, journalist, historian or otherwise) to capitalise on opportunities he had to obtain, or at least to report upon, the personal insights of lawyers who played central roles in controversies that had absorbed public attention over two decades. A refutation of the possibility that he aspired to be a journalist (investigative or otherwise), an historian of ordinary mettle or a commentator on Australiana unrelated to Outback Australia or the drama of war might be found in the realisation that the contacts he made in the course of his career at the NSW Bar would have qualified him, perhaps uniquely, to have written on the topics at the core of Cyril Pearl's classic, *Wild Men of Sydney*, first published in 1958¹³.

The Attorney General (CG Wade) who signed the documentation appointing him as a Judge's Associate, the judges he served as an Associate (Owen, Rogers and Fitzhardinge) and the silk who moved his admission to the NSW Bar (CE Pilcher QC) all played a role in the politically charged Dean controversy of the 1890s or the equally charged sequel involving administration of the Lands Department during Charles's service as an Associate. On top of that, one of the counsel who appeared in the sittings of the Wagga Wagga Circuit Court attended by Bean as an Associate (WA Holman) was actively engaged, politically, in the concurrent political controversy. What's more, another barrister with an interest in politics who appeared at the immediately following sittings of the Deniliquin Circuit Court attended by Bean (TR Bavin) appeared as counsel in a Royal Commission conducted by Fitzhardinge arising out of Owen's Royal Commission.

All these connections have common roots in the Dean controversy. George Dean (1867-1933)¹⁴ was a popular Sydney ferry-boat master who, in 1895, was convicted (by a jury presided over by Mr Justice William Windeyer) of the capital crime of attempted murder, by poison, of his wife. The solicitor who defended him at trial was RD Meagher (1866-1931)¹⁵, junior partner of WP Crick (1862-1908)¹⁶. Both were politically active. They conducted a political campaign (heavily critical of Windeyer J, Dean's wife and her mother) to secure for Dean,

¹³ WH Allen, London, 1958.

¹⁴ (1981) 8 *Australian Dictionary of Biography* 257.

¹⁵ (1986) 10 ADB 470.

¹⁶ (1981) 8 ADB 150.

first, a commutation of his death sentence to life imprisonment and, then, a pardon. They secured the pardon through agitation for commission of inquiry based upon protestations of Dean's innocence and the unfairness of his trial. The pardon was granted upon the recommendation of an Inquiry conducted by FE Rogers QC as Chairman and two physicians, P Sydney Jones and FN Manning. Rogers (later one of the judges Dean served as an Associate) dissented.

Meagher, then campaigning to join Crick in the Legislative Assembly, consulted Sir Julian Salomons QC MLC about the possibility that he might sue the *Daily Telegraph* in defamation for criticism of his advocacy in the Dean trial. To Salomons, he bragged that, after the trial and before the public campaign for a pardon, he had tricked Dean into a confession of guilt. That confronted Salomons with an ethical dilemma: Was he bound by lawyer-client privilege to conceal the misconduct of Meagher in conducting a public campaign for Dean's pardon based on a deceitful assertion of innocence?¹⁷ Salomons exposed Meagher's lie through a skilful use of his membership of the Legislative Council and enigmatic communications with the Attorney General, leading to exposure of the truth in Parliament. Salomons provoked Meagher to call for an explanation, then obliged.

When the falsity of Meagher's campaign for a pardon was publicly exposed, a succession of court proceedings brought him and Dean down, and exposed Paddy Crick to an unsuccessful prosecution. The parameters of the drama appear in judgments of the Full Court of the Supreme Court of NSW. Meagher, Crick, Dean and others were tried for conspiracy to pervert the course of justice; Dean and Meagher were convicted, but their convictions were quashed on appeal: *R v Dean and Meagher* (1896) 17 NSWLR (Law) 132. Meagher was struck off the role of solicitors for professional misconduct: *In Re Meagher* (1896) 17 NSWLR (Law) 157. Dean was convicted and imprisoned for perjury: *R v Dean (No 2)* (1896) 17 NSWLR 224.

Meagher never gave up his quest for rehabilitation. He was elected to Parliament in 1898, only to have his seat abolished in 1904. He was re-elected in 1907, joined the Labour Party in 1909, was active in the State's first Labour Government (elected in 1910), became Speaker of the Legislative Assembly in 1913 and was appointed as the first Labour Lord Mayor of Sydney in 1916. In the meantime (in 1900, 1902 and 1904) he applied unsuccessfully to the Supreme Court for re-admission as a solicitor. In refusing his 1904 application the Court intimated that, if he re-applied in or after June 1906, he would probably be re-admitted to practice. Acting on that invitation, he re-applied in August 1906, but was rebuffed. Controversy attending the Royal Commission of Owen J into administration of the Lands Department spoiled his chances. A further application in 1909 met with transient success when the Supreme Court (by majority) granted re-admission, but the High Court (unanimously) allowed an appeal: *Incorporated Law Institute of New South Wales v Meagher* (1909) 9 CLR 655. Frustrated, but undaunted, Meagher re-applied to the Supreme Court without success in 1917 and 1919 before making legal history of a new kind. By

¹⁷ Compare Leslie Blackwell *Death Cell at Darlinghurst* (John Long, London, 1970), ch. 9 (Should a lawyer tell?) and CK Allen, *Aspects of Justice* (Stevens & Sons Limited, London, 1958), p. 239 *et seq* (‘The Conscience of Counsel’).

the passage of the *Legal Practitioners Amendment Act*, 1920 (NSW) he was, by force of statute and courtesy of political friendships, (re) admitted as a solicitor¹⁸.

In that way, redemption of a kind came to him, in a form denied to his early mentor, Crick. In the aftermath of the Owen Royal Commission Crick was exposed to three unsuccessful criminal trials before, in 1907, being stuck off the Roll: *In Re Crick* (1907) 7 SR (NSW) 576. He remained defiant, but death came to him exactly one year later¹⁹.

Bean appears never to have been tempted by stories of Dean, Meagher or Crick to draw on his connections with centrally-placed lawyers, or their common experience, as a journalist or as an historian. Australian political history, like the law, took a backseat to the broad moral themes he preferred to pursue through stories of the Australian bush, Australia at war and Australian character. The life and times of the lawyer/politician, WP Crick, at the core of much political and legal controversy in the 15 years or so before he became a fulltime journalist, appears to have held little interest for him.

Bean's True Vocation: Writer, Moral Philosopher

Beans recorded, post-war recollections of his experiences as a Judge's Associate, and of the nature of the work undertaken by Owen J, are sufficiently far from objective fact to suggest that they were, in part, an *ex post facto* rationalisation for the course that the younger Charles Bean wanted, in any event, to pursue.

The life he lived was the life he was nurtured, if not fated, to live. In retrospect, an objective observer might be forgiven the error of thinking that the world adapted itself to accommodate him rather than the converse.

He wanted to be a writer; he became one. He wanted to mythologise the Australian character; he did so. He was fascinated by military history; he wrote it. Despite the fact that his experiences in the legal circles of New South Wales could have inspired deep, insightful historical perspectives on law and society, he turned away from them all.

He never quite escaped his family heritage in education. He professed a disdain for the career of a schoolmaster, but never entirely let it go. Certainly, he did not want to be a lawyer. Although modern newspapers remember his early career as that of a journalist (or a war correspondent), the reality is probably that he never really wanted to be a journalist either.

Certainly, when turning away from the law in 1907 he told his mother that he wanted nothing better than to pursue the profession of journalism²⁰. And he valued an ongoing newspaper connection, even when, in 1910, contemplating the luxury of a choice between publishing in my own name and following up

¹⁸ JM Bennett, *A History of Solicitors in New South Wales* (Legal Books Pty Limited, Sydney, 1984), pp. 210-211.

¹⁹ JM Bennett, *A History of Solicitors in New South Wales*, pp. 208-209.

²⁰ Letter dated 2 September 1907 (AWM 38/3 DRL 7447/6).

newspaper work, favouring the latter²¹. Still, the daily grind of a news reporter was not for him. He wanted to be, at least, a leader writer and, preferably, something more.

On his return to Sydney in early 1913 after about two years in London as the *Sydney Morning Herald's* Correspondent there²², he experienced disenchantment with the role of a mere leader writer²³. How much, if any, of that disenchantment was attributable to home sickness for the community of his parents, Brentwood School, and London is, perhaps, a matter of speculation. The fact that he experienced it at all, however, counsels caution against too much veneration of his interest in journalism.

The reality appears to be that he wanted to be a serious writer on large public questions; questions about the meaning of life and death, of life well lived.

And then War came.

The constancy of Bean's character, his exhortations (principally about the need for education, a well-rounded life and planning in all things), his description of the Australian character, his advocacy of the Arnold Tradition in Australia, as he understood it and his interpretation of the ANZAC Spirit, should not be disregarded (but, rather, used as a standard for comparison, for good or ill) in elaboration of Australia's social history. The unstated cultural assumptions of yesteryear, not noticed because so many who dominated social discourse held them in common, have been exposed to view by cultural change. The consistencies in Bean's outlook on life, the life he lived and the records he preserved for posterity provide a measure against which present-day Australia can take bearings.

An illustration of that use of his life story can be found in a paper on racism in Australia, published by Stephen Ellis in 1972, charting Bean's shift from support for a White Australia before WWI to a multi-racial immigration policy after experience of two World Wars and the horror of Nazi racialism²⁴. The paper begins with recognition of the uniqueness of Bean's long study of the Australian national character, and Australia's self image based on the Outback tradition and the ANZAC tradition. It does not, however, notice Bean's advocacy of the Arnold Tradition in Australia, or consider whether Bean's broadening vision of Australian society might have represented a working through of moral imperatives associated with the Arnold Tradition or the Christian ethics in

²¹ Bean letter dated 5 April 1910 addressed to 'Mother' on letterhead of the University Club, Sydney.

²² The precise dates of Bean's travel to and from England in 1910 and 1913 respectively have not been established. The Bean Papers contain a letter dated 20 September 1910 addressed to Bean by TW Heney of the *Sydney Morning Herald* ((1983) 9 ADB 258) at a time when they were both in London, shortly after Bean's arrival there. Heney counselled Bean to cultivate GH Reid, Australia's recently appointed High Commissioner: AWM 38/3DRL 6673/895. A farewell dinner was held for Bean at the Connaught Club in London on 13 March 1913: Mrs Leonard W (Egeria) Matters, *Australasians Who Count in London and Who Counts in Western Australia* (Jas. Truscott & Son Limited, London, 1913), p. 14.

²³ KS Inglis, *CEW Bean, Australian Historian* (Queensland University Press, 1970), p. 14.

²⁴ S Ellis, 'Racism in Australia: A Contribution to the Debate' (1972) 44 *Australian Quarterly* 58-66.

defence of which, Bean asserted, %most+Australians were willing in WWII to die²⁵.

Bean did not originate %the bush tradition+, but he adapted it to his didactic purposes, as he did his war experiences and his work as an historian and editor. His purposes consistently focussed on %character+and wholesome living.

As a boy he had visited battlefields, attended military parades and sketched soldiers in uniform²⁶. As a young man, he had tried, without success, to enter Britain's Colonial Service in India or South Africa, before studying law as a consolation prize. At the Bar, he aspired to be a contributor to newspapers, then a journalist. As a journalist he gravitated towards writing leading articles and aspired to be a war correspondent. As a war correspondent, he planned to be a war historian. All along, he indulged his bent for generalisations about life. World War I broadened his outlook, and brought out the teacher in him.

He appears always to have lived life to a purpose, though minds might differ in definition of the purpose, or purposes, that motivated him from time to time. Perhaps it is enough to say that he was, by inclination, purposeful.

He was not a one dimensional man, although he could be presented as such. Australians tend to depict him that way every year when, in April and November, in preparations for Anzac Day and Remembrance Day respectively, they celebrate his life as a war correspondent. That he was brave and true in the performance of that work cannot be denied. Nor can the debt owed to him, and his memory, by his compatriots. Nevertheless, he was more than a war correspondent or a writer about life in outback Australia. His life's mission, as life unfolded for him, was to discover, expound and extol Australian %character+as a democratic ideal in search of %Truth+.

From a narrow, but other-directed and idealistic family background, he grew in outlook with close experience of war and even closer familiarity with personal stories of war and post-war experience. The questions about war that fascinated him as a young man were answered by the bitter reality of war. He longed for peace.

As a young man of the British Empire, raised in a patriotic Imperial community that abhorred, but accepted and even admired, aspects of war as an incidence of public life, he may have been too fond of war before World War I. If he did occupy that space, he was hardly alone. The War changed all that. His letter, perhaps more accurately his sermon, to young Australians at the end of the War . *In Your Hands, Australians*²⁷ - testifies to the fact that he had had enough of war time experience. In reverence, he dedicated his subsequent career to the memory of those who had died, and in pursuit of utopian dreams he attributed to them: "*Who is going to make of [Australia] the country they wished to see?... It is*

²⁵ "Racism in Australia", p. 63, citing a publication of Bean in the *Sydney Morning Herald* on 27 March 1942, p. 3.

²⁶ AWM 38/3 DRL 7447/5 (Correspondence 1894-1903).

²⁷ Cassell and Company Limited, London, 1st ed, 1918.

*you – the younger Australians – even the boys and girls of Australia. You or no-one*²⁸.

When Hitler rose to power in the 1930s he supported Neville Chamberlain's policy of appeasement, but not as a pacifist. That is apparent in an article that he had published in the *Sydney Morning Herald* in March 1939.²⁹

"The policy of Mr Chamberlain, as some of us from the first understood and supported it, was as follows: -

If Hitler means to act in good faith – or if the opinion of the German people, appreciating that we intend to deal with them in fairness, induces him to do so – then an attempt to settle international difficulties by reason and goodwill may succeed and the ghastly spectre of world-war be exorcised.

If, on the other hand, Hitler proves to act in bad faith, and the good that we believe exists in a great part of the German people does not prevent him, then we shall be driven to reply to force by force. But we shall do so united by the knowledge that we have done everything humanly possible to offer the other solution; and, if it comes to the worst, our opponents will be divided by the consciousness that their leaders have plunged them into needless war.

FAITH SHATTERED

To the bottom of our hearts many of us believe this policy to have been wise and right, though many others, who loved peace and justice as well as we did, have strongly criticised it. We do not regret one word of it. But we do recognise that the events of last week [in Czecho-Slovakia] have united us with our critics. If recantation means singing a different song, then we recant in this sense: What has happened has ended the first half of our theme – the only tune we can sing is that of the second half".

His independence of mind allowed him to stand with Chamberlain in the spirit of Winston Churchill. And when the Second World War came, it was barely half over before he published another letter . another sermon . to young Australians: *War Aims of a Plain Australian*³⁰. The existence and tenacity of his utopian dream for Australia were both based firmly in his family background.

Charles's background was that of a son of a Headmaster and (just as importantly) a headmaster's wife dedicated to the 19th century, English public school tradition of Thomas Arnold's Rugby School and the liberal Anglicanism that inspired that tradition. If, as his biographers say, Arnold's purpose was to educate "Christian gentlemen", it would be a mistake to characterise Charles Bean as a Christian philosopher. His predisposition was too secular for that. Nevertheless, both father and son allowed any religious impulse to merge with a love of the history, and philosophy, of Ancient Greece and Rome. Edwin took Holy Orders in the

²⁸ *In Your Hands, Australians* (1918), p. 10

²⁹ CEW Bean, "Recantation. Germany's bad faith. End of Appeasement.", *Sydney Morning Herald*, 21 March 1939, p. 10.

³⁰ Angus and Robertson Limited, Sydney; 1st ed, 1943; 2nd ed, 1945; 3rd ed, 1945.

Church of England in aid of his role as Headmaster of Brentwood School. Charles's family background informed his thinking. He was in the family business.

Viewed as a whole man, he was essentially a moral philosopher. Australians have not yet chosen to celebrate that image of him, but it appears to have informed everything he wrote. Insofar as he is responsible for the Gallipoli legend that feeds the perceptions of two nations, Australians and their Kiwi cousins need perhaps to take note of the lens through which the first ANZAC Day was seen by CEW Bean. That lens was well in place a decade before 1915, when young Charles (in his mid-20s) was nominally on the threshold of a career as a barrister.

II. CONTEXT FOR THE THESIS: CEW Bean's Career in Outline

Charles Edwin Woodrow Bean is widely known in Australia as a journalist (and author of *On the Wool Track* first published in 1910) who became, in turn, Australia's Official War Correspondent in the Great War (as the First World War was known before World War II) and thereafter editor of the nation's *Official History of the War*, six of the 12 volumes of which he personally wrote. Known to his contemporaries as Charlie, Chas or CEW,³¹ he is best known to modern Australia by the title, CEW Bean. He is commemorated as a founder of the Australian War Memorial in Canberra and, more prominently, as a foundational source of Australia's defining myths of mateship and Gallipoli. Controversy about his work routinely arises in connection with celebrations of ANZAC Day (25 April 1915) and Remembrance or Armistice Day (11 November 1918). It is regularly used to attract attention to broader questions about war, peace and national identity.

Bean commenced his working life in Australia (in February 1905) as a barrister, and as a Judge's Associate (between 1 May 1905 and 30 April 1907), before turning to *The Sydney Morning Herald* to become (in January 1908) a full-time journalist.

The brevity of his career at the New South Wales Bar (for a few months in early 1905 and then again in late 1907), and an occasional suggestion that he failed at the Bar³², heighten the mystery of the role of the law in the development of a mind intent upon pursuit of the life he did ultimately lead. As and when it suited his purposes, he continued throughout his life to claim the status of a barrister. That, in itself, suggests that even a nominal connection with the law was perceived by Bean to have utility. His name was only ever twice (appropriately in 1908, and in error in 1909) published in the list of barristers in the annual volumes of the *NSW Law Almanac*³³, but it was

³¹ AW Bazley, 'Australia's Official History of World War I' (February 6 August 1959) *Stand-To* 23 at 23 verifies use of 'Charlie' and 'CEW'. Bean's letters were routinely signed 'Chas'.

³² Denis Winter, *Making the Legend: The War Writings of CEW Bean* (University of Queensland Press, St Lucia, 1992) p. 2.

³³ Back issues of the *NSW Law Almanac* are available on the web (www.lawalmanacs.info).

published in each volume of the English *Law List* from 1905 until the early 1950s³⁴, by which time his working life was drawing to a close.

How he personally viewed that life is perhaps best summarised by the short *curriculum vitae* published on the rear inside cover of his penultimate book, *Here, My Son*, published in 1950³⁵. He was commissioned by the Headmasters' Conference of Australia to write that book in the aftermath of World War II. His editorial experience, attention to detail and natural predisposition are likely to have ensured that his CV was vetted, if not written, by him personally:

"Dr C.E.W. Bean is the son of a former Australian headmaster, but spent his years of education mainly in England. After some further years as schoolmaster, judge's associate, barrister, and journalist, he was in 1914, upon a vote of his fellow-journalists throughout Australia, appointed Official War Correspondent with the First Australian Imperial Force. While still in France he had some part in bringing about the first moves for the system of Army Education. On his return to Australia he was entrusted, free from censorship, with the editing and main authorship of the Australian Official History of that war. During that work (which occupied twenty-three years), and since its completion, he has been prominent in most Australian efforts for better international understanding, better education, national fitness, and provision of space, amenities, and training for leisure".

III. RECEIVED WISDOM ABOUT BEAN'S LEGAL CAREER

Autobiographical Writings

If there is any conventional view about the nature of Charles Bean's experiences as a lawyer it is probably based upon a few throw away lines in his published writings and, more especially, on three readily accessible sources in papers held by the Australian War Memorial. In the Preface to the 1963 edition of *On the Wool Track* he explained the provenance of that book as follows:

*"Five years before the First World War the present writer, then a youngish reporter who in the previous year had given up waiting for briefs in order to make one wholehearted attempt upon the calling that he really loved, was sent for by his editor, Mr TW Heney, and told that the editor and proprietors of the Sydney Morning Herald wanted a series of articles on the wool industry"*³⁶.

³⁴ Bean's name appeared in the 1952 *Law List* at p. 230. The volumes for 1953-1955 have not been sighted. His name was not published in the 1956 volume.

³⁵ Angus and Robertson, Sydney, 1950.

³⁶ Page vi. After the War Bean endeavoured, loyally, to repay his professional debt to Heney by commissioning him to write the volume of Australia's *Official History of the War* dedicated to the domestic front. Heney's work failed to measure up. Bean was forced to commission Ernest Scott: Stuart Macintyre, *A History for a Nation: Ernest Scott and the Making of Australian History* (Melbourne University Press, 1994), pp. 164-165; Michael McKernan, "Introduction" to University of Queensland Press reissue of Scott's, *Australian During the War* (St Lucia, 1989), pp. xxix-xxxix.

He was more expansive in three autobiographical accounts written much earlier. The first was a letter dated 16 November 1922 written to Lionel Gage Wigmore (1898-1989) then at the *Daily Telegraph*³⁷. The second was an essay written by Bean for his wife, entitled 'Account for EFFIE' apparently written in 1924³⁸. The third was a letter dated 18 October 1930 written to Henry McKean Tasker (1900-80)³⁹, a member of the staff of All Saints College, Bathurst, and then editor of the School's magazine, *The Bathurstian*. It formed the basis of an article entitled 'Dr CEW Bean' in the 1930 issue of *The Bathurstian*, congratulating 'Captain CEW Bean' on the decision of Melbourne University (at a meeting of the Council of the University held on 15 September 1930)⁴⁰ to confer upon him the Honorary Degree of Doctor of Letters⁴¹.

A Letter to Lionel Wigmore, Journalist (1922)

The Wigmore letter tells the story thus:

"I had much illness in my last year at Oxford – I do not think that it affected my degree, but it decided me, instead of staying at Brentwood and helping my father, as I did for one term at Brentwood School, to come out to Australia. I was called to the bar at the Inner Temple, and came to Sydney in 1904, where I was admitted as Barrister [sic] and became associate [sic] to the late Mr Justice Owen.

Judge Owen was at this time engaged as Commissioner investigating into the recent 'Land Scandals', and having much time on my hands I employed it in writing a series of articles on Australia, which I retained until I gave up the associateship, and then took to the Editor of the Sydney Morning Herald, who published most of them. Barton Patterson, Editor of the Evening News had also published some of my stuff. After sitting down for several months without any briefs, I decided to attempt a career which I really loved that, before I was forced into school-mastering or some other profession for which I was not well suited, I would attempt a career which greatly attracted me, and therefore went, on Pattersons advice, to the proprietors of the S.M. Herald, and asked them to give me a trial on their staff. Mr J.O. Fairfax told me that he would do so if I were prepared to begin at the beginning. I agreed, studied shorthand at

³⁷ Wigmore later wrote, *The Japanese Thrust* (AWM, Canberra, 1957) as Volume IV in Series 1 (Army) of the Official History of WWII, *Australian in the War of 1939-1945*. He also wrote *The Long View: A History of Canberra, Australia's National Capital* (FW Cheshire, Melbourne, 1963) and *Struggle for the Snowy: The Background of the Snowy Mountains Scheme* (Oxford University Press, Melbourne, 1968) and edited *They Dared Mightily* (AWM, Canberra, 1963).

³⁸ 'Account for EFFIE' (apparently dated 30 August 1924); AWM, Papers of Arthur Bazley, 3 DRL/3520; Folder [10a] of 143.

³⁹ Tasker was born in Seymour, Victoria, on 29 September 1900. He taught at Scotts College, Sydney, before joining the staff of All Saints College, Bathurst. He was on the staff of All Saints College between 1923-1931. At the time he enlisted in WWII (on 22 July 1940) he was living in Victoria. He joined the AIF with the rank of Lieutenant. He was promoted to Lieutenant-Colonel. He served as Lt-Colonel in the 2/24th Battalion, and as Commanding Officer of the 47th Battalion. His religious affiliation was Anglican. See WA Steele and JM Antill, *The History of All Saints' College, Bathurst* (3rd ed, Sydney, 1964), pp. 69, 71, 77, 209 and 217; War Service Record (Australian National Archives).

⁴⁰ *The Brisbane Courier*, 17 September 1930, p. 13. Cf *The Sydney Morning Herald*, 17 September 1930, p. 12 (which suggests that the Council met on 16 September 1930).

⁴¹ Pages 8-9.

*Stott and Hoares for four months, and then joined the Herald together with H.M. Green, afterwards of the Daily Telegraph, as junior reporter in 1908*⁴². [Emphasis added].

Account for Effie, Charles' Bride (1924)

A slightly different, more elaborate picture emerges from the Account for EFFIE+. Having explained that he had failed to obtain first class honours at Oxford and failed again in the India Civil Service examination, and how providential those failures were in leading him to Australia, he continued:

"I had my appendix out.... & then worked for my bar exams. These were easy, & on the same reading I passed the Examination for Bachelor of Civil Law at Oxford in, I think, 1903. I knew then that I was going to Australia – intending to practice in Sea-law (for I was always intensely interested in the Sea & Navy) & I took the B.C.L. degree simply because I thought the letters might help me to get some coaching. I did not really know much law, but from the time I was a small boy I always knew what the examiners wanted; I could always, on a minimum of work, pass a good examination – it was a sort of a game which I always enjoyed. (Once, at school, I was 25th for Latin Grammar on the term's marks (ie nearly bottom) – top in examination, & 13th in the general result.)

After being called to the bar at the Inner Temple I helped father at Brentwood School for a while; but in the autumn of 1903 my throat and chest became so affected – simply by cold, nothing more – that father thought it wise for me to take a tutorship of some pupil travelling round the world, or to some warm part. Luckily we heard of a youngster, J.H. Sharp of Balmuir, near Dundee, who was being sent to Teneriffe in the Canary Islands for the winter, & I was chosen as his tutor. He was a delicate but splendid intelligent youngster, & I grew very fond of him. When we returned early in 1904 father & I decided that I should go to Australia & try my luck at the bar in Sydney. Mr Weigall, his old chief at the Sydney Grammar School, had offered to give me a little work teaching Greek for a few hours a week, which would help.

In these years, while I was at school & college, Jack had been sent – first to Bath College (not far from Clifton) & afterwards to Cambridge where he studied medicine – rather overdid it by trying to take an honour degree in Science at the same time. I think he succeeded – he is now MA & MD Cambridge. Monty remained at school at Brentwood, & then went to University College, London, & afterwards to Armstrong's at Newcastle to study Engineering. We all three were good cricketers & played football & tennis a bit, but Monty was the best at games.

When I got to Sydney Mr Justice William Owen (afterwards Sir Wm. Owen) made me his associate. The old judge was doing no work in the Courts at that time, but was Enquiring (as a Royal Commissioner) into some scandals connected with the Lands Department in which Mr Paddy Crick, the then Minister for Lands in N.S.W., & Mr H.N. Willis, a land agent, were alleged to be principally involved.

⁴² Page 2 of three pages.

The case could not be proved against them – it took a long time, & I amused myself writing articles ready for publication when I should give up the associateship. Before I became associate – while I was teaching at the Grammar School & waiting for clients in chambers in one of the buildings in Phillip St. – I had written a few articles for the “Evening News” of which A.B. Paterson was Editor. *Having no work to do for my own judge – Harry Bernard (you remember him) was the judges tipstaff, - I was lent out to other judges or rather acting-judges when they went on circuit. Thus I was associate for Judge Rogers on the Wagga Circuit in 1906 & for Judge Fitzhardinge at Deniliquin in the same year. My own judge, Owen, came back to his work in 1907 & I went on circuit with him to Newcastle & Tamworth. One saw thus a good deal of the country – perhaps the worst side of it.*

It was a pleasant life but promised nothing; so I told the dear old judge that I had decided to strike out for myself; he agreed & I went again into chambers. But “briefs” - That is barristers work – did not come along. I also knew that I was too nervous for success at the bar; I was a nervous, self-conscious speaker, very liable to break down, or anyway to do injustice to my subject through extreme nervousness. I knew that I could get work as a school-master, but my school-discipline was not good. I was too soft with the boys – or, rather, too anxious to please & be popular with them. Father always said that was a fatal weakness in any schoolmaster - & he did not know that I possessed it. I might have got over it – I am pretty sure I should have done so, if I had taken up the work again for I was on my guard against it. But I was not cut out, as Father was, for a teacher, & I loved writing. I had tried my hand on a book about Australia – ‘The Impressions of a New Chum’, – which I wrote & illustrated while I was with the judge. I did not attempt to get anything published while with him; but I afterwards took this book to Mr A.C Rowlandson of the NSW Bookstore Co, & to Messrs Angus & Robertson. A & R sent it to their reader, a Mr Matthews or some such name, who slated it, on the whole very justly. It was a rather crude & somewhat priggish production, and I was afterwards exceedingly glad that it was so firmly rejected, though it was written with enthusiasm & meant well. I took some of the chapters, as soon as I left Judge Owen, to the S.M. Herald, where Mr Heney, the Editor, read them, & chose 8 & printed them under the title, I think, of “Australia Revisited”.

I took a delight in writing, &, after thinking it over & over, decided that before I went into some profession – such as teaching – which I did not greatly like, I would make an attempt to succeed in one that I knew I should love. I therefore went to Barton Patterson. He advised me that it was a poor job, but that if I were set upon it I should go & see the Fairfaxes of the S.M. Herald, who had known or known of my father.

I went to Geoffrey Fairfax. He told me that there was only one way to enter the profession in Australia - & that was from the bottom. It was necessary to work one’s way up as a reporter – one could not become a leader writer from the start, as in England. This was (I found afterwards) not strictly accurate, but it was obviously the only way for me. Geoffrey told me that, if I took up shorthand & started at the bottom, he thought there was no reason why I should not rise pretty quickly. He sent me to W.G. Conley, the manager, who told me to go & learn shorthand & come back when I was proficient, when he would give me a place.

I went at once to Stott & Hoare's, & worked about 8 hours a day on shorthand for 4 months, & got on well. By Jan. 1908 I was able to go back to Conley, & he put me on as junior reporter at £4 a week; H.M. Green of Sydney University, my junior, joined about the same time at a lower salary.

I did not, at first, much like having to go to the Law Courts, & public meetings, & sit at the feet of people of whom I had been the friend a few months before; but I found the fellowship among pressmen so good, & the men in the Herald & Telegraph & other offices so unselfish & helpful, that the strangeness of the start gradually wore off & I spent one of the happiest times of my life in the old Herald office. It was a big family, from Jack the office boy to the Editor & even to Geoffrey & Jim Fairfax, the proprietors. All the old Herald men were loyal friends, too, of old Sir James Fairfax; & when I got to know him, some years later, I too grew most fond of him⁴³. [Emphasis added].

A Letter to HM Tasker, Editor of "The Bathurstian" (1930)

The Tasker letter provides a few variations on the theme:

"... [It] was just as well [that I did not get a First Class Honours Degree at Oxford University] – with a first I should probably have taken up teaching in England. As it was, I sat for the India Civil Service, obtained quite good marks, but not good enough, and after helping the Pater at Brentwood while I read for the bar, and spending a delightful winter in Teneriffe as tutor to a Rugby boy, a charming youngster, Herbert Sharp, I came back to Sydney in 1904 to try my luck as a barrister, preferably in shipping and commercial cases. I had worked at the Inner Temple in the chambers of Adair Roche (an advocate in admiralty) and for a short while in those of Mackinnon (marine insurance).

When I reached Sydney two friends of my father and mother helped me with some immediate work – Mr Weigall gave me a class in Greek at Sydney Grammar School – but I was always in difficulties there for though I read and wrote Greek well I was always hopeless at Greek grammar, and it did not take the class long to find this out. The other friend, Mrs Selwyn, asked an old friend, Mr Justice Owen, if he could assist me, and he most kindly made me his associate. When once I took up this work I had to give up the class at the Grammar School, which I did with relief.

The old judge, one of the most charming men that ever sat on the State bench, was, at the time when I joined him, appointed to investigate the Crick-Willis scandals, and as he had no need for an associate in this task I was left largely to myself. I was lent to Judge Rogers and Judge Fitzhardinge when they went on circuit as acting supreme court judges, and learnt a good deal of the country on those interesting journeys. But most of my time I spent in writing articles which I meant to publish as soon as I left the Judge – the impressions of an Australian who returned to Australia after having left it as a boy. Much of this stuff was very juvenile – I had little experience, but had a solution for every problem. I sent the work afterwards to Angus and Robertson, and their

⁴³ Sheets 25-38 of 73.

reader cut it to bits, for which I have been eternally grateful to him ever since. Indeed I have learnt more by rejections than by any other experience, and after ten minutes' indignation have always sat down to think it over and ultimately to recognise the very good reasons for the return of the manuscript. ***But the writing of these articles did give me a great love of writing. Eight of them were taken by the Sydney Morning Herald; and although the thinking behind some of them was sometimes crude, some of it was straight.*** The article on the lost chances of Sydney, and the need for some sort of body controlling the whole city and its outskirts, and of a town plan, is as true today as it was then. At this day, in the Town Planning Association, and the Parks and Playgrounds Movement we are still trying to induce the Government to adopt a few of the elementary principles that were advocated in that article twentythree years ago.

At the end of 1907 I left Sir William Owen, and set up for myself in chambers, but it did not take me long to realise that I was not one who would succeed at the bar. I was too nervous, though I had partly overcome this by going down to the Sydney School of Arts on debating nights and practising there. The speakers were men of all parties and of all views, and the audience came partly from the Domain; but I always found that they would give you an attentive hearing if you approached your subject in one way – the way any fairminded man would adopt – first gave your opponent full credit for every part of his argument that was good, and then pointed out where you felt he was wrong and hit as hard as you could at the weak points. I personally have found that this method seldom fails to secure an attentive listening from Australians.

But for the bar you need nerves of iron; you have to be ready for sudden homethrusts, which are sometimes fair and sometimes not, and I never felt sure that I should keep my head: I was more afraid of it than of missing those catches at Clifton, and this fear would have hampered me horribly. ***Probably one might have overcome it, as one did the weakness in fielding, by practice, but then there were the interests of clients at stake; moreover, although I had been interested in the work in chambers, my tastes were not really legal, or even studious, but always definitely constructive. I had always an irresistible tendency towards writing or acting when there was anything obviously to be written or done, and of reading only with a view towards those ends.***

The life of most men is filled up with learning and acting, but with some the desire for learning restricts the time available for action, and with others the opposite. I have always been one of the latter, always sincerely deploring that one 'cannot get in the time for more reading', but somehow never getting it.

At the end of a few months of waiting for briefs I recognised that the bar was not the career for me – I had seen men with far more brains than I, in England, still almost briefless at middle age; my interests were much more general, ***and I had seen one or two things of late which increased my distaste for the work – so much so that I tore up the only cheque I ever received for it. I knew also that I was not meant for teaching, much though I liked and admired schoolmasters. It looked as if teaching held the only openings just then, but I decided that before I settled down to a career for which I was only ill-fitted, I would have one fling at work which I really loved – writing.***

I had, like many young men, a notion that one might, if fortunate, obtain a job as leader-writer from the beginning; one knew of men who had done so in England, and I accordingly went to Barton Paterson, then editing the "Evening News". He had accepted a few articles of mine, but he had no opening for me. He advised me, however, to go along and see Jim or Geoffery Fairfax at the Sydney Morning Herald. I went straight there and met for the first time James Fairfax. He told me that there were no openings for writers of special articles or leaders; that, if I joined the staff of the Herald I must begin at the beginning and work my way up; but that, if I was prepared to do that, he saw no reason why I should not get on quickly. I would have to learn shorthand, however. If I decided to do so the Herald would take me on as reporter when I had attained sufficient shorthand speed.

I resolved to take up the work, and never for a moment have I regretted the decision. I joined Stott and Hoares and worked at shorthand continuously in my rooms and at the classes, but it took me four months to pass the test for sixty words a minute, although I could manage eighty or a hundred with a scramble. The Herald considered this fast enough and I joined the staff under Mr Heney, editor, Monty Grover, subeditor, and Charles Theakstone, chief of staff, in January 1908. With Harry Green, now Librarian of the Fisher Library at Sydney University, who joined at the same time, I was the junior reporter on the staff⁴⁴. [Emphasis added].

Commentary

Each of these three accounts contains errors of detail and, perhaps, a rosier, more romantic view of reality than might be justified by contemporaneous records. They should not, on that account, be held against their author. Bean was writing from memory, apparently without corroborative primary records and (at least in the case of the Tasker letter) in haste about the early stages of a career long since given over to journalism and work larger than a transitory career in the law.

What these accounts (with their errors) reveal is a reflective, insightful man engaged in rationalising the past. He appears to have persuaded himself that each step in his career followed, in sequence, as a discrete event. In retrospect, the truth may be that he always wanted to be a writer; he never abandoned that aspiration but constantly worked towards its fulfilment one way or another; and fulfilment came via the succession of letters to the editor, newspaper articles, journal papers and books on large public, practical questions that culminated in the award to him of two honorary doctorates, bringing him full circle to a point he might have reached had he not missed out on a First Class Honours Degree at Oxford at the beginning of his career.

He always had, he told Tasker, an irresistible tendency towards writing or acting when there was anything obviously to be written or done, and of reading only with a view towards those ends. Had he won a First at Oxford, he would probably have taken up teaching in England. Only when his next

⁴⁴ Pages 8-12 of 19.

career choice . some form of colonial service (in India or South Africa) . was closed to him did he turn to law. It was never, for him, a vocation.

Each step he took towards employment in the law was taken in consultation with his father, to whose judgement he may have deferred. In his father's estimation, if not his own, poor health and a need for a warmer climate, coupled with the availability in Sydney of an old friend (Mr AB Weigall of Sydney Grammar School) as a surrogate parent, may have tipped the balance in favour of the Sydney Bar.

The Old School connection was important to father and son, and an objective reality in every calculation. In suggesting to Charles that he approach the Fairfax Family for a start in journalism (as he did when Charles was ostensibly a lawyer), Banjo Paterson figured that thrown into the equation should be the fact that the Fairfaxes had known or known of Edwin Bean. And at least some of the editorial staff on the *Sydney Morning Herald* knew of, and counted in his favour, the young man's family connection with All Saints College Bathurst⁴⁵.

A kind regard for Charles's parents appears, also, to have been a factor in persuading Mrs Selwyn to request Owen J for assistance. The precise identity of Mrs Selwyn remains unclear but Selwyn was an honoured Anglican name in the circles in which the Beans, and William Owen, moved. The Anglican connection can reasonably be supposed to be implicit in references to Mrs Selwyn.

Charles's perception of the Associates' job as a dead end . [it] was a pleasant life but promised nothing+. manifests a fundamental lack of passion for the law, an absence of any vision of how the job might advance his career prospects at the Bar and a general disinterest in any such prospects. He did not see it as privileged preparation for the Bar. He explained away his experiences with the Judge by noting that Owen J had been kept away from court work by his commitments as a Royal Commissioner, by suggesting that he (Bean) was too timid to be a barrister, and by hinting that there was something morally distasteful about engagement with the law. Even the circuit court work, which enabled him to see a good deal of the country+, exposed him to the worst side of it+. Whatever it was that caused him to tear up the only cheque [he] ever received for [legal work]+had, for him, something of an unethical or sinister character. In all this, he appears not to have confided in any of his judges (Owen, Rogers or Fitzhardinge), or any member of the Bar, as a mentor. He turned instinctively to Banjo Paterson (1864-1941), not as a former solicitor but as a newspaper editor.

AB Paterson was, to Charles Bean, a Sydney Grammar School Old Boy. He had been a student at the School during Edwin Bean's sojourn there as a teacher. He served Articles of Clerkship (with Hugh Salway) before his admission as a solicitor of the Supreme Court of New South Wales on 28 August 1886. He practised in partnership with John William Street for about 10 years from 1889⁴⁶. He resolved to become a full-time journalist in about

⁴⁵ C Brunsdon Fletcher, *The Great Wheel*, pp. 130-131.

⁴⁶ (1988) 11 ADB 154.

November 1902⁴⁷. Between early 1903 and January 1908 he was Editor of Sydney's *Evening News*. His broader experiences as a War Correspondent for the *Sydney Morning Herald* during the Boer War (1899-1902), and in the world of literature, would have drawn Bean to him as well. He had met, and become friends with, Rudyard Kipling in South Africa. He was, perhaps, a role model for Charles Bean.

Bean's characterisation of Owen J's work schedule is not altogether accurate. Its inaccuracy is important, however, to understanding Charles's experiences as an Associate and the inner workings of the NSW legal system at that time. Contrary to Bean's recollection, Owen J maintained a heavy judicial workload until about February 1907, at which time it fell away dramatically, perhaps in anticipation of retirement. Most of the work he did in court was, however, appellate work, not first instance work⁴⁸. For a judge's Associate, Full Court appellate work would have provided fewer opportunities for in-court experience; three judges would not have required three Associates to assist them throughout what might have been long days in court. The most educative of experiences for an Associate would probably have come from first instance work, in Sydney or on circuit. It was, perhaps, Owen J's Full Court work rather than simply the Royal Commission which profoundly affected the nature of Charles's work experience.

But Bean's only expressed ambition in the law . to practise in 'Sea-law' (the admiralty jurisdiction or marine insurance law) . was driven by his native, intense interest in the sea, navies and military affairs; the interest that manifested itself in his march into journalism and World War I. It was never a realistic ambition as a mainstay for practice at the Bar of NSW before the First World War. Dr JM Bennett's *A History of the Supreme Court of NSW* treats the topic of admiralty jurisdiction as exceptional rather than routine legal work for NSW practitioners⁴⁹. Although Owen J's professional experience and expertise extended to admiralty and insurance work⁵⁰, he does not appear to have been able to expose his young charge to any case centred upon 'Sea-law'. That was, perhaps, one of the few areas of legal practice to which the 'old judge' (to use Bean's term of endearment) did not expose his Associate. Had he been receptive to it, and eager to learn the craft of a barrister, Bean was nevertheless given the means of a comprehensive legal education.

IV. BEAN'S "ARNOLD TRADITION IN AUSTRALIA" AS HIS ENDURING THEME, BEFORE AND AFTER GALLIPOLI

The idea that Bean was influenced by 'the English public school tradition', if not a precise exemplar of it, is not novel. However it is important specifically to notice⁵¹ that in the mindset, and experience, of the Bean Family their

⁴⁷ R Campbell and P Harvie, *Singer of the Bush: AB Paterson Complete Works, 1885-1900* (Sydney, 1983), p. xv.

⁴⁸ See Appendix III.

⁴⁹ (Law Book Co, Sydney, 1974) ch. 10.

⁵⁰ *Cyclopedia of NSW* (1907) p. 296.

⁵¹ As Professor Inglis did in his *Australian Dictionary of Biography* entry for Charles Bean: (1979) 7 ADB 226.

commitment was to something more specific than a general public school tradition. Charles, his parents and their friends and family were able to link the tradition to which they adhered to a known individual, not a mere abstraction.

That fact is important in that it exposes Bean's world to analysis in terms of personal connections with people who knew, or were connected with, Thomas Arnold and to 19th century Anglicanism. The Arnold Tradition appears to have been something qualitatively different from a merely secular, classicist public school education. Bean was trained in the classics, and drawn especially to Ancient Greece, but he was equally influenced by his Anglican environment. He married Ancient philosophy and Christianity in talk of Christian ethics. Anglicanism accommodated both strands of his thought.

Charles's lifelong preoccupation with character was consistent with, if not a reflection of, the Arnold Tradition. As attested by his writing and speeches, he kept Australian character under close observation. His observations were all made through the prism of the Arnold Tradition. In the result, they seem to have contributed as much to development of perceptions of Australian character as much as, or more than, they emanated from empirical observation.

Bean imbibed the Arnold Tradition through his father, Edwin, and his parents' family commitment to the Independent Schools with which Edwin was connected as a student or schoolmaster - and Charles was equally connected culturally, first as a pupil, briefly as a teacher and, then, as an active Old Boy.

Charles's connection with the Arnold Tradition is highlighted by an examination of his preoccupations as a lawyer: not the law, but Australia's emergence as a young, independent nation; military affairs; and mateship. The opportunities made available to him in his short career in the law, and not pressed to advantage but treated with apparent indifference, provide a measure of his character and, vicariously through him, that of generations of Australians.

What was the Arnold Tradition? It is perhaps best explained in Bean's own terms, in his book, *Here, My Son: An account of the Independent and Other Corporate Boys' Schools of Australia* (1950). There he speaks of the Arnold Tradition in Australia. In summary, it was a form of Christian humanitarianism of a democratic (albeit patrician) form, emphasising individual self-worth and qualities associated with good character: trust and reliability, honesty, openness, self-discipline, self-reliance, independent thought and action, friendship and concern for the common good over selfish or sectional interests⁵².

⁵² Angus & Robertson, Sydney, 1950, pp. 53, 108-109, 109-110, 177, 130 and 143-144 (extracted in Appendix I to this paper).

An independent assessment of Arnold's legacy, by an experienced headmaster sympathetic to Rugby School, writing 40 years after Bean wrote *Here, My Son*, explains and confirms the essential correctness of Bean's focus on Arnold's emphasis on Christian character.⁵³

"Nowhere were [Arnold's] convictions so strong as in religion. Although Lytton Strachey's iconoclastic study [Eminent Victorians (London, 1918)] makes considerable play with the puzzled look in Arnold's portrait and although correspondence with his friend Coleridge in 1819-20 confirms that early in life he had serious doubts about the doctrine of the Trinity, and reservations on three of the Thirty-Nine Articles, before he reached Rugby he had reached a settled faith founded on reason. ... The question supposedly asked by Newman in 1833, 'But is Arnold a Christian?' was misunderstood at the time and has been since, as Newman makes plain in his Apologia. In the nineteenth century the word Christian was used to indicate moral virtues, especially selflessness; today it usually indicates belief in certain doctrines. Newman used the term of Arnold in our sense and had some justification for doing so. But Christ was unquestionably all in all to Arnold. Yet to him the main value of Christianity was not its truth but 'the wisdom of our abiding by it', a natural enough point of view in one whose cast of mind was practical rather than speculative. Goodness was more important than truth, for he was more likely to succeed in his aim of implanting goodness in his pupils than in convincing them of the truth of Christianity.

At the heart of his faith and of his religious and political thought was his attitude to the Bible. ... While he regarded the case for the Bible's plenary inspiration as indefensible, at the same time his reverence for it and his determination to use it as a source of moral guidance were based on his belief in its fundamental historicity. ... He urged too the importance of interpreting the Bible positively with the aid of humanistic learning and laid stress on its primary value for ethical teaching.

Looking at the Church of England in light of the Gospel, Arnold, not surprisingly, found it inadequate and longed to reform it. Arguing strongly against its disestablishment, he attacked the Oxford Movement on the ground that it would tend to bring about such an undesirable event, and he stressed that the Church must be reformed administratively so as to have a wider appeal and admit Dissenters. He deplored the English clergy's habit of condescension towards the people, their liturgical preoccupation, and their exclusiveness, which drove many to Dissent.

Indeed there was no form of Church government which adequately represented the people's will. He believed as strongly in making the Church's constitution more popular as in broadening its terms of communion. He was ready to 'sink into nothing the difference between Christian and Christian' to win over Dissenters. If they were included in the national Church, 'great varieties of opinion and of ceremonies... while it worshipped a common God' would be encouraged, or at least tolerated. This Church should be at once Protestant and Catholic, broad and inclusive... Arnold's belief that Christianity was fundamentally concerned with moral guidance enabled him to propose a type of Church that the Tractarians could not accept. His Broad Church liberalism, however, was unpopular with liberal churchmen and Dissenters also. The former were offended by his desire to include Dissenters in the Church of England and by the extent of his proposed reforms, the latter by his attack on their sectarian narrowness.

⁵³ Michael McCrum, *Thomas Arnold, Head Master: A Reassessment* (Oxford University Press, 1989).

*It was not until after his death that his ideas, far ahead of his time, gained some acceptance. ...*⁵⁴.

*... [His] main achievement was to re-establish confidence in the public schools, to put heart into a moribund system. This ... he effected by his single-minded, fierce determination to turn out Christian gentlemen. Though he himself at times doubted the value of a boarding education, chiefly because of the removal of parental influence on adolescent boys, he tried to supply this deficiency himself by his patriarchal attitude to his pupils. Despite his constant concern with the wider issues of his time, social, political, and theological, he made it his chief task to Christianize the school. For him education was primarily the religious and moral training of character. ...*⁵⁵.

Subject to one important qualification, this summary of %Arnold+, prepared without reference to either Edwin or Charles Bean, has a resonance in their writing. The qualification relates to Charlesqincreasing emphasis on the importance of %Truth+as a guiding star.

So strongly does the current of %The Arnold Tradition in Australia+run through *Here, My Son* that, Bean confessed, at one time he thought of defining the subject of the book in those terms precisely⁵⁶.

There are strong parallels between %The Arnold Tradition in Australia+as elaborated by Bean in post World War II; his almost contemporaneous definition of %the ANZAC spirit+, in his book, *War Aims of a Plain Australian* (2nd ed, 1945);⁵⁷ his exhortations about the importance of education in his WWI booklet, *In Your Hands, Australians* (1st ed, 1918);⁵⁸ and, significantly, his early *Sydney Morning Herald* articles of 1907 on %Australian character+⁵⁹, his stories of %the real Australia+and Australians in the 1st (1910) edition of *On the Wool Track*⁶⁰ and his celebration of %loyalty to a mate+as an %outback code+ (and possibly an Anglo-Saxon %article of faith+) in the 1st (1911) edition of *The Dreadnought of the Darling*⁶¹.

The CEW Bean who wrote of %Australian character+, %the real Australia+, %the ANZAC Spirit+and %The Arnold Tradition in Australia+ was a product of both nature and nurture.

⁵⁴ Pages 4-6.

⁵⁵ Pages 116-117.

⁵⁶ *Here, My Son*, p. 3.

⁵⁷ Angus & Robertson, Sydney, 2nd ed, 1945, pp. 164-168 (extracted in Appendix I).

⁵⁸ Cassell and Company Ltd, London, 1918, Chapter XVI, especially pages 90-96 (extracted in Appendix I).

⁵⁹ Extracts of articles published on 22 June 1907 and 13 July 1907 are set out in Appendix I.

⁶⁰ Extracted in Appendix 1.

⁶¹ 1st ed, 1911, pp. 307-312 (extracted in Appendix 1).

V. BIOGRAPHICAL DETAILS: Father and Son, a Matching Pair

Edwin, the Father

Charles was born at All Saints College, Bathurst, when his father was Headmaster of the School. Edwin, father to his classically trained son, suffered a breakdown in 1889 and, returning to his roots in England, he took his wife and three surviving children home. In time, he became (between 1891-1913) Headmaster of Sir Anthony Browne's School (known as Brentwood School), Essex, with which he enjoyed a family connection. Charles was educated there, at Clifton College in Clifton, Bristol (his father's old school) and Hartford College, Oxford, before returning to Australia to make his own way in late 1904. He spent Christmas 1904 in the home of his maternal grandfather, Charles Butler (1820-1909), a prominent Hobart solicitor in an established family firm of solicitors⁶². He sailed from there on the *S.S. Oonah*, which berthed in Sydney on 23 January 1905⁶³.

Bean's life and career was in many ways an extension of that of his father. Edwin Bean (1851-1922) was born in Bombay, India. His father was Surgeon-Major John Bean of the East India Company's army. A measure of Charles's commitment to his family's history is that, as late as 4 November 1958, he wrote a letter (cited in RR Lewis, *The History of Brentwood School*)⁶⁴ explaining John's connection with the School. Edwin was educated in England: at Somerset College, Bath; Clifton College; and Trinity College, Oxford. His first job was as a private tutor in Hobart, Tasmania (1874). Thereafter, he served as a teacher at Geelong Grammar School in Victoria (1874-1875), and at Sydney Grammar School in New South Wales (1875-1877). He was subsequently Headmaster at All Saints College, Bathurst, NSW (1877-1890) and at Brentwood School in England. During his tenure at the latter school he took Holy Orders in the Church of England in aid of his position as Headmaster. He was ordained deacon in 1897 and priest in 1898. In his retirement, he taught part-time, apparently on an honorary basis, at Hutchins School in Hobart.

Hutchins was a school long associated with the Butler family⁶⁵ and with members of the family of Dr Thomas Arnold of Rugby School in England. Its first headmaster, Reverend JR Buckland (1819-1874), was a nephew of Thomas Arnold⁶⁶. Buckland is said to have been an ardent exponent of the Arnold doctrine of the production of 'Christian gentlemen' as the prime objective of a church school. He led the School between 1846 and 1863. His

⁶² Charles Butler letter dated 24 and 26 December 1904 addressed to Lucy Bean: AWM38/3 DRL 7447/6.

⁶³ Ships disembarkation record, State Records NSW; CEW Bean letter dated 24 January 1905 addressed to parents (AWM38/3 DRL 7447/6).

⁶⁴ (Brentwood, 1981), p. 104.

⁶⁵ G Stephens, *The Hutchins School: Macquarie Street Years 1846-1965* (Hutchins School, Hobart, 1979), pp. 239 n26 and 326; BW Rait, *The Official History of the Hutchins School* (Hobart, 1935).

⁶⁶ 3 ADB 287-288; *The Hutchins School Centenary Magazine, 1846-1946* (Hobart, 1946), pp. 8-9. The latter publication manifests confusion between Thomas Arnold and his more famous son, the poet Matthew Arnold (1822-1888). An erratum on p. 8 corrects an erroneous identification of Matthew, on p. 9, as the Headmaster of Rugby School.

influence continued thereafter with members of his family on the teaching staff.

When one adds to this the fact that the second son of Thomas Arnold, also Thomas Arnold (1823-1900), was Tasmania's first Inspector of Schools (between 1850-1856), the depth of the cultural connection between the Hobart Town society in which Edwin Bean moved and the Arnold Tradition in Australia—as absorbed by CEW Bean becomes more vivid. On both sides of Charles's family, the Arnold name was held in high esteem.

Edwin's Family: Lucy, Madeline and Three Sons

Edwin married Lucy Madeline Butler (1852-1942) on 26 June 1877 in Hobart. Of the four children of their marriage, the first (their only daughter) died in infancy. Charles was the eldest of their three sons.

All four children were born at All Saints College in Bathurst. As confirmed by their Birth Certificates, Miss Johns was a witness to all four births⁶⁷. Esther Johns was a young Cornish woman retained as the children's nurse⁶⁸. The eldest child, Madeline Jessie, was born on 4 May 1878⁶⁹. She is said to have died from meningitis some seven months later⁷⁰, but no formal death certificate has been located. Charles's birth certificate records the fact of her death rather formally. Under the heading Date and Place of Marriage, previous issue appears the Beans's date of marriage and a bare entry: female deceased⁷¹.

Charles was born on 18 November 1879. The next sibling in line was John Willoughby Butler, born on 1 January 1881. Later known as Jack or Lock and sometimes referred to in Charles's personal correspondence as B, he remained unnamed for at least the first six weeks of his life, as his birth certificate attests⁷². The youngest child, Montague Butler, was born on 30 July 1884⁷³. He is generally referred to as Monty, but Charles's letters to him, written during idle moments as Owen Jones Associate, are routinely addressed to My Dear Old Tig⁷⁴.

⁶⁷ WF Bassett was the other, principal witness on record for the first three births. Dr Spencer filled that office for the fourth birth.

⁶⁸ Dudley McCarthy, *Gallipoli to the Somme: The Story of CEW Bean* (John Ferguson, Sydney, 1983), pp. 22-23.

⁶⁹ NSW Registry of Births, Deaths & Marriages, Birth Certificate (registered at Bathurst by Edwin on 25 June 1878), Registration Number 1878/008586.

⁷⁰ Dudley McCarthy, *Gallipoli to the Somme*, p. 21

⁷¹ NSW Registry of Births, Deaths & Marriages, Birth Certificate (registered at Bathurst by Edwin on 20 December 1879), Registration Number 1879/009656.

⁷² NSW Registry of Births, Deaths & Marriages, Birth Certificate (registered at Bathurst by Edwin on 1 February 1881), Registration Number 1881/010593. At the time of registration of the birth, the child was unnamed. As allowed by the official record, his name was added after registration of the birth.

⁷³ NSW Registry of Births, Deaths & Marriages, Birth Certificate (registered at Bathurst by Edwin on 12 September 1884), Registration Number 1884/013769.

⁷⁴ A letter dated 13 June 1905 commenced, I believe that this will arrive about a week before your birthday and went on to seek news of any cricket matches that Tig or Jö might have played for Brentwood School. In another letter to Tig dated 5 March 1907 Chas estimated that [it] will almost be Easter holidays when you get this, if not quite. Both letters are held in the Bean Papers at the Australian War Memorial: AWM38/3DRL7447/6. In 1907 the Easter weekend commenced on Friday, 29 March: *1907 NSW Law Almanac*, pp. 3-4. Whether or not Charles was over-optimistic

The Beans' employment of Esther Johns reflects the social, and working, world of the wife of the Headmaster of All Saints' College. Lucy was actively engaged in the day-to-day work of the School. Esther was sufficiently part of the family for Charles and Jack to be left in her care when Edwin and Lucy were away in England for seven months (between February . September) in 1883 sorting out Edwin's father's deceased estate⁷⁵.

Closeness of the Family

Charles's Book Dedications

The closeness of the Beans' three sons is evidenced by the terms in which Charles dedicated the first (1910) edition of *On the Wool Track* to his brothers: "*To the two oldest and best friends a man could wish for, this book is affectionately dedicated by their brother*".

That dedication conformed to a pattern in the author's *modus operandi*. Each of *With the Flagship in the South* (published in or about 1908 or 1909) and its later iteration, *Flagships Three* (first published in 1913) was dedicated to his parents: "*To the most capable Man and most gracious Woman he is ever likely to know, this book is affectionately dedicated by their Son*".

Edwin's Books

The closeness and social context of their family bonds can also be illustrated by reference to the two books attributed to Edwin in biographical notes published about him⁷⁶. He was not as prolific as Charles proved himself to be. His two books were both published while he was living at Brentwood School. The first carries the mark of self-publication, including handwritten corrections; it was a very personal book of poetry. The second was his valedictory history of Brentwood School, apparently published for, if not by, the School.

Deianira and Other Poems (1905)⁷⁷ begins with a dedicatory poem entitled "To My Sons" dated, "School House, Brentwood, May 1905". The book thereafter comprises two Parts. The first Part comprises 17 numbered poems, the first of which is entitled "Deianira". The second Part comprises nine numbered poems under the general heading, "Special and Family Poems".

Most of the poems in the first Part are dated by reference to a year between 1866 and 1897. Some dates are accompanied by a geographical tag. The earliest poems were apparently penned while Edwin was a student at Clifton College; one is entitled "Clifton Chapel" (1869). Several were written at

about postal delivery times, the two letters, taken together, appear to be consistent with identification of MB Bean as "Tigö". Charles's letters home in 1910, when "Tigö" was with him in Sydney and the two of them were holidaying in Melbourne and Hobart, confirm that identification: see, eg, letter dated 8 February 1910 addressed to "My dear Old Jackö, written on letterhead of "Old White Hart Hotelö, Melbourne: AWM38/3DRL 7447/6.

⁷⁵ Dudley McCarthy, *Gallipoli to the Somme*, p. 24.

⁷⁶ 3 ADB 123-124; WA Steel and JM Antill, *The History of All Saints' College, Bathurst* (Sydney, 1st ed, 1936; 2nd ed, 1952; 3rd ed, 1964), ch. IV; RR Lewis, *The History of Brentwood School* (Brentwood, 1981), ch. 20.

⁷⁷ E French & Son, High Street, Brentwood (May 1905), 78 pages, no index.

Oxford (bearing dates 1870, 1872 and 1873). A couple were written in Sydney (1875). Another couple were written in Bathurst (1884 and 1887). The last poem in the Part is dated 1897, Brentwood⁷⁸.

One of the poems in that Part appears, *via* an explanatory footnote, to have been written as a tribute to Bishop Patteson and Commodore Goodenough [who in 1871] were murdered by the islanders in revenge for the kidnapping of villagers by colonial traders⁷⁹. It is dated 1875, Sydney. This is consistent with the possibility that, at that time, Edwin was a parishioner at, or at least in close communication with parishioners of, St Mark's Anglican Church at Darling Point. There (if not throughout Sydney Diocese) there had been an outpouring of grief for the martyred Bishop⁸⁰.

St Mark's Centenary History (published in 1948) contains no reference to any person named Bean. More work needs to be done to identify the Bean Family's Anglican parish affiliations. A number of facts point to the possibility that Edwin worshipped at St Andrew's Cathedral before moving to Bathurst: His mentor, AB Weigall was an active parishioner (a Bible and Prayer-book Churchman) at St Andrew's⁸¹; Charles chose to be married at St Andrew's⁸²; and his memorial service was held there. However the Anglican community, for the professional classes of Sydney at least, was closely-knit for decades either side of 1900. Sydney itself was a small community. If Edwin interacted with the parishioners of St Mark's, he might well have known Annie Catherine Mort (1855-1931), destined to be Mrs JR Selwyn.

In any event, Edwin's poem places his sympathies squarely in the realm of Bishop GA Selwyn (the first Anglican Bishop of New Zealand, 1841-1869) whose protégé Patteson was. Bishop Patteson was Bishop of Melanesia between 1861-1871. His successor between 1877-1891 was GA Selwyn's son, John Richardson Selwyn (1844-1898)⁸³. Edwin's sympathies, reciprocated by Bishop John's widow Annie, may be part of the explanation of how it came about that a young Charles Bean was able, in early 1905, to land an appointment as a Judge's Associate within less than four months of his arrival in Sydney.

⁷⁸ The copy of *Deianira* held by the author of this paper bears the inscription 'Miss D Mackeller, from the author with kind regards, June 1911'. In the same hand and ink (as it appears to an untrained eye), corrections are made to the printed text of the poems numbered VI (p. 15), V (p. 21), IX (p. 35), XII (p. 43) and XVII (p. 50) in the first Part of the text. No corrections are made to the poems in Part II.

⁷⁹ Poem XIII entitled 'Santa Cruz', at p. 45.

⁸⁰ HWA Barden, *Wherein Thine Honour Dwells: The Story of One Hundred Years of St Mark's Parish Church, Darling Point, NSW* (Sydney, 1948), pp. 130 and 313.

⁸¹ MW MacCallum, *In Memory of Albert Bythessa Weigall: Headmaster of Sydney Grammar School, 1866-1912* (Angus and Robertson, Sydney, 1913), pp. 39-41.

⁸² Charles and his former nurse (Sister) Ethel Clara Young were married on Monday, 24 January, 1921 by the Dean of Sydney (the Very Reverend AE Talbot), a Gallipoli veteran. Charles's Best Man was his brother Jack, another veteran of Gallipoli. See NSW Registry of Births, Deaths and Marriages, Marriage Certificate, registration number 1921/000406; *Sydney Morning Herald*, 25 January 1921, p. 10; *Queanbeyan Age and Queanbeyan Observer*, 28 January 1921, p. 2.

⁸³ David Hilliard, *God's Gentlemen: A History of the Melanesian Mission, 1849-1942* (UQP, Brisbane, 1978), ch. 3.

Part II of the book contains poems apparently written in Hobart, Bathurst, Brentwood and (exceptionally) Kensington and Brussels between 1876 and 1904. The earliest (dated 22 November 1876, at Hobart Town) was dedicated to %Lucy M Butler+. It is followed by another dedicated to %Lucy M Bean (Twenty Years On)+, dated %22 November 1896, Brentwood+. The third poem is entitled %Brother and Sister+. It is dated %1880, Bathurst+. It refers to %Madeline+. Presumably that is a reference to Edwin and Lucy's first born. It must have been a poem of deep family resonance. Two following poems refer expressly to %My Aunt Woodrow+. A third refers, we are told in a footnote, to %Henry Woodrow, formerly Fellow at Caius College, and Director of Public Instruction in Bengal+. That poem expressly refers, in laudatory terms, to Arnold's pupils and Rugby. It is entitled %Our Farewell+ and dated %22 July, 1883, 7 Girdlers Road, Kensington+.

Edwin's A Historical Sketch of Sir Anthony Browne's School,

Brentwood, Essex (1913)⁸⁴ is inscribed: "*To all those connected with the School... This booklet is inscribed as a parting tribute of affection by the grandson of a warden, the nephew of a master, the son of an old boy, and the parent of three others*". It begins with a song entitled, %The Old Red Wall+ dated %December, 1912+ and attributed to CEW Bean, and ends with a composition of Edwin entitled, %The School Beside the Tree+⁸⁵. Both songs are a tribute to the origins of the School, originally founded in 1557. The first takes as its theme the site of the School near where, on 26 March 1555, a %Brentwood lad of 19 years+ was burnt as a heretic and became a martyr. It is an optimistic celebration of an ethos, marking the importance of individual example, courage, freedom, friendship and fair play. The second song shares the rousing intent of the first but hangs heavy with allusions to School celebrities, including Edwin's father.

The text of the *History* refers in the following terms to Charles as an Old Boy of the School:

*%Among those who gained University honours are CEW Bean (1891-3 and 1896), M.A. B.C.L., Essex Scholar of Hertford College, Oxford (2nd cl. Mods., 2nd cl. Lit. Hum.). He left for Clifton in 1893, but returned for a term in 1896. He is now a prominent Sydney journalist and author ("On the Wool Track," "Dreadnought of the Darling," "Flagships Three," &c.). Returning to England in 1911, for two years he gave valuable aid in many ways, especially in organising the games and in cricket coaching, his ingenious bowling machine being still in use at the school. Our new drop and much of our scenery was painted or re-painted by him"*⁸⁶.

⁸⁴ The author acknowledges the kind assistance of Brentwood School in providing a copy of *A Historical Sketch*.

⁸⁵ The songs are reproduced as part of Appendix II.

⁸⁶ Page 39.

Notably, there is no reference here to Charles's membership of the NSW Bar or his experience as a Judge's Associate. On 12 December 1913 (the date of the manuscript)⁸⁷ he was, in his father's eyes (and his own), a prominent Sydney journalist and author. No reference is made to the fact that in 1912 he resisted the *Herald's* requests that he return to Australia. He wanted to remain in England for personal reasons associated with his family⁸⁸.

Parental pride aside, Charles's appointment as *The Sydney Morning Herald's* London Correspondent gave him prominence amongst Australian ex-patriots living in London. Evidence of that is his entry in *Australasians Who Count in London and Who Counts in Western Australia* (Jas. Truscott & Son Limited, London, 1913) by Mrs Leonard W (Egeria) Matters, the wife of a journalist. The book was dedicated to Sir George Reid, appointed in 1910 as the Australian High Commissioner in London. The entry (at pp. 13-14) outlined Bean's career (noting that he read in England for the Bar in the chambers of a well-known Admiralty barrister) and concluded with the following insight:

"Mr Bean is to a large extent wrapped up in the life of his old school at Brentwood, where the life of the boys, their games, and other interests, have always been the enthusiasm of himself and of his brothers. Mr Bean was farewelled at the Connaught Club by 'The Australians' on March 13 [1913], prior to his departure again for Australia".

VI. WHAT'S IN A NAME?

A key to understanding much of CEW Bean's life is found in his name. He was named Charles after his maternal grandfather, Edwin after his father, and Woodrow after a family connection. Within the Bean family, Uncle Henry Woodrow's claim to fame was that an incident in the famous 19th century novel, *Tom Brown's School Days* (first published in 1857) was based on a real life episode touching him. In his autobiographical notes entitled 'Account for EFFIE'⁸⁹ Charles proudly recounted to his wife that, as told in Part II, Chapter 1 of the novel, Woodrow (personified in the hero of the novel, Tom Brown) had stood up for a little boy (George Arthur) bullied for saying bedtime prayers at Rugby School.

The author of the novel, Tom Hughes, was an independently-minded, left-leaning social reformer (a Christian socialist) motivated by Anglican principles. He was called to the (English) Bar in 1847, took silk in 1869, and was appointed as a judge of England's County Court in 1882⁹⁰. His tendency to view social problems from the perspective of both upstairs and down would

⁸⁷ Page 45.

⁸⁸ Letter dated 12 August 1912 to CEW Bean from John Fairfax & Sons (reference 8LSö), referring to a letter of Bean dated 15 July 1912 to the firm and another letter Bean had recently sent to Mr GE Fairfax: AWM38/3 DRL 6673/895.

⁸⁹ Sheets 5-6 of 73.

⁹⁰ Entry for Thomas Hughes (1822-1896) (2004) 28 *Oxford Dictionary of Biography* 680.

have been congenial to the Bean family. His straddling of law and literature is also worthy of notice. By 1892, his novel had run to 53 editions.

As Bean himself recorded in *Here, My Son*, in the late 19th century (1880-1900) all educated Australians were aware of Dr Arnold's fame because of *Tom Brown's Schooldays*⁹¹.

VII. CEW BEAN'S WORLD VIEW: A Purpose-driven pursuit of Truth, informed by Christian Ethics

What is it to be a (Non) Religious Man?

CEW Bean appears throughout his life to have been a secular- leaning, Christian humanist in the nineteenth century, liberal Anglican tradition of Thomas Arnold. He may well have disclaimed that, or any other, 'Christian' label. There is certainly abroad a well-founded notion that he was an 'unbeliever' rather than 'Christian'. Whether or not he was one thing or the other, or something else, is of less importance for this paper than an exploration of the subject matter of his 'belief' or 'unbelief'. He was sufficiently purpose-driven, in great things and small, to justify a critical assessment of any 'purpose' that might have governed his thought.

From at least Christmas 1916 he is said to have been in denial of any religiosity. At that time, as more than one writer has noticed, he wrote in his diary: "*I am not a religious man – I don't know that I bear any allegiance to the Christian faith.*"⁹² Whether he was a regular church-goer before the War is unknown. His biographer, Dudley McCarthy, tells us that he was 'not much of a churchgoer' and never became one⁹³. At least one letter 'home'⁹⁴, in April 1905, reporting on a holiday trip to Bathurst happily reported on church attendance there without any hint of discomfort⁹⁵. His denial of religiosity in and after 1916 requires closer attention, not to found an assertion that he was a conventional or orthodox Christian, but so as not to allow bare language to obscure instructive nuances.

McCarthy, at least, expressed scepticism about the accuracy of Bean's quoted, Christmas 1916 disavowal of a personal, Christian faith⁹⁶. When that quote is placed in a broader context, as McCarthy placed it, he must be thought, at least, to have had some foundation for his scepticism. As

⁹¹ Page 66.

⁹² Quoted in *Gallipoli to the Somme*, p. 264 and KS Inglis, *Sacred Places: War Memorials in the Australian Landscape* (Melbourne University Press, 3rd ed, 2008), p. 318; Michael McKernan, *Here is Their Spirit: A History of the Australian War Memorial, 1917-1990* (University of Queensland Press, 1991), p.16.

⁹³ *Gallipoli to the Somme*", p. 307.

⁹⁴ At that time Bean used the conventional Anglo-Australian expression referring to England as 'Home': see, eg, letter dated 11 December 1904 written to his family (a day before he sailed into Adelaide) on his outward bound journey to Hobart for Christmas 1904: AWM38/3DRL 7447/6.

⁹⁵ Letter dated 17 April 1905 (written from 'Ngoroomba', Bathurst) addressed to 'My darling little Mummy': AWM38/3DRL 7447/6.

⁹⁶ *Gallipoli to the Somme*, p.307.

extracted in *Gallipoli to the Somme*, Bean's diary entry is a complaint against military authorities for not showing due reverence to the Christian ideal. It includes the following:

"It is the way we, or the Germans, are welcoming Christmas on the front.

I must say I hate and detest the sheer sacrilege of this. I am not a religious man – I don't know that I bear any allegiance to the Christian faith. But this day represents the birth of a very precious ideal into the world; and the observance of it is the sign of the attachment of a good part of the human race to the highest idea[s] yet imported on the earth. We are supposed to be fighting for just those ideals against other ideas which we hold vile.

*And yet our shallow brained chiefs have always set themselves to refuse to allow any observance of these amenities. It is wrong – it is not what we profess; it is not right in itself – and therefore good will not come of it. ..."*⁹⁷.

As McCarthy tells the story, Bean's mind turned again to Christ as Christmas 1917 approached. On that occasion, as he read about the capture of Jerusalem by General Allenby, he recorded his conviction that, if the world would only take notice of Christ's Sermon on the Mount, *"[the] war would stop – it could not go on"*⁹⁸.

Bean's religiosity or otherwise needs to be assessed in cultural context: 19th century Anglicanism, infused with a classical education, applied to an Australian *bush+ethos*. Owen Chadwick spoke of 19th century Anglicanism as an historian. CHS Matthews spoke of the bush ethos as an Anglican parson. Bean himself spoke publicly of a *personal philosophy of life+that fused the philosophy of Ancient Greece and the more powerful+religious teaching of Christ*⁹⁹.

In his *The Secularisation of the European Mind in the 19th Century*¹⁰⁰ Chadwick recorded: *"In protestant Britain... [of which Bean was a product] religion was decked in many shades and colours from militant ultra-orthodoxy to watery agnostic religiosity. Men had no vision of a gulf impassable between Christian and un-Christian. It was easy for pious Englishmen to enjoy if not revere Matthew Arnold or George Elliot."*

As a pioneer Anglican priest in outback NSW, in the service of the Brotherhood of the Good Shepherd, Matthews had no illusions about the status of a parson in the Australian Bush. It was not high. A clergyman was judged on personal character, with little regard for ecclesiastical forms or status. The religiosity of the Bush was often, at its highest, *natural Christianity+(to adapt St Augustine) rather than the institutional variety known in England: "About the things which trouble and divide the Church at home*

⁹⁷ *Gallipoli to the Somme*, p. 264.

⁹⁸ *Gallipoli to the Somme*, pp. 307-308.

⁹⁹ CEW Bean, *I Believe* in *The ABC Weekly*, Sydney, 3 April 1948, p. 41.

¹⁰⁰ (Cambridge University Press, 1975), pp. 122-123.

and the big cities, the Bushman neither knew nor cared anything. He did not ask whether his parson was a High Churchman; he asked whether he was a man. Was he a decent Bushman, or did he get lost every time he got a mile or two outside of town? Could he look after his horses, or did he always want a man to put them in and take them out? Did he talk like an ordinary person, or had he got the parsonic voice? Above all, did he seem to preach only because he had got to say something, or because he had something to say? It was by such standards as these that the Bush parson was judged. Your Bushman is a pretty good judge of character. There were many parsons, no doubt who failed to pass the test.... No doubt a certain amount of prejudice arose from the fact that if your Bushman had little acquaintance with a parson in real life, he had usually a considerable acquaintance with the Bush parson of fiction. Whatever the parson may be in life, he is not as a rule an attractive person in Australian fiction"¹⁰¹.

These observations dovetail with those made contemporaneously by Bean, leading up to World War I¹⁰². The notional English, country rector Bean deployed as a standard of comparison in *War Aims of a Plain Australian* during World War II¹⁰³ made no appearance in either *On the Wool Track* (1910) or the *Dreadnought of the Darling* (1911). However, in the latter book traces of Matthews's bush community can be found in collateral contexts. First, there is a story of an old man named Moore, known to be thoroughly pious, a reader of the Scriptures, a man who would always offer sound and wise advice to young fellows, even before it was asked; in time, he was exposed as a murderous fraud, and hanged¹⁰⁴. Then, in a chapter entitled 'The Benighted Heathen', there is a sympathetic treatment of an Afghan (Islamic) religiosity that appears to embrace his complaint that 'Christian don't believe their religion'¹⁰⁵. Finally, there is a passage that suggests that Matthews and Bean had encountered the same outback community: "... the fact that, in Australian opinion, any calling is honourable so long as it is honest, is probably due to the ideas of the back country. In the back country, where a man is face to face with nature all the time and fighting her for all he is worth, his success, and indeed his very life, depends on facing the facts; there is no time or use for frills"¹⁰⁶.

In one of his *Sydney Morning Herald* articles of 1907, written during his Associateship and published shortly after he ceased to be Owen Jones Associate. Charles presented an idyllic picture of an Australian's highest aspirations as accepting a role for the church. He imagined that the Australian found his ideal in a strong-hearted and sturdy philosopher of the bush whose sense of independence ran to respect for his womenfolk, his judge, and his parson+

¹⁰¹ CH Matthews, *A Parson in the Australian Bush* (Rigby Limited, Australia, 1973), pp. 16 and 22-23. Matthews's book was first published in 1908, with a revised edition published in 1926. Its essential accuracy was accepted by Ivan Southall, *Parson on the Track: Bush Brothers in the Australian Outback* (Lansdowne Press, Melbourne, 1962).

¹⁰² *Sacred Places*, p. 204.

¹⁰³ 2nd ed, 1945, pp. 50-55.

¹⁰⁴ 1st Australian ed, 1956, pp. 49-51.

¹⁰⁵ 1st Australian ed, 1956, ch. 24, pp. 150-155.

¹⁰⁶ 1st Australian ed, 1956, p. 216.

and who sought, in privacy and without interference, to read his Bible, his Shakespeare and his newspapers¹⁰⁷.

Whatever the secrets of his heart, Bean had a strong, independent bent towards social justice informed by his ongoing Anglican connection. It was coupled with a passionate commitment to democratic egalitarianism. The fact that it operated within the confines of conservative institutional structures is not inconsistent with Anglicanism, long accustomed to a mix of theology and politics in an established church tradition. Writing within months of his death Professor Inglis described Bean's memorial service in Sydney's Anglican Cathedral (St Andrew's) as 'appropriate, for the Church of England is more easily able than other Christian churches to accommodate the faith of men who believe, as Bean did, in civilisation rather than religion'¹⁰⁸.

Be that as it may, Charles's form of civilisation was, at least, informed by the teachings of Christ and a concern for people more vulnerable than himself. In all things, he appears always to have been both self-motivated and other directed. His egalitarianism was flavoured, if not limited, by paternalistic pedagogy. There was, within him, a tension between patrician and plebeian modes of thought.

Experience of war, with empathy for the common man, and years of attempting to unfold a uniquely Australian story from that perspective, appears to have broadened his understanding of life, if not his sympathies. In some respects, his views might have mellowed with age; in others, they were perhaps radicalised. He was not untouched by the isms of his day; but they appear never to have captured the essence of his being. That was reserved for his parents' gift to him, the gift he sought to share with his compatriots: The Arnold Tradition in Australia.

Something of this thesis can be seen in "*On the Wool Track*". The first and final editions of that book stand as literary bookends to Charles's public career. Intermediate editions might also be thought to mark its crests. The first edition was published (in London) in 1910. The final, revised edition was published (in Australia) in 1963. The first Australian edition was published in 1925, and another in 1945. There have been several reprints, but none recently.

On the Wool Track published in book form a series of newspaper articles written by Bean as a fledgling journalist for the *Sydney Morning Herald* in 1909¹⁰⁹. Assigned the task of writing about the wool industry, he wrote about people he met travelling through outback NSW on assignment. He was a people person.

¹⁰⁷ 'Australia: The Australian Ideal', *Sydney Morning Herald*, 13 July 1907, p. 5. The full quote is reproduced in Appendix I.

¹⁰⁸ KS Inglis, *CEW Bean, Australian Historian*, p. 31. [The John Murtagh Macrossan Lecture for 1969, delivered at the University of Queensland on 24 June 1969].

¹⁰⁹ It also drew on Bean's 'rural rides' for the *Herald* in 1908, if not his circuit work as a Judge's Associate in 1906-1907 and general observations as a 'New Chum' in Australia in and from late 1904.

His stories of the real Australia in *On the Wool Track* conformed to his life's model. However over the course of half a century of life experience his appreciation of his compatriots, and the world, led to nuanced revisions of the book. His criticism of socialism illustrates the point. In 1910, perhaps under the influence of his mentors at the *Herald*, the course of then current political debate as the Labour Party edged towards settled experience of government¹¹⁰, and certainly with less experience of Australia than he imagined, he wrote the following:

*"As you pack away your pipe you wonder if we in Australia realise the wonderful material we have in the Australian handy-man. Yet we with our socialism are actually making an incompetent out of this wonderful material...."*¹¹¹.

In 1962 (the date assigned to Charles's Preface in the 1963 revised edition) that same paragraph was recast in a retrospective light:

*"Yes, as you packed away your pipe there was plenty to think about even in those days. Did we in Australia realise the wonderful material we had in the Australian handyman? In some respects our semi-socialistic methods gave each man a better chance of developing himself than men possessed in other countries; in other respects – when it came to 'go-slow' or over limitation – they tended to render less competent this wonderful material. But one thing seemed certain – nothing that came would ever destroy the outback Australian. The outback country had too powerful an influence"*¹¹².

Bean's softening of attitude towards socialism appears not to have been the product of a road to Damascus experience or, even, a political conversion. Professor Inglis has suggested that the mass unemployment he observed in the 1930s might have opened his eyes to the socialist tradition¹¹³. That might well be so, but, if so, it is unlikely to be a full explanation, and it might be thought to discount unduly the interplay between the Arnold Tradition to which Bean was exposed from birth and the egalitarianism to which he was exposed in and following World War I. In any event, it appears to have been the product of long reflection accompanied by a reorientation of the same basic message. That is evident in *War Aims of a Plain Australian* (2nd and 3rd eds, 1945). There Bean analysed the strengths and weaknesses of socialism, communism and capitalism in their 20th century manifestations, measured against the commands of Christ. He came out strongly, as he generally did, in favour of freedom for the individual in a society marked by planning, and universal education, for the benefit of all.

¹¹⁰ WM Hughes, *The Case for Labor* (The Work Trustees, Sydney, 1910; Facsimile edition, Sydney University Press, 1970) reprinted articles published in the *Daily Telegraph*. Hughes presented himself as a champion of Socialism (öCollectivismö) against öAnti-Socialistsö (öIndividualistsö).

¹¹¹ Page 156.

¹¹² Page 80.

¹¹³ KS Inglis, *CEW Bean, Australian Historian*, p. 28.

Christianity was for him essentially a belief system grounded in metaphysical thought about ethics. This appears, explicitly, in the following extracts from *War Aims of a Plain Australian* (2nd ed, 1945):

*"If Russian socialism really was communism few Christians would have any ground for attacking it on that score, seeing that if Christ taught, and the early Christians practised, any distinct economic doctrine, that doctrine was communism – the holding of property in common. But, as is now too well recognised to be worth arguing here, the socialism now practised in Russia is not communism – is, indeed, in important respects based on an opposite principle."*¹¹⁴

... whether or not our rector [a notional English country clergyman used by Bean as a standard of comparison] stands for social equality, there can be no question but that the Carpenter of Nazareth would have done so. A great part of His teaching was a denunciation of shams and false values, and certainly it is socialism that brings the nearest approach to social equality. Of course absolute social equality is as unattainable as any other absolute condition: there will always be social differences between the decent and indecent, between those who play the game and those who don't – they cannot comfortably mix. Moreover efficiency in the nation's leaders demands a certain exclusiveness – their time and action would be clogged down without it. But whereas in capitalist society wealth tends to be the basis of public worship, and the striving after fashion furnishes the leading motive for a great part of civilised humanity, sending it along the wrong rails to ends not worth reaching, in a socialist state those urges are reduced to an almost negligible influence by the disappearance of great distinctions in wealth. The worship of fame and position doubtless continues, but it is motivated at least in part by gratitude for service to the community, and tends directly to encourage that service.

So much for the materialism of the socialist mind and the spirituality of private enterprise....

*The rector's real objection to Russian socialism is probably based on its attitude towards his religion – and here he is on much more substantial ground. Socialism, an economic doctrine, and Christianity, a metaphysical and moral one, are not necessarily opposed; but the Russian revolutionaries found that the Church, which in their country was often hideously corrupt, opposed them, and they in turn persecuted it, bitterly and mercilessly. ..."*¹¹⁵

Most nations practice, besides their formally acknowledged religions, the cult of some ideal of manhood or womanhood. With the primitive races it may be that of a headhunter. The Japanese 'Bushido' code, that of a warrior devoted to duty, is famous and indeed well-advertised. But history will perhaps judge its influence on mankind to be slight compared with that with the English code of 'gentlemen'. This code is based on Christian ethics, but is probably more powerful than formal Christianity in moulding the actions of those nations that it affects. It is clearly derived from the ideal of the knight of chivalry; and its own offspring is the slightly different ideal of 'sportsman' which, transmitted with the spread of games, has become a world-side standard. It is probably even true to say that the average English, American and Australian youth,

¹¹⁴ Page 48.

¹¹⁵ Pages 54-55.

*involved in a moral problem in civil life or on the battlefield, is more guided in his action by the desire to 'play the game' than the beliefs of formal religion....*¹¹⁶

*Fascism, in the shape of the exploitation of fellow men and fellow nations by fraud or force for individual ends, leads straight to what, according to the co-operative standard (which, in general, is the standard of the humane religions such as Christianity) is the utmost extreme of wickedness. According to fascist theory 'good' is simply that which contributes to fascist success. Thus treachery, blackmail, torture, murder or any other form of crime, so long as it affects the immediate object of a fascist leader, is 'good' in the fascist outlook"*¹¹⁷.

Professor Inglis drew the threads of Charles's Christian unbelief together thus:¹¹⁸

"I am not a religious man", Bean wrote in his diary at Christmas 1916. 'I don't know that I bear any allegiance to the Christian faith.' His doubting had not been induced by the war. An etherealized ethic of fair play between men, learned at his English public school, seemed to Bean a sufficient guide to living; and as for death, he found congenial the spirit of resignation expressed in texts he had studied at school and at Oxford from the warrior civilisations of Greece and Rome. Sometimes, as in the verses 'Non Nobis, Domine' written on Gallipoli and published in The ANZAC Book, Bean affirmed that there must be some beneficent purpose behind all the killing; but he could not convince himself of that while helping to bury a Tasmanian cousin – 'the finest specimen of manhood in Hobart' – killed at Mouquet Farm in 1916. Bean's only certainty was that to commemorate such men was a sacred task. And when he imagined the building that would do them honour, he saw a structure of 'white marble, in the purest Greek style, ... as the memorial to those who fell in our "Thermopylae"'. Like all planners of Australian war commemoration Bean had to work with the knowledge that sectarian division set limits to formal collaboration between Protestants and Catholics and that Jews had also to be accommodated in the rituals of nationality; but these facts of cultural life were not, for Bean, constraints. They made it easier for him to conceive an institution that would express his own spiritual values [based on classical Greek history]".

There is more than enough in Bean's writings to found these observations, but perhaps they need to be qualified in seven respects. First, and most fundamentally, in the tradition of piety within the broad church of Thomas Arnold Anglicanism, there is a legitimate question whether Bean's appearance of unbelief was, upon closer inspection, in reality a variant of 19th century Christian belief. Secondly, allowance needs to be made for the fact that, in common with many in the Anglican community with which he was educated, his learning was grounded in the history and philosophy of Ancient Greece and Rome. To the likes of the Bean family, therein lay the foundations of Western Tradition, reconciled to Christianity by the early Fathers of the Church. In the heat of the 19th century debates about secularism (spurred by the insights of Charles Darwin) and sectarianism (fuelled by the

¹¹⁶ Pages 90-91.

¹¹⁷ Page 134.

¹¹⁸ *Sacred Places*, p. 318. See also, to similar effect, Professor Inglis's *CEW Bean, Australian Historian*, pp. 31-32.

Catholic/Protestant divide, evangelical reformers and the Anglo-Catholic Oxford Movement) a safe alternative to use of theological language was articulation of fundamental ideas about the meaning of life by reference to common roots in ancient philosophy. It avoided too much Christian symbolism¹¹⁹. Thirdly, allowance also needs to be made for changes in society, theology and religious expression that began to manifest themselves in Australia increasingly in the 1950s: a general decline in regular church attendance, the rise of secular theology and a greater diversity in open expressions of belief and unbelief¹²⁰. How yesterday's language of belief, and unbelief, is heard is not necessarily the same today as it was yesterday. Charles Bean's consistent and persistent invocation of Christian ethics calls for exploration. It is, perhaps, a better starting point for consideration of Bean's religiosity than his disclaimer, 'I am not a religious man'.

Fourthly, care needs to be taken not too quickly to characterise Bean, without qualification, as an unbeliever if he is not to be open to charges of hypocrisy. His life and career were interwoven with the Anglican church and its social connections. The schools he cherished were oriented towards Anglicanism. He held to the view, in all things, that there was a purpose in life that required each individual to be valued as a person; that appears to be a legacy of his Anglican training. The sacramental verses he published in *The Anzac Book* in 1915-1916, *Non Nobis, Domine*, are not easily discounted as those of an unbeliever¹²¹. Had they been, it is unlikely that the Australian Anglican community would have incorporated them in its literature, which it did in the aftermath of World War II. Nor would he, one might have thought, have chosen . . . as he did choose in 1944 . . . to call his contribution to ANZAC Day ceremonies a 'Requiem'¹²². Fifthly, his light-hearted tribute in *The Anzac Book* to the Turks who defended the Gallipoli Peninsula, *Abdul*, betrayed an ecumenical, Christian orientation that dovetailed with the overt spirituality of *Non Nobis, Domine*¹²³. The penultimate stanza sympathetically portrayed a dying Turk appealing to 'the God we both can name'. The final one contained an explicit commendation of the Turks as 'gentlemen' in the name of their 'Christian' counterparts. Even in playful banter, Charles's mind turned to religious images. Sixthly, and to return to the first point about the Arnold Tradition, to say that his doubting had not been induced by World War I because of the ethic of fair play he had learned at his English public school, is to invite two further inquiries: What was it that he learnt at school, and how could he remain unaffected by war experiences that tested the spirituality of other men (and women)? Seventhly, if he was truly settled in a state of unbelief, why did he feel a need to record anything at all about it in his diary at Christmastime in 1916?

¹¹⁹ Peter Londey, 'A Possession for Ever: Charles Bean, the Ancient Greeks, and Military Commemoration in Australia' (2007) 53 *Australian Journal of Politics and History*, 344 at 345 and 346.

¹²⁰ Tom Frame, *Losing My Religion: Unbelief in Australia* (UNSW Press, Sydney, 2009), pp. 65, 88-95, 155 and 292.

¹²¹ CEW Bean (ed), *The Anzac Book: Written and Illustrated in Gallipoli by the Men of Anzac* (Cassell & Co. Ltd, London, 1916), p. 11. The verses are reproduced in the final section of this paper and in Appendix II.

¹²² Bean's 'Anzac Requiem' is reproduced in Appendix II.

¹²³ The text of *Abdul* is reproduced in Appendix II.

Whatever answers might be given to them or debated, questions of this nature do not become less insistent upon consideration of the final paragraphs of *Here, My Son, Beas* tribute to *The Arnold Tradition in Australia*. Writing of *The Future*, this was the high point of his peroration:¹²⁴

Here these schools [the subject of the book] stand, firmly founded on the belief that education must be based on religion in either the narrower or the wider sense. During more than half of Australia's history they, with certain private schools, were responsible for nearly all the higher schooling in our country. They are still directly – and also indirectly through the mutual reaction between them and the State school systems – an element of immense value in Australia's educational system. Their influence on the nation's morale, especially that of the professional and business classes, is very great even though some who pass through them may not live up to the tradition that these schools and their British prototypes have built.

Teachers and taught in these schools are only men and boys; and the tradition founded by Arnold and Thring and Weigall and Littlejohn has, no doubt, its imperfections. But it does not stand still except in adhering to the essential basis of a Christian outlook. It is moulded on what such men believe to be best in the tradition of our people and of humanity. It is true that we are passing through changes in which few leaders can be confident of seeing five years ahead. But the best elements in Western society know where they want to go – their guiding star is the Christian conception of humanity with freedom; and, if their devotion is pure enough, that concept should prevail in the next step of civilization, which may extend for a thousand years or only for a hundred, but means everything to our children and grandchildren and is as far up the million steps ahead of mankind as we can usefully plan.

With its stress on the humanities, on understanding and tolerance, on self-knowledge and self-control, on service (and where capacity enjoins it, unselfish leadership) as against the impulse of go-getting, this Christian tradition should be no mean factor in helping our Pilgrims, young and old, to the only Progress likely to lead to their happiness, or the world's."

If this was not in any sense *a* religious man, the example of his life invites others to ask: What is it to be a *religious* man anyway?

That same question, asked in the context of the Church of England, was treated with gentle humour in an episode of the popular TV series *Yes Prime Minister*, *The Bishop's Gambit*.¹²⁵ Jim Hacker was avowedly *not* religious, but (naturally) he had a *religious* wife. He was not *a* churchgoer; she was. He was simply a perplexed Prime Minister called upon to appoint a bishop . more accurately, to recommend an appointment to the sovereign. Steering his way through Anglican church politics, with nothing but the hesitancy of a natural conscience informed by political expediency, he was aided as always by his Permanent Secretary, Sir Humphrey Appleby. Struggling with the coded culture of the church, he was forced to confront distinctions between what it was to be religious and what not. In the Church of England, he was told, the word *modernist* was code for *non-believer* (Marxist, Atheist or

¹²⁴ Pages 215-216.

¹²⁵ J Lynn and A Jay *"The Complete Yes Prime Minister: The Diaries of the Right Hon James Hacker* (BBC Books, London, 1989), ch. 8, esp. pp. 217-218, 219-220, 220, 222, 223, 224, 224-225.

both); when clergy stopped believing in God they identified themselves as modernists; the Church of England was primarily a social organisation, not a religious one; the Church was run by theologians; and theology was a device for helping agnostics stay within the Church.

The Bishop's Gambit was a fictional celebration of English political culture. It echoed 19th century Anglican controversies about the meaning of Christianity and religion in which Thomas Arnold and others (including Australian bushmen) were, wittingly or otherwise, passionately engaged¹²⁶. Even a person who did not count himself a religious man in the language of that day might have been more religious than he thought.

For Bean, the Anglican church (or, at least, the Anglo-Catholic, High Church wing of the Church of England) was a familiar vehicle of operation. His universe was defined by a commitment to a universal system of liberal education in pursuit of Truth. Capable of writing scathingly of self-satisfied rectors of the church,¹²⁷ his tendency to do so appears to have reflected no end in itself, but an elaboration of his own views about an ideal social order. He believed, not without foundation, that his own scepticism towards ecclesiastical Christianity was widely shared by Australian soldiers¹²⁸.

To describe Bean as anti clerical may capture something of the truth, but not enough. It may simply be a matter of conventional labels. A Christian in the liberal, Catholic mould might more readily be described as anti clerical than an Anglican of a similar disposition. The Anglican community can accommodate anti clerical predispositions in its Evangelical or Low Church wing. An Anglican who steps outside both High and Low church traditions, without embracing an alternative Christian denomination, is more likely to be described as a non-believer than anti clerical. A Catholic who leaves the Church might be described as a lapsed Catholic, but one rarely hears of a lapsed Anglican. To this day, 45 years or so after The Church of England in Australia resolved to rebadge itself as The Anglican Church of Australia¹²⁹. Australians born into the Anglican Church but who drift away, can be found to describe their religion as C of E. They are sometimes described as nominal Anglicans. Whether, or how, Bean might have defined his position by reference to such linguistic labels is unknown.

¹²⁶ As for Arnold, see McCrum's *Thomas Arnold, Head Master: A Reassessment*, referred to in footnote 53 above. As for the nature of religious belief in 19th century Britain, see Owen Chadwick's *The Secularisation of the European Mind in the 19th Century*, referred to in footnote 100. As for the Australian bush, see CH Matthews's *A Parson in the Australian Bush*, referred to in footnote 101.

¹²⁷ eg., in *War Aims of a Plain Australian* (Sydney, 2nd and 3rd eds, 1945), Ch. VII, 'Some Points about Socialism'.

¹²⁸ *Sacred Places*, p. 204.

¹²⁹ The change of name from 'Church of England in Australia' to 'Anglican Church of Australia' was made by Canon 16, 1966 (*The Anglican Church of Australia Canon of 1966*), enacted by the Church's General Synod, coming into effect on 24 August 1981 only after the enactment of facilitating legislation in all Australian States and Territories.

Truth as a Guiding Star

Bean was, in 1945, an advocate of liberty, equality, fraternity: *“Liberty to seek the truth and state it; equality of opportunity and all that this involves; and fraternity – the resolve to progress by helping our fellow men forward and not by thrusting them back”*¹³⁰.

Writing in 1945, the ultimate bedrock upon which a new order was to be built for Australians was, for Charles Bean, *“the freedom of every citizen to discover the truth and proclaim what he finds”*. That was because, he wrote:

*“Given that freedom, we have at least the means of, sooner or later, discovering and resisting deception. Of course many men will proclaim ‘truth’ without having made any serious study in order to reach it, and much of the proclamation will be valueless; but so long as truth can get out, even amid a host of mistakes and distortions, it has an immense power for prevailing in the end”*¹³¹.

Bean’s personal philosophy of life appears, by all routes, to have tended towards Truth as the touchstone of belief. This is illustrated by a talk he delivered on ABC radio in 1948, the text of which was published in *The ABC Weekly* (with emphasis added).¹³²

“I Believe...

A Personal Philosophy of life

My philosophy of life is – like, I suppose, other people’s – the outcome of a journey in thought and experience.

It began, I suppose, at birth; but I think it is true, as I recently argued, that a child’s outlook on life is ‘caught’ rather than ‘taught’ – that is to say that until about the age of 15 it is learnt from the example and dogma of parents or other leaders who are the child’s heroes, and not from any reasoned explanation of how right doing leads in the end to happiness, and wrong doing to misery.

I think that was true in my own case. At all events, I cannot remember giving much of my own thought to any philosophy of life till I was 17, when, with a shock, I read the theory of the old Roman poet Lucretius, who expounded the atomic system, which had been thought out by an earlier school of Greek philosophers.

They believed that everything, including man, was merely the result of the rushing through space of innumerable atoms, combining and recombining; we and everything affecting us were just temporary products of that continuous process.

Lucretius was a brave thinker, and he welcomed this conclusion as an escape from the existing religion. But, though it supported the half-hidden doubts which one had as to dogmatic religion, it seemed to me a tragically depressing theory.

¹³⁰ *War Aims of a Plain Australian* (2nd ed.), pp. 33 and 165.

¹³¹ *War Aims of a Plain Australian* (2nd ed.), p. 31.

¹³² *The ABC Weekly*, Sydney, 3 April 1948, p. 41

Were life and everything else, then, just one big accident? Fortunately, like other children, one had since birth been imbibing from family and friends a love of the decent and beautiful in character as well as in art; and, however imperfect one's conduct, it was not doubts as to what was really right or wrong that disturbed it.

Next, one's glimmering sense that good conduct was really, at bottom, reasonable, and bad unreasonable, was reinforced by the philosophy that one read as part of a university course.

Part of that philosophy concerned the question, 'Why are some actions called good and others bad? And what is man's aim in what we call good conduct?'

All my life since I have wondered whether that aim was, or was not, what the great Greek philosophers conceived it to be – happiness.

Some great thinkers have disagreed with this, but after 40 years of experience I still find no definition of the aim of life so satisfactory.

By "happiness" these thinkers meant quite a different thing from pleasure. Aristotle describes it as the condition which arises when we use our capacities perfectly; and, as men are social beings surrounded by other beings, this happens only each plays his part perfectly in their common relations.

It is true that thinkers have differed greatly as to what part a perfect man should play in those relations. We have had the theory of the Superman, apparently tending to work out in practice in such catastrophes as the last world war; and we have the theory of men as mere cogs in the machine of the State, which leads to a very terrible code of conduct, and to the 'police-state'.

But, to an increasing number of people, the tragic events of the past 30 years have shown more plainly than ever that the way to happiness – national, international, and individual – lies in the aims and virtues which Plato and Aristotle explained and which were raised in a different and much more powerful way by the founders of the great religions – and certainly most purely, most widely, and most effectively by the founder of Christianity.

The conclusions of this philosophy and religion thus seemed to me to be in reality identical, and philosophy gave one a reasoned system as to what was right and wrong, and why.

Nevertheless, if we, and the whole universe, were merely the accidental result of the rush of atoms through space, depending upon chance in chaos, there seemed little incentive to living.

At one time – for a very short time – the world appeared to be without any basis for law, a place in which every living thing, from the minutest right up to man, simply fought its way to its future development by preying on others, 'red in tooth and claw'.

But then the question quickly came, 'How can you ignore all the great things in human history – the unceasing efforts that man has made and is making to help not only other men, but in some ways, also, the animal kingdom, by the principle of love or co-operation?'

And the feeling came to one with immense force: 'If God is not there to order the world for good, surely it is man's job to put Him there'. And with man's enormously increasing powers, and almost an eternity before him, who could foretell how far he might not go even in such a task.

By that time one had reached this position, that the question whether God existed or not could make no difference to conduct. Man's task was to help forward his own and other life in this universe; and he could do this only by discovering and using its laws.

And that led one step farther. We are only beginning to explore the nature of mind and life; yet we seem to be approaching a point at which life and mind and matter may be found scientifically to be results of a single cause, possibly qualities of the whole universe.

To what conclusions this might lead I do not know; but I have come far enough to have no doubt whatever that our job here is, in whatever way our faculties make possible, to help all life on its slow progress from the amoeba to the archangel or whatever is the highest form to which life can progress.

For civilised men this involves our having, in every sphere, freedom to seek and learn and teach the truth as to the laws of our being – or of nature, or of God, by whichever name you choose to call them''.

Beans' advocacy of Truth at a higher level of abstraction informed his life at every level. It probably exposed him to criticism that he might not otherwise have attracted from critics of his selection, and presentation, of historical facts in service of his predisposition to write to a predetermined purpose (usually an exposition of character). However, we have three small examples of how it impacted on his life at a less abstract level.

Taken in reverse chronological order, the first occurred in 1917-1918 when Bean opposed the use of composite photographs by the Australian War Photographer, Frank Hurley¹³³. Hurley, both an artist and a publicist, naturally expressed the horror of war in photographs presenting superimposed images of distinct events. Bean, himself a skilled artist and personally experienced in war photography, held to a realist school. For him, death and destruction needed to be captured in an authentic snapshot, not reconstructed from

¹³³ Alisdair McGregor, *Frank Hurley: A Photographer's Life* (Viking, Melbourne, 2004), pp. 157 *et seq.*, esp. 166-171.

events unconnected in time or space. Hurley's technique was, to him, a misrepresentation of true life.

The second example occurred in 1914, when Bean acquiesced in AW Bazley's overstatement of his age to enable Bazley to enlist (as Bean's batman) in the Australian Imperial Force. As Bazley later told the story, he was introduced to Bean by Archie Whyte, then Melbourne correspondent of the *Sydney Morning Herald*:¹³⁴

"Bean, who was wearing gold-rimmed pince-nez and a straw hat – but I forget now whether the hat-band or his tie were the colours of his old school, Clifton College, Bristol – thereupon asked me quietly whether I would like to go away with him. Would I? I had been trying without success for the past two months to join the A.I.F., but the age for enlistment was 19, and my father thought I should wait until I reached that age.

By the following afternoon I had got into the A.I.F. – by the old but simple expedient, followed by numbers of others in those days, of overstating my age. The officer at Victoria Barracks who attested me was General Bridges' junior A.D.C., Lieutenant (afterwards Major-General) E.C.P. Plant, whom many older residents of Canberra will remember at the Royal Military College in the early 1920's and later as Commandant in 1939-40. While waiting in the corridor – his door was ajar – I heard Plant say: 'Well, Bean, if he is 18 when he comes in here we can't take him.' He need not have worried on that score – the only one who showed any sign of worry was C.E.W. who, being the man that he was, realised that he was condoning something that he know [sic] was not altogether right."

Bazley¹³⁵ was born on 4 August 1896. He enlisted on 5 October 1914. To reach the minimum age of enlistment, 19 years, he overstated his age by 10 months. In the eyes of contemporary society, if not subsequent generations, this was perhaps a noble lie rather than a fraudulent misstatement. It was catered for, if not encouraged, by the authorities in the form of documentation required to be signed. In answer to the question, "What is your age?" in the Attestation Paper¹³⁶ he was required to sign on enlistment, Bazley was able to answer simply "19 years", without being required to identify his date of birth. Although the form required him to "solemnly declare that [his answers to the questions in the form] are true", the falsity of that declaration sat lightly upon him. Bean's acquiescence could not have masked from him that, in the eyes of the law, he was participating in a fraud.

¹³⁴ AW Bazley, "Australia's Official History of World War I" (February-August 1959) *Stand-To* 23 at 23.

¹³⁵ Entry on "Arthur William Bazley (1896-1972)" by AJ Sweeting (1993) 13 ADB 137.

¹³⁶ Australian Military Forces, Australian Imperial Force, Attestation Paper of Persons Enlisted for Service Abroad, dated 5 October 1914 (available online via National Archives of Australia, recordsearch.naa.gov.au).

As it happened, everything turned out well for Bean and Bazley: a successful, lifetime of joint public service. What Bazley's father thought of their open deceit is unknown. What they all might have thought had Bazley been killed early on in the war is speculation that, some might think, ought to have been engaged more fully at the time of enlistment.

It is with knowledge of his acquiescence in Bazley's noble lie that one steps back a few years to Bean's time at the Bar (or, perhaps more accurately, forward more than a few years to his description of that time to HM Tasker) for the third example of Bean's day-to-day sensitivity to Truth. In his (1930) letter to Tasker, he hinted at distasteful impropriety in Wigram Chambers: *"At the end of a few months of waiting for the briefs I recognised that the bar was not the career for me – I had seen men with far more brains than I, in England, still almost briefless at middle age; my interests were much more general, and I had seen one or two things of late which increased by distaste for the work – so much so that I tore up the only cheque that I ever received for it"*. Precisely what he had seen is unknown but, in light of his acquiescence in Bazley's noble lie, his *ex post* rationalisation for departure from the Bar could be characterised as just a little precious.

Politics in the Broad – Living on the Edge

Bean appears to have been independent of conventional party politics, as he was of most things in which his intuitive sense of independence was engaged. In treating his politics his biographer, Dudley McCarthy, characterised him as an *"anti-monarchist theoretical revolutionary"*¹³⁷, with *"questioning views [that] were unfocussed . . . many of them scarcely more than feelings which required honing by the sharp blade of circumstance into positive beliefs"*¹³⁸. His commitment to politics was a commitment to politics in the broad rather than to any form of party politics. Nevertheless, an innate sympathy for the working man is evident in praise for WM Hughes (1862-1952) in all editions of *On the Wool Track*. In the 1910, 1916 and 1925 editions Bean wrote:

*"The conversation in the [shearers'] hut after tea ranges from shearing to the House of Lords. It covers slow sheds and fast sheds, ringers and records, racing, farming; but more especially politics. Some MP's have much less political philosophy in them than the Australian shearer. Elections have been won and lost, candidates put up and knocked down, in those sheds. They have sent one of themselves to Parliament before now – to be the ablest man there."*¹³⁹

That the *"ablest man"* in Parliament was Billy Hughes became obvious in the 1945 and 1963 editions. With some minor changes in tense in earlier sentences that epitomised Beans' attention to detail, the last sentence of the same passage became:

¹³⁷ *Gallipoli to the Somme*, p. 319.

¹³⁸ *Gallipoli to the Somme*, pp. 316-317.

¹³⁹ 1910 ed, p. 225; 1916 ed, p. 196; 1925 ed, p. 187.

“They have sent one of themselves to Parliament before now – to become a great Prime Minister and the enfant terrible of the Versailles Conference, and the delight of Mr Clemenceau and, I fear, the bete noire of President Wilson”¹⁴⁰.

Bean was driven by a persistent, if not passionate, abhorrence of unequal social conditions, compassion for the poor, a commitment to democracy and an optimistic belief that universal education could cure almost all ills¹⁴¹. When these sentiments are coupled with his deep attachment to schools he identified with ~~the~~ the Arnold Tradition, the primacy of his 19th century liberal Anglican affiliations over any form of party politics is less surprising than it might otherwise be.

Still, his personal associations, if not deepest friendships, appear to have tended towards non-Labor types. Perhaps his true colours were early nailed to the mast when, in *On the Wool Track*, he took a swipe at ~~the~~ Labour leaders of Australia whose policies (for regulation of rural labour) he condemned as an attempt ~~to~~ to stamp out the genius of Australians in a passage that presaged his criticism of socialism. Whatever his personal political orientation from time to time, his engagement with politicians as a journalist, Official War Correspondent and Official War Historian dampened any partisan spirit, forced him to acknowledge the bipartisan support he had received in the performance of his work and reinforced his predisposition to aim for, and in any event to claim, objectivity in writing about public affairs¹⁴².

For the most part, it seems, he simply sought out like-minded personalities, often with similar social backgrounds. Four examples illustrate the point. Take, first, his identification of Brudenell White (1876-1940),¹⁴³ a founder of the AIF, as ~~the~~ the greatest man I have known and his consequential enumeration of the qualities of a ~~quiet~~ quiet Australian in terms that could accommodate (but had no need of reference to anything like) ~~the~~ the Arnold Tradition¹⁴⁴. Secondly, his selection of Gavin Long as the editor of Australia's Official History of the Second World War. Long's father had been the Anglican Bishop of Bathurst and a successor to Bean's father as Headmaster of All Saints College, Bathurst. Charles could not have been uninfluenced by his perception that Bishop Long was a ~~great~~ great Australian¹⁴⁵. Thirdly, something more than mere fate may have been in play when, *en route* to Sydney in 1905, Bean made the acquaintance of a barrister (WH Friend) who guided him towards Wigram Chambers. There he found members of the NSW Bar with social connections similar to his own: Sydney Grammar School; All Saints College, Bathurst; the Church of England; an

¹⁴⁰ 1945 ed, p. 157; 1963 ed, p. 114.

¹⁴¹ See *Gallipoli to the Somme*, 183, 275-276, 290, 294 and 313-314.

¹⁴² CEW Bean, *The Writing of the Australian Official History of the Great War – Sources, Methods and Some Conclusions* (1938) 24 RAHSJ 85 at 87 and 111.

¹⁴³ Entry for Sir Cyril Brudenell Bingham White (1990) 12 ADB 460.

¹⁴⁴ CEW Bean, *Two Men I Knew: William Bridges and Brudenell White, Founders of the AIF* (Angus and Robertson, Sydney, 1957), pp. 222-227.

¹⁴⁵ CEW Bean, *Two Men I Knew: William Bridges and Brudenell White, Founders of the AIF* (Sydney, 1957), p. 183.

Attorney General (CG Wade) in a non-Labour State Government. Fourthly, one might wonder whether the empathy for the Labourite WM Hughes that Bean manifested in his *Sydney Morning Herald* articles on a controversial waterfront strike of 1908, and in *On the Wool Track*, owed anything to the common origins the two men had in the English education system; their cultural debt to ~~the~~ (Thomas) Arnold Tradition+ (in the case of Bean) or Thomas Arnold's famous son, Matthew (in the case of Hughes); their schoolboy love of cricket; or their common, youthful interest in voluntary militia. Hughes was educated at St Stephen's School, Westminster. After completing his elementary schooling, he served as a pupil teacher there. In that capacity, he was under the supervision of Matthew Arnold as the District's Inspector and Examiner. Throughout his life he acknowledged Arnold's influence upon him¹⁴⁶.

Charles Gregory Wade (1863-1922) attended All Saints College, Bathurst¹⁴⁷. He served as the Attorney-General for NSW throughout Bean's Associateship to Owen J, and Owen's Royal Commission. After study at Oxford he was called to the Bar at Inner Temple in 1886 as the foundation for his admission to the NSW Bar that same year¹⁴⁸. As junior counsel to the then Attorney General, JH Want QC, he had appeared for the prosecution in *R v George Dean* (a charge of attempted murder that set the Dean controversy in motion) in 1895. As junior to CG Hayden QC he appeared for the prosecution in *R v Dean, Maher, Crick and Others* later that year, on charges of conspiracy to pervert the course of justice¹⁴⁹. He succeeded Sir Joseph Carruthers as Premier on 2 October 1907¹⁵⁰ and held that office until his Government lost the 1910 election to the State's first Labour Government under James McGowen¹⁵¹. Wade's political opponents in the trade union movement held against him the fact that, before the becoming Premier, he had regularly represented ship owners (and coal owners) as a barrister in industrial disputes on the waterfront¹⁵². Whether Bean ever turned his mind to the possibility that Wade's professional associations with ship owners, as well as with Wigram Chambers, might be turned to advantage by a young barrister in those Chambers tempted by ~~the~~ Sea-Law+ is unknown.

McGowen's play-maker and successor, in 1913, was William Arthur Holman (1871-1934), one of whose claims to fame was that he was a barrister¹⁵³. The historical record is sufficiently clear to justify a conclusion that Charles Bean would have observed the advocacy of Holman on circuit in Wagga Wagga on

¹⁴⁶ LF Fitzhardinge, *That Fiery Particle, 1862-1914 (a political biography, William Morris Hughes, Vol. 1)* (Angus and Robertson, Sydney, 1964), pp. 4-12; Malcolm Booker, *The Great Professional: A study of WM Hughes* (McGraw Hill, Sydney, 1980), pp. 2-6.

¹⁴⁷ WA Steele and JM Antill, *The History of All Saints' College, Bathurst, 1873-1963* (3rd ed, 1964), pp. 148-151.

¹⁴⁸ *Cyclopedia of NSW* (1907), p. 305.

¹⁴⁹ GD Woods, *A History of Criminal Law in New South Wales: The Colonial Period, 1788-1900* (Federation Press, Sydney, 2002), pp. 409 and 416.

¹⁵⁰ D Clune and K Turner, *The Premiers of New South Wales, 1856-2005* (Federation Press, Sydney, 2006), vol. 2, ch. 4. He died in office as a Supreme Court judge (1919-1922).

¹⁵¹ *The Premiers of New South Wales, 1856-2005*, vol. 2, ch. 5.

¹⁵² *That Fiery Particle*, pp. 198-199.

¹⁵³ *The Premiers of New South Wales, 1856-2005*, vol. 2, ch. 6.

27-29 September 1905 (in *R v O'Donnell*) and, probably, on 2-4 October 1905 (in *Hopwood v Caspers*), on the defence side in both cases¹⁵⁴.

The record is also sufficiently clear to support a conclusion that, shortly after that time, on circuit in Deniliquin, Bean would have observed the advocacy of another barrister who was well connected in law and politics - and who, in time, would become a member of the NSW Parliament, a Premier of the State (1927-1930) and, in the twilight of his career, a Supreme Court Judge (1935-1941): Thomas Rainsford Bavin (1874-1941), later Sir Thomas Bavin¹⁵⁵. He appeared for the Accused in *R v Broadick* on or about 11 October 1905¹⁵⁶.

A passing reference in *War Aims of a Plain Australian* (1945) suggests that Bavin had enough individualism and public-spiritedness to attract Bean's respect¹⁵⁷. Whether there is any significance in the fact that, after his death, Bavin's wife and children honoured him with a memorial tablet (on the southern wall) of St Mark's Anglican Church, Darling Point,¹⁵⁸ is unknown. As AB Weigall (and possibly Edwin Bean) had a connection with that Church, that possibility should not be overlooked¹⁵⁹.

Bavin and his friend JB Peden (another active Anglican) were at the vanguard of the Sydney Law School in and from the early years of the 20th century¹⁶⁰. Both ultimately found their way to University Chambers (a successor to Wigram Chambers) but, between 1905-1907, Bavin's chambers were at 149 Phillip Street, Sydney and Peden's were at Wigram Chambers (167 Phillip Street)¹⁶¹. If it is generally understood that party lines were fluid in Australian politics during the first two decades of the century, deeper insights nevertheless remain to be explored by an examination of personal relationships between NSW barristers active in political life. Bavin's mentors, Sir Edmund Barton and Alfred Deakin, were lords of non-Labour politics. One of the Labour politicians studying for the Bar in the early years of the century, with the benefit of coaching by him (and Peden), was WM Hughes, destined to be Australia's War-time Prime Minister, first in the Labour Interest, then as the Leader of the National Party¹⁶². Ideological boundaries sometimes melt away upon close examination of real people in everyday endeavours.

¹⁵⁴ See Appendix IV, based on newspaper reports in *The Wagga Wagga Advertiser*.

¹⁵⁵ (1979) 7 ADB 214-216; *The Premiers of New South Wales, 1856-2005*, vol. 2, ch. 11.

¹⁵⁶ See Appendix IV, based on a newspaper report in the *Deniliquin Chronicle*.

¹⁵⁷ 2nd and 3rd eds, 1945, pp. 61-62.

¹⁵⁸ HWA Barder, *Wherein Thine Honour Dwells*, p. 308. See also p. 154.

¹⁵⁹ The children of AB and AF Weigall presented the 'Holy Table' to the Church on 3 September 1921 as a memorial to their parents: Barder, *Wherein Thine Honour Dwells*, p. 313.

¹⁶⁰ T Bavin (ed), *The Jubilee Book of the Law School of the University of Sydney, 1890-1940* (Sydney, 1940); TR Bavin (1979) 7 ADB 214-216; JB Peden (1988) 11 ADB 190-192.

¹⁶¹ *SANDS Directory*: 1905, pp. 114-115 and 1256-1257; 1906, pp. 114-115 and 1290; 1907, pp. 116-117 and 1332; *The Jubilee Book of the Law School of the University of Sydney, 1890-1940*, p. 30; MD Hay (Clerk to the Faculty of Law, 1919-1953, and Librarian of the Law School Library, 1924-1947), 'Reminiscences of the Law School and of Barristers Practising as Remembered for the NSW Bar Council', pp. 4 and 10. 'Wigram Chambers' became part of 'University Chambers' in about 1914: JM Bennett (ed), *A History of the New South Wales Bar* (Law Book Co, Sydney, 1969), pp. 201-202.

¹⁶² Entry for 'TR Bavin' (1979) 7 ADB 214-216 at 214; MD Hay, 'Reminiscences' p. 4; JM Bennett (ed), *A History of the NSW Bar*, pp. 124-125.

There is no suggestion that Bean ever encountered Hughes at the Bar. Hughes was admitted as a barrister on 19 November 1903 and thereafter, up to and including 1929, his name appeared in the list of barristers published in the *NSW Law Almanac*. He was however continuously engaged in politics. His work as a barrister appears, in substance, to have been limited to industrial law and compensation cases ancillary to the career of a Labour politician¹⁶³. Bean appears to have first encountered him when, working as a rooky journalist with the *Sydney Morning Herald* in 1908, he covered a wharf strike in which Hughes was involved as a union leader, politician and barrister¹⁶⁴. His very full day-by-day account of the strike, including almost daily statements by Hughes, was sufficiently sympathetic to Hughes to form the basis of the narrative of the strike told by Hughes's biographer¹⁶⁵. Whether the two men ever discussed their common connection with the famous Arnold Family is unknown.

If Bean was the author of the interview with Mr Hughes MP, published in the *Sydney Morning Herald* on 16 January 1908 without attribution of authorship, it suggests that he hit the road running when, only days earlier, he joined the paper's full time staff.

As a youth of 22 years and shortly before he sailed for Australia, Hughes joined a volunteer battalion of the Royal Fusiliers which may have had, at least, a loose connection, not only with his school, but also with Thomas Hughes, the author of *Tom Brown's Schooldays*. From his early days in Australian politics, Hughes had dabbled in journalism, writing letters to the press and, at least from 1907, newspaper articles, principally for Sydney's *Daily Telegraph*¹⁶⁶. Had they ever taken time out to spin a yarn, he and Bean could not have failed to notice their commonalities.

Politics, Religion and Philosophy

Any assessment of Bean's political orientation needs to make allowance for three powerful forces operating within him and in the intuitive responses of those who dealt with him.

First, whatever the precise nature of his personal faith from time to time he was, in social terms, Anglican to the core. Although people within the Anglican community might well have been unaware of any exclusivity of attitude on their part, members of a club often have no sense of barriers to entry of which those on or outside their boundaries are painfully aware. People standing outside the Anglican community (whether adherents to Christianity or not) could well have felt excluded from the bonds that bound Charles Bean to the Church of England.

There was no formal impediment to membership of that church by Labour Party members or sympathisers, and the Anglican Church had more than its fair share of Christian Socialists and the like (including Tom Hughes and

¹⁶³ LF Fitzhardinge, *That Fiery Particle*, pp. 99, 151, 197 and 205.

¹⁶⁴ Account for EFFIE, p. 43; Tasker letter, p. 13.

¹⁶⁵ *That Fiery Particle*, pp. 196-204, esp. 204 note 71.

¹⁶⁶ *That Fiery Particle*, pp. 206-207 and 215.

others associated with the Arnold Tradition), but many might have had reservations about the role of the Anglican establishment in governance of public affairs.

Before World War I brought him into closer contact with men of Catholic faith with whom he could empathise in a common cause, Charles appears to have been predisposed against Roman Catholics¹⁶⁷. That, in itself, may reflect only the different cultural heritages of an (Anglican) Englishman *vis-à-vis* (Catholic) Irishmen in a past era. As an Anglican, with a close personal association with All Saints College, Wigram Chambers and, in time, the *Sydney Morning Herald*, he might easily have been typecast as an alien member of the establishment, a political Conservative, by a left-leaning Labour Party on the rise.

Party members would not have been entirely amiss in doing so. Charles Matthews, a pioneer Anglican Bush Brother with broad sympathies informed by Anglo-Australian experiences, wrote in 1908:¹⁶⁸

“... the average Englishman has a vague, general notion that Australia is being ruined by the Labour Party. As members of the Labour Party rarely come over to England, he gains his ideas from reading lurid paragraphs copied in the English papers from Anti-Labour Australian Press, or from the rich Australians who come over to England and go about saying that they are being ruined by Labour troubles, so he rarely hears more than one side of the question.”

The *Sydney Morning Herald* was generally part of the Anti-Labour Australian Press. The rising star of the Federal Parliamentary Labour Party, Billy Hughes, wrote for the *Daily Telegraph*¹⁶⁹. He disclaimed any connection between atheism and socialism. It was a purely economic question, though having, as all things that touch the lives of men and woman have, an ethical side¹⁷⁰. But he was under no illusions about the anti-socialist credentials of conservative Christians¹⁷¹. Sceptical about Christian socialism, he lectured all Christian denominations about the duty of churches, religion in daily life and the economic value of the gospel¹⁷². Given the prominence of the Church of England in Australian society, pronouncements by the Anglican Archbishops of Canterbury and York (and attempts by the Lambeth Conference to define socialism) were the subject of special notice¹⁷³.

Following a series of court decisions in England in the mid-19th century, no colonial church could claim the legal status of an established church; in legal theory, all were classified as voluntary associations (ie. clubs) rather than

¹⁶⁷ *Gallipoli to the Somme*, pp. 305 and 376.

¹⁶⁸ CHS Matthews, *A Parson in the Australian Bush* (Rigby Limited, Australia, 1973), p. 215 (first published, 1908; revised edition, 1926).

¹⁶⁹ *That Fiery Particle*, ch. XII, esp. pp. 206-207 and 215.

¹⁷⁰ WM Hughes, *The Case for Labour* (1910), p. 94.

¹⁷¹ *The Case for Labour*, p. 97.

¹⁷² *The Case for Labour*, pp. 92-106.

¹⁷³ *The Case for Labour*, pp. 101-102.

part of the State¹⁷⁴. However, the Church of England remained (and remains) an established church on its home turf; Australians of Bean's ilk were Britons at heart even if nationalistic members of an Imperial family; and, in their social relationships, not all Anglicans appear to have been deceived by the law's characterisation of their colonial co-religionists as bound by the same general principles governing non-Anglican communities. To non-Anglicans, if not to Anglicans themselves, something of the flavour of an established church continued to permeate social relationships.

Secondly, Bean was a product, and an active Old Boy, of a community of schools firmly committed to Anglicanism, albeit that they might have been attracted to its liberal wing. In an era in which public education was emerging under catchcries like 'compulsory, secular and free', and the Catholic Church conspicuously stood apart from State education as a badge of honour, Charles's commitment to his Rugby School culture and his English public school connections, stands out as an impediment to his assimilation with the working men and women with whom he empathised¹⁷⁵.

His letters to his parents evidenced the importance to him of even casual encounters with a school connection. His first letter to his parents upon his arrival in Sydney in January 1905 told of his happy meeting with a Sydney Grammar School Old Boy (WH Friend) on the boat from Hobart¹⁷⁶. In mid-1908, and reporting to them as a journalist aboard *HMS Powerful*, he was pleased to record a casual meeting with 'a Clifton man'¹⁷⁷.

Thirdly, Bean appears, in common with more than a few of his friends (including, possibly, Thoby Stephen at Clifton College), to have been a devotee of 'science' in an era, under the influence of Darwin, in which there was a perception of conflict between science and religion, with the 'rationality' of scientific principles and methodology increasingly asserting ascendancy.

Professor Inglis has characterised as 'Tennysonian and Darwinian' a question that Bean in 1942 said that he had asked himself in formulating the theme of *The Official History of Australian in the War of 1914-1918*: "How did this nation [Australia], bred in complete peace, largely undisciplined except for a strong British tradition and the self-discipline necessary for men who

¹⁷⁴ The legal history of the Anglican Church in Australia, and incidentally throughout the British Empire, is conveniently canvassed by the NSW Court of Appeal in *Scandrett v Dowling* (1992) 27 NSWLR 483. Historically, the starting point may be *Dr Warren's Case* (1835), but its implications for colonial churches were not spelt out until the 1860s in a series of cases emanating from South Africa. See, in particular, the judgments of the Privy Council in *Long v Bishop of Cape Town* (1863) 1 Moo NS 411; 15 ER 756 and *Re The Bishop of Natal* (1865) 3 Moo NS 115; 16 ER 43 and the judgment of Lord Romilly MR in *Bishop of Natal v Gladstone* (1866) LR3 Eq 1, followed by a House of Lords decision in *Forbes v Eden* (1867) LR 1 Sc & Div 568.

¹⁷⁵ EM Andrews, *The ANZAC Illusion: Anglo-Australian Relations During World War I* (Cambridge University Press, 1993), p. 214.

¹⁷⁶ Letter dated 24 January 1905 (on the letterhead of 'Hotel Metropole, Sydney') addressed to Bean's parents: AWM38/3DRL7447/6.

¹⁷⁷ Undated letter to 'Dear Father' written on 'HMS Powerful, near Norfolk Island, 4am' (July-August 1908): AWM38/3DRL 7447/6.

*grapple with nature – how did this nation react to what still has to be recognised as the supreme test for fitness to exist?*¹⁷⁸.

Two alternative formulations of Bean's theme conform more closely to the picture of him presented in this paper. In 1938, four years before his Tennysonian and Darwinian question, Bean stated it as: *"How did the Australian people – and the Australian character, if there was one – come through the universally recognised test of this, their first great war?"*¹⁷⁹. A few months after his statement of the Tennysonian and Darwinian question he put it differently again: *"For me there was the interest of a great theme – the reaction of a young, free, democratic people to this great test – slowly working itself out to the climax of the astonishing victory in 1918"*¹⁸⁰.

Tennysonian and Darwinian as Charles Bean may have been, the greater influence on his thought was the Arnold Tradition+. Of course, that is not to suggest that the three great British names of the 19th century can be packaged in separate, mutually exclusive intellectual worlds. They overlapped.

The fact that the only lawyer mentioned by name at the Memorial Service held at St Andrew's Cathedral, in Sydney, to mark Charles Bean's passing from this world in 1968 was Sir John Latham is not entirely without significance. Latham (who had surrendered his office as Commonwealth Attorney General, and his seat in the Federal Parliament, to a young Robert Menzies QC, who promptly appointed him Chief Justice of the High Court of Australia in the 1930s, and who was succeeded in that judicial office by their professional colleague of many years, Sir Owen Dixon in the 1950s) had a background, not only in law, but also in journalism. He was also a strong rationalist¹⁸¹.

Strong Moral Views: A Debt owed to Education

In his self-assessments, Bean attributed his strong moral views to the influence of his father and their old school, Clifton College. His account for EFFIE+contains an express acknowledgement of his debt to both:

"... I know I have two gifts, of the many which a writer should have – I know what interests people, & I have a pretty fair judgment – I can generally see the flaw in a false argument, & have a pretty true sense of where the right & the wrong lie. It is those two faculties which made me the right sort of person to take up journalism. I am slow, and lack ever so many other qualities, but

¹⁷⁸ KS Inglis, *Sacred Places: War Memorials in the Australian Landscape* (3rd ed, Melbourne University Press, 2008), p. 79, quoting CEW Bean, "Our War History" *Bulletin*, 27 May 1942, p. 1

¹⁷⁹ CEW Bean, "The writing of the Australian Official History of the Great War" *Sources, Methods and Some Conclusions* (1938) 24 RAHSJ 85 at 91.

¹⁸⁰ CEW Bean, "The Technique of a Contemporary War Historian" (1942) 2 *Historical Studies* 65 at 79.

¹⁸¹ Entry for "Sir John Greig Latham (1877-1964)" (1986) 10 ADB 2-6 at 2 and 6; T Blackshield, M Coper and G Williams, *The Oxford Companion to the High Court of Australia* (Oxford University Press, Melbourne, 2001), pp. 419-422 at 419.

those & a sense of duty (which Father & Clifton gave me) have carried me through."¹⁸²

The College rated a mention in *On the Wool Track* in a story of two Clifton Old Boys (one of whom, it might be inferred, was Charles himself) meeting up outback¹⁸³. In after years Charles lived, in succession, in two homes he and Effie named %Clifton+¹⁸⁴. Edwin made a lifetime investment when he sent his son to his old school. Their common connections with Brentwood School and All Saints College, Bathurst, also bound them more tightly together.

The dedication to the first Australian (1956) edition of Charles's *The Dreadnought of the Darling* (first published, in London, in 1911) illustrates the strength of his lifelong attachment to Brentwood School: "*To The Boys of Brentwood School in Essex, where with several other young Australians he first made the acquaintance of the English Boy and many a lifelong friendship, the author affectionately dedicates this book – in the hope that many more of them may some day help to fill the borders of the wide country with which it deals*".

Charles's personal experience at All Saints College was limited to attendance at its prep school before the family moved to the northern hemisphere. However, on his return to Australia as a young adult, he plainly embraced the School's community with a strong commitment accompanied by filial pride.

The School's History written by WA Steel and JM Antill, is a carefully crafted work. Entitled *The History of All Saints' College Bathurst*, the 1st edition (Sydney, 1936) covered the years 1873-1934; the second (Sydney, 1952), 1873-1951; the third (Sydney, 1964), 1873-1963. In each edition, chapter 4 details the life and career of the School's second headmaster (between 1878-1888), Edwin Bean. As the Preface to the First Edition acknowledged assistance given by Charles Bean and his mother, Lucy, and the publication ran to three editions during Charles's lifetime, the accuracy of the account of Edwin's life is entitled to respect.

How much, if anything, of Edwin's *Historical Sketch* of Brentwood School owes its authorship, directly or indirectly, to Charles is a moot point about which a contemplative mind might well speculate. The two men thought alike. The *Sketch* was published in December 1913, shortly after expiry of Charles's term as *The Sydney Morning Herald's* London Correspondent. It begins with Charles's song. It ends with Edwin's related composition. Edwin's philosophy of education appears to have been a precursor to that of Charles. Having stated that %not] less important than the teaching to the real welfare of a school is its moral and social tone%, he later recorded that %my experience of the best Australian schoolsõ taught me that democratisation is quite compatible with a high tone and good intellectual standards+¹⁸⁵. It was with evident satisfaction that he also noted that one of the prayers used at

¹⁸² Sheets 40-41 of 73.

¹⁸³ 1st ed, 1910, p. 131; 1963 revised ed, p. 67.

¹⁸⁴ 17 Eton Road, Lindfield (Certificate of Title Volume 4828 Folio 58; Lot 3 Deposited Plan 334136) and (from 1956) 24 Suffolk Avenue, Collaroy (Certificate of Title Volume 5446 Folio 70).

¹⁸⁵ *Historical Sketch*, pp. 23 and 33.

Brentwood under his headmastership was a shortened form of one used by Dr Arnold in Rugby School some 50 years or so after Arnold's death¹⁸⁶. As recorded in the text, Brentwood's W.B. [Old Brentwood] Society started in 1899 at the suggestion of Charles, who served as its first Honorary Secretary¹⁸⁷, although he was a student at Brentwood only in 1891-1893, and for a term in 1896, during a decade of his life otherwise dominated by attendance at Clifton.

There was a direct link between The Arnold Tradition, Clifton College and Edwin Bean in the person of John Percival (1834-1918). He started his teaching career at Rugby School (1860-1862). On the recommendation of the then Headmaster, Frederick Temple (Archbishop of Canterbury, 1886-1892, and the father of William Temple, Archbishop of Canterbury between 1942-1944) he was in 1862 appointed first Headmaster of Clifton College. He remained at Clifton until 1879, when he became President of Trinity College, Oxford. Between 1887-1895 he served as Headmaster at Rugby School. He was Bishop of Hereford from 1895 until his death. He was reputed to be a liberal Anglican of the broad church variety with a strong social conscience. He was sufficiently favoured by the Temples (themselves progressive Anglicans) to be the subject of a biography published by William Temple in 1921¹⁸⁸. He was Headmaster of Clifton College when Edwin Bean was a student there, and Headmaster of Rugby School during Edwin's first years as Headmaster of Brentwood School. According to Charles, many of the methods and traditions of Brentwood under Edwin derived from Percival's influence¹⁸⁹. In the Tasker letter¹⁹⁰, Charles described his father as 'one of Percival's favourite pupils at Clifton [sic]'; noted that he had Percival's personal confirmation of that fact; and reported that Edwin had had 'an admiration amounting to veneration' of Percival.

Like his father, Charles failed to secure an undergraduate university degree at Oxford with the highest honours or entry to the Indian Civil Service in a competitive examination. Like his father, he commenced his working life with temporary work as a tutor (between graduating from Oxford and taking up work as a Judge's Associate). Like his father, he was greatly influenced by the ethos of an 'independent School' based on the Rugby School, Anglican tradition established by Thomas Arnold. Like his father, he was fascinated by genealogy, writing and publishing (sharing pride in Edwin's establishment of a school magazine at each of Sydney Grammar, All Saints Bathurst and Brentwood School). Like his father, and their contemporaries of the same bent, he was imbued with Empire and all things military. He viewed Australia as a young, independent, fiercely democratic nation in an Imperial family.

The significance of Clifton College as a common bond between father and son, and as a spiritual home for Charles Bean, should not lightly be overlooked. It is probably reading too much into the Bean story to dwell on the fact that both Field Marshall Douglas Haig (1861-1928), Commander of

¹⁸⁶ *Historical Sketch*, p. 30.

¹⁸⁷ *Historical Sketch*, p. 37

¹⁸⁸ William Temple (then Bishop of Manchester), *Life of Bishop Percival* (London, 1921).

¹⁸⁹ RR Lewis, *The History of Brentwood School* (Brentwood, 1981), p. 186.

¹⁹⁰ Page 1.

the British Expeditionary Force during most of the First World War, and General (later Field Marshall) William Birdwood (1865-1951), the Commander of the Australian and New Zealand Army Corps (ANZAC) during the Gallipoli Campaign in 1915, were Clifton College Old Boys; but neither is it wholly irrelevant. Haig was a student at the College between 1875-1879; Birdwood, a couple of years later. In line with the times and its community, the School was attuned to the importance of military affairs in the public life of the British Empire.

So were Edwin and Charles Bean. From his earliest days, Charles was nurtured in that sort of environment. The Bean family spent summer holidays scouring Napoleonic battlefields in Europe. The Bean Papers include early drawings by Charles of soldiers in uniform, distinguishing their various features¹⁹¹. Charles was an active promoter of the Old Cliftonian Society.

The Origins of a Legal Education

Relevantly to an examination of Charles's mindset as he undertook legal studies, the Bean Papers include a pamphlet dated 28 February 1903 published by the Old Cliftonian Memorial Committee, listing Old Cliftonians who had died in the Boer War in each of 1899, 1900, 1901 and 1902¹⁹². South Africa was in his mind. In July . August 1902 he sat, unsuccessfully, for the Civil Service Commission's examination for clerkships.

Insight into Charles's exposure to a legal education comes from the letter dated 27 September 1902 from the Secretary of the Commission notifying him of his results in the examination¹⁹³. Candidates were vying for six clerkships in the Home Civil Service, 52 appointments in the Civil Service of India and 14 cadetships in the Colonial Service. Charles entered his name for all three categories of job, apparently hoping to obtain a posting to India or South Africa. In the Table of Marks+accompanying the letter he was placed 118th out of 145 candidates. He scored 65/100 in the Roman Law exam and 65/100 marks+ in the English Law Exam. Whether he actually attended those examinations is unknown. What can be inferred with confidence, however, is that law was not for him a subject area of profound personal fascination.

The documentary record is consistent, then, with his later recollection that he proceeded to study law (achieving third class honours in the BCL examination in 1904) as a default option. It was perhaps a natural fallback for a young man whose mother's family were in the law and whose father's teaching experience included the education of pupils (at All Saints College, Bathurst) who had made careers at the Bar in NSW.

In late 1902 he applied for employment in the Civil Service of the Transvaal and Orange Free State, again without success. The exact timing of his application is uncertain. The Bean Papers include a letter of acknowledgement from the office of the Under-Secretary of State for Foreign Affairs dated 30 October 1902. The application was supported by

¹⁹¹ AWM38/3DRL 7447/5 (Correspondence, 1894-1903).

¹⁹² AWM38/3DRL 6673/902.

¹⁹³ AWM38/3 DRL 6673/894.

testimonials from WW Asquith (Headmaster of Clifton College) dated 20 March 1902; HB Mayor (Vlth Form Master at Clifton College) dated 10 March 1902; and Reverend HH Williams (a Lecturer of Hartford College, Oxford) dated 3 May 1902¹⁹⁴. Throughout 1902 Charles's focus appears to have been on entry into some form of Colonial Service.

Incidental confirmation of that appears in the manner in which he apparently completed the application form for employment in South Africa. Almost as an afterthought, it records what appears to be a belated endorsement under the heading 'Other qualifications': 'Student at Inner Temple (studying law, but have not yet been for any Exams there)'+

As knowledgeable as Charles was on his chosen areas of interest (military, naval and colonial affairs and history), one suspects that he could not have known much law or anything about legal practice (especially NSW law and practice) at the time he assumed the mantle of an NSW barrister in February 1905. His legal education was exclusively English. The Archives of Oxford University record the following information:

"Charles Edwin Woodrow Bean matriculated from Heartford College on 19 October 1898. On his matriculation form he records that he was born on 18 November 1879 at Bathurst and that he was the first son of the Rev. Edwin Bean, Clerk in Holy Orders and headmaster, living at School House, Brentwood, Essex. Charles Bean was educated at Clifton College.

As part of the First Public Examination Charles Bean achieved second class honours in Classical Moderations in Hilary Term 1900, and also passed an exam in holy scripture in Trinity Term 1900.

In his Final Examination Charles Bean achieved second class honours in Literae Humaniores [Classics] in 1902. The 'Examination Statues' for 1902 state that the Examination in the Honour School of Literae Humaniores consisted of the following subjects:

The Greek and Latin Languages

The Histories of Ancient [Greece] and Rome

Logic, and the Outlines of Moral and Political Philosophy

Charles Bean's BA was conferred on ... 23 October 1902.

Charles Bean achieved third class honours in the Bachelor of Civil Law Examination in 1904. The examination for the BCL consisted of sections of Jurisprudence, Roman Law, English Law and International Law. His BCL was conferred on 20 October 1904 and his MA, for which no further study was required, was conferred in absentia on 22 June 1905"¹⁹⁵.

¹⁹⁴ AWM38/3DRL 6673/894.

¹⁹⁵ Email dated 3 July 2007 to the author from Emma Marsh, Archives Assistant, Oxford University Archives, Bodleian Library, Oxford. The separate archives of Heartford College have yet to be checked.

A handwritten letter in the Bean Papers dated 30 October 1902 addressed to 'Dear Bean' by AHJ Greenidge of Oxford provides further confirmation of the character of Charles's subjects¹⁹⁶. It is in the character of a 'Dear John' letter, apparently responding to a letter in which Charles had requested his marks when earlier advised of the award to him of a second class honours degree. He was assured that his marks were good; that he was in the running for a first class honours degree and had had the test of a serious viva. He was assured that, considering the way in which his work had been hampered by illness, his performance was excellent. In this communication, his subjects were described as Logic; Moral and Political Philosophy; Ancient History; Greek History; and Roman History.

VIII. BEAN'S LEGAL CAREER IN CONTEXT

Winds of Change in NSW

Bean's first-hand experience of the Bar and the NSW court system was limited in time, but of profound significance to his development. It marked his transition from conventional expectations of a life in the law to self-realisation and a focused, idiosyncratic career aspiration pointing in another direction. It occurred, moreover, at a time when the Bar, the Supreme Court of NSW and Australian society were undergoing pivotal change. The whole system was accommodating the consequences of 1901's federation of the Australian colonies. In 1902, a few short years before Bean's return to Australia from an English education, the NSW Bar Association was reconstituted. The practical implications of the establishment of the University of Sydney's Law School in 1890 were beginning to manifest themselves.

The necessity for, and fashionability of, a Call to the Bar in England was on the wane. The first Chief Justice of NSW to have been born and wholly educated in Australia (Dr W P Cullen QC) was appointed only in 1910. More than one barrister had risen through the ranks, and continued to sustain himself, dabbling in journalism. Legal practice, academia, politics and journalism intersected on a far broader front than is now common. The Gender Wars were in a dynamic phase. Ada Evans, the first woman to graduate from Sydney University Law School (in 1902) was denied the right to practise until the passing of the *Women's Legal Status Act, 1918 (NSW)* but, through her, lines of battle had been joined.

Non-Stereotypical Legal Biography: Fellow Travellers in the Law

Bean's legal career, such as it was, is worthy of study as an excursion into Australian legal history, as well as social history, because of the light it throws upon: (a) the nature of the relationship between law and society; and (b) the life of a barrister at the junior end of the profession.

Most, if not all, biographical studies of barristers have as their subjects men or women who have been, or can be presented as, leaders of the profession.

¹⁹⁶ AWM38/3 DRL 7447/28.

Commonly, they have advanced through the ranks to become senior counsel, a judge or a holder of some other high public office. And yet, the rigours of professional life dictate that their life choices have been marked by conformity to a model. Perhaps they were born into obscurity. Whether or not that was so, their early careers were likely to have been characterised by adversity, moderated by patronage. Merit wins through. Success follows, however measured. Prominence, if not public office is attained. In retrospect, an outstanding career is able to be characterised as an inevitable, generally linear progression. The realities of early days in the profession are lost in conventional myths, if not hagiography.

A subject who samples the Bar and moves on without any trappings of professional success may well be more interesting. Bean's later success in fields other than law places him in this category. Others amongst his contemporaries who might be thought to share that honour, and by doing so cast light on a barrister's calling, include JG Legge (1863-1947), HM Green (1881-1962) and, in contrast with WA Holman (1871-1934), WM Hughes (1862-1952). The careers of each of these men, more or less, intersected with that of Charles Bean.

As serving politicians in the law, Holman and Hughes were not typical of the Bar as a whole¹⁹⁷, but Legge and Green can be mentioned as two illustrations of the character of a law degree as a general purpose degree in Bean's New South Wales. James Gordon (Gordon) Legge (1863-1947) was English born. He migrated to Australia with his parents in 1878. In Sydney, he was educated at Sydney Grammar School and the University of Sydney, from which he graduated BA (1884), MA (1887) and LLB (1890). Before his graduation in law he taught at Sydney Boys' High School (1886-1890). He was admitted to the Bar in 1891. He needed a return to part-time teaching at Sydney Boys' High to survive at the Bar. He nominally practised as a barrister until, in 1894, he made good his part-time interest in the New South Wales Infantry Regiment by joining the permanent staff of the New South Wales Military Forces. Subject to one, important qualification, he thereafter pursued the career of an army officer and was instrumental in the development of Australia's defence forces. The qualification is that in 1896 he published two volumes of early law reports that, until the work of Professor Bruce Kercher a century later,¹⁹⁸ served as the only conveniently available reports of early colonial case law in New South Wales. The two volumes entitled, *A Selection of Supreme Court Cases in New South Wales from 1825 to 1862* are known colloquially as 'the Legge Reports'. According to Bean, at the beginning of World War I, rumour had it in military circles, that Legge was the coming man¹⁹⁹. Whether they had contact during Charles's sojourn at the Bar is unknown, but their paths crossed during the War. As it happens,

¹⁹⁷ JM Bennett (ed), *A History of the NSW Bar* (1969), p. 125.

¹⁹⁸ *The Kercher Reports: Decisions of the New South Wales Superior Courts, 1788 to 1827* (Forbes Society, Sydney, 2009), edited by Bruce Kercher and Brent Salter, is a scholarly edition of cases published on the Macquarie Law School website as part of the University's Colonial Case Law Project. See Decisions of the Superior Courts of New South Wales, 1788-1899 (www.law.mq.edu.au/scnsw).

¹⁹⁹ CEW Bean, *Two Men I Knew: William Bridges and Brudenell White, Founders of the AIF* (Sydney, 1957), p. xiii.

Gordon Legge had an unhappy war experience. His military career did not attain the heights once expected²⁰⁰.

Henry Mackenzie Green (1881-1962)²⁰¹ had even less association with the law than either Legge, or Bean but more with Charles Bean's career. Harry was educated at All Saints College in Bathurst (1890-1898) and the University of Sydney, from which he graduated BA (1902) and LLB (1905). He had a distinguished record at school and university. In 1898 he was school captain. Before and after his departure from All Saints he contributed to its magazine, *The Bathurstian*. His future career was early marked out in a love of literature. He was admitted to the NSW Bar on 24 February 1908, but never practised. He and Charles joined the staff of the *Sydney Morning Herald* as junior reporters at about the same time. Bean remembered their shared experiences of that time with fondness²⁰².

Green remained with the *Herald* for two years. Thereafter, he worked for the *Daily Telegraph* (1910-1921) with nine months' service as a private in the army in 1918²⁰³ intervening - before securing an appointment as Librarian at the University of Sydney, succeeding John Le Gay Brereton (1871-1933) in 1921. He held that office until his retirement in 1946. The full extent of his literary engagement with CEW Bean remains unknown, but Bean features prominently and favourably in his major work, *A History of Australian Literature, Pure and Applied* (1961)²⁰⁴. A measure of the nature of Bean's work, and the time necessary for its significance to sink into public consciousness, is that it rated no mention at all in Green's earlier review of Australian literature, *An Outline of Australian Literature* (1930)²⁰⁵ even though other ANZAC-writers were noticed. In contrast, the 1961 work contains an extended appreciation of Charles's writings, including a sympathetic treatment of Charles's mission to expound the Australian character²⁰⁶. Bean's work is lauded as monumental and original; admired for its nationalism and sincere enthusiasm, rather than distinguished literary style. In style, sympathy and judgement it could have been written by Bean himself. There is at least some sign of collaboration in a footnote reference to a letter from Gavin Long to Bean²⁰⁷. There is also an allusion to Bean's (but not Green's) connection with All Saints College.

The Value of Bean's Legal Biography

Green described Bean as a [son] of a clergyman who was headmaster of a school at Bathurst and as a product of England almost as much of Australia. His attitude as an historian was described as an intense but

²⁰⁰ 10 ADB 63-65; CD Coulthard-Clark, *No Australian Need Apply: The Troubled Career of Lieutenant-General Gordon Legge* (Sydney, 1988).

²⁰¹ WA Steel and JM Antill, *The History of All Saints' College, Bathurst, 1873-1963* (3rd ed, 1964), pp. 44, 161, and 171-172.

²⁰² CEW Bean, *On the Wool Track* (1963 edition), Preface, p. vii.

²⁰³ *The History of All Saints' College Bathurst, 1873-1963*, p. 202.

²⁰⁴ Angus & Robertson, Sydney, 1961: Vol. 1 (1789-1923), Vol. 2 (1923-1950).

²⁰⁵ Whitcombe & Tombs Ltd, Sydney, 1930.

²⁰⁶ Vol 1 ch XVI (pp. 737-761, with a passing reference at p. 762), ch XVII (pp. 793-796) and Ch XX (p. 839), esp. at pp. 739, 742-743, 744, 745 and 792-795.

²⁰⁷ *A History of Australian Literature*, Vol 1, p. 749 n 34.

broadened Australianism+, informed by democratic nationalism. His %legal career+ was described as follows: “... he [Bean] completed his formal education [in England] with a classical scholarship at Oxford and a law degree; at twenty four he was called to the English Bar, and in the next year he returned to Australia and was admitted to the Bar in Sydney. But after three years as a Judge’s Associate, during which, on circuit, he gained some knowledge of the Australian country-side, he joined the staff of the Sydney Morning Herald, and became in turn reporter, London representative and leader-writer; he was also sent on several up-country expeditions which brought him into intimate touch with important and far-reaching aspects of Australian outback life that resulted in books.... By the time of his appointment as Commonwealth War Correspondent he was therefore not only well trained in the accurate observation and analysis of facts and people, but understood Australia and Australians better than most men”²⁰⁸. This reads like an orthodox CV distributed by Bean.

His legal career attracts particular attention for a variety of reasons. First, his later success beyond the law heavily discounts any suggestion that his experience as a young lawyer should be characterised as a failure. Second, his self-deprecating capacity to contemplate that he might be thought to have failed in the law saved him from any sense of bitterness or envy about what have been; he appears never to have long endured a diet of sour grapes. Third, his early departure from the law forces consideration of what it was to be a struggling barrister on the make in difficult times . unaffected by the mists of mythology that generally descend upon the early careers of prominent barristers. Fourth, the availability of his personal papers and published writings offers hope that events otherwise usually lost to time might be raised from the grave. Fifth, his social network placed him at the intersection of more than a few fascinating communities of interest: chiefly, education, law, journalism and the military, always on the fringes of politics, never submerged in it. Sixth, his genius . his spark, his spirit . is perhaps as much defined by the remarkable career opportunities he did not take up as it is by those he did. Seventh, he was a member of the Bar in NSW as the States legal system was in a transitional stage, loosening ever so slightly colonial ties with a Britain many Australians still called %home+. Eighth, there is something to be learned about the nature of the law in the fact that he became a lawyer at all; the steps he took towards, in and away from the law; and his perseverance in calling himself a %barrister+ throughout a long working life when, to modern eyes, he was no such thing.

The extensive character of his personal papers, writings and networks is both a plus and a minus for scholarship. On the positive side, it offers evidence and opportunities for further evidence to be uncovered. On the negative side, the ready availability of the written word on some topics (the First World War especially) has shielded others (notably the law) from scrutiny. Only by exposing basic facts about the law, as Bean experienced it, is it likely that Bean scholars will be able to respond to the significance of seemingly unimportant allusions to the law in the Bean Papers and other materials.

²⁰⁸ *A History of Australian Literature*, p. 738.

Traces of Bean's legal career can be found in his general writing, particularly in casual references, difficult though they may be to identify. His time at the Bar was too short, and he was too junior a barrister, for anything like a viable legal practice to have been expected or established. There were nevertheless personalities he had encountered in the law, who must have come to mind as he wrote letters or reports, formally or informally, during WWI and as he later turned his attention to the history of the War. One example of this might be his immediate predecessor as Owen Jones Associate (CE Manning) who proceeded from the Judges' Chambers to the Bar, and from the Bar to an early death on active military service²⁰⁹. Between 12 September 1914 and 4 April 1915 or thereabouts he served as Assistant Judge - Advocate General in the Military Occupation of German New Guinea²¹⁰. He then proceeded to Gallipoli and France, where he was killed in action on 7 August 1916. He had joined up as a Lieutenant on 18 August 1914 (within three weeks of commencement of the War), earned promotions first to Captain and then Major, suffered shellshock and secured a Mention in Despatches courtesy of Sir Douglas Haig. He lies in Becourt Cemetery, one of 72 Australians who died in the Battle of the Somme, in France²¹¹.

The NSW Legal System: Then and Now²¹²

A search for traces of Charles Bean, Lawyer, is assisted by an understanding of what was (and, in large measure, still is) involved in starting up as a barrister in New South Wales. In undertaking that search, allowance must of course be made for some fundamental changes. One of the greatest of those was that trial by jury was the dominant form of legal procedure in Bean's day (1905-1908), whereas its field of operation is now limited principally to serious criminal trials. There has been a shift in legal culture. Trial by jury came to New South Wales as a hard-fought, democratic right initially denied to a convict colony²¹³. It was firmly entrenched in the consciousness of New

²⁰⁹ The course of Manning's legal career is contrasted with that of Bean in Section XII, below.

²¹⁰ SS Mackenzie, *The Australians at Rabaul (Official History of Australia in the War of 1914-1918)* (Fifth ed, 1938), pp. 256-264.

²¹¹ National Archives of Australia, War Service Record, Charles Edye Manning (1879-1916). In the *Official History of the War*, edited and partly written by Bean, Manning's biographical details appear in Volume II at page 422 note 10; his wounding, in Volume II at pages 850-851; and his death, in Volume III at page 724 note 74.

²¹² As a corrective against the danger of reading the present into the past, readers are invited to consult six contemporary, popular expositions of the NSW legal system in operation in or about 1905-1908: (1) HR Curlew (a NSW barrister), *The Mirror of Justice* (Law Book Co, Sydney, 1906), particularly pp. 1-43 on the topics of 'The Opening of Term' (pp. 1-6) and 'How a Law Suit is Brought' (pp. 7-43); (2) HV Edwards (a NSW solicitor), *The New South Wales Lawyer: A Handbook of the Every-Day Laws of this State* (William Brooks and Company Limited, Sydney, 2nd ed, 1904); (3) DS Edwards (a NSW barrister), *An Outline of the Duties of Justices of the Peace in New South Wales* (Law Book Co, Sydney; 1st ed, 1905; 2nd ed, 1914); (4) Daniel Stephen (a Sergeant of Police), *The Justices' Manual and Police Guide* (Angus and Robertson, Sydney, 1905); (5) *The Cyclopaedia of NSW (Under the patronage of Vice-Royalty, the Government of New South Wales and the Lord Mayor of Sydney): An Historical and Commercial Review* (Sydney, 1907), particularly those pages entitled 'History of NSW' (pp. 1-43), 'Constitutional' (pp. 44-54), 'Parliamentary' (pp. 55-102), 'Federation' (pp. 103-122) and 'Law' (pp. 273-336); (6) A two-part article by GH Reid KC entitled, 'How a Great Case is Fought', published in successive issues of the magazine, *Life: A Record for Busy Folk* (the first part in the issue dated 15 August 1904 at pp. 833-837 and the second part in the issue dated 15 September 1904 at pp. 945-947).

²¹³ David Neal, *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales* (Cambridge University Press, 1991); Ian Barker, *Sorely Tried: Democracy and Trial by Jury in New*

South Welshmen in the early 20th century. The Circuit Court adventures that Bean enjoyed as a Judge's Associate in 1905-1906, and which helped to form his perception of Australian law+culture, had jury trials as their centrepiece²¹⁴.

Insofar as reference might necessarily be made to English legal history for the purpose of understanding the mindset of NSW legal practitioners at the beginning of the 20th century, WJ Windeyer's *Lectures in Legal History* (Law Book Co, Sydney, 1st edition, 1938; 2nd edition, 1949; 2nd Revised edition, 1957) is likely to be closer to Bean's understanding than anything published after NSW adopted the *Judicature Act* system of court administration (upon the commencement of the *Supreme Court Act*, 1970 (NSW)) in 1972. Because it only briefly, and then only in the final chapter, essays the introduction of English law into Australia, it needs perhaps to be read with Windeyer's article, 'A Birthright and an Inheritance: The Establishment of the Rule of Law in Australia' (1962) 1 *Tasmanian Law Review* 635.

A *Judicature Act* system of court administration is one in which there is a single court (instead of several courts) administering different types of jurisdiction (notably, Common Law and Equity) and any judge of that court can exercise all types of jurisdiction in the one proceeding. Before enactment of the UK *Judicature Acts* of 1873 and 1875, England was served by a diversity of separate courts (including three Courts of Common Law and a separate Equity Court) and separate proceedings at Law and in Equity were sometimes required to determine a single dispute. Although the NSW Supreme Court was able, from inception, to administer both Law and Equity, the judges and the NSW Parliament insisted (until 1972) that they be administered separately within the Court²¹⁵.

A study of the historiography of Australian legal history reveals a shift in focus over time from nation-building in England and the British Empire to nation-building in Australia, together with a slowly growing consciousness of the development of Australian law, looking forward from 1788 (the first British settlement in Australia) rather than back towards the Norman Conquest of England in 1066.

References to NSW legislation operative in Bean's years of practice are simpler than they would have been but for a programme of revision and consolidation undertaken between 1896-1904 by (his Honour Judge) Charles Gilbert Heydon KC as Royal Commissioner for the Consolidation of the Statute Law of NSW²¹⁶. Heydon nominally reported to a Committee, the membership of which included each of the three judges Bean served as an Associate: Owen, Rogers and Fitzhardinge²¹⁷. Those judges were very senior men, at the peak of their careers, if not in their prime. They were centre-stage, not on the margins of the NSW legal system.

South Wales (Forbes Society, Sydney, 2002); JM Bennett, 'The Establishment of Jury Trial in New South Wales (1959-1961)' 3 *Sydney Law Review* 463.

²¹⁴ See Appendices IV-VII.

²¹⁵ Meagher, Gummow and Lehane's *Equity: Doctrine and Remedies* (Butterworths Lexis Nexis, Australia, 4th ed, 2002), chs. 1-2, esp. pp. 11-18.

²¹⁶ *Cyclopedia*, pp. 290-291 and 302-303.

²¹⁷ *Cyclopedia*, p. 290.

By modern standards, the pattern of litigation in the decades before World War I had a hard edge to it, evidenced by observations by the barrister, Wilfred Sheppard in *The History of the New South Wales Bar* (1969)²¹⁸:

"Looking at the general pattern of litigation before the first World War, it was unusual to find cases brought except in business matters and for the protection of property. The Victorian attitude that such protection was the prime object of the law strongly persisted and the concept of 'social justice' was scarcely understood. Litigation was rather a luxury for those who could afford it and State assistance to poor litigants was then a thing of the future. There were no motor accident cases and actions for damages in industrial cases were rare. Injured workmen were still subject to the doctrine of common employment and could not sue employers for negligence except in the limited cases provided by the Employers' Liability Act of 1897. The influence of the Bar was not directed towards helping such litigants, but rather the reverse. Counsel acting for them were often looked upon by their colleagues with even less favour than their clients. As late as 1915, Mr Justice D.G. Ferguson, speaking at a meeting of the Sydney University Law Society as its President, acknowledged this but said that, were it not for the action of the few counsel who had helped, many persons injured in accidents would have been denied justice altogether".

These observations cannot be taken too literally, as Bean's experience as a Judge's Associate attests. One of the trials he observed as an Associate on circuit in Tamworth in 1906 was a *running down* case in which a young pedestrian was knocked over by a truck²¹⁹. However, that may have been the exception that proves the rule. It was not until many years later that, with the proliferation of motor vehicles, personal injury lawyers enjoyed a golden age of compensation claims arising out of motor accident cases.

Other changes of significance between then and now that need to be understood include the structure of the legal profession. In Bean's day the NSW profession was distinctly divided between *barristers* and *solicitors*, and neither branch of the profession was troubled by a need to obtain an annual practising certificate (licence) from a professional association. The primary qualification required of a lawyer was that he (meaning, at this time, literally, a person of the male gender) be recognised as a lawyer by the Supreme Court of New South Wales. That status was achieved upon admission to legal practice, by being allowed by the judges to sign the Court's *Roll* as either a barrister or as a solicitor. Separate Rolls were kept for barristers and solicitors. To move from one branch of the profession to the other required an order of the Court that one's name be removed from the Roll (at the practitioner's own request; it was important to add) and another order that the practitioner be admitted to practise in the other branch of the profession, whereupon the Roll of that branch would have to be signed. Disqualification as a barrister or solicitor was in those days (and still is) spoken of as being *struck off the Roll*.

On paper at least, solicitors were better organised than barristers in the matter of professional associations. The solicitors' association, then called the Incorporated Law Institute of New South Wales (and since 1960 the Law

²¹⁸ JM Bennett (ed), *A History of the New South Wales Bar* (Law Book Co., Sydney, 1969), p. 125.

²¹⁹ *McIntyre v Fielder & Son Millers* (13 October 1906). See Appendix VII.

Society of New South Wales), was established in 1884²²⁰. After a false start in 1896, and with some prodding by the Attorney-General, the New South Wales Bar Association was (re)established in 1902²²¹. In Bean's day, the Bar Association was unincorporated. It was incorporated only in 1936.

The first (1903) and second (1928) editions of the practitioners' text, *The Practice of the Supreme Court of New South Wales at Common Law*, illustrated the comparative absence of regulation of the Bar in 1903. In that year, the text contained no reference to rules made by the Council of the Bar Association. The second edition, 25 years later, published rules governing the conduct of barristers *vis à vis* circuit work and retainers²²² which, a century later, would be disclaimed as anti-competitive.

Although solicitors were, institutionally, better organised than barristers in the early years of the 20th Century, there was at that time, compared to now, greater acceptance that the Bar was the senior branch of the profession. If barristers were less organised in their formal relationships with one another, they were better equipped to live with informality. There were fewer of them than there were solicitors. They were geographically less dispersed than solicitors, generally practising in one or another of several sets of chambers in Sydney. Bench and Bar travelled on circuit to service country NSW. Barristers were in closer contact with judges than most solicitors, and the bench was smaller than now. Solicitors won a right to appear in the Supreme Court only in 1892²²³.

Barristers were more likely than solicitors to have founded their entitlement to practise law upon completion of a university degree in law. Lawyers who trained locally might have graduated from the University of Sydney (the Law School of which was established as distinct Faculty of Law only in 1890) or, in greater numbers, they might have completed a course of theoretical and practical study conducted by an Admission Board of the Supreme Court. In practice, an Admission Board course was administered by the judges of the Court through the agency of the Law School of Sydney University. Members of the Bar often served as lecturers for one or both of the two types of legal education course.

The University had a practical monopoly on the formal teaching of law in New South Wales until the 1970s when law schools were established in other universities. That monopoly was only beginning to be felt at the outset of Bean's legal career because, until then, most New South Wales barristers founded their entitlement to practise law in the State upon a Call to the Bar in England. An English Call was, subject to the formality of signing the NSW

²²⁰ JM Bennett, *A History of Solicitors in New South Wales* (Legal Books Pty Ltd, Sydney, 1984), ch. 10 (written by Anthony Fisher, now a Catholic Bishop in Sydney), esp. pages 177, 192-193 and 198.

²²¹ *The Weekly Notes (NSW)*, Covers, Vol. X, No. 38, 3 July 1902, pp. cxlix-cl, reproduced in G Lindsay and C Webster, *No Mere Mouthpiece* (LexisNexis Butterworths, Sydney, 2002) between pp. 146-147.

²²² T Rolin and GM Long Innes, *The Practice of the Supreme Court of New South Wales at Common Law* (Law Book Co, Sydney, 1903) had as its successor S Betts and F Louat, *The Practice of the Supreme Court of New South Wales at Common Law* ("Founded upon Rolin and Innes") (Law Book Co, Sydney, 2nd ed, 1928). In the latter publication "Rules made by Council of the Bar" appear at pp. 348 *et seq.*

²²³ *A History of Solicitors in New South Wales*, pp. 211-212.

Roll, substantially the same as that experienced by locally-trained lawyers as admission to the Bar. In a profession in which seniority at the Bar mattered, an English Call was treated in the *New South Wales Law Almanac* (the annual law directory published by the NSW Attorney General) as the equivalent of admission. Thus it was that Bean's seniority dated from his Call to the Bar on 15 June 1904 even though he only signed the local Roll on 13 February 1905.

Hurdles to Establishment of a Barrister's Practice, 1905

Having secured an entitlement to practise law in New South Wales, a fledgling barrister faced a series of practical problems. They were inter-related. A barrister was not, and is not, under any formal compulsion to practise only in chambers (ie, office accommodation) with other barristers. The practical reality was (and perhaps remains) however that membership of chambers was highly desirable, if not necessary. The camaraderie of chambers was (and is) more important than text book theory might suggest, if only because lawyers generally benefit from the availability of colleagues with whom problems can be discussed. Although barristers depended upon the willingness of solicitors to brief them with work, a common experience of barristers has long been that work referred by barristers is the most likely source of early work for a new member of the Bar. Nobody should discount the importance of a barrister having a stable of solicitors from whom work might come, but neither should the absence of connections with solicitors be viewed as a fatal impediment to starting out at the Bar.

As he travelled from his family home in England to Sydney in 1904-1905, Charles Bean was bound by the institutional imperatives for the practice of law in New South Wales to ask himself questions such as these: What opportunities are there to join established chambers? Is it necessary for a new barrister to read (ie, to have another barrister act as his tutor or master) in the first year of practice? Even if formal ~~reading~~ or ~~pupillage~~ (to use the two expressions for a barrister's apprenticeship from time to time used at the NSW Bar) is not required, how can mentors be found at the Bar? If chambers can be found, what arrangements need to be made for the employment of staff (such as a clerk and typist); announcements (to judges, barristers and solicitors) of availability to accept briefs; procurement of stationery; access to a law library; and entry of one's name in commonly consulted directories (the *NSW Law Almanac*, the *telephone directory* and, in 1905-1908, the *English Law List* and *Sands' Directory*)? Given the lead times involved in securing work as a new barrister (and obtaining payment for that work), what means are available to earn an income (in a manner compatible with development of a practice at the Bar) while waiting for things to pick up?

As Bean's study of the law had taken place wholly in England, he might indeed, he should also have been concerned to plan a programme of study to familiarise himself with the local law and practice of NSW. That would have required access to, if not purchase of, practice books in common use.

Even if it did not come naturally, a new barrister in any era could reasonably be expected to have quickly learned to enquire about the availability of %work+ as routinely as farmers enquire about the weather: Is there much work about? How can I get some of it? Are you busy? These are universal, eternal questions. They occur to barristers of any seniority. They are closely related to a follow-up question: Are they (solicitors and clients) paying accounts promptly? The fact that barristers are, and must be, sole traders and, as such, bound to be interested in both sides of their accounts (income and expenditure) concentrates any barristerial mind. Before they become established at the Bar, and accustomed to the rhythmic cycles of a barrister's life, new chums (to use an expression familiar to CEW Bean) generally start out lean, hungry and apprehensive about their prospects, whatever course their career might take. Even those who come to appreciate that other barristers (in addition to or even rather than) solicitors might be a new barrister's prime source of work readily enquire about where and how to meet solicitors. %Attorney-hugging+ is an eternal verity with some, if not most, barristers.

Most aspiring barristers could also be expected to reflect on whether, and how, they might land a job as a Judge's Associate as a means of learning the ropes, observing experienced advocates, meeting solicitors and (if luck should have it) securing contacts for circuit work. For a new member of the Bar contacts with small country or suburban firms of solicitors have often been more beneficial than contacts with large city firms. That is because small or remote firms of solicitors are more likely to call upon the services of a barrister to help them out in particular tasks. By the same token, service as an Associate to a judge sitting in the District Court of New South Wales might be more beneficial to an aspiring barrister than service as an Associate to a judge in the Supreme Court of New South Wales or the High Court of Australia. That is because the opportunities for observation of advocacy . particularly the rough and tumble advocacy of a trial such as a young barrister might see in the early years of practice . are greater in the District Court than in higher courts more likely to be focussed upon disputation about %law+ rather than factual controversies.

Rational though these considerations are, they may appear counter-intuitive to somebody outside the legal profession. Uninformed by a barrister's experience, most people might assume that it is solicitors who provide a barrister's start; that contacts with large prestigious firms of solicitors are likely to be more beneficial than with small, remote firms; and that the utility of service as a Judge's Associate is directly proportionate to the situation of the judge in a court hierarchy.

IX. THE COURSE OF CEW BEAN'S LEGAL CAREER

Admission to Practice in NSW: Signing the Roll of Barristers (1905)

Bean's statutory right as an English barrister to admission to the NSW Bar could be traced back to the *Third Charter of Justice* issued under the *New*

South Wales Act, 1823 (Imp),²²⁴ pursuant to which the modern Supreme Court of NSW was first established. It was preserved by subsequent legislation regulating the legal profession, including the *Legal Practitioners Act*, 1898 (NSW)²²⁵.

Bean was called to the English Bar, at the Inner Temple (one of four Inns of Court through which English barristers were educated, admitted to practise and, if necessary, disciplined) on 15 June 1904. He signed the Roll of Barristers of the Supreme Court of NSW on 13 February 1905, shortly after his return to the State. He would have done that immediately following, and in consequence of, an order of the Full Court of the Supreme Court made the same day that he be admitted to the Bar of NSW.

Bean's signature remains vivid on the original Roll held by State Records NSW. Allowing for two intervening names subsequently removed from the Roll at the barristers' own request (generally indicating a move to the Roll of Solicitors), it ranks immediately after the signature of his predecessor as Owen J's Associate. Charles E Manning signed the Roll on 17 November 1904, after three years service as the Judge's Associate, when he was looking towards commencement of practice at the Bar.

The Bean Papers contain no scroll, certificate or letter (from the Supreme Court, the NSW Bar Association or any other officialdom) acknowledging Charles Bean's admission to the NSW Bar. They do, however, contain a Certificate dated 11 January 1904 issued by the Council of Legal Education in England, certifying Charles's fitness to be called to the Bar; a Certificate dated 15 June 1904 issued by the Treasurer of Inner Temple marking his English Call; and his University of Melbourne and Australian National University Doctoral Scrolls²²⁶. By negative implication, it appears that Charles received no piece of paper certifying his NSW admission. His arrival at the Sydney Bar is not the subject of any entry in the Minutes of either the Admission Board or Bar Council.

The order for his admission was made by a Full Court constituted by the Chief Justice, Sir Frederick Darley; the Senior Puisne Judge, Mr Justice (William) Owen; and the Court's most junior judge, Mr Justice (Robert Darlow) Pring.

Bean's admission was not effected with the ceremony that today attends the mass admission of lawyers fresh from their tertiary studies. It was one of

²²⁴ The short title attributed to this Act (formally cited as 4 Geo. IV c. 96) is a colloquial one. Exceptionally, it was not given a short title by the *Short Titles Act*, 1896 (Imp), after the enactment of which British statutes have generally been given a short title in the text of the particular statute.

²²⁵ Section 9 of the 1898 Act exempted English and Irish barristers and Scottish advocates from the local requirement that a candidate for admission as a barrister satisfy the 'Admission Board' that 'he [was] a person of good fame and character'. Section 40 prohibited unqualified practitioners from preparing legal documents. As s. 3 defined the term 'barrister' as a 'barrister-at-law admitted by the [Supreme] Court', an English Barrister not admitted in NSW would be constrained by the section; and the Court may have declined to hear him unless formally admitted. See JM Bennett (ed), *A History of the NSW Bar* (1969), pp. 219-220 and, more generally, ch. 2 (entitled 'Historical Background') of the publication entitled, *Legal Education in NSW* (December 1979), presented as its report to the NSW Attorney General by a Committee chaired by Sir Nigel Bowen pursuant to terms of reference formulated in 1974.

²²⁶ AWM38/3 DRL 6673/910.

several items of preliminary, routine business dealt with by the Full Court (on the first day of sittings after the Court's Long Vacation+over the hot summer months of an Australian Christmas) before proceeding to entertain Motions challenging jury trial verdicts. That was the standard form of appellate+ procedure for what today would be dealt with by way of an appeal by way of re-hearing+pursuant to a statutory right of appeal.

An illustration of the character of the process attending Bean's admission to practice in NSW, an introduction to Dr RM Sly KC of Wigram Chambers, and the insight that Bathurst-born Bean (a man intent upon articulating what it was to be an Australian) was apparently perceived by locals to be an Englishman, are all provided by the first few items of court business recorded in *The Sydney Morning Herald's Law Report*+on page 7, 14 February 1905:

"LAW REPORT

Monday, February 13.

IN BANCO

*Before the Chief Justice, Mr Justice Owen,
and Mr Justice Pring*

KING'S COUNSEL

*Dr Sly, KC informed their Honors [sic] that since he had last
appeared at the Bar of that Court he had received a
commission appointing him a King's Counsel.*

*The Chief Justice conveyed the congratulations of the Court to
Dr Sly on his appointment.*

ADMISSION OF A BARRISTER

*On the motion of Mr Pilcher, KC, Mr Charles Edwin Woodrow
Bean, an English barrister and a member of the Honourable
Society of the Inner Temple, was admitted to the Bar of New
South Wales.*

CONFIRMATION OF ORDERS, ETC.

*A number of orders made during vacation were confirmed, and
several jurors' fines were dealt with.*

HILLIER v SALTWELL

*Mr L Armstrong stated that this case had been settled. It was,
therefore, struck out."*

This routine business having been dealt with, the newspaper report suggests, the Full Court proceeded to deal with a succession of contested Motions. Of the barristers who appeared in support of, or opposition to, those Motions, the most senior was Mr Pilcher KC.

In the list of barristers (arranged in order of seniority) published in the *NSW Law Almanac* for 1905²²⁷ Pilcher ranked third in the State. The first, by virtue of his office, was the Attorney-General, CG Wade MLA of Wigram Chambers. The second was Sir Julian Salomons KC, MLC: a man who had briefly occupied the office of Chief Justice of NSW in November 1886 and remained an object of great respect²²⁸. On the death in office of Sir James Martin, Sir Julian had accepted appointment as Chief Justice, but immediately sensed opposition. Mr Justice William Charles Windeyer, in particular, had told Salomons that he would be temperamentally unsuited to the office. Hurt by criticism of that character, Salomons resigned. He returned to leadership of the Bar, retiring from practice in 1907. Ranking after him in the 1905 *Almanac* came CE Pilcher KC, MLC.

The fact that Pilcher moved Bean's admission is not, in itself, evidence that there was anything other than a formal, passing relationship between the two, or even that they had had, or thereafter had, substantial personal contact. In the days when greater significance attached to the seniority of barristers in the conduct of court business than pertains today, the Chief Justice might simply have called upon the most senior barrister present to attend to the formality of moving Bean's admission. Such tasks were one of the honours, and obligations, of leadership of the Bar.

Wigram Chambers and Professional Relationships at the Bar

Whether Charles Bean did or did not have any substantial contact with Pilcher, or for that matter Sly, before, on the day of or following his admission to the Bar, he was at about that time in contact with Wigram Chambers. He might have occupied a space there before his appointment as Owen J's Associate in May 1905. Whether or not we can say that he did so depends principally upon the availability of an inference arising from the fact that, on the boat between Hobart and Sydney in January 1905, a junior member of Wigram Chambers (WH Friend) invited him to call on him in chambers and, in his first letter home after arrival in Sydney, he manifested an intention to take up that invitation²²⁹.

²²⁷ Page 41.

²²⁸ Sir Julian Emanuel Salomons (1835-1909) was Chief Justice between 12-27 November 1886: JM Bennett *Portraits of the Chief Justices of NSW, 1824-1977* (Sydney, 1977), Ch. 5; 6 ADB 81-83; *Cyclopedia of NSW* (1907), p. 87.

²²⁹ Letter dated 24 January 1905 (on the letterhead of Hotel Metropole, Sydney) addressed to Bean's parents (together with an envelope post-marked Sydney, noon, 24 Jan 1905 and Brentwood, 5.15pm, 24 Feb 1905): AWM38/3 DRL 7447/6.

Having been admitted to the NSW Bar, Bean was not required to undertake any form of post-admission training or to read with another, local barrister. No regulatory requirement for barristers to hold an annual practising certificate (to which continuing education or professional development conditions can be attached) existed in NSW before 1994²³⁰. In the NSW of Bean's day, the only requirement for post-admission training was a voluntary six months period of reading with a leading junior after first admission to the Bar²³¹. Most newly admitted barristers did it. It did not apply to Bean. He does not appear to have taken it up nevertheless. There is no record that he undertook any form of reading in New South Wales or that he attached himself to any mentor at the Bar before, or after, his service as a Judge's Associate.

Independently of any formal arrangements for reading, NSW barristers have generally made a start in practice by joining other barristers in chambers and developing professional relationships with other barristers, whether in the same or other chambers. Those barristers might be of any level of seniority, including senior counsel. Informality reigns. New barristers have not uncommonly relied upon referrals from fellow barristers or a form of subcontracting work from other barristers traditionally described as levelling. Every new barrister's dream is the possibility that he or she might receive a brief to appear as a junior to a Silk (called King's Counsel during Bean's sojourn at the Bar)²³².

In those days, when it was customary, at least in civil proceedings, for Silk to appear only with one or more junior counsel in tow, Juniors not unnaturally aspired to an ongoing relationship with Silk. That remains true, but it is an aspiration that can draw no life from the two counsel rule of old, now abolished²³³. One of the justifications for the rule was its value to education of the junior Bar.

²³⁰ Amendments to the *Legal Profession Act*, 1987 (NSW) took effect on 1 July 1994.

²³¹ Sir Nigel Bowen's report, *Legal Education in New South Wales* (December, 1979), p. 9, read with JM Bennett (ed), *A History of the New South Wales Bar*, p. 231 (in ch. 2 of Part III, entitled 'Training for the Bar'), written by RJD Legg.

²³² The term 'Silk' derives from the fact that Senior Counsel wear a gown made of silk, whereas Junior Counsel (ie, barristers who have not been appointed Silk) wear a cotton, stuff gown. The first Senior Counsel appointed in NSW was JH Plunkett QC, whose entitlement to that honour was lost to history until JM Bennett's researches confirmed it: see 'Of Silks and Serjeants' (1978) 52 *Australian Law Journal* 264 at 270-271. From Plunkett's appointment in 1856 up to and including 1992, Senior Counsel in NSW were appointed by a commission issued to them in the name of the Crown, designating them a 'Queen's Counsel' or 'King's Counsel' depending upon the gender of the British monarch at the time. Their post-nominals, 'QC' or 'KC', changed in conformity with the identity of the reigning monarch. The practice of appointing new Queen's Counsel was abandoned by the NSW Government in November 1992. The last QCs appointed in NSW were appointed on 1 December 1992. On 26 August 1993 the NSW Bar Association adopted a protocol for the appointment of 'Senior Counsel' (to be designated 'S.C.'), pursuant to which the first appointments of S.C.s were announced on 22 November 1993: G Lindsay and W Webster, *No Mere Mouthpiece: Servants of All, Yet of None* (Lexis Nexis Butterworths, Australia, 2002), pp. 14-15; (1994) 68 ALJ 470-477.

²³³ The rule did not generally apply to criminal proceedings: RC Teece, *The Law and Conduct of the Legal Profession in New South Wales* (Law Book Co, Sydney, 2nd ed, 1963), pp. 81-82. It was abolished in consequence of reforms arising out of work of the NSW Law Reform Commission between 1976-1984 (Lindsay and Webster (ed), *No Mere Mouthpiece*, pp. 13 and 32-33) culminating in the *Legal Profession Act* 1987 (NSW), as amended by the *Legal Profession Reform Act* 1993 on 1 July 1994. See, particularly ss. 38FC, 38G-38O and 57A-57N of the Amended Act.

The source or sources of such work as Bean might have obtained as a new barrister, and whether he was remunerated for any legal work he may have done at the Bar, is unknown. In his letter to HM Tasker, written in 1930, he suggested that he had only ever received one cheque for work that he had undertaken at the Bar . which (very nobly), he said, he had torn up²³⁴. Whether or not that was literally true, it is conceivably true. Unless gifted with early devilling work or a beneficent solicitor, a new barrister might wait some months for a paying brief and, then, several months more before receipt of payment for work done. Without a NSW tutor or mentor at the Bar, Charlesq prospects of obtaining any paying work during his brief months as a practising barrister were not good.

“Busyness” at the Bar: The Availability of Work

Anecdotal evidence about the %busyness+or otherwise of the Bar needs to be treated with caution. Whether there was, or was not, much work about for new barristers in the early months of 1905 or the latter months of 1907 (the two periods when Bean was available to accept work as a barrister) is difficult to assess at a distance. New barristers are particularly vulnerable to tight economic conditions, dependent as they often are on crumbs from another’s table. If there is any doubt, it generally can be assumed that new barristers are %doing it tough+.

There is some anecdotal evidence that times *were* particularly tough for new barristers in Bean’s time. In September 1904 GH Reid KC (then the Australian Prime Minister) wrote: *“I have been asked whether a young fellow has any chance at the [NSW] Bar nowadays. My opinion is that it is overcrowded. There are a great many more men at the Bar in NSW than business warrants. Many of them write for the newspapers, coach students for examination, and so forth. But, in the legal profession, as in most others, there is always room at the top. A man of great abilities and great industry always has a career”*²³⁵. To these observations can be added a comment attributed to Sir Edmund Barton. Writing of the jealousy of State courts towards the High Court of Australia (then not quite five years in being) in June 1908 he is said to have written, amusingly: *“We [the High Court Judges] have had no trouble from ‘irascible State judges’ this time. The poor fellows have no work to do, and so cannot denounce us. The Full Court [of the Victorian Supreme Court admittedly] was to open today, but there was not a case in the list and the ‘Age’ [the Melbourne newspaper] is yelling for the abolition of the Appellate Jurisdiction of the Supreme Court”*²³⁶. On 13 June 1905 Bean wrote home (from %No. 1 Jury Court, Supreme Court, Sydney+) complaining that there was nothing to do in the civil courts²³⁷. A justification given for abolition of Circuit Courts, and absorption of their work within the institutional structure

²³⁴ Tasker letter, p. 11.

²³⁵ GH Reid, *How a Great Case is Fought*, Part II, *Life: A Record for Busy Folk* (15 September 1904), pp. 945-947 at p. 947.

²³⁶ MD Hay (Clerk to the Faculty of Law 1919-1953, and Librarian of the Law School Library 1924-1947, at Sydney University), *Reminiscences of the Law School and Barristers Practising as remembered for the NSW Bar Council* p. 8.

²³⁷ Letter dated 13 June 1905 addressed to *My Dear Old Tigō*: AWM38/3 DRL 7447/6.

of the Supreme Court, in 1912²³⁸ was that there was insufficient work for them to do²³⁹.

Charles Bean, Marking Time at the Bar, 1905

No entry in the *NSW Law Almanac, Sands'* (Sydney, *Suburban and Country Commercial*) *Directory* or the *NSW Telephone Directory* (Sydney) contains an entry expressly evidencing a link between Charles Bean and any barristers' chambers in 1905. He was very much, in his own terminology, a *new chum*. He apparently survived with parental support, the precise details of which are unknown; by part-time teaching of Greek at or through Sydney Grammar School (where his father had been a Classics Master); by seeking work as a private tutor; and by writing pieces for the *Evening News*, edited by AB (Banjo) Paterson (1864-1941) between 1903-1908. Precisely when, and how, the Associate's job came to him is unknown. A letter he wrote to his mother on 17 April 1905, while holidaying in Bathurst, makes no mention of the job²⁴⁰. That he felt able to take a fortnight's leave from chambers suggests that he was not fully occupied there, understandably enough.

On 13 April 1905 he secured publication of an article about the war between Russia and Japan then engaging world attention. It was entitled, "*The Approaching Sea Fight. Its Place in Naval History. Why it will be Worth Watching*". His biographer, Dudley McCarthy (in *Gallipoli to the Somme: The Story of CEW Bean*)²⁴¹ records the publication as *The Sydney Morning Herald*. It was in fact Sydney's *Daily Telegraph*²⁴². It was reproduced in Perth's *The West Australian*²⁴³. Bean cast his net in several directions.

His audience was the public at large, not limited to Sydney or the readership of the *Herald*. The article speculated on whether the war would produce a fight between two great armoured battle fleets fought out to the bitter end; a first real test of armoured ships. It demonstrated a familiarity with the make up of the British Fleet, naval architecture and naval tactics. It traversed the history of naval warfare by reference, *inter alia*, to the Crimean War (1853-1856), the American Civil War (1861-1865), the Franco-Prussian War (1870-1871), the Sino-Japanese War (1894-1895) and the Spanish-American War (1898), as well as current events. Charles was well-read in military and naval history.

The idea that the world had yet to witness its first real test of armoured ships stayed with him until the outbreak of World War I. It found expression in the

²³⁸ By the *Supreme Court and Circuit Courts (Amendment) Act*, 1912 (NSW).

²³⁹ JM Bennett, *A History of the Supreme Court of New South Wales* (Law Book Co, Sydney, 1974), pp. 79-80.

²⁴⁰ AWM38/3DRL 7447/6.

²⁴¹ Sydney, 1983, page 50.

²⁴² Page 5.

²⁴³ 27 April 1905, page 6.

first paragraph of *With the Flagship in the South* (1908 or 1909)²⁴⁴, the substance of which was repeated in *Flagships Three* (1913 and 1916)²⁴⁵.

Charles's distraction by journalism and military affairs reinforces the probability that he spent little time in 1904-1905 swotting up on local law and legal practice. So far as is known, he did not undertake any course of study in NSW law before, or after, his arrival in Sydney. Whether he undertook a programme of private reading is unknown. It is unlikely that he did. Even if he wanted to do so (which must be counted doubtful at best), local texts were little more than adaptations of English practice books. Sydney Law School did not begin to publish typed or printed Lecture Notes until 1914, four years after the appointment of JB Peden as replacement for the Law School's foundation Dean, Professor Pitt Cobbett.

Appointment(s) as a Judge's Associate, 1905-1907

Bean's service as an Associate commenced on or about 1 May 1905. The *NSW Government Gazette* No. 242 of 12 May 1905 published as Item No. 10902 on page 3198 a Notice under the *Public Service Act* 1902 (NSW) dated 10 May 1905, signed by CG Wade, on behalf of the Department of the Attorney General and of Justice. It recorded the following: "*His Excellency the Governor, with the advice of the Executive Council, has been pleased to appoint Charles Edwin Woodrow Bean, Esquire, Barrister-at-Law, to be Clerk Associate to The Honourable Mr Justice Owen, and Clerk of Arraigns, Vice CE Manning, Esquire, resigned – to take effect from the 1st instant*".

At about the very time Bean became an Associate, his Judge (the senior puisne judge of the Supreme Court) received a commission to conduct a Royal Commission into allegations of corruption in the administration of the NSW Lands Department²⁴⁶. That was no small appointment for the State, for Bean or for Owen J. The fate of the Premier, Joseph Carruthers was at stake²⁴⁷. However, it meant that Bean's Judge was to some extent diverted from ordinary court work (or, more probably, routine trial work) and, as a consequence, he was lent out to two highly experienced judges of the District Court of NSW who, as Acting Judges of the Supreme Court, conducted Circuit Courts.

That Owen J.'s duties would ordinarily have included Circuit Court work is confirmed by the facts, first, that he had gone on circuit (with his then Associate, CE Manning) to Goulburn in October 1904²⁴⁸ and to Dubbo in

²⁴⁴ Page 1.

²⁴⁵ 1913 edition, p. 24; 1916 edition, p. 15.

²⁴⁶ Owen published two Reports: the main one (nominally an interim report) was dated 23 May 1906; the second one (a final report) was dated 17 May 1907. See *Report of the Commissioner* dated 23 May 1906 on the Royal Commission of the Administration of the Lands Department, ordered by the Legislative Assembly on 26 June 1906 to be printed (NSW Parliamentary Papers, 1906, Vol. 2); *Report* dated 17 May 1907, reproduced in NSW Parliamentary Papers, 1907 Session, Vol. 1, pp 3-4.

²⁴⁷ A dispassionate account of the work and course of the Royal Commission is HV Evatt's *Australian Labour Leader* (2nd ed, 1942) ch. 25-29, esp. pp. 174-181, 190 and 205. For a more contemporary account of the general political environment of that day, see D Clune and K Turner (ed), *The Premiers of New South Wales, 1856-2005*, vol. 2, ch. 3 (Carruthers), 4 (Wade), 5 (McGowen) and 6 (Holman).

²⁴⁸ (October-December 1904) 4 *NSW Government Gazette*, p. 7575.

1905²⁴⁹ and, further, that he resumed circuit court work in 1906 when permitted by his Royal Commission responsibilities to do so.

Given Owen J's unavailability, in September 1905 Bean went to Wagga Wagga with Rogers AJ (Francis Edward Rogers KC) and the following month he went to Deniliquin with Fitzhardinge AJ (Grantley Hyde Fitzhardinge).

NSW Government Gazette No. 496 of 22 September 1905 recorded at page 6427 four interrelated items providing for Bean to serve as Clerk Associate to Rogers AJ at the Circuit Court sittings held at Wagga Wagga on and following 27 September 1905, and as Clerk Associate to Fitzhardinge AJ at the Circuit Court sittings held in Deniliquin on and following 11 October 1905. On 20 September 1905 the Acting Judges were appointed as such. On 21 September 1905 Bean received an appointment as Clerk Associate to each Judge and as Clerk of Arraignment for the Circuit Courts at which they were respectively to preside²⁵⁰.

In September-October of the following year, after the bulk of the work of the Royal Commission had been completed, Owen J took him on circuit, first to Newcastle and then to Tamworth. On 5 September 1906, as Owen J's Clerk of Arraignment, Bean signed the formal Notices for the Holding of Circuits that were published in the *NSW Government Gazette* on 19 September 1906²⁵¹.

Armed with his experiences on circuit, together with the routine court work Owen J performed at first instance and in the Full Court, Bean ostensibly resolved (shortly before going on circuit with Owen J²⁵²) to strike out at the Bar. Implementation of his plan to do so may have been delayed by ill health;²⁵³ but, in any event, he resigned his Associate's job on 30 April 1907²⁵⁴ and entered Wigram Chambers.

X. A 'RETURN' TO THE BAR IN 1907: SETTING UP CHAMBERS AS A PRECAUTION

Charles was sufficiently committed to the Bar (or, at least, sufficiently uncertain of his prospects of employment outside the Bar) that, in mid to late 1907, he took precautions to ensure that his name was publicly listed amongst those of barristers practising in and from Wigram Chambers. Three

²⁴⁹ *NSW Government Gazette*, No. 147, 21 March 1905, p. 1973.

²⁵⁰ Summaries of the business conducted at those sittings of the Wagga and Deniliquin Circuit Courts are set out in Appendices IV and V respectively.

²⁵¹ Summaries of the business conducted at these sittings of the Newcastle and Tamworth Circuit Courts are set out in Appendices VI and VII respectively.

²⁵² *Gallipoli to the Somme*, pp. 51-52. The correspondence between Edwin and Charles referred to there has not yet been located by the author of this paper.

²⁵³ *Gallipoli to the Somme*, p. 52. Medical records relating to the operation (arising out of kidney trouble) referred to there have not yet been located by the author.

²⁵⁴ Bean's resignation was formally recorded in the *NSW Government Gazette*; (April-June 1907, Vol. 2, p. 2704.

points of reference provide concrete evidence of that: the *NSW Telephone Directory (Sydney)*, *SANDS' Directory* and the *NSW Law Almanac*.

The Sydney Telephone Directory

In each of 1907 and 1908 the *Telephone Directory* was published quarterly: in March, June, September and December. Subscribers to a telephone service were allocated a number identified by reference to the Telephone Exchange through which their service was connected. One of those Exchanges was %Central+. It serviced Wigram Chambers. Charles had a personal subscribers listing (%Central 2216Y Bean, C.E.W., Barrister-at-Law 167 Phillip Street+) in each of the telephone books published in June 1907 (page 60), September 1907 (page 60) and December 1907 (page 61). There was no personal subscribers listing for him in either the March 1907 Directory (page 60) or the March 1908 Directory (page 61).

The Directories are consistent with inferences, first, that he made a decision to enter Wigram Chambers between March . June 1907, immediately before his first personal entry (in the June 1907 Directory) and, secondly, that, by the time the March 1908 Directory had closed for subscribers, he had left the Bar.

SANDS' Directory

SANDS' Directory was published annually throughout Charles's time (between 1905-1908) at and about the NSW Bar. According to the Preface of each annual edition, it was published in January of the year of publication, and the first week of October in that year was then fixed as the deadline for notification of changes for the following year's edition.

In each edition, there were several categories of %Directory+ in addition to a %General Index+: a %City Streets Directory+(which recorded premises, such as Wigram Chambers, by reference to street addresses), an %Alphabetical Directory+(which recorded the addresses of businesses and some individuals), a %Trades and Professional Directory+(which included a list of barristers) and a %Miscellaneous Directory+(which recorded references to Supreme Court judges, for example).

%CEW Bean+ was listed as a barrister in Wigram Chambers in the %City Streets Directory+ for 1908 (at page 115), but not for any other year. He was listed also as a barrister of 167 Phillip Street, Sydney in the listing for %Barristers+ in the %Trades and Professional Directory+ for 1908 (at page 1377), 1909 (page 1415) and 1910 (page 1480), but for no other year. He was also included as %Barrister, 167 Phillip Street+ in the %Alphabetical Directory+ for 1908 (at page 756), but for no other year²⁵⁵. Although the Directory contained residual references to Charles in 1909 and 1910, there was no entry referable to him

²⁵⁵ %CEW Bean+ was listed as Associate/Clerk to Mr Justice (Sir William) Owen in the entry for the Supreme Court in the Directories for 1906 (at page 1551) and 1907 (page 1605), but for no other year. Owen J was recorded as having CEW Manning as his Associate/Clerk in 1905 (page 1516) and the position of Associate/Clerk to the Judge was recorded as %Vacant+ in 1908 (page 1649) that being the year of his retirement. Reference to the Judge in the Supreme Court listing was omitted from the 1909 Directory (page 1687).

at all in the 1911 Directory. By that time, his course had been firmly set as a journalist and writer.

In summary, entries in *SANDS' Directory* are consistent with an inference that, as late as the first week of October 1907, Charles was sufficiently cautious about his future either to arrange that his name be advertised as a barrister or, having arranged for publication of his name in that connection, not to undo what he had arranged.

NSW Law Almanacs

A similar pattern can be discerned in the *NSW Law Almanacs*. There was no entry for ~~GEW~~ Bean as a barrister or as an Associate before the 1906 Almanac. The 1906 Almanac recorded his name as ~~Associate/Clerk~~ to Owen J (at page 31), but without any entry in Lists of Barristers. The same was true for the 1907 Almanac (at page 31). In the 1908 Almanac (at page 48) he was recorded as a barrister in Wigram Chambers in both the seniority and the alphabetical lists; his seniority was identified by reference to his English Call (15 June 1904). At page 31 of the same volume, no person was recorded as Owen J ~~Associate/Clerk~~. Although Charles's name was recorded in the general lists of barristers, it was not shown in any of the lists of barristers attached to country Circuits; if he had any aspirations to practice in Circuit Courts, those aspirations had yet to find that level of public expression.

The 1909 Almanac recorded Bean's name (at page 48) as a member of Wigram Chambers. By that time he had plainly left the Bar. A copy of the Almanac in the possession of the NSW Bar Association provides a small glimmer of recognition of his time at the Bar. There his name is, in pen, struck out of the seniority list, evidencing the fact that his departure from the Bar was not entirely unnoticed by at least one of his contemporaries.

On any view, publication of Charles's name in the 1909 Almanac was an error. It was not repeated the following year. The name ~~GEW~~ Bean is not recorded in any list of barristers in the NSW Law Almanac in or following 1910.

Gaps in the Formal Record

Taken together, the *Telephone Directories*, *SANDS' Directories* and the *NSW Law Almanacs* present a picture of Bean attending in 1907 to the formal necessities of establishing the practice of a barrister at the Sydney Bar. In retrospect, the reality may have been otherwise.

As corroborative as they are of formalities attending Charles's occupation of chambers in 1907-1908, these documents do not reveal important details about his life as a barrister: First, the terms upon which he occupied a space in Wigram Chambers; secondly, the physical character of the space he occupied there; thirdly, his relationships with other barristers and any staff

employed by the barristers jointly or severally; fourthly, relationships between barristers in Wigram Chambers and solicitors; and, fifthly, Charles's financial arrangements.

Informality might have attended both the terms upon which Charles occupied a space in chambers and the physical characteristics of that space. As a new chum in chambers, Charles is unlikely, by purchase or otherwise, to have acquired any property interest (such as a lease) in chambers, assuming that any such interest was to be had. The possibility that he had nothing more than a licence (ie, permission) - written or simply oral - to occupy a room, or part of a room, determinable at will or on reasonable notice, would not be foreign to the experience of a barrister. Whether he had his own space, occupied a fixed shared space, or merely floated between shifting spaces (eg, when more established barristers were in court or on circuit) is unknown. Presumably arrangements were made to place his name on a noticeboard at the entrance to chambers, but even that need not necessarily have been so during the six months or so he was in chambers; in any event, it is unknown. He presumably had some privacy in chambers, but it might not have been much. It could, conceivably, have been no more than a corner of a room or a room, proverbially, no larger than a broom cupboard. More than likely, any arrangements he had were spartan in character.

If entries in *SAND'S Directory* are any guide, it was not then the practice of Sydney barristers to employ a barrister's clerk to administer the day-to-day business of chambers. No such people are identified, by name or title, as associated with chambers. Not uncommonly, however, the lists of occupants in particular chambers included a named person described as a caretaker or housekeeper. In both the 1907 Directory (at page 116) and the 1908 Directory (at page 115) the list of barristers in Wigram Chambers concluded with an entry for Brown Mrs., caretaker. Whether, and how, her life intersected with Charles's is unknown. In the ordinary course of a fledgling barrister's career, however, he (or in modern times, he or she) could be expected to be on more intimate terms with staff members (accustomed to shepherding a succession of new barristers around the traps) than with more experienced barristers preoccupied with their own professional problems.

Times spent by barristers in this environment become more idyllic in retrospect if a successful practice develops. For most barristers, struggling with inexperience, impecuniosity and a range of related anxieties, the actual experience is more stressful than not. If Charles's observations, in contemporaneous correspondence and subsequent autobiographical asides, are to be taken at face value, he avoided much of the stress of a barrister's early days by training himself for journalism.

XI. THE LURE OF A CAREER AS A WRITER: Escape from the Law (and Journalism)

From the outset (earlier, really), his attention was diverted from the Bar by success (in March 1907)²⁵⁶ in securing publication in *The Sydney Morning Herald* (between 1 June and 20 July 1907) of a series of eight articles on the topic of 'Australia' drafted while he was an Associate²⁵⁷.

Those articles had been culled by the editor of *The Sydney Morning Herald*, TW Heney, from the manuscript of a book Bean had boldly (but unsuccessfully) submitted to Angus & Robertson for publication. Whether or where the manuscript might have survived is unknown. In after years Bean generously accepted the wisdom of the publisher's rejection slip.

Leaving aside observations about race that would today be condemned as reflective of a discredited White Australia Policy, and friendly jibes at both Englishmen and Americans, the published articles demonstrated both an early tendency in Bean to confront an audience with an overt, personal assessment of 'Australian character' and the characteristic nature of his assessment²⁵⁸.

Warts and all, the articles provided a youthful preview of the lens through which Australia's pre-eminent War Correspondent and Official War Historian would view the Australian Digger in World War I, eight years before Gallipoli.

There was little, if anything, in any of the *SMH* articles that could be identified as having a connection with Bean's experiences at the NSW Bar or as a Judge's Associate. Although much was written about bush culture, some of what was written was justified by reference to the Anglo-American Bret Harte (rather than local writers, Henry Lawson or Banjo Paterson, as a modern Australian audience might now have guessed) and no mention was made of any of the circuit towns to which Bean's job as an Associate took him. The nature, length and tone of all that was written suggest that (unlike his contemporaries at the NSW Bar) he did not dwell overmuch on Bullen & Leake's *Precedents of Pleadings in Personal Actions in the Superior Courts of Common Law* (3rd ed., London, 1868) Stephen's *Principles of Pleading* (7th ed., London, 1866); Rolin and Innes's *The Practice of the Supreme Court of New South Wales at Common Law* (Sydney, 1903); or Rich, Newham and Harvey's *The Practice in Equity* (Sydney, 1902). Nor has he left a record of enjoyment of popular legal texts such as Curlewis's *The Mirror of Justice* (Sydney, 1906). If the law made any impact on him at all, it must have been at a deeply subliminal level.

Via a recommendation of Banjo Paterson he had courted the Fairfax family. It would be a mistake, though, to tie his mind exclusively to the Fairfax's or *The Sydney Morning Herald*. They certainly played a central role in the progress and course of his career, but his was a doggedly independent mind that

²⁵⁶ CEW Bean letter dated 5 March 1907 (written from 'Supreme Court') to 'My Dear Old Tig': AWM38/3 DRL 7447/6.

²⁵⁷ *The Herald* published eight numbered articles over as many successive Saturdays. All were entitled 'Australia'. Each had its own sub-title: (I) 'First Impressions' on 1 June 1907; (II) 'The Australian City' on 8 June 1907; (III) 'The Opportunities of Sydney' on 15 June 1907; (IV) 'The Australian' on 22 June 1907; (V) 'The Romance of It' on 29 June 1907; (VI) 'The Country Problem, the Real Australian' on 6 July 1907; (VII) 'The Australian Ideal' on 13 July 1907; and (VIII) 'As a Land to Settle In' on 20 July 1907. Each one had an acknowledged authorship, 'by CW'.

²⁵⁸ See Extracts from the articles in Appendix I.

appears always to have looked beyond his present setting. In July 1907 he had success in being published in both *The Lone Hand* and *The Spectator* magazines. The *Lone Hand* was a monthly Australian magazine founded in 1907 by JF Archibald²⁵⁹ as a sister magazine to Sydney's *Bulletin* magazine. The first issue, under the editorship of FI (Frank) Fox,²⁶⁰ was published in May 1907. It flourished for two years, then lingered with less success until publication of its last issue in 1921. The *Spectator* was, and is, a weekly British magazine, first published in 1828.

On 1 July 1907 the *Lone Hand* published a poem entitled, 'What My Life+', attributed to 'Charles Woodrow+'. On 13 July 1907 two items were published in the *Spectator*: a letter to the editor entitled 'The Real Significance of The White Australia Question' (pages 49-50) and an article (published under the heading, 'Topics of the Day') entitled, 'Japan, America and the Anglo-Saxon World' (pages 40-41)²⁶¹.

His views on 'the White Australia Question' would today be unfashionable to the point of abhorrence; but they were not then; and, to him, they were rationalised as more about an historical clash of civilisations. East meets West. than race *per se*²⁶². He cannot simply be dismissed as a 'racist' by an anachronistic application of modern mores. In January 1908 he left the Bar for a full-time job at the *Herald*²⁶³.

As it happens, he was also Owen J's last Associate. The Judge's career was nearing an end. The main work of his Royal Commission was completed with publication of his first report on 23 May 1906. He received a knighthood in June 1906 in recognition of his work as a Royal Commissioner, and a judicial career that had commenced in 1887. In 1907 he coasted towards retirement. In the aftermath of two inconclusive jury trial of criminal proceedings against the ex-Minister for Lands WP Crick, and the former Land Agent WN Willis, who was alleged to have engaged in corrupt dealings with Crick, the Attorney General resolved to take no further action against the two men; and Owen closed his Royal Commission with a short final report dated 17 May 1907²⁶⁴. Between 6 March 1907 and 12 November 1907 he was a member of the Improvement Leases Board established by the *Improvement Leases Cancellation Act* 1906 (NSW) to unwind corrupt land dealings identified by his Royal Commission. The Board was established, held a preliminary hearing on 10 May 1907, and commenced hearings on 4 June 1907, in the wake of Bean's active service as an Associate²⁶⁵.

²⁵⁹ (1969) 3 ADB 43.

²⁶⁰ (1981) 8 ADB 568.

²⁶¹ AWM38/3 DRL 6673/918.

²⁶² 'Australia: (VII) The Australian Ideal', *Sydney Morning Herald*, 13 July 1907.

²⁶³ CEW Bean, letter dated 7 January 1908 addressed to 'Dear Family' and another dated 1 March 1908 addressed to 'Dear Father' (AWM38/3 DRL 7447/6); CEW Bean, *The Dreadnought of the Darling* (1st Australian edition, 1956), Preface, p. 1.

²⁶⁴ The Final Report of the Royal Commission was printed in *NSW Parliamentary Papers*, 1907, First Session.

²⁶⁵ The Final Report of the Board was printed in *NSW Parliamentary Papers*, 1907, Second Session, Vol. 1.

Between 15 February 1907 (when four Full Court judgements involving him were delivered) and 1 February 1908 (when he formally resigned the office of a judge of the Supreme Court of NSW) Owen J is recorded as having been involved in only two cases reported in the *State Reports*²⁶⁶. 1907 may have been, in effect, a %etiring year+for him. Judges in those days not uncommonly took lengthy leave, or (as in Owen's case) a reduced work schedule, leading up to formal retirement. Certainly he appears to have had few court commitments. He was relieved of much of his judicial workload by the appointment of, first, Rogers and, then, Dr Richard Meares Sly KC (1849-1928) as Acting Judges of the Supreme Court. Sir William Owen retired on 1 February 1908. He was replaced by Sly, the Head of Wigram Chambers.

Bean's decision to return to the Bar in mid-1907 might have been (as he remembered it) entirely voluntary; but, if Owen J's workload had diminished by that time, Bean's may have done so too. Whether that was so is difficult to gauge at a distance, given the tendency of judges to %end out+their staff to other judges from time to time.

In a letter dated 5 March 1907 written from %Supreme Court+and addressed to %My Dear Old Tig+(Charles's brother, Montagu) he recorded that he was going up to Central Criminal Court (at Darlinghurst) to perform what might prove to be his last duties as an Associate unless given Circuit Court work with an Acting Judge; he also noted that *The Sydney Morning Herald* had, in principle, accepted a series of articles for publication (after his retirement from employment as an Associate)²⁶⁷.

That letter is consistent with the course of Owen J's reported workload, with judgments published in the *State Reports (NSW)* and the *Weekly Notes (NSW)* falling away almost completely with the delivery of four reserved Full Court judgments on 15 February 1907. It is also consistent with contact between Charles and the *SMH*'s editor TW Heney (who had accepted Charles's %Australia+articles for publication) several months before Charles's (re)entry into Wigram Chambers.

He might have remembered his entire experience as an Associate as having been diminished by diversion of his judge to the work of a Royal Commissioner, but that memory could well have been *ex poste* rationalisation. Bean lacked any real passion for a legal career. His boredom with the law may have been a reflection of his desire to escape from it. A nominal return to the Bar would have provided a convenient cover for his departure from the Supreme Court for both the Judge and his Associate.

Bean's *SMH* articles were soon published and, in the hope that he would be taken on by the *Herald* as a full-time journalist, he devoted much of his time in Wigram Chambers to his intense (and apparently covert) effort to learn shorthand as soon as possible. Whether he actively sought legal work, or was given it, during this period is largely conjecture. What is tolerably clear, though, is that his mind was elsewhere.

²⁶⁶ See Appendix III, Note 1.

²⁶⁷ AWM38/3 DRL 7447/6.

In the letter he wrote to his mother from Wigram Chambers on Monday, 2 September 1907 (celebrating ~~%~~another article in the *Herald* on Saturday+and looking forward to ~~%~~going onto the staff of the paper in a month or two+if he could manage it) he wrote:

"I have set my heart on it [joining the staff of the Herald] for I don't know quite how long, - certainly for two years - & I have got the chance now. I should have to make myself perfect in Shorthand; but I have got the favour of the proprietor's [sic] - & perhaps of the Editor; & so though I should have to go through with it in every phase, if necessary, still I should do so with quite exceptionally good chances, - & I rely on myself to take them.

That is my news - & it is good enough for me. I want nothing better - no profession so much. It means giving up the bar of course; still, my experience there will have been splendid for me; & I shall get the advantage of a legal training without being cramped down for good & all to the narrowness of the law. ...

It is such a relief to have the prospect of a regular income ahead of me! I was never very worried about getting no briefs, because I never intended to get them except as a last resort. Still it is nice to have an assured income again, and this time one which lasts & [progresses?].²⁶⁸

The precise timing of Charles's departure from Wigram Chambers is unknown, as are the terms upon which he occupied a space there, and left. Perhaps he left at the end of the 1907 Law Term in December 1907. He was working full time with the *Herald* by the time he wrote to his family on 7 January 1908²⁶⁹. Given his lack of commitment to the Bar, he may simply have drifted away from Chambers, barely noticed.

Against that, there is the intriguing possibility that his lack of commitment to the Bar might, in 1908, have led to resistance towards his admission to St Paul's (Anglican) College at Sydney University, with which all of Mr Weigall, JB Peden and Mrs Annie Selwyn²⁷⁰ were then associated. Weigall was elected as a Fellow of the College in 1887²⁷¹. Peden served as a Vice-Warden of the College between 1892-1898 and as a Fellow between 1901-1928²⁷². In an undated letter he wrote to ~~%~~Dear Father+while on board *HMS Powerful*, on assignment as the *Sydney Morning Herald's* Special Correspondent, Bean in mid-1908 wrote:

"I heard from Mr Weigall last week that there was very little chance of St Paul's & so wired to you. Mr Weigall will cable."

It was as an author with two books based upon feature articles written for the *Herald*, *With the Fleet in the South* (1908 or 1909) and *On the Wool Track*

²⁶⁸ AWM 38/3 DRL 7447/6.

²⁶⁹ Letter dated 7 January 1908 addressed to ~~ö~~Dear Familyö: AWM 38/3 DRL 7447/6.

²⁷⁰ When Mrs Selwyn and her daughter Mary attended a reception for them at St Paul's on 5 May 1914, the *Sydney Morning Herald* next day reported on it, noting that ~~ö~~It was chiefly due to the efforts of Mr GA Selwyn [Annie's father-in-law] and Mr TS Mort [her father] that the college was founded: *Sydney Morning Herald*, 6 May 1914, p. 6.

²⁷¹ *In memory of Albert Bythelsea Weigall*, pp. 40-41.

²⁷² 11 ADB 190 and 192.

(1910), that he found fame. The first of those books was self-published. Greatness was not simply thrust upon him. He went in search of an audience. It was as an author (not as a journalist, let alone as a lawyer) he made his first entry in *Fred John's Annual* (the forerunner of *Who's Who* in Australasia) in 1912, at which time he was on the staff of the *SMH* as its London representative.

With the benefit of hindsight, one might conclude that Bean's sojourn in the law was a genuflection to parental desire before his predisposition towards creative writing, the development of the Australian ethos, military affairs and all things educational drew him away from the law: towards journalism and ultimately the role of a public moralist, celebrating life or telling others how to live it better. His letters home in 1908 exude a sense of joy, and release, in reporting his early days on the *SMH* staff²⁷³. The Bar may have exposed him to the country. It certainly aided his journey of self-realisation. The *Herald* nurtured his talent by providing opportunities for him to prepare feature articles and to learn how to write books. Then, when war came, the Australian Journalists Association elected him (over Rupert Murdoch's father, Keith, of the Melbourne *Herald*) as the nation's Official War Correspondent. In appointing him to that position the Minister for Defence Senator Pearce (whose memoir Justice J D Heydon's father later published²⁷⁴) encouraged him in the hope that he might later write the history of Australia's involvement in the War²⁷⁵.

XII. PERSONALIA OF VEW BEAN'S LEGAL CAREER

Bean's Literary Technique: A "People Perspective"

In all his writings CEW Bean told the story of individual men and women, set in larger context. It was a perspective that came naturally to the son of Edwin Bean. It was an application of the Schoolmaster's interest in genealogy beyond the school yard and the Bean Family. Charles's cheerful, open personality and honesty of purpose enabled him to win respect, friendship and influence across a broad spectrum. He built upon his familiar connections: the school ties he kept in his pocket (especially Clifton College); common experiences in journalism; and military connections. These qualities lay at the heart of his genius.

In *On the Wool Track* he adopted, and he thereafter never really abandoned, the plan of telling a larger story through interconnected personal stories. He was a chronicler. His recurrent literary device was 'people+.

²⁷³ Letter dated 7 January 1908 addressed to 'Dear Family'; letter dated 24 February (1908) addressed to 'Dearest Mother'; and letter dated 1 March 1908 addressed to 'Dear Father': AWM38/3 DRL 7447/6.

²⁷⁴ Peter Haydon, *Quiet Decision: A Study of George Foster Pearce* (Melbourne University Press, 1965). JD Heydon was appointed to the High Court of Australia in 2003.

²⁷⁵ John Connor, *Anzac and Empire: George Foster Pearce and the Foundations of Australian Defence* (Cambridge University Press, Melbourne, 2011) p. 47.

The larger story of Australia's fledgling post-federation legal system . in an early phase of transition from several colonies to a nation state . could be told using the same technique applied to Bean's legal career, 1905 -1908. The names that principally come to mind in that context (apart from the three judges he served as an Associate, Owen, Rogers and Fitzhardinge) are AA Roche, FD MacKinnon, Charles Butler, WH Friend, Miss (Laura) Mason, AB Weigall, Mrs Selwyn, CE Manning, HW Bernard, and (with an eye to an international stage) Julian Thoby Stephen, Virginia Woolfe's much-loved brother.

A second tier of personalities would be available in people with whom Charles Bean had, or may have had, at least formal contact: eg., CE Pilcher KC, MLC; Dr RM Sly KC; CG Wade (1863-1922), WA Holman (1871-1934), TR Bavin (1874-1941) and JB Peden (1871-1946). A third tier might comprise members of the NSW Bar with whom Bean apparently had no contact, or no substantial contact, at the Bar, but with whom he soon had significant contact as a journalist or war correspondent: eg., GH Reid QC (1845-1918), WM Hughes (1862-1952) and JG Legge (1863-1947). A fourth tier might draw upon Bean's journalistic connections who lured him away from the law or supported him in his early years: eg., AB Paterson, the Fairfax Family, TW Heney and Archie Whyte.

A snapshot of some of the personalities of the NSW Bar and Judiciary in 1907, revealing public images unaffected by later attainments or historical revision, is available in the *Cyclopedia of NSW* - published under the auspices of the Governor and Government of New South Wales and the Lord Mayor of Sydney in that year. Those noticed in that publication include Pilcher KC (at pp. 305-306), Sly KC (at p. 306), Wade (at p. 305), Peden (at p. 320), Reid (at p. 306). Those who appear to have escaped official notice include Holman, Bavin, Hughes, Legge, WH Friend, CE Manning, Banjo Paterson, the Fairfaxes, Heney and Whyte. Each of the judges Bean served as an Associate received an entry: Owen (at p. 296), Rodgers (at p. 302) and Fitzhardinge (also at p. 302). So too did the secretary to Owen's Royal Commission, Mr JWH Houston (at pp. 160-161) and Owen's Counsel Assisting, Hanbury Davies (at p. 309). Whether or not anything more can be drawn from this list of ~~ins+~~ and ~~outs+~~, more than a few of the people Charles encountered in 1905-1908 had substantial standing in Sydney society.

For the present, an introduction to some of the people Charles encountered when he made his first contacts in the law must suffice.

First Contacts in and about the Law

Alexander Adair Roche (1871-1956) and Frank Douglas MacKinnon (1871-1946) were English barristers with whom, or in whose chambers, Bean appears to have read before he ventured to NSW as a barrister.

When this occurred, and the nature of the process, is unknown. Charles obtained General Admission to membership of The Honourable Society of the

Inner Temple on 17 November 1900. He was called to the Bar by that Society on 15 June 1904²⁷⁶. Whatever time he spent in the chambers of Messrs Roche and MacKinnon appears to have occurred before his Call rather than as post-Call training. The time between his Call and his departure for Australia in or about early November 1904²⁷⁷ was too short to allow for much, if any, substantive reading in chambers. He appears to have filled in the time helping his father at Brentwood²⁷⁸. An inference from the manner in which he completed his Application for Employment in the Civil Service of the Transvaal and Orange Free State in 1902 is that it was not until late in the piece that Charles actively pursued his legal studies. Then, between 6 November 1902 and the end of April 1903 or thereabouts (rather than 1903-1904 suggested at page 27 of the Account for EFFIE), he was occupied as Tutor to young Herbert Sharpe on a trip to Tenerife in the Canary Islands²⁷⁹. His legal studies, coupled with time spent helping at Bentwood School, appear to have occupied the period between mid-1903 and mid-1904. He sat for his Bachelor of Civil Law Examination in 1904, leading to the conferral of his BCL on 20 October 1904.

Significantly for an assessment of Bean's predispositions, he characterised Roche as an Admiralty advocate and MacKinnon as a specialist in marine insurance law. Both ended their careers as appellate judges in England.

Bean referred to them, in passing, in the Tasker Letter²⁸⁰ when he wrote: *"he had worked at the Inner Temple in the chambers of Adair Roche (an advocate in admiralty) and for a short while in those of Mackinnon (marine insurance)"*. The probability that this occurred between mid-1903 and mid-1904 is strengthened by the fact that it was at about that time that, first, Roche and, then, MacKinnon attained seven years' seniority at the Bar. That is in New South Wales, and may have been in England, the beginning of a barrister's season for taking pupils. No longer a junior. Beginning to be thought of as a senior. Not yet senior counsel (silk), no longer permitted to take a pupil.

On paper, and in retrospect, Roche and Mackinnon appear to have been good connections for a pupil. Whether they were in fact good teachers . tutors . is less susceptible to assessment. An over-busy, fashionable junior counsel can be a poor choice as a tutor because he (or she) is unable to devote quality time to any pupil. However much potential they had as tutors for Bean in 1902-1904, by the time the Tasker letter was written, both men were judges . sitting at first instance . and knights.

Roche was admitted to membership of the Society of the Inner Temple in 1893 and called to the Bar there in 1896²⁸¹. He was a graduate of Oxford

²⁷⁶ AWM38/3DRL 6673/910

²⁷⁷ *Gallipoli to the Somme* (pp. 47-48) does not record the date of Charles's departure from England.

The Bean Papers include an undated Letter Card (postmarked Brentwood, 6 Nov 1904) addressed by Bean to his parents reporting on his sailing out of Brighton: AWM38/3DRL 7447/6.

²⁷⁸ Wigmore letter, p. 2; Account for EFFIE, pp. 27-28; Tasker letter, p. 8.

²⁷⁹ *Gallipoli to the Somme*, pp.44-46; AWM38/3DRL 7447/5 (Correspondence 1894-1903).

²⁸⁰ Page 8.

²⁸¹ He was admitted to membership on 2 November 1893 and called to the Bar on 17 November 1896: www.innertemple.org.uk/archive

University²⁸². He took silk (that is, became a King's Counsel) in 1912. In 1917 he was appointed as a judge of the High Court of Justice (the English equivalent of the NSW Supreme Court) and, in consequence, knighted²⁸³. He became a Bencher (the most senior form of membership of the Inn) shortly thereafter²⁸⁴. He sat in the King's Bench Division (exercising the common law jurisdiction of the High Court, which was responsible for the conduct of that Court's commercial list, sometimes in New South Wales conducted by Equity rather than Common Law Judges). In 1934 he was appointed a Lord Justice of Appeal (that is, a judge of the English Court of Appeal), exercising, as part of a permanent appellate bench, jurisdiction similar to that exercised in New South Wales by the Full Court of the Supreme Court (in Bean's day) and (since 1969) the NSW Court of Appeal. Shortly afterwards he was also appointed to the Privy Council²⁸⁵. Scarcely a year later, in 1935, he was appointed a Lord of Appeal in Ordinary and made a Baron for Life; that is, he was appointed to the House of Lords (the equivalent of the High Court of Australia)²⁸⁶. He retired early in 1938²⁸⁷, but continued from time to time to sit on the Privy Council.

Mackinnon was admitted to the Society of Inner Temple in 1894 and was called to the Bar in 1897²⁸⁸. He too was a graduate of Oxford University²⁸⁹. He was a contemporary of James Richard Atkin, a Queensland-born Englishman who became Lord Atkin, famous for the leading judgment in the leading negligence case, *Donoghue v Stevenson*²⁹⁰. Atkin and Mackinnon both served as pupils to Thomas Scrutton (later Mr Justice Scrutton), prominent in the practice of commercial law²⁹¹. Many years later, in the 1942 *Holdsworth Lecture*, Lord Justice Mackinnon's criticism of *Donoghue v Stevenson* set running a rumour that has delighted law students ever since. It takes the form of a doubt, asserted as if an established fact, about whether there ever was a snail in the ginger beer bottle purchased by the plaintiff consumer upon which she had sued the manufacturer of the beverage²⁹². That rumour is used as a teaching tool, to endear the case to students, and to demonstrate the pitfalls of pronouncements of law upon untried assumptions of fact²⁹³.

Mackinnon's father was a Lloyd's underwriter and his brother, (Sir) Percy Graham Mackinnon (1872-1956), became a chairman of Lloyds. His family connections assisted development of his practice at the bar²⁹⁴. He took silk in

²⁸² Bachelor of Arts, 1894; Master of Arts, 1913.

²⁸³ The authorised law reports, in [1917] AC Memoranda, record the date as 12 October 1917.

²⁸⁴ On 23 November 1917: www.innertemple.org.uk/archive.

²⁸⁵ [1934] AC Memoranda record the dates as 3 October 1934 and 9 November 1934 respectively.

²⁸⁶ [1935] AC Memoranda record the date as 16 October 1935.

²⁸⁷ [1938] AC Memoranda record the date as 10 January 1938.

²⁸⁸ He was admitted to membership on 8 November 1894 and called to the Bar on 30 June 1897:

www.innertemple.org.uk

²⁸⁹ Classics, 1892; *Literae Humaniores*, 1894.

²⁹⁰ [1932] AC 562.

²⁹¹ G Lewis, *Lord Atkin* (Butterworths, London, 1983), p. 8.

²⁹² *Lord Atkin*, pp. 52-53.

²⁹³ The House of Lords decided the case upon a Scottish equivalent of a demurrer procedure in which the defendant took a relevancy objection to the plaintiff's allegations of fact.

²⁹⁴ Mackinnon, Sir Frank Douglas (1871-1946) (2004) *Oxford Dictionary of National Biography*.

1914. He became a Bencher in 1923²⁹⁵. He was appointed to the King's Bench Division of the High Court of Justice in 1924²⁹⁶ and consequentially knighted. In 1937 he was appointed to the Court of Appeal and made a Privy Councillor²⁹⁷. He died in office in 1946²⁹⁸. He had an academic, antiquarian turn of mind, which found reflection in a number of publications²⁹⁹.

That Bean may have served as a pupil to Roche and/or Mackinnon provides no guarantee that he maintained any ongoing relationship with either of them. The primary significance of their appearance in the Bean story appears to be Charles's definition of his personal area of interest ('Sea-Law') by reference to their specialities.

Charles Butler (1820-1909), Bean's maternal grandfather, counselled Bean over the summer of 1904-1905 when he was in Hobart in transit from England to Sydney. Charles Snr was a son of Gamaliel Butler (1783-1852) the founder of the Butler Family, and the Family's legal firm, in Tasmania³⁰⁰. Gamaliel has a biblical connection with law. It is the name of the Pharisee, Teacher of the Law, spoken of in Acts chapter 5, verses 34-42. Gamaliel Butler, born of a legal family in England, was admitted as a practitioner of the Supreme Court of Van Diemen's Land (Tasmania) within three weeks of his arrival in the Colony in 1824³⁰¹. Charles his son, CEW Bean's grandfather, arrived in the Colony in 1835, served Articles of Clerkship there and was admitted as a barrister and solicitor (in the Colony's fused profession) in 1843. On the foundation of the Tasmanian Law Society in 1888 he became its first president, an office he held until his retirement in 1907³⁰².

Although he had retired from full, active practice and was in ill-health by the time his young name-sake came calling, he continued to attend his firm's office for a couple of hours each day. By a letter dated 24 and 26 December 1904 he reported to his daughter (possibly an anxious, but certainly a supportive, mother, to young Charles): "*Several solicitors in Sydney act as our Agents & we shall give him [CEWB] letters to them which may be of great use*"³⁰³. The identity of those solicitors, whether Bean introduced himself to them and whether they supplied him with any briefs or other opportunities is all unknown.

The depth of the Butler Family's ongoing connection with the law (and the Church of England) in Tasmania at the time Bean passed through Hobart on his way to Sydney is illustrated by the life and career of his second cousin,

²⁹⁵ On 20 November 1923: www.innertemple.org.uk/archive.

²⁹⁶ [1924] AC Memoranda record the date as 7 November 1924.

²⁹⁷ [1937] AC Memoranda record the dates as 27 April 1937 and 8 June 1937 respectively.

²⁹⁸ His death is recorded in the introductory pages of [1946] KB.

²⁹⁹ Eg, 'The Law and the Lawyers', being ch. 1 XXV in AS Turberville (ed), *Johnson's England: An Account of the Life & Manners of his Age* (Clarendon Press, Oxford, 1932), vol. 2; *On Circuit, 1924-1937* (Cambridge University Press, 1940); and, posthumously, *Inner Temple Papers* (Stevens & Sons Ltd, London, 1948), reprinted in 2011.

³⁰⁰ (1966) 1 ADB 190-191.

³⁰¹ GT Butler, *Gamaliel Butler: A Family History* (Hobart, 1961), pp. 1-2 and 4 (Accessible via State Library of Tasmania).

³⁰² *Gamaliel Butler, a Family History*, p. 14

³⁰³ AWM38/3 DRL 7447/6 (Correspondence 1904-1914).

William Frederick Dennis (~~%Dennis+~~ Butler (1878-1941)³⁰⁴. He was the grandson of Francis Frederick Butler, a son of Edward Paine Butler, a brother of Charles Butler, the sons of Gamaliel Butler³⁰⁵. Dennis (who took that name from his mother's maiden name) attended The Hutchins School in Hobart before studying Arts, Science and Law at the University of Tasmania. He was admitted as a barrister and solicitor of the Supreme Court of Tasmania on 25 September 1903. After a world tour he joined the Butler Family's firm (then known as Butler, McIntyre & Butler), where he practised for the rest of his life, as a partner from 1910. At the First Annual Meeting of the Law Council of Australia held, in Sydney, in March 1934 he was elected as one of two Vice-Presidents³⁰⁶. In April 1938, he was the first Tasmanian to be elected President of the Law Council³⁰⁷. He shared CEW Bean's gift for meticulous research, but applied his mind to the law (as well as education, in the context of The Hutchins School, and Anglican affairs in Australia) in a way Charles never did. His predisposition was that of an Equity lawyer.

Had Charles remained at the Bar, a similar predisposition might have manifested itself in him. Dennis shared Charles's antiquarian interest, but turned it to advantage in the law. He presented a learned paper entitled ~~%Some Aspects of Statute Law Revision in Australia+~~, to the first Australian Legal Convention, held in Melbourne, in 1935. It was published in the *Australian Law Journal*³⁰⁸. Whether or not he and Charles had much in common, apart from a family connection and an Equity temperament, there is a sense in which, as lawyers, they stood on opposite sides of a line dividing the Old and the New Australia. Charles's admission in NSW, based on an English Call, reflected a career path rapidly disappearing. Dennis's admission in Tasmania, based upon an education that was wholly local, was the emergent pattern.

William Horace (~~%Horace+~~ Friend (1875-) was a Sydney born, English barrister (called, Inner Temple 19 June 1901) who met Bean on his trip from Hobart to Sydney on the SS *Oonah* in January 1905. Their names are recorded in the ship's List of Passengers as travelling in Saloon rather than Steerage. For one school year (15 January . December 1891) Friend had attended Sydney Grammar School as a student; in those days it was not uncommon for Sydneysiders to attend Grammar, even for a short time, to establish a connection³⁰⁹. He introduced Bean to Wigram Chambers. Although he was himself, if only nominally, a member of those chambers, he did not remain there long. He signed the NSW Roll of Barristers on 28 July 1904; but he was only passing through the State, sorting out the complicated affairs of his father's deceased estate. Owen Friend had died in 1894 aged 46, leaving a widow and seven children³¹⁰. He had conducted business as a

³⁰⁴ (1979) 7 ADB 511

³⁰⁵ *Gamaliel Butler: A Family History*, Family Tree of Gamaliel Butler immediately following page 19.

³⁰⁶ (1934) 7 *Australian Law Journal* 434-435.

³⁰⁷ (1938) 12 ALJ 1; 7 ADB 511.

³⁰⁸ (1935) 9 ALJ (Supplement) 87 *et seq.*

³⁰⁹ Information supplied by the Archivist of Sydney Grammar School. WH Friend's student number was 3780. Reference is made to him in *The Sydnean*: No. 96 (August 1891), p. 9; and No. 99 (December 1891), p. 13.

³¹⁰ His Death Certificate records the cause of death as 'Malignant Disease of Penis and Groin. Uraemia. Congestion of Liver. Jaundice, Albuminuria'.

Merchant in Sydney. The family had lived in Newtown and he had owned a substantial commercial property in York Street, in the central business district of Sydney³¹¹. On the death certificate of Horace's mother Fanny Friend (who died on 20 August 1911) Horace was named as the informant, and his address was recorded as 52 Macleay Street (Potts Point/Elizabeth Bay) in Sydney. Documents prepared by his estate's solicitors (Norton Smith & Co) provide information about Horace³¹². In a 12 year lease of the York Street property dated 27 August 1902 Horace was described as of London in England, Barrister at Law. A Primary Application dated 1 August 1912 made to the Registrar General to bring the same property under the Torrens title provisions of the *Real Property Act* 1900 (NSW) was signed on Horace's behalf by his attorney, Robert Smith of Norton Smith & Co. It described him as formerly of Sydney but now of Foreign Parts. Smith's Power of Attorney was dated 1 February 1907³¹³.

Horace's name appeared in the List of Barristers published in the annual *NSW Law Almanac* only in 1905, 1906 and 1907. It had a longer run in the *English Law List*³¹⁴. Horace's commitment to practice at the NSW Bar was not a lifelong obsession. Whether or not his family's wealth gave him any leverage in Wigram Chambers, at the time he befriended Bean as a younger man with common connections at Sydney Grammar and the Inner Temple, is unknown. Whether or not Bean was aware of the family connection when, during World War II, they had contact,³¹⁵ the Australian artist Donald Friend (1915-1989) was a relative of his early contact in the law, WH Friend.

What the Bean Papers reveal with a vivid sense of excitement and immediacy is how and to what purpose Charles met Horace Friend. One of the first things young Charles did on his arrival in Sydney was to write to his parents. In a letter dated 24 January 1905 (on the letterhead of Hotel Metropole) he gave them this news: "*I met a friend of Mr Theo Weigall's (who married Miss Hamilton) on board the Oonah. He is a Mr Friend lately come out from the Inner Temple - & he has given me some advice & asked me to come & see him if I want to know anything. I shall do so this morning. He says, also, that he thinks he knows of a pupil (5/- per hour)*". With some teaching experience at Brentwood School after Oxford, and subsequent experience as a tutor to a young Scot on excursion to Teneriffe, Charles was on the lookout for pupils to supply his bread and butter. He concluded his letter to his parents: "*Now I*

³¹¹ 129 York Street, bounded by York Street, Market Row and Mullins Street. For Registrar General's references, see Certificate of Title Volume 2391 Folio 223.

³¹² The State Library of NSW holds records of Norton Smith & Co (including files of the Friend Family) in the Mitchell Library.

³¹³ Registered No. 6514.

³¹⁴ In the 1904 *Law List* (published by Stevens and Sons Limited, London) his name was listed as a member of the Bar (p. 96) but was not included in the list of English Counsel at the NSW Bar (p. 159). That pattern continued for many years in later volumes of the *List*, save that he was recorded as a member of the Oxford Circuit. Volumes for 1924, 1927-1937 and 1939-1947 have not been sighted. The 1922 volume omitted reference to chambers, but included reference to the Oxford Circuit: pp. 98 and 351. Subsequent volumes did likewise. The 1938 volume simply referred to Friend's membership of the English and Australian Bars without reference to chambers or any Circuit. There was no entry for him at all in the 1948 volume.

³¹⁵ *The Diaries of Donald Friend* (National Library of Australia, 2001-2006).

must away to lodgings [for which he was searching] & *Wigram Chambers* (to see Friend)...³¹⁶.

Miss (Laura Emma) Mason (1862-1936)³¹⁷ was Bean's landlady throughout his short legal career. She does not, literally, fit the description of one of Charles's contacts in the law. However, she appears to have served as a surrogate family for the young man away from home. She provided company as well as lodgings and meals, sometimes eating out together³¹⁸. In his letters home he spoke fondly of her, noting her need of another boarder, attempting to entice Wigram to join him. Monty eventually did so, in 1909.³¹⁹ (At Charles's urging Jack also returned to Sydney, in 1910, shortly before Charles's departure for England as the *Herald's* London Correspondent³²⁰). His first encounters with the practice of law, and journalism, cannot be assessed as a whole without acknowledgement that he apparently needed, and obtained, the support of a stable domestic environment through Miss Mason. When he landed in Sydney on 23 January 1905 his first port of call was the Metropole Hotel in Bent Street (Corner of Young Bent and Phillip Streets) Sydney. He soon took up residence with Miss Mason as a boarder at 22 Kellett Street, Darlinghurst. When she later moved to a larger, nearby house at 7 Roslyn Street, Darlinghurst, he moved with her³²¹. Title searches at the office of the Registrar-General suggest that she was only a tenant or licensee of both residences. There is no record of any estate or interest (to use a property lawyer's terminology) she may have held in them.

When Monty returned to Sydney, he joined Charles as a boarder with Miss Mason. When Jack also returned, Charles and his brothers took a house on Old South Head Road, Bellevue Hill, where a Miss Mary Mason initially kept house for them³²². She was Laura's younger sister, Mary Todd Mason, born on 7 August 1872³²³.

AB Weigall (1840-1912) was a prominent, long-serving headmaster of Sydney Grammar School. In Bean's assessment, he was an exemplar of 'The Arnold Tradition in Australia', which may be, principally, to say that Bean admired

³¹⁶ AWM38/3 DRL 7447/6.

³¹⁷ According to her Birth Certificate (NSW Births, Deaths & Marriages, Registration No. 1862/002559) Laura was born on 17 July 1862 at Camperdown; her father (Francis Mason) was described as a 31 year old 'gentleman' born in England; her mother was Elizabeth Jones, a 34 year old Parramatta girl; Francis and Elizabeth married on 11 March 1856 at St Christ Church, Sydney. At the time of her birth Laura had two brothers and a sister. According to her Death Certificate (registration No. 1936/019952) Laura died on 1 December 1936 at 162 Victoria Street, Darlinghurst and her address at the time of her death appears to have been the home of her brother-in-law (CJ Craggs, 1 Park Crescent, Pymble); her father's occupation was described as 'Grazier' and her mother's name was entered as 'Elizabeth Booth Jones'; a Church of England minister witnessed her burial at South Head Cemetery the day after her death; and she was 'not married'.

³¹⁸ Bean letter dated 5 March 1907 to Wigram: AWM38/3DRL 7447/6.

³¹⁹ *Gallipoli to the Somme*, p. 69.

³²⁰ *Gallipoli to the Somme*, p. 69-70; Bean letters dated 8 February 1910 to Jack and 5 and 12 April 1910 to Mother (AWM38/3DRL 7447/6).

³²¹ Miss Mason's listing in the 1906 Electoral Roll was for the Kellett Street address (East Sydney Electorate; polling place, Fitzroy). In the 1908 Roll it was for the Roslyn Street address (East Sydney Electorate; polling place Darlinghurst & Glenmore. In each instance, her occupation was shown as 'Home Duties'.

³²² 'Account for Effie', p. 52.

³²³ NSW Births, Deaths & Marriages, Registration No. 1872/003834.

him greatly³²⁴. He had given Bean's father his first significant teaching position in 1875 and supported Edwin's appointment as Headmaster at All Saints College Bathurst in 1877. His confidence in Edwin emboldened Edwin to marry Lucy Butler on 26 June 1877. Edwin repaid Weigall's friendship by contributing an anecdote to the book published as a tribute to his friend in the year after his death, Professor MW MacCallum's *In Memory of Albert Bythesea Weigall: Headmaster of Sydney Grammar School, 1866-1912*³²⁵. It spoke of the happy boyhood memories for many a Sydney merchant and barrister of Sydney Grammar's Cadet Corps camps.

Charles attributed to Mr Weigall's influence his opportunity to do some part-time teaching in his early days at the Bar. Exactly how that came about is not apparent from the archived records of Sydney Grammar³²⁶. There is no express reference to any appointment of, or payment to, Charles; and Weigall was on extended leave from the School, travelling overseas, throughout 1905; he had suffered a serious heart seizure towards the end of 1904³²⁷. Nevertheless, Charles regarded him as one of his two principal benefactors on commencement at the Bar, and long after Bean's arrival in Sydney he looked upon Weigall as a surrogate for his father. The Bean Papers contain fragments of a letter dated 1 March 1908 written by Charles to his father. They include an assurance: "*I follow Mr Weigall's advice in all these things*"³²⁸.

The mystery that surrounds teaching work performed by Bean at Sydney Grammar, and any payment to him for such work, in 1905 goes beyond the absence of any corroborative record. Charles should be accepted at his word when he writes of having taken classes at the school³²⁹. He is unlikely to have imagined that. A distinct possibility is that, through an act of generosity

³²⁴ *Here, My Son*, pp. 66, 134 and 215.

³²⁵ (Angus & Robertson Limited, Sydney, 1913), pp. 48-49.

³²⁶ The Minute Book of the Trustees of Sydney Grammar School (for the period between 25 January 1904 and 26 June 1905) does not, at least by name, mention Bean. Meetings were held during that period on 31 October 1904, 28 November 1904, 23 January 1905, 29 March 1905, 1 May 1905 and 26 June 1905. A meeting scheduled for 27 February 1905 lapsed for want of a quorum. At the March meeting the Trustees granted £5 on application for payment of substitute during temporary absence of Mr Tillyard. Clifford Turney's *Grammar: A History of Sydney Grammar School, 1819-1988* (Allen & Unwin, Sydney, 1989) records RJ Tillyard BA MA as a member of staff, 1904-1913, but does not state whether he taught Classics, Charles Bean's teaching specialty (p. 397). There is no reference to CEW Bean (as distinct from his father, a member of staff between 1875-1877) in the book's list of school staff or in its index. The recipient of the £5 payment authorised by the Trustees on 29 March is unknown. It might have been Charles Bean.

³²⁷ *In Memory of Albert Bythesea Weigall*, p. 94. At their meeting on 31 October 1904 the School Trustees granted Weigall six months leave of absence from 10 December 1904 and appointed Mr AH Lucas as his *Locum tenens*; they also confirmed re-engagement of staff (not CEW Bean) by the Headmaster. The last meeting of the Trustees attended by Mr Weigall before his trip was the meeting held on 28 November 1904. At their meeting on 1 May 1905 the Trustees noted that on 7 April 1905 their Acting Secretary, upon instructions from the Chairman had sent a cable (followed by a confirmatory letter) to Weigall extending his leave until January. The February-March 1905 issue (No. 181) of the School magazine, *The Sydneian* (at pp. 2-3) published a letter dated 17 January 1905 sent by Weigall to the School from Marseilles. He was, plainly, outside NSW at the time of Charles Bean's arrival.

³²⁸ AWM38/3 DRL 7447/6.

³²⁹ Account for EFFIE, sheet 28 of 73; Tasker letter, pp. 8-9.

for which he was renowned,³³⁰ Weigall made informal arrangements to assist the young man at his own expense.

The School came, in time, to recognise Charles's connection with it³³¹. However, it may not have done so until Charles himself drew it to attention in 1915. Issue No. 223 (March 1915) of *The Sydneian* includes (under the heading, 'Old Boys' Notes) the following paragraph: "*Although they are rather belated, the school would offer none the less hearty congratulations on his appointment to Captain CEW Bean, Commonwealth Official Correspondent with our Forces*"³³². Given the informality of the 1905 connection, the School community could be forgiven for overlooking it. The likelihood that Charles himself drew it to attention is an inference that can be drawn from the timing of the School's congratulations, and the terms in which they were given, coupled with recognition that it would have been well within character for Australia's Official War Correspondent to take an opportunity to reaffirm a personal, and family, connection with a school he valued.

Mr Weigall's assistance to Charles might not have been confined to the provision of opportunities for part-time teaching in early 1905. In the absence of corroborative primary records, caution is required if a recognition of possibilities is not to descend to mere speculation. However, even if tainted by an element of speculation, the exercise of noticing this particular possibility may serve to illustrate the nature of Sydney society in Bean's encounter with the law in 1905-1908. Mr Weigall was a pivotal figure in an institution central to Sydney's legal profession. That was treated as an established fact in Sydney society. MacCallum's memorial publication recounted an anecdote said to have been told by Weigall: "... after mentioning some distinguished sons of the School, he ... finished up: 'I was at a trial not long ago. The Judge was an Old Boy, the counsel on the one side and the counsel on the other side were Old Boys, and, I am sorry to say, the chap behind the spikes was an Old Boy too'"³³³.

AB Weigall's son, Cecil Edward Weigall (1870-1955)³³⁴ was at the Bar, and had started his career as Associate to Mr Justice (Sir) George Bowen Simpson between 1896-1901 or thereabouts³³⁵. The centenary history of St Mark's Anglican Church, Darling Point (published in 1948) recorded a connection between that Church and the families of both AB Weigall and GB Simpson³³⁶. As the long-standing Headmaster of Sydney Grammar, and as a friend of Charles's parents, he could well have vouched for Charles, if not

³³⁰ *In Memory of Albert Bythesea Weigall* (1913), pp. 76-79.

³³¹ AB Gaunson, *College Street Heroes: Old Sydneians in the Great War* (Sydney Grammar School Press, 1998), pp. 21 and 38-39. In an 'ANZAC Address' delivered at a Special Assembly of the School in 2000 and, *semble* 2001, Dr Gaunson (Senior Master in History) drew attention to Charles's name on the School's 'Honour Roll' and (following Bean's lead) noted that Bean had been 'briefly a master' at the School, teaching Classics and 'some cricket' before he turned to journalism. He also remarked on the familiarity with which Bean referred to Major Ivan Sherbon (who had been in the First Form at the School in 1905) as 'little Sherbon' in the Official War History: (June 2000) 23 *Grammar Foundations* 5-6; (June 2001) 400 *The Sydneian*, pp. 50-54.

³³² Page 28.

³³³ *In Memory of Albert Bythesea Weigall*, p. 67.

³³⁴ (1990) 12 ADB 434-435.

³³⁵ *NSW Law Almanacs*, 1897-1901 (inclusive).

³³⁶ HWA Barder, *Wherein Thine Honour Dwells*, pp. 307 and 313.

introduced him to, Old Boys of the School like AB Patterson or his Anglican connections.

The other of his two principal benefactors was identified by Charles (in a biographical letter dated 28 October 1930 addressed by Bean to HM (Henry McKean) Tasker of All Saints College, Bathurst) as another friend of his parents, Mrs Selwyn. In Charles's estimation, she was responsible for securing him his job as Justice Owen's Associate in 1905. Although her identity remains a matter of conjecture, the likelihood is that she knew both Bean's parents and William Owen through their respective Anglican connections. Upon that assumption, Mrs Selwyn could have been either (most probably) Annie Catherine Selwyn (nee Mort), the second wife and widow of Bishop John Richardson Selwyn (1844-1898), a Master of Selwyn College Cambridge (1893-1898), or (possibly) Rose Elizabeth Selwyn, the widow of Canon Arthur Edward Selwyn (1823-1899) of Newcastle Diocese, NSW.

Annie was baptised at St Mark's Anglican Church, Darling Point, on 11 May 1855³³⁷. She died in 1931 at Bournemouth³³⁸. She knew Edwin and Lucy Bean via Selwyn College, if not otherwise. She is the leading contender for nomination as Charles's benefactor. Selwyn College (named for Bishop John's father) had the reputation of a college, on a par with Keble College at Oxford, run upon strictly Church of England lines where a somewhat cheaper education was provided³³⁹. Charles's brother, JW Bean went there, as recorded in Edwin Bean's *Historical Sketch* of Brentwood School (published in 1913). A pointer towards her in the Bean Papers is a letter dated 11 December 1904 Charles wrote to his parents, the day before sailing into Adelaide on his way out to Sydney. Speaking of his brother, he wrote: "*Jack I picture at Cambridge – first in his rooms – then round at the Selwyns*"³⁴⁰. Annie's husband, Bishop John, was a man in the same mould as Edwin and Lucy Bean: a cultivated, but not academic, Christian man committed to a well-rounded education of young men (for, in Selwyn's case at least, he resisted reforms for the education of women at Cambridge) using robust, but overtly benign, disciplinarian methods (with a quasi-military flavour) to instil habits of self discipline³⁴¹. When Edwin died in 1922 the editor of the school magazine of the Hutchins School wrote of his "robust Christianity" and his "outspoken championship of all that is honourable and uplifting"³⁴².

Rose died on 9 August 1905 (aged 80), in Jersey Road, Paddington, not far from where Charles lived. She would have been known to Edwin and Lucy from their time in NSW, or Edwin's status as an Anglican priest and Headmaster could of itself have attracted her helping hand. She was in

³³⁷ *Wherein Thine Honour Dwells*, p. 171.

³³⁸ "London Personals" (dated 23 December 1931) in the *Evening Post*, Wellington, NZ, 29 December, 1931, p. 15.

³³⁹ FD Howe, *Bishop John Selwyn: A Memoir* (London, 1899), p. 214.

³⁴⁰ Sheet 3, page 2 (AWM/3 DRL 7447/6).

³⁴¹ FD How, *Bishop John Selwyn: A Memoir*, ch XV & XVI, especially pp. 215-221, 225, 226 and 251-252.

³⁴² G Stephens, *The Hutchins School: Macquarie Street Years, 1846-1965* (Hutchins School, Hobart, 1979), p. 234.

Sydney, and well connected in government circles there, when Bean's Associate job came to him³⁴³.

References to Mrs Selwyn and the timing of Owen J's offer of an Associateship to Bean in Charles's Account for EFFIE and the Tasker Letter suggest that Bean's job as an Associate was not on the horizon until after his arrival in Sydney. That may tip the balance towards Rose Selwyn because Rose was a resident of Sydney, whereas Annie was not. However, what is not known is whether Annie might have been visiting Sydney at the time³⁴⁴ or whether Mrs Selwyn's intervention in favour of Charles took the form of a telegraphic wire. Telling against Rose is the apparent absence in Charles's contemporaneous correspondence of any mention of her death, so soon after he commenced his employment with Owen J, and the tone of his reference to her in the Tasker Letter suggests that (25 years later) Mrs Selwyn was a living person known to Tasker.

Both candidates were either active in NSW Anglican circles or closely associated with them. Annie was a daughter of Thomas Sutcliffe Mort (1816-1878) by his first marriage. He was a prominent local Anglican; a principal benefactor, and founding churchwarden, of St Mark's, Darling Point³⁴⁵. He was a fellow parishioner, business associate and friend of Sir William Montague Manning (1811-1895)³⁴⁶, whose career as a judge of the Supreme Court of NSW (1876-1887) gave way to that of William Owen. The Manning family may have served as a conduit between Annie Selwyn and Owen J in 1905. The centenary history of St Mark's makes no mention of William Owen (which would have been expected had he had a regular connection with that Parish) unless it is in a passing reference to a Mr Owen in a list of laymen in minutes of a meeting dated 1883³⁴⁷. The Selwyn men were members of the family of George Augustus Selwyn (1809-1878), the first (missionary) Bishop of New Zealand. Bishop John was his son, Cannon Selwyn his cousin. According to the centenary history of St Mark's he (Bishop John) preached there in 1875, and both preached and celebrated Holy Communion there between 1878-1890³⁴⁸.

Several judicial families appear to have been parishioners at St Mark's in or about 1905. The impression conveyed by the centenary history is that the most active of the legal notables was JM Harvey, who served as a judge of the Supreme Court of New South Wales between 15 April 1913 and 31

³⁴³ In 1902 Rose privately published *Letters of the Late Dean Selwyn (of Newcastle), Chiefly to his Wife* (Angus and Robertson, Sydney). The career of her husband is recorded in AP Elkin, *The Diocese of Newcastle: A History of the Diocese of Newcastle, NSW, Australia* (Australasian Medical Publishing Co Limited, Sydney, 1955), ch. 26.

³⁴⁴ Had she been in Sydney, her presence would almost certainly have been noticed in the *Sydney Morning Herald*, as it was when she and her daughter Mary paid a visit in 1914: *Sydney Morning Herald*, 6 May 1914, p. 6; 7 May 1914, p. 10.

³⁴⁵ *Wherein Thine Honour Dwells*, pp. 22-24, 32-36 and 338.

³⁴⁶ Alan Barnard, *Visions and Profits: Studies in the Business Career of Thomas Sutcliffe Mort* (Melbourne UP, for ANU, 1961), p. 229. TS Mort was a Rector or Warden at St Mark's between 1848-1852 (inclusive); Sir WM Manning held that office in 1861-1862: *Wherein Thine Honour Dwells*, p. 338.

³⁴⁷ *Wherein Thine Honour Dwells*, p. 335.

³⁴⁸ *Wherein Thine Honour Dwells*, p. 319.

January 1936³⁴⁹. More to the point in unravelling how Bean came to be Owen J^o Associate, the family of AB Weigall also had a connection with St Mark³⁵⁰.

Charles Edye Manning (1879-1916) was Bean's immediate predecessor as Owen J^o Associate. The Owen and Manning families lived in Hunter's Hill. They were parishioners at All Saints Anglican Church there. A memorial in the church surrounds bears Charles's name as one of WWI's fallen. In the mid south-west side of the nave of the church stand three stained glass windows (depicting St Patrick, St George and St Andrew respectively) dedicated to the memory of Charles, a brother and their father³⁵¹. Charles died in France in 1916. His father, Charles James Manning (1841-1898), had served on the Supreme Court of NSW (from 1889 until his death) and as the Court's Chief Judge in Equity from 1896. CJ Manning was a nephew of Sir William Montague Manning. In addition to his relationship with Thomas Mort, Sir William was a prominent barrister, politician, Attorney General and Supreme Court judge. On his resignation from the Court in 1887 he was replaced by William Owen.

A plaque near the altar in All Saints Hunters Hill, is dedicated to the memory of the Rev. Edward Owen, BA, Rector of the Parish between 1900-1925. Three days after Sir William Owen's death on 22 November 1912, Edward officiated at his funeral.³⁵²

The next generation of the Manning and Owen Families were no less close than the last. After CE Manning ceased to be Owen J^o Associate, the law reports record appearances by him as junior to the judge's son, Langer Owen³⁵³. Whether Charles Bean would, in time, have been able to share anything of the professional intimacy of the Owen and Manning Families cannot be known, but that was one of the opportunities granted to him in 1905.

The respective legal careers of Owen J^o's last two Associates provide a contrast worthy of notice as reflecting both the transformation that was taking place at the NSW Bar and CEW Bean's predisposition. Bean's university, and legal education, occurred wholly in England. He returned to Australia as a fully fledged barrister, entitled to be admitted to practice without further study or even a requirement that he submit to a voluntary process of reading. Manning attended Oxford University, and graduated Bachelor of Arts, without securing an English Call. He was required, therefore, to submit to training

³⁴⁹ *Wherein Thine Honour Dwells*, pp. 224, 309 and 340-341. Harvey, then at the Bar, was noticed in the *Cyclopedia of NSW* (1907), p. 317.

³⁵⁰ *Wherein Thine Honour Dwells*, records (at p. 313) that on 3 September 1921 the children of AB Weigall and his wife (Ada Frances) made a gift of a Holy Table to the Parish in memory of their parents. The book otherwise makes no mention of any member of the Weigall family.

³⁵¹ Another three, adjacent stained glass windows (depicting Moses, Jesus and Elijah) are dedicated to the memory of Archibald Henry Simpson (who served on the Supreme Court of NSW with Owen J) and a son killed in action at Gallipoli.

³⁵² NSW *Registry of Births, Deaths and Marriages*, Death Certificate registration number 1912/016033. Sir William was buried in the Church of England section of Waverly Cemetery on 25 November 1912. The Death Certificate records the name of 'Edward Owen' as the Minister of Religion attending to the burial.

³⁵³ Eg, *Houison v Fielding* (1907) SR (NSW) 677.

conditions imposed by the NSW Barristers Admission Board before admission to the Bar. He fulfilled those conditions while working as Owen J's Associate. After he left Owen he took up chambers³⁵⁴ and settled down to practice. His career had not developed sufficiently by 1907 for him to be the subject of an entry in the *Cyclopaedia of NSW* published that year, even though other members of the Manning family did not escape notice³⁵⁵. The law reports suggest he built upon his Owen connection, by appearing as junior to Langer Owen from time to time and by doing relatively uncomplicated work as an Equity junior. When World War I broke out he had sufficient experience, upon enlistment, to serve as a military judge in the Australian Occupation of German New Guinea. Like Bean, he went to the War unmarried, aged in his mid-30s³⁵⁶.

Henry William (Harry) Bernard (1864-1955) was Owen J's Tipstaff from 20 October 1890 until the Judge's retirement in 1908³⁵⁷. Born in London, he arrived in Australia in about 1880, aged 15. In the immediate aftermath of Owen J's retirement, he worked as Tipstaff to Sly J, but the new judge subsequently made his own arrangements. A Tipstaff was nominally the second member of the personal staff of a Supreme Court judge, ranking after the Judge's Associate³⁵⁸.

Throughout Bean's tenure as Owen J's Associate, the standard annual salaries of a puisne judge of the Court (£2,600), an Associate (£354) and a Tipstaff (£150) may be thought to have been indicative of their respective standings in the court structure³⁵⁹. To this might be added the fact that the court attire of a Judge and his Associate set them apart from a Tipstaff. They were ordinarily robed. A Tipstaff's salary (but not the salary of an Associate) was supplemented by a specific uniform allowance (£4), marking him out in formal terms as something closer to a Sheriff's officer than to a judge.

In large part, the job description of a Tipstaff could be equated with that of a messenger. That assessment may be thought to be corroborated by publication of the home addresses of Tipstaves in the *NSW Law Almanacs* of Bean's day; a practice that continued up to and including (but not beyond) the 1972 *Almanac*. In the comparative absence of modern communication facilities, Tipstaves may have served as post boxes and administrative conduits for their judges outside court hours. Consistent with this is the fact that the budget papers of the Attorney-General's Department provided

³⁵⁴ At 151 Phillip Street, Sydney.

³⁵⁵ Sir WM Manning (at p. 303); CJ Manning (at p. 305); RK Manning (at p. 314); and HE Manning (at p. 321).

³⁵⁶ Australian National Archives, War Service Record, Application for Commission in the AIF.

³⁵⁷ The dates of Bernard's birth, his arrival in Australia and his commencement with Owen J are taken from the 'Public Service Lists' detailing appropriations for the Department of Attorney General and Justice (eg. 1907 List, p. 50) read with his Death Certificate.

³⁵⁸ JM Bennett (ed), *A History of the Supreme Court of NSW*, pp. 91-92.

³⁵⁹ *Public Service List* of officers employed, as at 30 June, by the Government of NSW, under the provisions of the *Public Service Act*, 1902 (*NSW*): 1905 (Department of the Attorney-General and of Justice), p. 61 (Associates/Tipstaves); 1906 (Department of the Attorney-General and of Justice), p. 64 (Associates/Tipstaves); 1907 (Department of the Attorney-General and of Justice), p. 50. Bean was mentioned by name in each of the 1905 and 1906 Lists. The 1907 List recorded that the position of Associate to Owen J was vacant as at 30 June 1907. Harry Bernard was mentioned by name, as Owen J's Tipstaff, in each of the 1905, 1906 and 1907 Lists.

appropriations for messengers+and, when Henry Bernard died half a century after Owen J's retirement, his death certificate recorded his occupation as that of a Head Messenger+. Throughout his service to Owen J, he lived at Gladesville, nearby the Judge's residence at Hunter's Hill.

In Bean's day, a judge's Tipstaff (invariably male) ran errands for the judge (in and outside court) and, bearing the judge's royal staff of office+(a long white staff topped with a brass crown), ushered the judge into, and out of, court during a sitting. In today's Supreme Court, relatively few judges have, or use, a ceremonial staff and Tipstaves (male and female alike) are increasingly young law students, or graduates, used *inter alia* as research assistants.

Back in 1905 and thereabouts, Harry Bernard's length of service as Owen J's Tipstaff, coupled with the Judge's turnover of Associates, probably meant that he served as a mentor to several younger men . nominally more senior to him . as they acclimatised to their profession.

The theory that the Crown . Royal authority . is the source of all justice has somewhat receded from view in Australia since full legal autonomy from Britain came to Australia with enactment of the *Australia Acts* (of the Australian and Imperial Parliaments) in 1986³⁶⁰. At a high, abstract level the High Court of Australia has regrounded the legitimacy of the Australian polity in the people+where once it was grounded on the authority of the British Crown and the Imperial Parliament³⁶¹. At a much less abstract level, the fact that the ceremonial significance of a Supreme Court Judge's staff of office+ has faded almost into nothingness . out of sight, out of mind . is a small, quiet fact that speaks just as loudly of cultural change.

Bernard first joined the Attorney General's Department in January 1888. On the strength of that employment he married his wife Sarah (nee Coulter) later that same year³⁶². In the family home at Gladesville³⁶³, they raised 11 children, all but possibly one of them surviving well into maturity. All this, apparently, on the salary of a Tappie+.

Whether Bean maintained regular contact with Bernard after he finished up with Owen J is unknown. However they must have had at least some contact after the War. In his Account to EFFIE+(1924) he reminded his wife that Harry Bernard (you remember him) was the judge's tipstaff [sic]³⁶⁴. Charles did not meet Effie until, taken ill while he was writing the first volumes of the

³⁶⁰ Anne Twomey, *The Australia Acts 1986: Australia's Statutes of Independence* (Federation Press, Sydney, 2010) and *The Constitution of New South Wales* (Federation Press, Sydney, 2004), ch. 2.

³⁶¹ Michael Kirby, *Through the World's Eye* (Federation Press, Sydney, 2000) ch. 12 (öPopular Sovereignty and the True Foundation of the Australian Constitutionö), citing *inter alia* *Leeth v Commonwealth* (1992) 174 CLR 455 at 483; *Australian Capital Television Pty Limited v Commonwealth* (1992) 177 CLR 106 at 138; *Cunliffe v. Commonwealth* (1994) 182 CLR 272 at 336; and *McGinty v Western Australia* (1996) 186 CLR 140 at 230.

³⁶² The marriage was celebrated at öChrist Churchö, Gladesville, according to the rites of the Church of England on 10 October 1888: NSW Registry of Births, Deaths & Marriages, Marriage Certificate, Registration No. 1888/004685.

³⁶³ His Death Certificate records that Henry's öusual residenceö was ö51 Wharf Road, Gladesvilleö.

The *NSW Law Almanacs* for 1895-1908 (inclusive) record his address as ö-Thorncliffeö, Gladesvilleö.

³⁶⁴ Page 31.

Official History of the War, he fell in love with the Acting Matron (Sister Ethel Clara Young) of Queanbeyan Hospital. It is a safe bet, then, that Bean and Harry Bernard crossed paths at least once in the early post-war years.

(Julian) Thoby Stephen (1880-1906) is, or may be, a fulcrum figure in the story of CEW Bean's legal career no less than in English literature. Charles thought of him, not only as his best friend at Clifton College, but also as the son of Sir Leslie Stephen (1832-1904). Modern Australians would define him as a brother of Virginia Woolf (1882-1941): who introduced her to his friends from Cambridge University who collectively became, with him, the first manifestation of the Bloomsbury Group; and whose tragic, early death haunted her unsettled mind ever thereafter.

The Stephens loomed large in the imagination of anyone familiar with the British Empire at the time Bean was a member of the NSW Bar. One of several members of the family named James Stephen (1758-1832) had served as a Master in Chancery³⁶⁵. With William Wilberforce (1759-1833) he was a member of the Clapham Sect, an influential coalition of Evangelical Anglican anti-slavery agitators. He was instrumental in the English Parliament's proscription of the slave trade by publication of a book entitled *War in Disguise; or, The Frauds of the Neutral Flags* (1805) which paved the way for enactment of the *Slave Trade Act 1807* (Imp.) as a war measure aimed at Napoleon's defeat. After the birth of his children, and the death of his first wife, he married Wilberforce's sister.

One of his children, another James Stephen (1789-1859) commenced his working relationship with the Colonial Office in 1813 when retained as counsel to advise it on a regular basis. He gave up the independent Bar, and took up a permanent appointment as counsel to the Office, in 1825. In 1834 he was appointed Assistant Under Secretary. In 1836 he was appointed Under Secretary. He retired in 1848 and, in retirement, was knighted. No individual was more influential than he in the administration of the Colonial Office in the first half of the 19th century. He fostered its growth from relatively humble origins, as an adjunct to the War Office, in the wake of the Napoleonic Wars. He also personally drafted the *Slavery Abolition Act 1833* (Imp.), which provided for the abolition of slavery in the British Empire five years later³⁶⁶. In retirement from the public service, he became Professor of Modern History at Cambridge University. By the time of his death in 1859 he had an established reputation as learned in the law, history and literature.

In 1836 a protégé at the Colonial Office, the poet (Sir) Henry Taylor (1800-1886)³⁶⁷, published a small book of essays entitled, *The Statesman*. It was dedicated to (Sir) James Stephen, and based on observation of Stephen's career. It reads like a public servant's equivalent of Machiavelli's *The Prince*.

³⁶⁵ The Hogarth Press (London), associated with the Stephen family, in 1954 published *The Memoirs of James Stephen: Written by Himself for the Use of His Children*, edited by MM Bevington. It includes (at pp. 429-434) a "Genealogical Tree".

³⁶⁶ Paul Knaplund, *James Stephen and the British Colonial System* (University of Wisconsin Press, Madison, 1953).

³⁶⁷ Taylor's collected *Works* were published in five volumes in 1877-1878; his *Autobiography* was published in two volumes in 1885; and his *Correspondence* was published in 1888.

In modern parlance, Stephen may have inspired the character of Sir Humphrey Appleby in the popular fictional series, *Yes, (Prime) Minister*.

Sir James published works included, *Essays in Ecclesiastical Biography* (first published in 1849)³⁶⁸ and *Lectures on the History of France* (published two years later)³⁶⁹. The *Essays* were available in reprint throughout the second half of the 19th century, and were reprinted in January 1907 with a Preface written by Sir James's grandson, (Sir) Herbert Stephen³⁷⁰. Indeed, in 1906 his daughter Caroline Emelia Stephen (1834-1909) printed, for private circulation only, on terms that included an advertisement of its availability for purchase on application to the printer, a book entitled, *The Right Honourable Sir James Stephen: Letters with Biographical Notes*. Whether or not Charles Bean was specifically aware of these manifestations of the Stephen family's tendency to preserve and promote their public persona, he could not but have been aware of their social standing. Sir James Stephen had not been forgotten by his day. His talented family made sure of that as they actively kept his legend alive.

James had strong connections with New South Wales. With the assistance of Francis Forbes, he had responsibility for securing passage of the *New South Wales Act 1823* (Imp.), the legislative warrant for the Supreme Court of NSW. The second judge appointed to the NSW Supreme Court, after Forbes, was John Stephen (1771-1833), his uncle. John's son, a cousin of James, also served on the Court. After five years as a puisne judge, Sir Alfred Stephen (1802-1894) became the longest serving Chief Justice of New South Wales (1844-1873) and, following his retirement from the Bench, pursued the cause of law reform in an ongoing, active public life.

James (Mr Under Secretary) Stephen and his wife (Jane Catherine, daughter of John Venn, Rector of Clapham) had five children. Two of them achieved distinction in their own right. (Sir) James Fitzjames Stephen (1829-1894) as a lawyer; more as a legal writer and legislative draftsman than as a barrister or as a judge, although he was both³⁷¹. Within a year of his death, his biography was published by his famous brother³⁷². (Sir) Leslie Stephen (1832-1904) was famous as an author, literary critic and the first editor (1885-1891) of the *Dictionary of National Biography*.

Sir Leslie was twice married: first to Harriet Marian (1840-1875), a daughter of the famous novelist, William Makepeace Thackeray (1811-1863) between 1867 and 1875; then to the widow of Herbert Duckworth (1833-1870), Julia Prinsep Duckworth nee Jackson (1846-1895), between 1878-1895. He was twice widowed. From his first marriage, he had a daughter. Upon marriage to Julia he became stepfather to her three children. Together they had another four: Vanessa (1879-1961), who married Clive Bell in 1907 and became famous as Vanessa Bell; Julian Thoby, born 8 September 1880; Adeline

³⁶⁸ London: 1st ed, 1849; 2nd ed, 1850; and 3rd ed, 1853.

³⁶⁹ London, 1851.

³⁷⁰ Herbert's father was (Sir) James Fitzjames Stephen.

³⁷¹ KJM Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* (Cambridge University Press, 1988).

³⁷² Leslie Stephen, *The Life of Sir James Fitzjames Stephen* (London, 1895).

Virginia (1882-1941), who married Leonard Woolf and became famous as Virginia Woolf; and Adrian Leslie (1883-1948)³⁷³.

Thoby's first name, Julian, was taken from his mother. Thoby, by which he was generally known, was taken from Julia's beloved 'Uncle Thoby'. Sir Henry Thoby Prinsep (1793-1878), whose career included service as a Director of the East India Company (1849) and on the Council of India (1858-1874)³⁷⁴.

If Charles Bean and Thoby Stephen had any sense of a common heritage by their parents' choice of names for them by reference to a popular uncle, or an Indian Colonial connection, it would not have been harmed by the additional fact that Thoby's father had been a personal friend of Tom Hughes, the author of *Tom Brown's Schooldays*³⁷⁵.

Thoby was educated at Evelyn's Preparatory School, Hillingdon; Clifton College; and Trinity College, Cambridge, from which he graduated with a Bachelor of Arts. As related in his father's notes, his academic record appears to have been similar to Charles Bean's mixed record. In November 1898, against his father's expectations, he won an exhibition at Trinity College. At Easter 1902 he was elected to a scholarship at Trinity, but in June of the same year he was disappointed at dropping into the second class of the Classical tripos³⁷⁶. He was admitted as a student at the Society of the Inner Temple on 4 November 1903, and called to the Bar there on 27 June 1906.

Clifton College was not the Stephen family's first choice for Thoby's secondary education. They had hoped to send him to Eton, but he failed to get a place. He started at Clifton in September 1894, and left in July 1899. He was there when his mother died on 5 May 1895.

That death, together with the deaths of the second child of Julia's first marriage, Stella Duckworth (1869-1897), Sir Leslie Stephen on 22 February 1904 and Thoby on 20 November 1906 reputedly accounted for at least some of Virginia's mental instability. It would not have assisted her equanimity that Thoby's death coincided with publication of FW Maitland's biography, *The Life and Letters of Leslie Stephen*³⁷⁷. Maitland, a leading legal historian in his day and ever since, was part of the Stephens' extended family. He was sufficiently close to, and trusted by, Leslie to be in contemplation as his biographer as early as 1895³⁷⁸. That was an office which Maitland filled as

³⁷³ Further biographical details of Leslie Stephen's family are set out in Appendix VIII.

³⁷⁴ *Sir Leslie Stephen's Mausoleum Book*, with an Introduction by Alan Bell (Clarendon Press, Oxford, 1977), pp. 29 and 59.

³⁷⁵ *Mausoleum Book*, p. 100.

³⁷⁶ *Mausoleum Book*, pp. 106, 110 and 111.

³⁷⁷ GP Putnam's Sons (New York) and Duckworth and Co. (London), 1906; CHS Fifoot (ed), *The Letters of Frederick William Maitland* (Harvard University Press, Selden Society, 1965), Letter No. 485 (dated 14 October 1906) to CE Norton.

³⁷⁸ *The Mausoleum Book*, p. 4

one of his final duties. He himself died on 19 December 1906, shortly after mourning the death of Thoby³⁷⁹.

The strong evangelical Christian commitment of Sir James Stephen, and the James Stephen immediately before him, offered no consolation to the grieving family of Sir Leslie Stephen. After taking Anglican Holy Orders at Cambridge, Leslie had renounced Christianity, and his children appear to have followed suit.

Thoby was evidently happy to have enrolled at Clifton. That is the picture that emerges from references to Thoby in the *Hyde Park Gate News* (a family newspaper playfully produced by Virginia, Vanessa and Thoby as a record of day-to-day events at the family home in Hyde Park Gate, London)³⁸⁰. After Julia's death, production of the journal stopped abruptly.

Thoby did not live long enough to escape his heritage. At Cambridge he was typecast as part of the intellectual aristocracy because of his family connections³⁸¹. There his life intersected with an elitist clique of ambitious young men centred upon what they called the Apostles Society, influenced by philosophical speculations of GE Moore³⁸². Their notoriety after Thoby's death, and the effect of that death on Virginia, tend perhaps to lend a colour to Thoby's life that it would not have had had he lived longer.

Their claim to public attention did not occur before 1910³⁸³. By that time, Thoby was long dead, in fact, if not in Virginia's imagination. If one judges events not by how they turned out, but more narrowly by how they appeared at the time, the tale is not so glamorous. Upon the death of Sir Leslie Stephen, Thoby's bohemian Cambridge friends came into close contact with the Stephen girls. They were all set free from parental constraint in the new down-market home at 46 Gordon Square, Bloomsbury, to which the newly orphaned Stephen children (young adults) moved after their father's death³⁸⁴. Whatever the reality, the legend is that great minds and a volatile hormonal mix unleashed a maelstrom of free living, free loving, artistic and intellectual brilliance. Judging by the long trail of literary works that emerged during their adult years, and has continued after their deaths, one must allow for the possibility that the legend was also the fact. On the other hand, if the focus is Thoby Stephen (not his siblings or their friends in afterlife) a sober assessment of the facts does not need to be encumbered by their future. It is

³⁷⁹ *The Letters of Frederick William Maitland* (1965), Letters numbered 489 (dated 12 November 1906, to HAL Fisher), 493 (dated 27 November 1906, to James Bryce) and 495 (dated 28 November 1906, to FW Buckland).

³⁸⁰ *Hyde Park Gate News: the Stephen Family Newspaper* by Virginia Woolf, Vanessa Bell and Thoby Stephen (Edited by Gill Lowe and published by Hesperus Press, London, in 2005) at pp. 175 (28 January 1895), 186 (4 March 1895), 192 (18 March 1895) and 199 (8 April 1895).

³⁸¹ Quentin Bell, *Bloomsbury* (Weidenfeld & Nicholson, London, 2nd ed, 1986), p. 23 *et seq.*

³⁸² Quentin Bell, *Bloomsbury*, pp. 24 and 49; Quentin Bell, *Bloomsbury Recalled* (Columbia University Press, New York, 1995), pp. 27, 118, 222, 224 and 226.

³⁸³ Quentin Bell, *Bloomsbury*, p. 50. In February 1910 some of the Bloomsbury Group (including Adrian and Virginia Stephen) achieved a pacifist publicity coup by staging a fraudulent inspection of *HMS Dreadnought* by an entourage of sham Abyssinian Princes: Adrian Stephen, *The "Dreadnought Hoax"* (Hogarth Press, London, 1936; reprinted 1983); Quentin Bell, *Virginia Woolf: A Biography* (Hogarth Press, London, 1972), Volume 1 (1882-1912), Appendix E.

³⁸⁴ Quentin Bell, *Bloomsbury*, p. 40.

enough to note that, if he had pursued it in earnest, a barrister's life might have taken Thoby in a different direction.

Adrian Lesley Stephen, Thoby's brother, is recorded in the Admissions Database of the Inner Temple as having been admitted to membership of the Society on 19 November 1904 without proceeding to a Call to the Bar³⁸⁵. He became a psychoanalyst and a conscientious objector in World War I.

Virginia's devastation at Thoby's death 12 years after her mother's, and two years after her father's, never quite left her. Thoby is said to have been the role model for the lead character in her 1922 novel, *Jacob's Room*. He certainly remained in her thoughts on 18 August 1940 as she wrote autobiographical notes to distract her from German raiders passing overhead, seven months before she committed suicide on 28 March 1941³⁸⁶.

Those notes are important to the story of Charles Bean because: Charles and Thoby had been friends at Clifton; Charles continued to value their friendship after Thoby's death; both he and Thoby studied law and were called to the Bar at Inner Temple within a similar timeframe, permitting comparisons of their experiences to be made; the notes contain a character assessment of Thoby that suggests that he and Charles might well have had compatible personalities (if not kindred spirits); and, particularly, there is an allusion by Virginia to an event at Clifton involving both boys. Writing of Thoby at Clifton she appears, probably unwittingly, to have referred also to Charles Bean:

"[Thoby] had a great power for liking people, for admiring them. And they amused him; I think I felt that he enjoyed Evelyns [his prep school] and Clifton, because he liked being on his own, and held his own; and was admired, but was also dominant there too. He held his own, he put up with disagreeables; he was far more philosophic, because more in his element at school than Adrian [his younger brother] was. And he exacted his rights. The Pup [presumably Thoby's house master] had to apologise when he put another boy over him as head of the house; he was not going to be passed over. He was not easy to put upon. And yet he had no reason to assert himself; he did not expect to win things; he admired the boys who were good at football; good at Latin, but unenviously. I felt he had taken stock of his own powers; would come into possession of them all in good time; and enjoyed slowly and deliberately without being worried or upset whatever came his way at Clifton. [Emphasis added]"

This reference to another boy appears to be as close as Virginia Woolf's published writings come to noticing CEW Bean. The possibility that it refers to Bean at all rests upon a comparison of *Moments of Being* with Bean's autobiographical letter dated 18 October 1930 addressed to HM Tasker, the member of staff at All Saints College, Bathurst, who then edited that College's journal, *The Bathurstian*:

³⁸⁵ www.innertemple.org.uk

³⁸⁶ Appendix IX sets out the entry for 18 August 1940 in Virginia Woolf's *Moments of Being* (2nd ed., Hogarth Press, London, 1985) at pp. 124-126.

"I owe an enormous debt to Clifton. My four and a half years there altered my whole outlook on life. One learned, somehow, to regard as one's first interest the interest of the house and the school. I started near the bottom of the house and finished as the head of it, although my great school-friend, Thoby Stephen, was immediately above me in the school. He was a son of Leslie Stephen, the writer, and had a far better brain than I, but he was very young, and the housemaster (WW Asquith, a brother of the Prime Minister)³⁸⁷ thought it better that I should be head of the house. When I left Stephen succeeded me".

Whether and what contact Thoby and Charles had after their common years at Clifton is not presently known. Following their fathers' footsteps, Charles went to Oxford and (fatefully for the Bloomsbury Group) Thoby went to Cambridge. That they did maintain more than passing contact might, however, be inferred from a bundle of letters held in the Bean Papers in an envelope endorsed in Bean's hand:

"Last letters from my old school mate JT Stephen. He died shortly after sending the last of these, of typhoid contracted in Greece. He was the son of Leslie Stephen, & had a distinguished Cambridge career"³⁸⁸.

Some of the letters are undated. At least one appears to have been written to Charles's brother, Jack, rather than to Charles himself. They appear to have been written at a time when Thoby was reading law, between 4 November 1903 and 27 June 1906. They record Thoby's address as 46 Gordon Square, Bloomsbury, the house to which the Stephen children moved from Hyde Park Gate following the death of Sir Leslie Stephen in 1904. It was the house which lent its name to the literary group that commenced meetings there.

Thoby addressed Bean as *My dear Charles*. He comes across as having an agile, playful mind. In one letter (undated) he declared that *hold the law a most fascinating pursuit*. In the letter to Jack he apologised for being unable to accept a dinner invitation because *I am now working in a solicitor's office and can't get away, trying to make [a] good impression*. In a letter dated 23 October 1905 he told Charles that he had spent the last three months working in the office of solicitors. Playfully, he observed that *solicitors know no law* and, with a rough cartoon self-portrait in close proximity, he asked Charles: *Have you come across any Stephens in Sydney (and do they look like this?)*. In the same letter, and apparently with the same sense of fun, he

³⁸⁷ William Willans Asquith (1851-1918) was, in fact, the brother of Herbert Henry Asquith (1852-1928), Liberal Prime Minister of the United Kingdom between 1908-1916. They had three younger sisters. HH Asquith entered the House of Commons in 1886 after a career at the English Bar. He was called to the Bar (Lincoln's Inn) in 1876. He took silk in 1890. He served as Home Secretary (1892-1895) and Chancellor of the Exchequer (1905-1908) before he became Prime Minister. His older brother, William, spent his entire career (after graduating at Oxford) as a schoolmaster at Clifton College; he never married: Roy Jenkins, *Asquith* (London, 1964), ch. 1. At the time Charles Bean was at Clifton in the 1890s HH Asquith was a prominent front bench politician, but his ascendancy to the prime ministership was a decade away. Charles's description of WW Asquith as *a brother of the Prime Minister* (rather than *the brother*) is consistent with the possibility that he had not taken more than passing interest in the family connections of the Asquith brothers.

³⁸⁸ AWM 38/3DRL6673/902.

wrote: "By the way I am possibly going to give up law and shall possibly become an Artist."

One of the undated letters in the bundle appears to have been written to Charles on 27 June 1906. It includes a statement, "I was called to the Bar this day." Perhaps it belongs to the envelope in the Bean Papers addressed to "Charles EW Bean Esquire, Judge's Chambers, Supreme Court, NSW" and readdressed to 22 Kellet Street, Darlinghurst. The envelope is post marked "August 1906", "Sep 5 06" and "Sydney 6 Sep 06", suggesting that Charles received it in September 1906.

About that time Thoby must have had his mind on his and his siblings' holiday in Greece, apparently planned as a precursor to commencement of practice at the Bar³⁸⁹. The holiday turned to disaster. Thoby left Constantinople for London on 14 October 1906. His companions returned on the Orient Express, arriving in London on 1 November 1906. Thoby was seriously ill. The family doctors diagnosed malaria, but later realised that he had typhoid. Against expectations, his condition worsened. He underwent an operation on 17 November 1906, and died three days later.

Charles apparently heard none of this until nearly a year later. The Bean Papers contain a letter dated 29 September 1907 (written from "29 Fitzroy Square") addressed to "Dear Bean" reporting Thoby's death.

The Bean Papers contain none of Charles's letters to Thoby. Whether they are archived in the family papers of the recipients is unknown. If any such letters have survived they would, perhaps, provide first hand evidence of Charles's attitude to, and experience of, legal practice. Whether Charles rates a mention in Thoby's private note books is also unknown. There is work for Bean scholarship in research of the papers of the Stephen family.

Would Bean's career have taken a different path had his old school mate lived to thrive at the Bar or in England's literary circles? Thoby's siblings appear to have been polar opposites of Bean temperamentally. The "Arnold Tradition" which Bean revered was ridiculed by the Bloomsbury Group's Lytton Strachey in *Eminent Victorians* (1918)³⁹⁰. Which way would Thoby have developed had he lived? Could his friendship with Bean have survived the Bloomsbury Group? A less ambitious "what if" is enough for the present: If Thoby had survived, and pursued a career as a barrister, might Charles have been tempted to try his hand at the English Bar?

Probably not. His self-assessment was that he was temperamentally unsuited to public speaking in the hurly-burly atmosphere of the Bar. But, with Thoby close at hand, he might have been even more tempted to remain in London than he was when, in 1911-1913, *The Sydney Morning Herald* recalled its London Correspondent.

³⁸⁹ Hermione Lee, *Virginia Woolf* (Vintage Books, London, 1997), Ch. 12, p. 227.

³⁹⁰ McCrum's Biography of Arnold acknowledges some of Strachey's criticism, but joins battle with him in describing his caricature of Dr Arnold as "a skilful exercise in falsification" and a "maliciously tendentious attack": *Thomas Arnold, Headmaster: A Reassessment* (Oxford University Press, 1989), pp. 4 and 139 n 19.

Bean's Judges

William Owen (1834-1912) was, when Charles met him in 1905, a senior and experienced judge³⁹¹. He was born in Ireland, a son of Colonel Robert Owen of the 72nd Highlanders. Following an education in England and Ireland, and after several terms at Lincoln's Inn, London, in 1859 he was called to the Irish Bar. Following his marriage, he and his wife migrated to Sydney, where he was admitted to the NSW Bar in 1860. He took silk in 1882, and was appointed to the Supreme Court in 1887. He was well familiar with Sir William Manning, whose resignation from the Court created the vacancy to which he was appointed.

Owen J was perceived by his contemporaries as an all-round lawyer. He was generally regarded as pre-eminent in Equity. The *Equity Act* of 1880 was based upon a draft prepared by him. When he was appointed to the Bench it was, in the first instance, as Chief Judge in Equity that he served. A year after taking silk he became an acknowledged leader of the Common Law Bar as well. He won damages for the plaintiff in *Anderson v Fairfax* against distinguished opposing counsel led by WB Dalley, defending *The Sydney Morning Herald's* publication of a defamatory article. As a judge, his celebrated cases included the second trial in the notorious Coningham Divorce Case in 1901. That case was sufficiently notorious, and scandalous, that it became the subject of a book in which the transcript of the trials were published by an anonymous author described as 'Zero': *The Secret History of the Coningham Case (illustrated with photographic facsimiles of the Documents in the Case and Many Others that were not Produced in Court)*³⁹². Owen was knighted in June 1906 (when Bean was his Associate). His court sittings substantially came to an end in February 1907, probably marking an effective end to Bean's workload as an Associate. He formally retired in February 1908, shortly after the commencement of Bean's full time employment with *The Sydney Morning Herald*.

The *Herald* marked his retirement with an extended, laudatory note in which it congratulated NSW on the quality of its judges, and noticed Owen's pension of £1800 per annum, seven-tenths of his judicial salary³⁹³. It bears no marks of authorship or input by Bean.

Owen was the subject of a specific chapter in Wilfred Blacket, *May it Please Your Honour: Lawyers and Law Courts of the Olden Times in New South Wales*³⁹⁴. He was also favourably mentioned in a AB Piddington, *Worshipful Masters*³⁹⁵. They are the major works of reminiscence written by barristers who knew (Sir) William Owen as a judge.

³⁹¹ *Cyclopedia of NSW* (1907), p. 296.

³⁹² Finn Bros Printers, Sydney, 1901.

³⁹³ *Sydney Morning Herald*, 6 February 1908, p. 6.

³⁹⁴ Cornstalk Publishing Co., Sydney, 1927, pages 49-53.

³⁹⁵ Angus and Robertson, Sydney, 1929, pages 204-205 and 220-221.

Those works were published in the late 1920s, about two decades after Owen's retirement from the Bench. A better guide to his reputation in Beans' day may be what was published by GH Reid KC in August 1904:³⁹⁶

"We all remember, in NSW, the sudden success of the present Mr Justice Owen at the Common-Law Bar of NSW. For many years before, Mr Owen was considered a leading Equity lawyer, but he seldom, if ever, made his appearance at Nisi Prius [ie, in a jury trial at Common Law]. But in the case of Anderson versus Fairfax, Mr Owen was leading counsel for the plaintiff, whilst the Rt Hon WB Dalley, a brilliant advocate, was leading counsel for the defendant. The plaintiff was a person who was carrying on a charitable work – a working-home for boys – and the defendant was a newspaper proprietor who had published strictures upon the management of that home by the plaintiff. The case is now a leading one in the books; it attracted great attention at the time, and was fought out with great ability on both sides. But Mr Owen won, and he won mainly by an exhibition of qualities for which he is noted, as against an exhibition of different qualities for which Mr Dalley was noted. Mr Dalley was an orator who indulged even before common juries in flights of the most beautiful imagination. He was always soaring, even with his heaviest client on his back, into the highest altitudes – where he was sometimes lost to view – and his case too. Mr Owen, on the other hand, was pre-eminently a man who never indulged in any flights of imagination. He was never lifted off his feet. He used to take the jurymen out for a walk with him on terra firma.

The two opposite minds brought into sharp contrast in that celebrated case gave Mr Owen his great opportunity. If he had been opposed by a counsel of the same type as himself, the probability is that the case would scarcely have been heard of. But the brilliancy of Mr Dalley acted as a foil, and made Mr Owen's reputation. Had it been a criminal case, Mr Owen's style would have been a foil for Mr Dalley's and the result would probably have been the other way".

Sir William's son (Sir) Langer Meade Loftus Owen (1862-1935) was one of the founders of the Bar Association in NSW in 1896. He took silk in February 1906, during the currency of Beans' associateship. He and his wife were active in support of Australia's war effort in World War I, largely through support for the Red Cross. After the war he became a judge of the Supreme Court himself. In turn, his son (Sir) William Francis Langer Owen (1898-1972) became a judge of the Supreme Court before elevation to the High Court of Australia. Throughout Beans' life, the Owen family was both distinguished and prominent in the NSW legal profession.

The judge with whom Charles travelled on circuit to Wagga Wagga in 1906, Francis Edward Rogers QC (1841-1925) was a senior, respected judge³⁹⁷. He was Australian born and educated. He had been admitted to the NSW Bar in 1864. He served as a Crown Prosecutor between 1869-1882, returned to the private Bar, took silk in 1887, served as President of the Land Court between 1890-1892, returned to the Bar, and took an appointment to the

³⁹⁶ GH Reid, "How a Great Case is Fought, Part I", *Life: A Record for Busy Folk* (August 15, 1904), pp. 833-834.

³⁹⁷ *Cyclopedia of NSW* (1907), p. 302.

District Court of NSW in 1898. He had presided over several Royal Commissions, including a celebrated Royal Commission of 1895 into George Dean's conviction for attempted murder³⁹⁸, a controversy that involved the solicitor WP Crick, a player in Owen J's 1905-1907 Royal Commission into the administration of the Lands Department). In 1903 he had provided a report to the Barristers' Admission Board on the application for admission to the Bar made by WA Holman MLA³⁹⁹, one of the barristers who appeared in contested trials before the Wagga Circuit Court in 1905 at the same time as political controversy about the Owen Royal Commission raged. He regularly acted as a judge of the Supreme Court⁴⁰⁰. Judge Dowling (son of Sir James Dowling, the second Chief Justice of NSW) described him as 'clever, able, industrious, and effective with a jury, and very humorous'⁴⁰¹. His humour is still evident in the *Wagga Wagga Advertiser's* reports of the 1905 sittings of the Wagga Circuit Court.

The judge with whom Bean travelled on circuit to Deniliquin in 1906, Grantley Hyde Fitzhardinge (1845-1939) was also a respected judge, although perhaps not in the same rank as Owen and Rogers as a lawyer⁴⁰². He never took silk. Australian born and educated, he had associations that might readily have appealed to Charles Bean. He had attended Sydney Grammar School (1858-1863), written articles for *The Sydney Morning Herald* and received a commendation from Sir James Reading Fairfax for the quality of his law reporting. He and AB Weigall were students together at the University of Sydney⁴⁰³. He was admitted to the NSW Bar in 1868. He served as a Crown Prosecutor between 1875-1884, the first five years of which were served in an acting capacity. He was appointed as an Acting Judge of the District Court in 1884. He received a permanent appointment to that Court in 1889. He had on several occasions served as an Acting Judge of the Supreme Court⁴⁰⁴. When allegations of jury-rigging tainted the criminal trial of Crick and others arising out of Sir William Owen's Royal Commission, he was appointed a Royal Commissioner to investigate them⁴⁰⁵. By a quirk of fate, it appears, a

³⁹⁸ JM Bennett (ed), *A History of the New South Wales Bar* (Law Book Co, Sydney, 1969), pp. 100-101; GD Woods, *A History of Criminal Law in New South Wales: The Colonial Period, 1788-1900* (Federation Press, Sydney, 2002), ch. 28; L Blackwell, *Death Cell at Darlinghurst* (John Long, London, 1970); PA Jacobs, *Famous Australian Trials (and Memories of the Law)* (Robertson & Mullens Ltd, Melbourne, 2nd ed, 1943), ch. VIII (pp. 91-104); Cyril Pearl, *Wild Men of Sydney*, (WH Allen & Co Ltd, London 1958) ch. 6; *R v Dean* (1896) 17 *New South Wales Law Reports (Cases at Law)* 35 (a Full Court bench that included Owen J); *R v Dean (No. 2)* (1896) 17 *NSWLR (Law)* 224 (a Full Court bench, not including Owen J); *R v Dean and Meagher* (1896) *NSWLR (Law)* 132 (another Full Court bench, including Owen J); *In Re Meagher* (1896) 17 *NSWLR (Law)* 157 (the same Full Court bench, including Owen J, that heard *R v Dean*); GC Lindsay, 'The Dean Controversy', a background information paper, for the 2008 Australian Legal History Essay Competition, Forbes Society Website, www.forbessociety.org.au.

³⁹⁹ HV Evatt, *Australian Labour Leader* (2nd ed, 1942), pp. 156-157.

⁴⁰⁰ HTE Holt, *A Court Rises* (Sydney, 1975), pages 132-135; 1 ADB 4.

⁴⁰¹ A Dowling (ed.), *Reminiscences of a Colonial Judge: James Sheen Dowling* (Sydney, 1996) page 96.

⁴⁰² *Cyclopedia of NSW* (1907), p. 302.

⁴⁰³ *The Sydney University Calendar*, 1870, records them as graduating, MA, in the Faculty of Arts in 1869. Corroborative references appear also in the Calendars for 1874-75, 1876-77 and 1878-79.

⁴⁰⁴ HTE Holt, *A Court Rises*, pp. 123-126.

⁴⁰⁵ Cyril Pearl, *Wild Men of Sydney* (WH Allen & Co Limited, London, 1958), ch. 12(7); *Sydney Morning Herald*, 21 December 1906, p. 6 (announcement of appointment), 11 January 1907, p. 5 (final

member of his family (LF Fitzhardinge) became, after his death, WM Hughes's biographer⁴⁰⁶.

XIII. AN ASSOCIATE'S EXPERIENCE OF LEGAL PRACTICE

The job description of a Judge's Associate in the Supreme Court of NSW in 1905-1908 is not self evident. It appears to have been little different in practice from what would be expected a little more than 100 years later, making allowance for changes in what is expected of the Judges themselves and changes in technology affecting record keeping. The demise of trial by jury in civil cases means, for example, that there is less occasion for Judges and their Associates to engage in the work of a jury trial. For practical purposes, trial by jury is now confined to serious crime and defamation cases.

Modern day Associates are assisted by a Manual that lists, and guides them in performance of, their duties. Whether there was anything comparable in Beans's day is unknown. The earliest Associates' Manual presently held by the Law Courts Library in Sydney was published in 1928⁴⁰⁷.

From its establishment in 1824 the Supreme Court of NSW was necessarily serviced by clerks of various descriptions⁴⁰⁸. The settled pattern of allocation of a Clerk Associate and a Tipstaff to each judge as personal staff emerged no later than promulgation of rules of court on 1 March 1856. Rule 4 cast light on the character of the duties of an Associate. It was in the following terms:

*"4. The judges' clerks, in addition to their ordinary duties as such, shall discharge all the duties appertaining to clerks in chambers, or in attendance for chamber business; and shall sit, severally, as clerks of arraigns, and of assize and nisi prius, in Sydney, as well as on circuit. – They shall prepare also the criminal calendars and returns, and all estreats [ie, extracts of court records] and jury precepts [ie, orders]."*⁴⁰⁹

addresses); 24 January 1907, p. 7 (summary of Report upon publication) and 29 January 1907, p. 36 (summary of Report upon presentation). The proceedings were widely reported throughout Australia.

⁴⁰⁶ The Preface to *That Fiery Particle* dates the biography's origins as no earlier than LF Fitzhardinge's introduction to Hughes in 1940.

⁴⁰⁷ *Manual (for the Guidance of the Associates of their Honors the Supreme Court Judges, New South Wales)* (Alfred James Kent, Government Printer, Sydney, 1928), dated 1st December, 1927, compiled by WH Hazelton (Chief Clerk of the Court), assisted by CT Herbert (Clerk of the Court).

⁴⁰⁸ JM Bennett, *A History of the Supreme Court of New South Wales* (Law Book Co, Sydney, 1974), pp. 89-93.

⁴⁰⁹ See CE Pilcher (ed), *The Common Law Procedure Acts 1853 and 1857, and other statutes and enactments relating to the practice of the Supreme Court of NSW, in its Common Law jurisdiction, together with the Common Law Rules, and the English Rules of Practice adopted thereby, with Notes* (John Sands, Sydney, 1881), paras. [364] and [368]. The substance of the rule is extracted in JM Bennett *A History of the Supreme Court of New South Wales*, p. 91.

The equivalent rule in Beans day was rule 13 of the *Regulae Generales*, made on 22 December 1902⁴¹⁰. The form in which those Rules were most readily available to the legal profession was in Rolin and Innes's *The Practice of the Supreme Court of New South Wales at Common Law*⁴¹¹. That publication was the professional successor to *Pilcher* following enactment of the *Common Law Procedure Act 1899 (NSW)* and related legislation. Rule 13 provided that *the Associates, in addition to their ordinary duties as such, shall sit severally as Clerks of Arraigns and of Assize and Nisi Prius in Sydney as well as on Circuit*".

Other provisions of the *Regulae Generales* published in the *Associates Manual* of 1928⁴¹² as *Rules of Court Affecting Associates* and which might reasonably be supposed to have borne equally upon Beans' generation of Associates), focussed on record management⁴¹³.

Although the *Regulae Generales* were rescinded, and replaced by the *General Rules of the Court* in 1953⁴¹⁴, rule 13 was re-promulgated as Order II rule 3. A rule in those terms disappeared only with the commencement of the Act 1970 and the *Supreme Court Rules 1970* on 1 July 1972⁴¹⁵. The new Act and Rules abandoned reference to the old English offices of *Clerks of Arraigns and of Assize and Nisi Prius*. Section 120 of the Act granted the State Governor a general power to appoint *officers*.

With these reforms, references to the office of *Clerk of Arraigns* were omitted from *NSW Law Almanacs*. Up to and including the 1972 *Almanac*, occupants of Beans' office were described as *Clerk to Mr Justice X* and designated both as an *Associate* and *Clerk of Arraigns*. Since the 1973 *Almanac*, they have been described simply as *Associates*⁴¹⁶.

For practical purposes, a Judge's Associate appears in Beans' day to have been something like a *private secretary* to his Judge. To describe an Associate's functions as those of an *Executive Officer* could also capture something of the job, but it would overstate the Associate's authority and functions. Corroboration for the *private secretary* analogy is found in the historical fact that Bavin moved from the role of Private Secretary to Prime

⁴¹⁰ The Rules were gazetted on 19 January 1903.

⁴¹¹ T Rolin and GM Long Innes, *The Practice of the Supreme Court of New South Wales at Common Law* (Law Book Co, Sydney, 1903), pp. 376-475 (with supplementary General Rules at p. 476).

⁴¹² At pp. 20-21.

⁴¹³ Rules 131-133 (as in force in Beans' day) related to the production of Supreme Court records, at the request of a party, at a trial or hearing. Rule 134 dealt with the production of government records on subpoena. Rule 157 directed Associates to attend the Full Court hearing of a motion for a new trial following the trial of a cause by their judge. Rule 218 required an Associate to deliver to the Prothonotary records relating to orders for arrest made on circuit. Rule 348 required Associates to keep a minute book for each Circuit Court and Sydney Criminal Sittings. Rules 350-352 related to records of fines imposed and recognizances forfeited at sittings in Sydney and on circuit. Rule 406 related to the presentation of accounts for court fees payable by parties to the trial of a cause. Rule 419 required the keeping of records relating to times spent on particular business on the conduct of a trial or hearing so as to facilitate proceedings for the taxation (ie, assessment) of costs associated with that business.

⁴¹⁴ The new Rules came into operation on 1 January 1953. They were gazetted on 14 July; 19 September; 17 October; and 7 and 28 November, 1952.

⁴¹⁵ Section 5 of the *Supreme Court Act* repealed earlier statutes governing court procedures. Section 122 gave legislative force to the *Supreme Court Rules*. Part 1 Rule 5 of those Rules provided for rescission of the *General Rules of the Court* operative since 1953.

⁴¹⁶ Compare the 1972 *Almanac* at pp. 61-62 and the 1973 volume at pp. 55-56.

Minister to Associate to Mr Justice Barton on establishment of the High Court of Australia in 1903, at the same time continuing in the role of Private Secretary to Alfred Deakin, Barton's successor as Prime Minister. For the legal profession, a Judge's Associate often served as the 'gateway' to the Judge; a person through whom contact with the Judge's chambers could be had without unnecessarily troubling the Judge personally.

As a matter of practice, what was required of an Associate could depend on the personality, work habits and needs of his particular Judge; the skills and availability of the Judge's Tipstaff; and the availability of other court staff, including clerks working in the Registry, and court officers working in the Sheriff's Department. Whether or not judges in Bean's time relied upon their respective Associates for research assistance or typing is unknown. The fact that many Associates were fledgling barristers, coupled with the salary differential between Associates and Tipstaves suggests that an ability to research law was perceived as desirable. Typing is less certain. It must be noted, however, that transcripts of evidence were not routinely taken in shorthand by a 'court reporter' as in later years⁴¹⁷. Without the benefit of a transcript, greater reliance was placed on a Judge's Notebook than might otherwise have been the case.

Zero, *The Secret History of the Coningham Case* (1901) provides core material for illustrating the 'a court' work of an Associate in a jury trial presided over by Owen J. His Associate at that time was Tedbart B Johnson. The fact that Zero dedicated his book to WP Crick (a name later connected with Owen J's Royal Commission into the Lands Department) adds a degree of connection, if not continuity, with the broader picture being described. With Zero's help, passing references to court procedure in HR Curlewis, *The Mirror of Justice* 1906) and a cameo role attributed to Rogers AJ's Associate (possibly but not necessarily Charles Bean) on circuit in October 1905⁴¹⁸, it is possible to reconstruct the respective roles of minor court officials (including a Judge's Associate) in the conduct of a jury trial in Bean's time:

- with counsel sitting at the bar table, their instructing solicitors as closely behind them as seating in the courtroom might permit and with jurymen present, the Tipstaff entered the courtroom (from a side door leading to the bench) carrying the Judge's staff of office and allowing the Judge to enter unobstructed through the door held open . prompting a court officer (an usher or other sheriff's officer) to call for 'Silence!'. All present in court stood, exchanged bows with the Judge and, after he sat, resumed their seats⁴¹⁹.

⁴¹⁷ The fact that Owen J made special arrangements for proceedings at the second trial in the *Coningham Divorce* case in 1901 was the subject of notice in open court: Zero, *The Secret History of the Coningham Case* (Finn Bros Printers, Sydney, 1901), p. 84.

⁴¹⁸ *Colm v Matthews*, reported in *The Wagga Wagga Advertiser*, Tuesday, 3 October 1905, p. 2.

⁴¹⁹ Curlewis, p. 20; Zero, p. 347.

- at the judge's direction (call the next case+or call the part-heard case+) the Associate would have called the case by name, Doe against Roe+or whatever, eliciting an announcement by counsel of their appearances in that case⁴²⁰.
- under direction of the Judge, the Associate supervised the mechanics of jury selection and administration of the jurymen's oath⁴²¹.
- throughout the trial, the Tipstaff would have generally sat quietly behind or otherwise within reach of the Judge when in court, ready to run errands (eg. to fetch a law report or to convey messages to or from the court registry); and the Associate would have sat at a low bench positioned under the raised bench of the Judge, within reach or whisper of the Judge, managing court records, marking exhibits+admitted into evidence or objects marked for identification+and keeping a running list of both; reading exhibits or other documents to the jury as directed by the Judge; running errands at the request of the Judge; and generally serving as a liaison officer between Bench and Bar⁴²².
- under direction of the Judge, the Associate would have, at the end of the trial, formally interrogated the jury as to whether they had reached agreement on a verdict and, if so, what it was (prompting responses from the Foreman of the Jury on behalf of all jurymen)⁴²³.

Although convenience dictates use of the term Associate+ to describe the employment to which Charles Bean was appointed between 1 May 1905 and 30 April 1907, the offices to which he and his peers were appointed were technically described as Clerk Associate+ to a named Judge of the Supreme Court and Clerk of Arraignment+. That is apparent in the job descriptions attributed to them in the volumes of the *NSW Law Almanac* in which Bean's name is recorded, and in the formal Notices signed by the NSW Attorney General and published in the *NSW Government Gazette* to mark each appointment.

The expressions Clerk Associate+ and Clerk of Arraignment+ are English in origin, but they cannot, on that account alone, be equated with jobs bearing the same title in English experience. The expression Clerk of Arraignment+, in particular, has been lost from public consciousness in New South Wales. It was, in English practice, closely associated with the system of Assize Courts - upon which the Circuit Court system operating in New South Wales in Bean's day was modelled. According to the first edition of Halsbury's *The Laws of England* (the relevant volume of which was published in 1909), a Clerk of Arraignment was an assistant to a Clerk of Assize, the latter of whom was responsible for opening an Assize (an English circuit court+by another name)

⁴²⁰ Curlewis, p. 21.

⁴²¹ Curlewis, pp. 21-22.

⁴²² Zeroö, pp. 86, 144, 146, 172, 179, 225, 305, 346 and 347.

⁴²³ Zeroö, pp. 346-347; *Colm v Matthews* (1905).

by reading the commissions by which the Assize was constituted, and generally performing such functions of a master and an assessor as may be necessary⁴²⁴.

The English connection of NSW %Circuit Courts+, and the offices of %Judge+ Associate+ and %Clerk of Arraignment+, is apparent on the face of the legislation governing Circuit Courts in Beans day: *Part IV (sections 22-33) of the Supreme Court and Circuit Courts Act, 1900 (NSW)*. The State Governor established circuit districts, and gave directions for the holding of Circuit Courts, by proclamation: ss. 22-23. Circuits Courts were constituted by a Judge of the Supreme Court of NSW (s. 24, with %such ministerial officers as may be required+(s. 25). Section 31 provided for Circuit Court procedures to follow those of the Supreme Court, and s. 32 made provision for delays in the holding of Circuit Courts.

The jurisdiction of a Circuit Court was defined by reference to: (a) the jurisdiction of its English counterparts at the time of enactment of the *Administration of Justice Act, 1840 (NSW)*, local legislation that first introduced in the Colony of New South Wales a regular system of Circuit Courts,⁴²⁵ and (b) the jurisdiction of the Supreme Court (itself defined, then and now, by reference to the jurisdiction of English Courts at the time of its establishment in 1824): ss. 26-30. Section 27, in particular, provided as follows: “*Every Circuit Court shall have the same powers and jurisdiction as courts of oyer and terminer, and gaol delivery, and of nisi prius in England had respectively at the time of the passing of [the Administration of Justice Act 1840, referred to by its regnal year citation, 4 Vic. No. 22], and shall stand in the same relation to [the Supreme Court] as such courts respectively stood in with respect to Her Majesty’s Superior Courts of Record at Westminster [ie. the three Courts of Common Law, Queen’s Bench, Common Pleas and Exchequer] at the time of the passing of the said Act”.*

The reference in s. 27 to %courts of oyer and terminer, and gaol delivery+ is a reference to the exercise of criminal jurisdiction by %assize judges+(ie, circuit court judges) pursuant to commissions issued to them for the purpose of an assize (ie, a court sitting or session outside Westminster). A commission of oyer and terminer authorised a commissioner (usually, but not necessarily, a judge of one of the Common Law Courts) to inquire into, hear and determine specified types of offence. A commission of gaol delivery authorised a commissioner to try or release the prisoners in a specified gaol⁴²⁶.

The reference to a %court of nisi prius+ was a reference to a court exercising common law jurisdiction (including civil jurisdiction) by way of a trial by jury before a single judge. Although the idea of a trial before a single judge (with or without a jury) does not strike a modern mind as exceptional, an understanding of the old way of conducting judicial business in England

⁴²⁴ Volume 9, öCourtsö, para. 158 (pp. 73-74).

⁴²⁵ Ian Barker QC, *Sorely Tried: Democracy and Trial by Jury in New South Wales* (Forbes Society, Sydney, 2003), pp. 79-84.

⁴²⁶ See definitions of öassizeö, ögaol deliveryö and öoyer and terminerö in *Osborn’s Concise Law Dictionary* (Sweet and Maxwell, London, 10th ed, 2005); and JH Baker, *An Introduction to English Legal History* (Butterworths Lexis Nexis, London, 4th ed, 2002), pp. 16-17.

requires an appreciation that, absent of the nisi prius system, all common law actions had to be tried at the bar of the Common Law Courts (ie, before the Full Court, constituted by several judges). The nisi prius system involved, in effect, a delegation of authority to a single judge to conduct a trial of factual disputes, reserving an opportunity for legal argument upon the return to the courts at Westminster of the record of a jury's verdict. The expression nisi prius was taken from the form of the summons issued to jurors for the conduct of a trial. Although they were, in formal terms, summoned to appear on a certain day at Westminster, their obligation to appear there was qualified by an addition of the words 'unless before that day (*nisi prius*) the King's justices (justices of assize) should come into the county'. In practice, each summons was accompanied by arrangements for the conduct of an assize court in the jurors' county, rendering the principal obligation to attend Westminster merely a nominal one⁴²⁷. Obscure though this seems to a modern Australian mindset, it was ingrained in the thinking of NSW lawyers at the commencement of the 20th century.

English practice and procedure was reflected in the NSW legal system at every level. The office of a Clerk of Arraignment took its name from the process of arraignment of an accused person at a criminal jury trial. That process involved: calling the accused by name to the bar of the court; reading to him or her the indictment containing the charges against him or her; and asking the accused whether he or she was guilty or not guilty. Upon a plea of not guilty, a jury was empanelled for the purpose of a trial of the charges. The ministerial acts done in arraignment of the accused, empanelment of a jury and, at the conclusion of a trial calling on the jury to render its verdict were performed by the Clerk of Arraignment⁴²⁸. Section 33 of the *Supreme Court and Circuit Courts Act*, 1900 expressly recognised the office of Clerk of Assize as separate and distinct from that of a Judge's Associate. It provided as follows:

"The records of every Circuit Court shall be taken to belong to and shall be kept in the Supreme Court, and the Prothonotary shall have their legal custody: Provided that during the sitting of any Circuit Court the Judge's Associate, or other officer there acting as Clerk of Assize, shall in respect of all proceedings at such sitting have the custody of such records."

One of the records falling within the administrative responsibility of a Clerk of Arraignment was incidentally noticed in the Second Schedule of the *Justices Act*, 1902 (NSW), and may therefore be taken as indicative of the types of record under consideration: a prescribed form (numbered A2) for a Certificate of Indictment being Found.

⁴²⁷ Entry for *nisi prius* in *Osborn's Law Dictionary*; and JH Baker, *An Introduction to English Legal History*, pp. 20-22.

⁴²⁸ John B Bishop, *Criminal Procedure* (Butterworths, Sydney) 1st ed (1983), pp. 213-214, 241-245 and 269 referred to a clerk of arraignment performing these functions. The 2nd edition (Butterworths, Sydney, 1998) spoke instead of a judge's associate or a court officer performing them, except in citation of *Milgate v The Queen* (1964) 38 ALJR 162, where Barwick CJ and Owen J (the grandson of Sir William Owen) referred to a Clerk of Arraignment: pp. 424-425, 495-500 and 529-530.

This NSW legislative recognition of the offices of Judge's Associate and Clerk of Arraignment demonstrates graphically three particular cultural assumptions of the time. The first was that the NSW Court system could, and should, be a local approximation of the English system at the time of its transplantation in the Antipodes. The second was that the jurisdiction of NSW courts could, and should, be defined and preserved, by reference to the terms in which it was first conferred. The third was that the identity and functions of the personnel of NSW courts could, and should, be defined, at least in the broad, by an appropriation to them of the names of public officials associated with English courts.

If the job to which Bean was appointed carried with it any potential for the exercise of the quasi-judicial functions that *Halsbury* suggests for a Clerk of Arraignment in England, there appears to be no evidence that Bean in fact performed such a function. A recorded example of the work he did do in his capacity as Clerk of Arraignment is found in his execution of the formal Notices for the Holding of Circuit Courts for the Newcastle sittings (commencing on 25 September 1906) and the Tamworth sittings (commencing on 9 October 1906)⁴²⁹. His role appears, in reality, to have been that of a personal assistant to Owen J, who was able to call upon his legal training and administrative ability to help to organise the business of his court before, during and after sittings of the Court. That job would, in today's New South Wales, be described simply as that of an Associate.

However described, the job provided Bean with an opportunity, not only to meet a range of judges, and barristers and solicitors in practice, but also to study (apparently for the first time) Australian law and legal procedure. Employment as a Judge's Associate was (and still is) regarded as a potentially important opportunity for an aspiring barrister.

Although Executive Government jealously guarded the right to make and regulate appointments, in practice appointees were made at the request or on the recommendation of individual judges, and Associates were regarded as part of a Judge's personal staff⁴³⁰. During Bean's time with Owen J, several Associates were members of their Judge's family. Bean's immediate predecessor as Associate to Owen J (CE Manning) was a member of the Manning family, a distinguished legal family who lived in close friendship with Owen.

Amongst members of the NSW Bar and Judiciary prominent in those times, a number had commenced their careers as barristers by serving as Associates to Supreme Court judges⁴³¹. For example: Edmund Barton (Australia's first Prime Minister and, in 1903, one of the first judges of the High Court of

⁴²⁹ *NSW Government Gazette*, No. 228 of 19 September 1906, Items 1523 and 1524.

⁴³⁰ JM Bennett, *A History of the Supreme Court of New South Wales* (Sydney, 1974), pages 89-93 (esp. at 91-92).

⁴³¹ Details of service of Associates can generally be found in the *NSW Law Almanac* (www.lawalmanacs.info) but the NSW Government's budget papers (the 'Blue Book' in and before 1894 and the 'Public Service List' in and from 1896) and Notices in the *NSW Government Gazette* need to be consulted for precision. The *Almanac* contains many errors of detail because it is an annual publication compiled towards the end of a year in anticipation of the following year, and changes in arrangements may be overlooked or unable to be recorded.

Australia)⁴³² had served as Associate to the Chief Justice of New South Wales, Sir Alfred Stephen in 1875. AB Piddington had served a term as Associate to Mr Justice (Sir William) Windeyer. Thomas Bavin (1874-1941), whose orbit may have intersected with that of Bean at the NSW Bar, served as Prime Minister Barton's Private Secretary and, when Barton was appointed to the High Court, became his Associate . at the same time serving as Private Secretary to Barton's successor as Prime Minister, Alfred Deakin⁴³³. Sir William Manning's son, Henry, in 1904 served as Associate to Mr Justice RE O'Connor of the High Court. Owen J's grandson, (William Francis Langer Owen) served as Associate to the then-Chief Justice of New South Wales, Sir William Cullen, while studying for the Bar following his return from WWI.

As it happened, Owen J commenced sitting as Royal Commissioner on the Administration of the Lands Department at 2.00pm on 1 May 1905 (the very date from which Bean's appointment as Associate was effective), having received his Commission only that morning when he was sitting in the Supreme Court. The Secretary to the Commission was Mr JWH Houston, a substantial public man in his own right with extensive experience as Under-Secretary of the Department of Lands and in the conduct of Commissions of Inquiry⁴³⁴. Counsel Assisting was Mr Hanbury Davies⁴³⁵. Between 1 May 1905 and 3 April 1906 inclusive, the Commissioner sat on 93 days (in the offices of the Lands Department) and examined 251 witnesses. His primary report was dated 23 May 1906. A formal supplementary report was dated 17 May 1907⁴³⁶. Neither Report contains an explicit reference to Charles Bean. Nor would such a reference ordinarily be expected of an Associate to a Judge sitting as a Royal Commissioner. The services a Judge might expect to be performed by his Associate or his Tipstaff could be performed by his Secretary or by Counsel Assisting.

Counsel assisting, Hanbury Davies, was a senior junior (ie., a member of the Outer Bar . without an appointment as Senior Counsel . but a barrister of substantial seniority). He was admitted to the NSW Bar in 1883. In 1897 he accepted a retainer for the Minister of Lands and, in performance of that retainer over subsequent years, acquired substantial experience in property law that would have been turned to account as Counsel Assisting Owen J⁴³⁷.

Owen's work on the Royal Commission must have taken up time otherwise available to him to engage Bean's attention. How much time outside formal sitting hours of the Commission cannot be known without inside knowledge about the nature and extent of assistance he received from Commission staff

⁴³² Entry for (Sir) Edmund Barton (1849-1920): (1979) 7 ADB 194.

⁴³³ Alfred Deakin (1856-1919) was a Victorian barrister, journalist and state and federal politician who, with NSW's Edmund Barton, played a central role in leading the Australian colonies to federation and then dominated the first Australian Parliament: (1891) 8 ADB 248.

⁴³⁴ *Cyclopedia of NSW* (1907), pp. 160-161.

⁴³⁵ *Report of the Commissioner* dated 23 May 1906 on the Royal Commission of the Administration of the Lands Department, ordered by the Legislative Assembly on 26 June 1906 to be printed (NSW Parliamentary Papers, 1906, Vol. 2)

⁴³⁶ DH Borchardt, *Check List of Royal Commissions, Select Committees of Parliament and Boards of Enquiry* (Bundoora, La Trobe University Library 1975), Part IV (NSW) 1855-1960) pages 231-232 (para. 700).

⁴³⁷ Lindsay and Webster *No Mere Mouthpiece*, p. 331; HJ Gibbney & AG Smith *A Biographical Register 1788-1939* (Canberra, 1987) Vol. 1, p. 166; *Cyclopedia of NSW* (1907), p. 309.

and Counsel Assisting. Whether Counsel Assisting carried the burden of preparation of draft Reports for publication in the name of the Royal Commissioner is unknown, but not beyond experience of Royal Commissions.

Throughout 1905 and 1906 Owen J appears to have maintained a regime of regular appearances as a member of a Bench of three judges sitting as the Full Court of the Supreme Court. That is apparent from reports of judgments of the Supreme Court published in the *Weekly Notes (NSW)* and the newer, authorised law reports, the *State Reports (NSW)* published for the information of the legal profession⁴³⁸.

How heavy were Owen J's appearances in the Full Court during Bean's Associateship is open to speculation. At that time he more often than not sat as a member of a Full Court presided over by the Chief Justice, Sir Frederick Darley. It was the practice of Darley CJ, generally, to deliver the leading judgment. Owen J and the third judge constituting the Bench then, not uncommonly, concurred with the Chief Justice. That, at least, is how the law reports portray what happened. For the most part, the concurring judges were not reported as having done more than nod their head for a formal concurrence. Moreover, most of the proceedings before the Full Court took the form of Motions for a New Trial rather than a full Appeal on the merits of the case fought at trial, and the Reasons for Judgment published by all judges were shorter and less conspicuously learned than is fashionable 100 years later.

That is not intended as criticism of judicial practice at either end of the century. It is rather a reflection of available resources and customary practice and procedure. In the early 20th century judges lacked the office aids that are these days taken for granted and which facilitate the publication of (lengthy) written reasons for judgment. In the earlier years judges tended more often than they do now to deliver judgments orally rather than in writing. It must also be remembered, as affecting the Bench as well as the Bar, that the character of legal texts available to the profession for research purposes was not then what it is now. The multi-volume encyclopaedia, *Halsbury's Laws of England*, which dominated much Australian research for the next 75 years or so (until the fourth edition waned in popularity) did not begin to publish the first volume in its first edition until 1907. The *Commonwealth Law Reports*, which are now the primary source of legal authority for Australian courts and lawyers subjected to the High Court of Australia as the nation's ultimate appellate court, had not long commenced publication. The High Court was not established until 1903. From that time, until the passage of the *Australia Acts* by the Australian and Imperial parliaments in 1986, it was subject to appeals to the Privy Council in most types of case and inclined, if not bound, to follow English case law in the name of a restrictive doctrine of precedent that did not begin to be liberalised, in England or Australia, until the 1960s.

⁴³⁸ Appendix III contains a chronological summary of Owen J's reported judgments, incorporating a short description of the nature of each case and identification of the barristers and solicitors who are reported to have appeared in the proceedings. Because based only on the published law reports, it is not exhaustive of the judicial work undertaken by Owen J. Neither the judge's Notebooks (held by State Records NSW) nor newspaper reports of law lists or proceedings have been consulted.

From an Associate's perspective, allocation of one's judge to a Full Court sitting was likely to lighten the Associate's official duties considerably. One Associate per court sitting might service three judges as well as a single judge. Owen J might have been slated to sit on the Full Court, and with the Chief Justice, in order to give him respite from the chamber work necessitated by his appointment as a Royal Commissioner. This cannot readily be known. What can be known, however, is that Bean's exposure to the rough and tumble trial work best calculated to advance the education of an aspiring barrister must have been diminished, to some extent, by the nature of Owen J's workload.

XIV. THE LEGACY OF LEGAL PRACTICE FOR CEW BEAN

Anybody apprised of Charles Bean's formal training as a barrister, buttressed by two years' service as a Judge's Associate, would be tempted to attribute his investigative methodology, his close attention to particular facts and (it must be said against lawyers as a class) his wooden literary style to what remained of the lawyer in him. Any such thought would be reinforced by the disclaimer that Bean insisted be attached to each volume of his war diaries when he lodged them with the Australian War Memorial in 1946.⁴³⁹

"These writings represent only what at the moment of making them I believed to be true. The diaries were jotted down almost daily with the object of recording what was then in the writer's mind. Often he wrote them when very tired and half asleep; also, not infrequently, what he believed to be true was not so – but it does not follow that he always discovered this, or remembered to correct the mistakes when discovered. Indeed, he could not always remember that he had written them.

These records should, therefore, be used with great caution, as relating only what their author, at the time of writing, believed. Further, he cannot, of course, vouch for the accuracy of statements made to him by others and here recorded. But he did try to ensure such accuracy by consulting, as far as possible, those who had seen or otherwise taken part in the events. The constant falsity of second-hand evidence (on which a large proportion of war stories are founded) was impressed upon him by the second or third day of the Gallipoli campaign, notwithstanding that those who passed on such stories usually themselves believed them to be true. All second-hand evidence herein should be read with this in mind".

⁴³⁹ Kevin Fewster, *Bean's Gallipoli: The Diaries of Australia's Official War Correspondent* (Allen & Unwin, Sydney, 3rd ed, 2007), pp. 15-16 and 22.

Lawyers are rarely so careful when they pass their own war stories+from one generation to another! However, in the forensic battles they fight, and in the forensic judgments they are routinely called upon to make, barristers have a similar, ingrained scepticism about second-hand evidence+.

The attitude of Doubting Thomas+is not uniquely that of a lawyer, though. It is routinely taught at universities, and practised by journalists and historians. Moreover, it does not generally become fully instinctive in newly-trained barristers until they have had more hands on experience in professional practice than Bean ever had. A fully qualified law graduate might not uncommonly require about five yearsqlaborious work taking witness statements, leading evidence, cross-examining witnesses and suffering the slings and arrows of trial advocacy to become a fully fledged barrister.

With no false modesty, but with an established reputation as an historian, Bean described his War Diaries as containing information collected by a trained investigator⁴⁴⁰. His training undoubtedly included, as an historical fact, legal training. However, it also (and perhaps more importantly) included on-the-job training as an investigative journalist. After the War he sometimes explained his experiences by use of law-related analogies such as the compatibility or otherwise of separate eye witness accounts of an incident recounted in litigation⁴⁴¹; the old legal rule against the admission of hearsay+evidence⁴⁴²; and the tendency of policemen giving evidence+to slip into jargon⁴⁴³. Plainly, then, his legal training and experience at the very least informed his imagination as a writer.

In his self perception, the fact that he had training as a barrister might have been significant as a contribution to his becoming a competent writer. In describing the British War Officers staff of highly competent writers, including barristers and playwrights+able to summarise military records,⁴⁴⁴ he appears (too generously to barristers) to have made an association of ideas by linking writers+, barristers+and playwrights+.

So, did exposure to forensic techniques+of the law in any way contribute to Beans empirical methods of investigation? Some scepticism is called for. In explaining how it was that he became convinced that first hand evidence+of military stories was essential, he related that after two-three days experience of interrogating wounded soldiers at Gallipoli he came to realise the unreliability of second hand accounts⁴⁴⁵. Hard experience, however obtained, is the best teacher.

⁴⁴⁰ CEW Bean, 'The Writing of the Australian Official History of the Great War ó Sources, Methods and Some Conclusions' (1938) 24 RAHSJ 85 at 100.

⁴⁴¹ 'The Writing of the Australian Official History of the Great War ó Sources, Methods and Some Conclusions' (1938) 24 RAHSJ 85 p. 109.

⁴⁴² 'The Writing of the Australian Official History of the Great War ó Sources, Methods and Some Conclusions' (1938) 24 RAHSJ 85, p. 110.

⁴⁴³ CEW Bean, 'The Technique of a Contemporary War' (1942) 2 *Historical Studies* 65 at 76.

⁴⁴⁴ CEW Bean, 'The Technique of a Contemporary War Historian', p. 70.

⁴⁴⁵ 'The Writing of the Australian Official History of the Great War ó Sources, Methods and Some Conclusions', p. 110.

What can more confidently be said is that the law took nothing away from skills and tendencies of thought he otherwise possessed. Insofar as he was given to making a public address to any audience in order to persuade others to think or act as he would have them do, his language was consistently the language of a pedagogue, not that of a lawyer. And his audience was the public at large, not a jury.

Bean's pursuit of facts in support of published statements, and his advocacy of a scientific method in support of practical action, can be seen most clearly in his work as Australia's Official War Correspondent and, after World War I, its Official Historian. His investigation of the Gallipoli battleground in 1919 as a foundation for what became the Australian War Memorial is a case in point. He tells the story in his book, *Gallipoli Mission* (1948), and the story has recently been retold by Dr Janda Gooding in *Gallipoli Revisited: In the Footsteps of Charles Bean and the Australian Historical Mission* (2009)⁴⁴⁶.

His dogged pursuit of facts is consistent with the common law tradition to which his legal training exposed him. However, he was already predisposed to that approach, and his family's passionate commitment to genealogy demonstrates an exposure to it independent of the law.

Perhaps the more subtle question is whether Charles's exposure to legal practice in any way impacted on his perception and selection of facts. Perhaps it did, but only marginally. The die was cast well before Charles's engagement with legal practice.

XV. CEW BEAN, CULTURAL CHANGE AND SELF-KNOWLEDGE

Much remains to be discovered about Bean's legal career but what is beyond question is that, by a detailed study of it, light can be thrown on the development of Australian culture, not limited to the place of the Bar in the Australian legal system.

Bean may not have been religious in his own perception of that term, or in the perception of others. He might also have fallen short of qualification as a philosopher in his own or others' perception. He did, however, live an active life of observation of, and deep reflection on, the human condition; the meaning of life; and the ever-presence of life's great leveller, death.

The genealogy of CEW Bean is a research topic in waiting for social, or church, historians. There is a need of someone brave and patient enough to face the voluminous primary records available to cast light and shadow over the private, and personal faith, of a public pedagogue.

What we can know from observations of external forms is that Charles never entirely distanced himself from his Anglican roots. It was in his DNA. There is, in Australia, a long tradition of disavowal of the label religious (even and sometimes especially) by thoughtful people whose lives revolve around a

⁴⁴⁶ Hardie Grant Books, Melbourne (and Australian War Memorial), 2009.

church. Whether or not he was a regular churchgoer . and it may be assumed that he was not one, at least after his return from World War I . he might fall into that category.

For its part, his country turned to him and gave his life-purpose fulfilment in and by reference to the Great War. It turned to him again in and after the Second World War. It would be a mistake to believe that all his books were best sellers⁴⁴⁷; but his contemporaries knew that he had something to say touching the core of their lives, and that he had earned the right to say it, whether anybody listened or not.

Not everybody did listen. (Dame) Mary Gilmore (1865-1962) admired him but, at the same time, dismissed him, perhaps, as a dreamer⁴⁴⁸. In a comparison with Australian wheat scientist William Farrer (1845-1906)⁴⁴⁹ she wrote of Bean (in February 1946): "... *what a different kind of man. One [Farrer] had his feet on the ground & the other [Bean] on the mountain tops, and both servants of Australia.*"

Professor (Sir) Keith Hancock (1898-1988), author of a celebrated book entitled *Australia*,⁴⁵⁰ was, at least in his youth, irritated by celebration of the Gallipoli legend in Australian cultural history, perhaps in part because it had a tendency to exclude those who, for whatever reason, had not been there⁴⁵¹. Any sense of exclusion of this character might be compounded by loss of a family member or friend in the War. Young men whose families have already given up one young man thwarted any military ambition or sense of %all+they might have had⁴⁵². The politics of %aclusion+in definition of a community generally operate, at least implicitly, to exclude some who do not fit the pattern.

However much Bean's writing may have struck some Australians as utopian, or sectional in its focus on the Australian bush and Australians at War, it has been seminally influential in Australian nation-building. Whether or not it is correct to characterise the title of Hancock's autobiography, *Country and Calling*⁴⁵³ as an allusion to a peroration in the Preface to Bean's *On the Wool Track* as at least one commentator has done,⁴⁵⁴ the objective fact is that Hancock publicly associated himself with ANU's conferral of an Honorary Doctorate on Bean in 1959 and Bean can reasonably be identified as an influence on Hancock's own presentation of %Australia+⁴⁵⁵. The presence of

⁴⁴⁷ Sales figures during Bean's lifetime or thereabouts are recorded in KS Inglis, *CEW Bean, Australian Historian*, pp. 25-26 and 30 n 38.

⁴⁴⁸ WH Wilde and T Inglis Moore, *Letters of Mary Gilmore* (Melbourne University Press, 1980), p. 209.

⁴⁴⁹ (1981) 8 ADB 471.

⁴⁵⁰ WK Hancock, *Australia* (Benn, London, 1930), subsequently published in New York (1931), in an "Australian Pocket Library" edition (1945) and by Jacaranda Press, Brisbane (1961).

⁴⁵¹ DA Low (ed), *Keith Hancock: The Legacies of an Historian* (Melbourne University Press, 2001), p. 182. In Hancock's case, see J Davidson, *A Three-Cornered Life: The Historian, WK Hancock* (UNSW Press, Sydney, 2010), pp. 16-19.

⁴⁵² . In Hancock's case, see J Davidson, *A Three-Cornered Life: The Historian, WK Hancock* (UNSW Press, Sydney, 2010), pp. 16-19.

⁴⁵³ WK Hancock, *Country and Calling* (Faber and Faber, London, 1954).

⁴⁵⁴ Rob Pascoe, *The Manufacture of Australian History* (Melbourne University Press, 1979), pp. 20-21.

⁴⁵⁵ *The Manufacture of Australian History*, pp. 20-22.

Bean's thematic writing was too great for any Australian living in his lifetime, after World War I, to pass over untouched.

Perhaps the time has come for a new generation of Australians to listen for whispers from the spirit of CEW Bean. Newspaper headlines, Official Histories and didactic books have long ceased to shout out loud. CEW Bean is no longer fashionable except insofar as formal necessity dictates that his name be associated with celebrations of ANZAC Day and Remembrance Day. We may come to know ourselves better by starting with him.

It would not be difficult for modern readers to identify points of difference between his culture and that of modern Australia. It would not be difficult for a modern reader to criticise him as racist on the basis of his newspaper articles in support of the White Australia Policy of early 20th century Australian politics; his opposition to advancement of General Monash in World War I; or his statements (without reference to the tag *Terra Nullius* now fashionable in debate about indigenous Australia, European settlement and Land Rights) about the wide, empty spaces of Australia ripe for occupation and development or despair about improvement in Aboriginal social conditions⁴⁵⁶. Nor would it be difficult to criticise his use of language, if not underlying ideas, from a feminist perspective. And these points of criticism are independent of a major difference between then and now: the militarism that was both latent and patent at all levels of Australian society (and elsewhere) in the decades leading to the First World War.

These are litmus test topics that might help modern day Australians to explore their present, and future, by engagement with the past. Modern readers must take care not to be angry or irritated with their forebears, or to judge them too harshly, merely because they were not as we are or as we, for our own peace of mind, would have them be. We need, rather, to reflect upon why a man such as Charles Bean thought as he did and why, and how, Australian society came to change.

Whatever his failings, Charles Bean was a well-intentioned, other-directed and consistently public-spirited man. According to his own lights, he advocated pursuit of Truth in the belief that, in time, the world could be made a better place for everybody.

His formal education and life experience led him to think about race in the context of a European philosophical divide between East and West. He was not alone in doing so. Even those Europeans who opposed racial discrimination in the name of Christ, or the universality of humanity, explained attitudes of the early 20th century (not limited to Australia) in those terms⁴⁵⁷. Charles's university studies of ancient Greece and Rome appear to have been consistent with that pattern of thought. The British Empire was built upon allusions to parallels between Britain at the heart of an Empire and Imperial Rome. Charles was not alone, or expressing a uniquely right-wing view of

⁴⁵⁶ Eg, CEW Bean, *The Dreadnought of the Darling* (1st Australian ed, 1956), dedication and pp. 186-188.

⁴⁵⁷ Eg, JH Oldham, *Christianity and the Race Problem* (Student Christian Movement Press, London, 9th ed, 1933), the first edition of which was published in 1924.

Australian politics, when, in the early years of the 20th century, he wrote sympathetically of Australia's 'White Australia Policy'. It was largely (although not only) a product of the economic protectionism of militant industrial workers on the left of politics. A begrudging acceptance of it can be found in the memoirs of the Oxford educated pioneer of the Anglican 'Bush Brothers', Charles Matthews, first published in 1908⁴⁵⁸.

The Policy found its origins in, and was sustained by, a kaleidoscope of cultural conditions that (in and independently of Australia) fell away in the aftermath of two World Wars. Insofar as it had been sustained by fear of the rise of Japanese military power, for example,⁴⁵⁹ the defeat of Japan in WWII removed that strut. In the wake of that War, Australians of all political persuasions increasingly questioned the foundations of any 'White Australia Policy'⁴⁶⁰. Professor KS Inglis makes the larger point: *"The sense of values established in boyhood remained steady [with Charles Bean]; the opinions derived from it went on changing. Before 1914 Bean had employed serenely the notion of an English race, and briskly defended White Australia. By 1949 he was arguing for admission of immigrants from Asia rather than perpetuation of 'a quite senseless colour line'"*⁴⁶¹.

Quite apart from his repudiation of 'White Australia', Bean cannot be summarily dismissed as a 'racist'. On close examination of his 'racial' comparisons of soldiers in World War I, the discrimination appears, perhaps, to have been more 'education' than 'race'⁴⁶². In the heat of World War II he protested against the Australian Government's inflammatory, racist vilification of the nation's then-Japanese enemy⁴⁶³. If there was anything of anti-Semitism in his opposition to Sir John Monash's advancement in World War I,⁴⁶⁴ it needs to be balanced against his public and private regret in later years that he had judged Monash too harshly⁴⁶⁵. The Bean Papers include the draft of a speech he was too weak to make at ANU's Ceremony for the conferral of an Honorary LLD upon him⁴⁶⁶. It contains no mention of his legal career. The degree was awarded in recognition of 'distinguished eminence in public service' referable to his work as Australian War Historian and as an

⁴⁵⁸ CHS Matthews, *A Parson in the Australian Bush* (first published, 1908; revised edition published 1926; republished by Rigby Limited, Australia, 1973), ch. 32 ('The Future of Australia').

⁴⁵⁹ Renate Howe, *A Century of Influence: The Australian Student Christian Movement, 1896-1996* (UNSW Press, Sydney, 2009), pp. 314-316.

⁴⁶⁰ Eg, *A Century of Influence*, pp. 343-346; Borrie, G Cuthbert, GL Wood, HL Harris and AP Elkin, *White Australia: Australia's Population Problem* (Australian Institute of Political Science, Sydney, 1947).

⁴⁶¹ (1979) 7 ADB at 229. See also KS Inglis, *CEW Bean, Australian Historian*, pp. 30-31; and S Ellis, 'Racism in Australia: A Contribution to the Debate' (1972) 44 *Australian Quarterly* 58-66.

⁴⁶² Eg, CEW Bean, 'Sidelights of the War on Australian Character' (1927) 13 RAHSJ 209 at 211-212.

⁴⁶³ KS Inglis, *This is the ABC: The Australian Broadcasting Commission, 1932-1983* (Melbourne University Press, 1983), p. 96; Ellis 'Racism in Australia', p. 63.

⁴⁶⁴ Geoffrey Searle, *John Monash, a Biography* (Melbourne, 1982, 2002 paperback edition), pp. 393-398.

⁴⁶⁵ CEW Bean, *Two Men I Knew: William Bridges and Brudenell White, Founders of the AIF* (Angus and Robertson, Sydney, 1957), pp. 169-173; Dudley McCarthy, *Gallipoli to the Somme*, p. 387. See *The Official History of Australia in the War of 1914-1918*, Vol. 6 (*The Australian Imperial Force in France, During the Allied Offensive, 1918*, published in 1942), ch. 6 ('Monash Succeeds Birdwood'), esp. pp. 198-211.

⁴⁶⁶ AWM38/3 DRL 6673/484.

Archivist . but it speaks of the importance of morale and tradition, and cautions Australians against being %holier than thou+in retrospective criticism of Nazi persecution of the Jews.

In the Tasker letter⁴⁶⁷ he tells us that, had it not been for the outbreak of World War I, he might have written a book based on his accompanying a %Commission to Kilalpaninna, near Lake Eyre, investigating the condition of the aboriginals+. In his Account for EFFIE⁴⁶⁸ he describes the work of the Commission as an %enquiry into the education of the aboriginals+. That experience might, perhaps, have taken up his unpublished work on comparisons between slum life in London and Sydney prepared when he was filling in idle moments as the *Herald's* London Correspondent⁴⁶⁹. For present purposes, it is enough to note that his pre-war journalism predated the seminal anthropological work of Professor AP Elkin (1891-1979), an Anglican clergyman and author of *The Australian Aborigines: How to understand them*⁴⁷⁰ and other works; his student, WEH Stanner (1905-1981), author of *White Man Got No Dreaming; Essays, 1938-1973*⁴⁷¹; and the work of Charles Rowley. By the time the results of their research were in, and the 1967 referendum for empowerment of the Australian Government in Aboriginal Affairs was won, Charles Bean's best years had passed.

Nevertheless, for all his despair about the survival of Australian %blacks" confronted by a clash of cultures, he spoke well of Aboriginal achievements in a harsh country; accepted that early encounters between %blacks+and %whites+were characterised by wrongdoing on both sides; lamented the displacement of Aboriginals from traditional lands; and recognised in European Australians a deep sense of obligation that compelled acknowledgement of Aboriginals as worthy of special consideration as original inhabitants of the land⁴⁷².

Bean belonged to an earlier era, before the British Empire was compelled by two world wars to %morph+into a %Commonwealth of Nations+. The greatness of the British Empire, and the safety of those who wittingly or otherwise relied upon its protection (including the United States of America, it might be argued), depended upon Britain's dominance as a sea power after Lord Nelson's fatal, fateful victory at the Battle of Trafalgar in 1805. Charles Bean's intuitive grasp of that fact, and the challenge to the existing order of the world in the days leading up to World War I, lie at the heart of his interest in military and naval affairs.

The Bean family's Anglican roots, accompanied by personal contact with descendents of Bishop GA Selwyn, might explain the missionary zeal with which Charles Bean promoted his moral themes. The society in which he lived might strike modern observers as paternalistic or presumptuous. Nevertheless its emphasis on equality of opportunity for all, personal

⁴⁶⁷ Pages 15-16.

⁴⁶⁸ Page 66.

⁴⁶⁹ Tasker letter, p. 15.

⁴⁷⁰ Angus and Robertson, Sydney, 1st ed, 1938.

⁴⁷¹ ANU Press, Canberra, 1979.

⁴⁷² CEW Bean, *The Dreadnought of the Darling* (1st Australian ed, 1956), pp. 178-180 and 182-188.

development for everybody and helping others cannot readily be characterised as malevolent.

Quite possibly, attitudes of mind held by people like Charles Bean in the early 20th century, but since fallen into discredit, may have reflected unfamiliarity with alien cultures and a fear of the unknown. Perhaps human nature has not changed in the interim but, as the world has grown smaller and shared experiences have become greater, our collective experiences of community, common bonds and friendship have found deeper soil within which to grow.

If the life and work of CEW Bean permits these possibilities to be explored in search of Truth, one can hardly imagine his spirit doing otherwise than urging us forward. The large ideas that informed his optimism throughout a long life, and the devastation of two World Wars, enabled him to grow in empathy with an ever-expanding Australian community. Their full force is not spent. They remain potent.

XVI. TO SEE AND AIM AT TRUE VALUES

It was fitting that, at the Memorial Service conducted for him at St Andrew's Anglican Cathedral on 2 September 1968, the mourners celebrated his life with a hymn written by him. *Non Nobis* was, in origin, a poem written by Charles in December 1915 when leaving the graves on Gallipoli⁴⁷³. In September 1945 the General Synod of the Church of England in Australia, meeting in Sydney, had resolved to include it in an *Australian Supplement* to the *Book of Common Praise*, published together with the Anglican *Book of Common Prayer*, widely distributed by Oxford University Press in a single volume. It was recommended for use on ANZAC and Remembrance Day:

- “1. *Not unto us, O Lord, to tell
 Thy purpose in the blast;
 Why these, that towered beyond us, fell
 And we were overpast.*
2. *We cannot guess how goodness springs
 From the black tempest's breath,
 Nor scan the birth of gentle things
 In these red bursts of death.*
3. *We only know – from good and great
 Nothing save good can flow;
 That where the cedar crashed so straight
 No crooked tree shall grow;*
4. *That from their ruin a taller pride –
 Not for these eyes to see –
 May clothe one day the valley side ...
 Non nobis, Domine”.*

⁴⁷³ CEW Bean (ed), *The Anzac Book*, p. 11.

The CEW Bean who wrote those lines was not born fully formed in the Great War, even if celebrations of Australian nationalism find convenience in a belief that that is what happened. His late 19th century view of the world . charmed by talk of duty, service, discipline and optimism as well as militarism . was nurtured by a father in whom a like-minded son could take pride and schools (especially Clifton College and Brentwood School) which served as one of their many common bonds.

For those Australians for whom the gulf between Charles's cultural assumptions and their own is too large to inspire empathy, something of the continuing appeal of an independent spirit might be discerned in his approach to honorific awards. In 1930-1931 he accepted an honorary degree of Doctor of Letters from the University of Melbourne and immediately adopted the title, 'Dr CEW Bean'⁴⁷⁴. In 1959, in failing health, he accepted an honorary degree of Doctor of Laws from the Australian National University⁴⁷⁵. He was not indifferent to honours, but his selective acceptance of them reveals a man who knew his mind and would not have it compromised.

In December 1940 he was informed by Government House in Canberra that, if he would agree, 'the King would be pleased to approve your appointment as Knight Bachelor'. His biographer and friend, Dudley McCarthy extracts his reply in *Gallipoli to the Somme*⁴⁷⁶.

"I deeply appreciate the action of His Excellency and the Government in recommending me for a knighthood, but I have for many years held that in Australia the interest of the nation would best be served by the elimination of social distinctions, as far as is reasonably possible. Though I have the greatest admiration for many titled men and women and for their work and influence, it seems to me that in practice, despite certain advantages, the system encourages false values among our people, and that our generation needs above everything to see and aim at true values. For this reason, and this only, I have begged to decline this reward, by the kind offer of which I am deeply gratified".

The constancy of this spirit is seen in the fact that he declined Imperial Honours on more than one occasion and when, in 1964, frail health called upon him, finally, to confront his own mortality⁴⁷⁷, he chose admission to Concord Repatriation Hospital in Sydney so that he might be with other survivors of war as he lay dying. Death did not come for another four years

⁴⁷⁴ The University Council resolved on 15 September 1930 to confer the degree: *The Brisbane Courier*, 17 September 1930, p. 13. It was conferred on 18 April 1931. The University's Scroll remains with the Bean Papers: AWM 38/3 DRL 6673/910.

⁴⁷⁵ The degree conferral ceremony took place on Friday, 8 May 1959 and was reported in the *Canberra Times* the following morning: AWM 38/3 DRL 6673/480. The degree was conferred by Dr HC Coombes (Deputy Chairman of the University Council) and Bean was presented to him by Professor Sir Keith Hancock (Director, Research School of Social Sciences, ANU). The degree Scroll is with the Bean Papers: AWM 38/3 DRL 6673/910.

⁴⁷⁶ Sydney, 1983, page 390.

⁴⁷⁷ He resigned from the Board of the Australian War Memorial in March 1963, effective 1 July 1963: M McKernan, *Here is Their Spirit: A History of the Australian War Memorial, 1917-1990* (University of Queensland Press, St Lucia, 1991), p. 244.

but, even in failing mental health, he instinctively knew his own mind and honoured its spirit⁴⁷⁸.

The title of this paper is taken from the printed Address (Eulogy) of Angus McLachlan distributed with the Order of Service for Bean's Memorial Service⁴⁷⁹. McLachlan recounted that Charles took as his motto for life the words of Sir Thomas Browne: *Be substantially thyself and let the world be deceived in thee as they are in the lights of heaven*". The full, correct form of that quotation is: *"Be substantially great in thy self, and more than thou appearest unto others; and let the World be deceived in thee, as they are in the Lights of Heaven."*⁴⁸⁰.

The subtle difference between these two forms of the quotation is not insignificant: the original commends greatness of spirit; the adaptation, self-knowledge reminiscent of Shakespeare's *"This above all – to thine own self be true, And it must follow, as the night the day, Thou canst not then be false to any man"*⁴⁸¹. Either form of Browne's proverb could do justice to Charles Bean. He had greatness of spirit and McLachlan was right, in this at least, [his] wholeness lay in being at all times himself.

If the lessons of CEW Bean's life, his example and his teaching are to be understood by a new generation, our image of him needs to be rescued from characterisation merely as a writer on War and Outback Australia. He was that; but he was more than that.



⁴⁷⁸ Effie (Ethel Clara Bean, nee Young) died, aged 97 years, on 2 July 1991: *Sydney Morning Herald* 5 July 1991 (Death Notice) and 26 July 1991 (Probate Notice).

⁴⁷⁹ John Angus McLachlan died in November 1989: *Sydney Morning Herald* 15 November 1989, p. 39 (Death Notice) and 16 December 1989, p. 155 (Probate Notice).

⁴⁸⁰ Section XLV of *A Letter to a Friend* (published posthumously in 1690) and Part 1, Section XIX of *Christian Morals* (published posthumously in 1716) reprinted in LC Martin (ed), *Sir Thomas Browne: Religio Medici and Other Works* (Oxford, 1964) at pp. 194 and 209; WA Greenhill (ed), *Sir Thomas Browne's Religio Medici, Letter to a Friend &c and Christian Morals* (MacMillan, London, 1966) at pp. 153 and 170; H Sutherland (ed), *Sir Thomas Browne: The Religio Medici and Other Writings* (Everyman's Library, JM Dent and Sons, London, 1956) at p. 241 (and, by reference, p. 165). Sir Thomas Browne (1605-1682) was the author of *Religio Medici* (1642), *Pseudodoxia Epidemica: Enquiries into Vulgar Errors* (1646), *Hydriotaphia, or Urn-burial* (1658) and *The Garden of Cyrus* (1658), published during his lifetime; and, published posthumously, *Letter to a Friend* and *Christian Morals*.

⁴⁸¹ *Hamlet*, Act 1 Scene 3 per Polonius.

ACKNOWLEDGEMENTS

An earlier version of this paper (entitled "The Legal Career of CEW Bean: An Australian Moralist in the Making") was presented on 15 December 2010 to the Annual Conference of the Australian and New Zealand Law and History Society meeting in Melbourne.

The author acknowledges, with gratitude, the published works of Professor KS Inglis, Kevin Fewster, Michelle Grattan, Dr SC Ellis, Michael Piggott and Denis Winter; Stephen Ellis' thesis, "CEW Bean: A Study of his Life and Works" (University of New England, unpublished MA thesis, 1969); research assistance and secretarial support freely given by Margaret Lewis and Shari Williams; learned encouragement given by Philip Selth, Tony Cunneen, Mark Walsh, Mandy Tibbey and the staff of the NSW Bar Association's Library, led by Lisa Allen; and the assistance of the Law Courts Library, Sydney. Editorial assistance, including commentary, was provided by Stuart Ogg.

Kind encouragement received from Professor Inglis on his review of a draft of the paper was greatly appreciated. His work is an indispensable point of reference for this paper.

Thanks are also due to the staff of the Australian War Memorial (for research assistance relating to the Papers of CEW Bean and his family, and Arthur Bazley, in 2007); the staff of State Records NSW (for assistance with primary records in 2007); and the Archivists of the Inner Temple (for supplying information, in 2007 about Bean's training and qualifications), All Saints' College, Bathurst (for supplying Extracts from *The Bathurstian* that enabled HM Tasker's identity and the providence of the Tasker letter to be confirmed in 2010) and Sydney Grammar School (for access to the Trustees' Minute Book, and old copies of *The Sydneian*, in 2007 and information about WH Friend in 2010). Reverend Phillip Bradford, the Rector of All Saints' Anglican Church, Hunters Hill, kindly opened the church to enable its important historical memorials to be inspected during investigations (not yet exhausted) into links between the parish and the legal profession; stained glass windows are dedicated to the memory of members of the Manning and Simpson families (including CE Manning) at a time when the Rector bore the name of "Owen".

A longer standing debt of gratitude is owed to the staff of Bankstown Boys' High School (1966-1971) where, almost simultaneously, a 15 year old boy, fascinated with all things Australian, first resolved to be a barrister and, in study of *On the Wool Track*, noticed both CEW Bean's career path and the sentiment expressed in the quotation introducing this paper.

APPENDICES

- I. CEW Bean, Thomas Arnold, Australian Character and the ANZAC Spirit.
- II. Edwin and CEW Bean in Poetry and Song.
- III. A Chronology of the Judicial Work Schedule of Owen J during CEW Beans Associateship (1905-1907).
- IV. Wagga Wagga Circuit Court Business, September-October 1905.
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- X. A Bibliography of CEW Beans Major Works.
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