

Battles Overseas and At Home: The New South Wales Legal Profession in 1917.

The Symposium 24 March 2012

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Comments welcome

Synopsis: This paper focuses on the events of 1917 and is a part of a series on Lawyers in the First World War. Other papers in the series cover lawyers on Gallipoli and in 1916 as well as related topics may be accessed on the website of the Francis Forbes Society for Australian Legal History on <http://www.forbessociety.org.au/> or by contacting the author directly at the above email address.

Introduction:

The activities of lawyers in the first decades of the twentieth century in general and the First World War in particular have received scant attention. The need to examine this area lies in lawyers' importance in defining the early forms of Australian life after Federation and their leadership of many war related activities. The period of 1914-1918 was a time when the country was determining just how it would operate as an independent Federation yet also a full member of the British Empire – which was increasingly being seen as an international community of nations. An investigation of lawyers' activities during the war challenges any stereotypes of a remote, isolated profession

and reveals a vibrant, human community steeped in shared values of service and cooperation and determined to play an active part in shaping the nation. war service, whether on the battlefield or the Home Front was seen as an essential part of that process. The development of the protectorate of Papua was part of that process. The Lieutenant Governor was Judge Murray. His report in 1917 gave an indication of the sort of development of crops and patrolling which would develop this 'brown daughter of the tropics.'¹

The Australia of today is different country from that of 1917. By 1917, the New South Wales legal profession was dominated by the war: professionally; personally; socially; politically and spiritually. It is hard to see beyond the contemporary social and physical landscape to the more restrained and grief stricken environment of that year – which was in many ways the worst period of the war, in terms of casualties and bitter social conflict. The year 1917 was a period of spiraling radicalism for the legal profession which led them into the most intense period of political and social intervention which went well beyond their normal professional activities.

Overview of the Legal Profession during the War

The complex network of personal connections amongst lawyers and with the wider community at the beginning of the Twentieth Century are neither well documented nor well understood. While some lawyers were the scions of established colonial legal and business families, others were products of more

recent arrivals from England. Many lawyers were connected through their attendance at the University of Sydney Law School. In addition, lawyers and their families often attended the same schools. The boys were often educated at Sydney Grammar School, Shore, St Ignatius College Riverview, St Joseph's Hunters Hill or The King's School at Parramatta. Their daughters tended to attend Ascham or Abbotsleigh. All these schools had vibrant ex-student associations which ensured that these families were kept informed of each other's activities regardless of whether or not they came in contact professionally.

The University of Sydney was becoming increasingly influential in that it was producing Australian born and educated lawyers. The main advisor to the Commonwealth on International Law was the Sydney University Law Professor Pitt Cobbett. Emerging politician and barrister, Thomas Bavin and Law Professor and politician Professor John Peden were close friends. Their association had been formed as undergraduates in the Sydney University Law School. Bavin was also close to the Commonwealth Solicitor General Robert Rainsford Garran. Bavin had also collaborated with Deakin in writing articles for the London 'Morning Post' and been an associate and friendly correspondent with Sir Edmund Barton.

Professional legal training also ensured that some people became well known to each other. Prime Minister William Morris Hughes had been coached for his Barristers Admission Board Examination by John Peden. In addition William Morris Hughes had studied in the chambers of Mr Justice Ferguson when he

had been a barrister. Hughes had been one of three ambitious and talented men in the Labor movement (the others were William Holman and David Hall) who had studied to be admitted to the bar later in their lives than was usual. These early friendships did not necessarily always survive the vicissitudes of politics but they do suggest unanimity of purpose and a personal connection which contributed to a sense of professional identity. Personal letters in the files of Justice Ferguson, Professor Peden indicate just how closely people communicated with each other.

Combine these appointments and connections with the former barrister and senior military officer, Lieutenant-General Legge, the legal connections of the Official Historian CEW Bean and the early legal career of the poet 'Banjo' Patterson² close connections of the many correspondents to people such as Justice Ferguson and the influence of the Sydney Bar becomes remarkably extensive. This brief outline of connections indicates the rich opportunities for social research into the lives of the legal profession in the future.

Sydney at the outbreak of the war

The legal profession then lived in a sandstone world – both physically and mentally. Form was everything. Wigs, gowns, chambers, titles and procedures existed as a derivative of the English Inns of Court. People wrote with pens dipped in ink and left their mark by the distinctive smudges on the ends of looping letters. Pencils were also still in common use. Trams rattled along Elizabeth Street near the Supreme Court and connected lawyers to the Western and Eastern Suburbs. An efficient ferry service made it easy to move

about the Harbour side suburbs. Horses still made the air rich with their farmyard odours.

Chambers were crowded, Dickensian places – stuffy and hot in summer, chilly in winter. A judge without a wig was unthinkable. Yet impinging on the established legal landscape were the beginnings of modern legal forms. There had been protracted lobbying to have women admitted to the legal profession, which resulted in one serious attempt to pass the necessary legislation in 1916. The Chief Justice, Sir William Cullen, was the first holder of that office to be born and educated in Australia. For the second half of 1917 he would be the Lieutenant Governor, and play an active public role in a range of war-related activities in that position.

The profession was becoming increasingly proud of its self-sufficiency in Australia.³ Sydney University was producing Australian lawyers and the profession was producing Australian Judges. The year 1917 would see that process accelerated by the introduction of a bill which would result in the Act which set that all judges should retire at 70 years of age. While these men (they were all men at that time) were avowedly pro-British their Australian nationalism seeped into their daily discourse almost unconsciously. Australia may well have been a derivative of England, but it was also seen as an evolving independent entity, proud of itself and determined to show that it could stand in full partnership with the ‘mother country’ as a functioning part of the British Empire.

Compounding the war related stresses, the industrial landscape was taking shape under difficult circumstances where issues of loyalty to Empire, responsible industrial action and court decisions would become conflated until it was difficult to discern between what was a legitimate industrial claim and what was a betrayal of the country in a time of crisis. The differences of interpretation of what was justified industrial action escalated until the *Great Strike* of August 1917 split the population to such an extent that civil war was spoken of as a real possibility. The legal profession was as involved in the dramas as any could be. In some ways the real conflict was in Australia, more than on the battlefields of France and Belgium. Allegations of bias, prejudice and treason were a common part of the judicial, industrial and political discourse.

While Australia was tied to the English Court system there was some indication that this was seen as temporary. In 1914 Karl Cramp, an Examiner in the Department of Public Instruction, wrote that 'appeals to the Privy Council from the High Court of Australia as allowed in exceptional cases, though this right of appeal is little more than nominal and may conceivably fall into disuse.'⁴ He was right, but it took a long while to happen.

Intruding on the steady world were the beginnings of modern legal forms. There had already been one attempt to have women allowed to be lawyers with the New South Wales parliament at least debating a bill to admit women to the profession, known as the *Women's Legal Status* bill in 1916. The industrial landscape was taking shape. 1917 would see the country split to

such an extent that civil war was hinted in the public discourse. The legal profession was as involved in all these issues. In some ways the real war was in Australia, more than on the battlefields of France and Belgium.

Lawyers' styles varied as much as their personalities. Reginald Long Innes was reported to be 'dogmatic to the point of arrogance' in court.⁵ He was one of the steadily declining number of lawyers who had been educated in England. His sister lived in England during the war and was a welcome source of hospitality for Australian soldiers overseas. The most influential practitioners exhibited a number of styles – there were the glacial looks from the stony faced judges such as Mr Justice Pring, or the more ebullient, remonstrations from judges such as Heydon in the industrial Court. Others were noted for quick-witted repartee or scalpel-like forensic skills.

The legal community in 1917 was a mixture of somewhat contradictory behaviours. It was professionally combative in the nature of case work. But lawyers were collegial and supportive of each other. The profession could be profiled as a Meritocracy, hierarchical, dependent on academic and professional success. Success bred success. It was unselfconsciously nepotistic. The professional bonds extended overseas. Lawyers' letters from the Front constantly mention contact with anyone they know from the law, school or other social groups. Some lawyers led lives which cut across a range of social institutions. A number were in politics. Other managed their high profiles through engagement in charitable activities. But their prevailing sense of duty can best be represented by AH Lucas, the acting headmaster of

Sydney Grammar School – where so many lawyers had been educated. Speaking to the College assembly he referred to the British Empire as ensuring the futures of Australia and ended by referring to the service the students had to perform and said: 'To whom much has been given, of them much is required.'⁶ His exhortation may be presented as the dominant thinking of the legal profession at the time.

Lawyers demonstrated a unique combination of values: loyalty to the Empire; service to the community; physical courage; single-mindedness of purpose and an international view of the world. In addition the legal profession during the War displayed a propensity to centralized, if not autocratic control of people's lives. Judges and magistrates gave severe sentences to those people who they deemed a threat to good order or the promulgation of the war – and increasingly the two things became synonymous. Lawyer politicians enacted bills and used their official powers to suppress dissent. However, it would be limiting to focus purely on the public lives of lawyers during this period.

Underpinning this assertion of social control was the poignant sacrifice of lawyers and their sons on the battlefields, where they continued to launch themselves into the violence motivated by a passionate commitment to the British Empire and a compelling desire to set a good example to others – to simply 'carry on' until the task was done.⁷ There was a sense of the moral crusade, a religious zeal, about the whole enterprise. In a profession marked by independent action there was protracted unanimity of purpose and thought

despite religious, political and social differences, unusual in a profession characterized by 'fierce independence and, at times, vigorous expression of dissent'.⁸

Lurid, biblical imagery resonated throughout the discourse of the legal community in their justification for the war. The conflict was presented as some sort of primeval battle between the forces of evil, represented by the Germans and the forces of good, the British Empire. In a public letter of support for France's Day, the Chief Justice, Sir William Cullen condemned the 'accursed savagery of the Prussian' while Mr Justice Heydon went further by claiming the Germans actions were 'foul and black and deep' with France's 'gaping wounds . . . streaming in our sight.'⁹ Lawyers demonstrated a passion for public life, a desire to establish the new nation and set an example to other Australians. In addition their active participation in the battlefield meant that they lived out that idea – both physically and mentally. In some ways they were living out the ideals of the books they devoured as children and adolescents – heroic tales by Robert Louis Stevenson, Sir Walter Scott and Rider Haggard.

Members of the legal profession and their families during the War were influential operators in politics, charities, recruitment campaigns and other war related causes. Many were on active service in the armed forces. Lawyers ran internment camps and sort to ensure that internees were given their legal rights in a hostile atmosphere and provided free legal advice to soldiers. The Red Cross Missing and Wounded Bureau, under the direction of the Sydney

barrister, Langer Owen KC, voluntarily investigated the tragic stories of soldiers missing or lost in action, while spending time comforting or counseling their relatives. Lawyers officiated in courts martial, ran public enlistment campaigns, battled or defended strikers, managed campaigns to provide 'comforts' to soldiers and worked to resettle wounded soldiers in Australia. Lawyers' families were active and energetic participants in the huge charitable enterprises, which support the war effort, namely the Red Cross and the Comforts Funds.

In addition the profession demonstrated its fierce loyalty to the British Empire through direct enlistment in the armed forces or the membership by many lawyers in organisations such as the British Empire League and other patriotic groups. Once the war was done a stronger Empire, led by people of 'wealth and affluence' would be able to address issues such as squalor, industrial oppression and social injustice' as was articulated by the Chairman of the British Empire League.¹⁰ This idea resonated throughout the profession. Participation in the war was according to the law student Adrian Consett Stephen a 'spiritual'¹¹ opportunity to define the nation.

The wartime Prime Minister, and Sydney barrister, William Morris Hughes noted the spiritual zeal with which people approached public life in the lead up to Federation. This passionate intensity reappeared during the First World War. Lawyers saw themselves as upper class with associated levels of responsibility. As they exhorted others to do so they willingly engaged

themselves in recruiting, in politics and in the war. A steady stream of older lawyers, such as Ernest 'Nulla' Roberts and Edwin Brissenden, had enlisted to encourage others to do so. Roberts was already dead by 1917 – shot down while dueling with a Turkish sniper on Gallipoli, willingly engaged in front line duty despite his age and his friendship with the fellow solicitor, Lieutenant Colonel Percy Phipps Abbott who offered to keep him in the rear areas.¹² Another well known and prosperous solicitor, William Cope, had been too old to enlist but at the age of 64 years was making himself as useful as he could driving ambulances and becoming a Honorary Captain and Assistant Commissioner with the Comforts Fund.¹³ The beginning of 1917 saw him working hard to help the men through the evil winter which so debilitated them. This trend to set an example and become involved in any way they could continued in 1917 with the solicitor, Leslie Seaborn¹⁴ among others taking on leading public roles to urge others to enlist.

Some Significant lawyers at the time

With the departure of Sir George Strickland from New South Wales in April 1917, the Chief Justice, Sir William Cullen became the Lieutenant-Governor, a most prestigious position, which he would occupy until 18 February 1918, an unusually long period.

Sir William Cullen was a pivotal character in legal, political and social history who deserves much greater research than he appears to have received so far. As Chief Justice he had a dominant legal role. But his position as Lieutenant Governor gave him an important public role. He entered

enthusiastically into the public arena in 1917 and made a succession of speeches strongly supportive of the war: opening conferences, encouraging recruiting and urging support for the endless round of charitable. He tried to avoid making political statements but he displayed a strong attitude towards vigorously promulgating the war. He was also one who saw that the activities of women in the war, as nurses or in the Red Cross, had given the lead to men who were reluctant to enlist. He was heartily cheered by the crowds when he made speeches such as one in which he stated : 'I wish to heaven that some of our men showed the same spirit of devotion here in our midst as the women working for the Red Cross through out the length and breadth of this fair land.'¹⁵ Perhaps Sir William Cullen was inspired by the example of his wife who was a leader in the Red Cross movement.

Lady Cullen was a close friend of and associate of the wife of Henry Curlewis KC, the author Ethel Turner – who will be referred to using that public name in this text.¹⁶ The Curlewis and Cullen houses in Mosman were on the opposite sides of the hill above the Spit. Lady Cullen's beautiful house and gardens, *Tregoyd*, looked out over Balmoral towards the Sydney Heads, while the Curlewis' home, *Avanel*,¹⁷ looked over the bushland to Middle Harbour. It was a 30 minute lung busting walk over the hill between the two properties. Ethel Curlewis had worked with Lady Cullen in establishing Red Cross activities and wrote a column 'Wartime and Women' for the *Sydney Morning Herald* which contained suggestions as to how women could help the war effort. Her diary entries provide useful insights into Sydney life during the war and in April she

witnessed the 'tragic sight [of] about four hundred black robed figures' at Sydney Town hall on Anzac Day 1917. She and her daughter Jean helped with the War Widows entertainment.¹⁸

Sir William Cullen and Lady Cullen gave practical help to the cause allowed their home, *Tregoyd* in Mosman for a variety of fetes and other functions in aid of the Red Cross, the War Chest, wounded soldiers and other war related causes. Lady Helen Munro Ferguson, the wife of the Governor-General opened one fete in April 1917 and an advertised feature of the event was that there would be no raffles so that 'friends may sit in peace undisturbed by the sellers of tickets.'¹⁹ This little reference suggests just how intrusive such strident activities could become – even to those who were keen supporters of the conflict. Ticket sellers had become notoriously intrusive, badgering people to purchase a chance to win: with the unspoken assumption being that any winner would immediately donate the prize back to the funds.

In addition they hosted visits by wounded soldiers from Randwick Hospital, giving over their superb grounds to the damaged veterans. Lady (Eliza) Cullen, had an important public life. She was a foundation vice-president of the New South Wales division of the British Red Cross Society and remained a keen supporter of the society throughout the war years. Sir William and Lady Cullen made regular appearances at Red Cross fundraising evenings. Ethel Turner wrote her memories of Lady Cullen

I see her seeing her two sons off to the war. She is more erect than ever; her eyes seem bluer; her lips are a little tight. Never a falter, a repining word. How she plunges into a sea of war work, of packing parcels "For the Front." Tregoyd "carries on;" "Drawing rooms," fetes, appeals, you find the tall figure hammering up a stall, cutting mountains of sandwiches, machining shirts. Prodigally she spills her health and strength: are not her sons so doing?²⁰

In 1916-1917 Lady Cullen was President of the Australian Red Cross Society. She was also active in the Comforts Funds and was well known for never turning down an invitation to speak at a public meeting. Lady Cullen adopted a strong leadership role. In 1917 she inspected and addressed the quasi-military parade of 1,200 Voluntary Aid Nurses (VADs) assembled in the Sydney Domain. It was an important role for anyone. Her speech contained the simple exhortation to "Carry on!"²¹ This slogan would become forever associated with her. Her role was by no means simply ceremonial and was one of the effective public presentations by women which contributed to the pressure to increase their rights to include being able to practise as lawyers and be members of the New South Wales parliament.²² Lady Cullen was a very significant person in her own right. The Red Cross, which she led became one of the most high profile non-government organisations in the country. She was active in an array of public functions including the welcome home of wounded soldiers along with other supporters such as the indefatigable Gladys Langer Owen or her mother May.

Both the Cullen sons, William Hartford Cullen and Howard Clifford Cullen, enlisted early in the army in 1915. William served on Gallipoli from August 1915 with the 19th Battalion. He then served in a variety of front line and training units in France and England for the remainder of the war. Howard suffered severe illness on Gallipoli then was transferred to very eventful frontline duty in Europe. He survived being gassed in 1917 and later in that year was awarded the Military Medal.²³ The Cullen family experience was not unusual among the other Supreme Court Justices during the war.

Many wives and daughters of lawyers became enthusiastic supporters of the Red Cross or one or other of the many 'Comforts Funds' which supported individual units. Other lawyers' families were also active in helping specific units. The aim of these comforts funds were to direct specific assistance to a particular unit – usually one in which the supporters had relatives serving, or in the past. Mrs Herbert Allen, wife of a partner in Allen, Allen and Hemsley was president of the 12 Light Horse Comforts Funds. Her husband's firm had a number relatives and associates in the armed services, including Arthur Denis Wigram Allen who received the DSC for his skill and courage as a pilot in the Royal Naval Air Service. Lawyers wives appeared constantly in the reports of charitable organisation. Florence Mary Williams, the wife of solicitor PO Williams spent most of the war working with the Red Cross in London.²⁴

Another Barrister, Adrian Knox KC, managed a high professional workload with a very active public life in the Red Cross and other organisations as well as sports administration, particularly horseracing. He had already visited

Australian forces in the Middle East and helped the Red Cross and other charities, generally known as 'Comforts Funds', establish a system for the delivery of the tons of supplies donated by the Australian population.

Professionally he was instructed by Norton, Smith & Co to appear in such diverse cases as for Sydney Ferries Ltd in a Royal Commission into the affairs of that company in mid June 1917.²⁵ In the same week he was part of an advisory committee which was appointed by a conference of sporting organisations held at Sydney's Victoria barracks to respond to the suggestion that government could cause a complete cessation of boxing, racing and football. Knox KC represented the AJC. He made the practical suggestion that there was 'a gross amount of racing in and about the neighbourhood of Sydney' anyway so it was a good opportunity to get this reduced, and besides if the committee did nothing, the government may do so anyway. While there was some squabbling over how many days could be lost from which activity, generally speaking, as so often happened, Knox KC's idea won through.²⁶

The high profile of the legal profession made it inevitable that the private lives of its members would become the subject of public interest. June also saw a sensational scandal unfold involving a well known solicitor, Robert William Lenehan. He had lost his son to a war related illness in 1916 and became attached to a Mrs Gulot while he was the Commandant of the Light Horse in Menangle camp outside of Sydney. He was a veteran of the Boer War and had already had a protracted squabble with Lord Kitchener. At first Lenehan was charged with assaulting the husband, Mr Gulot, when that man found Lenehan in the same room as Mrs Gulot. Then Lenehan was the co-

respondent in the divorce. The accounts made for some lurid reading as was the case with divorces at that time, particularly if they involved prominent people.²⁷

The Legal Profession and the Charitable Funds.

The legal community continued their enthusiastic support of the range of charitable funds which proliferated during the war. Disbarred Solicitor and Sydney Lord mayor, Richard Meagher, sponsored the Lord Mayor's Patriotic Fund. This Fund gave direct cash grants to the dependants of men in camp, on service overseas or killed overseas or who died after return but before discharge from the AIF. The fund also assisted war widows and orphans through weekly allowances to augment military pay or pensions up to a certain level. The fund also paid household debts in approved cases and gave grants in confinement cases.

Mr Justice Gordon was president and later chairman of the Hospital Saturday Fund in association with the Sydney Lord Mayor, Richard Meagher.

Considering the level of antagonism Meagher felt toward the Chief Justice, Sir William Cullen, the annual meeting in September of the fund, when they shared the stage must have been an exercise in diplomacy on the part of both men. The fund distributed a total of ten thousand pounds to hospitals in 1917. The organising commissioner for the Citizens War Chest Fund was the Sydney barrister, A H Garraway.²⁸ He toured the state to establish country branches for the fund across New South Wales.

Recruiting

The year had started with a sense of melancholia concerning the war. While the lawyer soldiers were patriotic they were not immune from the sadness of their world. Adrian Consett Stephen wrote home in January 1917, commenting on General Haig's Despatch on the war. Consett Stephen wrote:

how strange though to catch a glimpse of a mind which views the whole battle like a game of chess, thinking not of men but of flanks. 'I then ordered Sir Henry Rawlinson to advance his right flank.' It was advanced. A thousand homes wept, but a line on the map has been straightened.²⁹

It was no wonder that recruiting dried up. In response to the shortage of recruits, the Chairman of the State Recruiting Committee, Professor MacIntyre urged the creation in January 1917 of 'Win-the-war' leagues. Men and women were urged to seek 'definite promises of enlistment from eligible men' in response to the 'urgent need for reinforcements.'³⁰ These leagues could easily get out of hand and individual members could become overly zealous in their approaches of individuals to enlist for overseas service. Lawyers and their families were prominent advocates in the gimmicky nature of enlistment campaigns. Their sometimes-hectoring tone reflected their overarching enthusiasm for encouraging others to do what they thought was best suggests a tendency towards centralised power. Lawyers consistently

supported coercive proposals such as Conscription into the armed forces or the more extreme cause of Universal Service, which would make every citizen liable for state-directed occupations. They opposed devolution of power to alternative means such as unions. However, they also believed their position in society brought them increased obligations. Throughout 1917 older lawyers enlisted, as many had done before, as an example to others.

The legal profession were enthusiastic, if not sometimes lurid campaigners for enlistment. Unlike the care and restraint which might be the mark of a lawyer in professional life, the recruiting campaigns saw them give free rein to their sense of hyperbole. Barrister and Major-General James Gordon Legge returned to Australia in 1917. He brought with him a fierce loyalty to Australian troops and the cause of the war. When asked if he had seen any German atrocities himself he displayed an outrage that suggested that he abandoned any scepticism he may once have had regarding the value of hearsay evidence. He said:

I did not actually see them, only on undoubted evidence I was shown barn-doors which bore marks indicating that men had been crucified on them, bayonets having been employed other than nails. I have also seen evidence at certain places that children's brains had been wantonly dashed out. The womenfolk also tell sad tales of outrage, some verbally, others only by their dementia. . . . Collectively the Germans are a race of criminal lunatics.³¹

The rumour of the crucified soldier was one of the more persistent atrocity stories of the war. Whatever the explanation for Legge's extraordinary outburst it is an indication of the intense patriotic fervour combined with a sense of the war as a moral crusade which would override any other consideration. Many others in the legal community had similar passions which explain the extremely conservative views they brought to any social issue. Also, Legge maintained some connection with the legal community from his days as a barrister. He was introduced by Justice Ferguson on one occasion and the judge said that the 'capacity that made him a success as a member of the bar also made him a success as a soldier.'³² The close knit personal nature of the legal/military communities was indicated by the fact that Justice Ferguson also mentioned that he felt close to Legge because his son, Keith, was serving in Legge's 1st Division.

One passionate supporter of enlistment and a range of war related cause was the daughter of Langer Owen KC, Gladys Owen. She was a regular speaker in Martin Place and on occasion shared the platform with the prime Minister William Morris Hughes – a unique position of high public profile for a woman. She also toured surrounding Sydney districts. One scheme she attempted was a recruiting train, which left Grenfell for Sydney with various stops intended to entice recruits on board.³³ On other occasions her style could be directly confrontational of those who had not enlisted. Speaking in Sydney's Martin Place in April she made challenging remarks about men who 'were not worthwhile' avoiding the sacrifice of enlisting.³⁴ She put on some extraordinary performances, one of which was described as 'enthusiasm in excelsis' by *The*

Sydney Morning Herald.³⁵ There was some criticism of the excesses of such enthusiasm in the *Official History of Australia in the War of 1914-18* in which TW Heney disparagingly referred to a 'Shrieking sisterhood, who took the platform or made the air shudder at afternoon teas and drawing room meetings . . . and, protected by their sex, sneered openly at such young men as they chanced to imagine to be shirkers.'³⁶ During the conflict many influential people such as the Chairman of the State Recruiting Committee, Professor MacIntyre urged women to seek 'definite promises of enlistment from eligible men' in response to the 'urgent need for reinforcements.'³⁷ MacIntyre was from Sydney University and was part of the network of senior academics and lawyers who worked hard to promote the war. Heney's comment echoes criticism made in 1917 by the Sydney barrister JD Fitzgerald MLA of some women for the 'objectionable practices (of) taunting and gibing at young men in the audience for not enlisting (and making) references to the "white feather" and other taunts.'³⁸ Not everyone agreed with him and he opened himself to some lively contradiction. Fitzgerald was one of the few lawyers who expressed some reservations about the passion, verging on hysteria, which many members of the legal community displayed at the time. Perhaps his Irish sympathies gave him some reason for reticence with regards to supporting the British Empire.

Another lawyer to be involved in recruiting was E J Loxton KC. He regularly regaled the crowds at recruiting rallies in Martin Place. His public appearances coincided in the first part of 1917 with his campaign to be

elected to New South Wales parliament. Loxton's speeches followed the theme that 1917 was a time of national peril. He added to this the spiritual appeal to follow those who had been 'in the Gallipoli campaign and on the soil of France which was consecrated with the blood of thousands of noble-hearted men who had given their lives in the cause of justice, freedom and Christianity.'³⁹ The other aspect of Loxton's public utterance was references to industrial relations. Like many other lawyers he referred to the need for industrial courts to 'insist upon the application of all just penalties with an impartial hand.'⁴⁰ His emphasis was on penalties not on other means to resolve the difficulties.

Other lawyers to speak at recruiting rallies included Alexander Gerard Ralston KC, whose son, the barrister; Lieutenant Colonel Alexander Windeyer (Win) Ralston was on active service in Europe in 1917. Lieutenant-Colonel Ralston had already been awarded the DSO for his leadership at Pozieres in 1916. He had commanded both the 19th and 20th Battalions at different times and thereby been in charge of a number of Sydney lawyers in those units. The 20th Battalion in particular had close connections to the legal community as Justice Ferguson was the President of its very active Comforts Fund. In addition Justice Ferguson was the Chairman of the Amelioration Committee which provided financial assistance to sick and wounded soldiers and sailors who had returned to Australia. By May 1917 the committee had given over 100,000 pounds to a total of 7150 cases. The committee was one of a range of very effective war related charities which operated from in or near Challis

House in Martin Place. The Ralstons were another family who were very closely involved in the war at home and on the battlefields.

The Legal Profession on the Battlefields

The beginning of 1917 saw at least 200 solicitors, barrister, law clerks or students serving or having served overseas. In the two and a half years since the war had commenced 26 of these men had fallen in action. A further 20 would be lost before January 1918 – nearly the entire number of 1914, 1915 and 1916 combined. Letters on file in the Ferguson papers refer to the aching anxiety people felt for their relatives and friends caught up in the war.⁴¹ In addition, seriously injured men, including lawyers, were drifting back to their lives and practices. Of course these figures do no account for the many friends and relatives which the legal profession lost in action as well as their own number. Not surprisingly recruiting numbers diminished drastically.

The war shadowed the lives of all citizens and the legal profession were by no means immune from the stress and worry concerning loved ones serving in action overseas. Tragic news could intrude on daily life at any time. Such was the experience of one of the keenest supporters of the war, Mr Justice Ferguson. On 27 June 1916 he was presiding in court when he was interrupted by the New South Wales Commandant Lieutenant Colonel Gustave Ramaciotti.⁴² The high ranking soldier had come to tell Justice Ferguson that his son, Arthur Gardere Ferguson, had been killed in action in France.⁴³ In a particularly unpleasant twist of fate, a ship had delivered Arthur

Ferguson's last letters to his family only that morning. No-one was spared the worry of it all. Justice Higgins of the Federal Arbitration Court was on holidays at Dromana on Victoria's Mornington Peninsula on New Years Eve 1916 when the local Reverend delivered news of Higgins' only son, Mervyn, having been killed in action serving with the Light Horse in the attack on Maghdaba in the Middle East. Justice Higgins had been steeling himself for the news since Mervyn had been lucky to escape death during the catastrophic attack by the Light Horse at the Nek on Gallipoli in 1915.⁴⁴ In Mid 1916 Higgins had written to Justice Ferguson on the death of his son, Arthur:

*Heronswood
Dromana
28 June 1916*

*Dear Justice,
May I express my deep sympathy? I shall relieve my own mind, if nothing else. Street's fine son, whom I met in Egypt, has gone; Simpson's has gone; Rich's has gone; and now yours has gone. I am so sorry. My own boy is still at the front. He was one of the few – the very few of the 8th Light Horse who escaped on that awful 7th of August; but who can tell what is in store for us?
I do hope that you will be enabled to keep a stout heart in the awful calamity.
Faithfully yours
Henry B. Higgins.*

Note: Higgins mentions three other judges Sir Philip Street, Sir George Rich and Archibald Simpson, whose sons have been killed. Higgins' son was killed in action a few months after the letter. The 7th was the attack at the Nek on Gallipoli 7 August 1915⁴⁵

While tragic in their own right, these events also give some indication as to the constant tension which ran through the daily lives of people with relatives and acquaintances in the war. At any one time from 1916 onwards every judge, barrister, solicitor or clerk had either a direct relative or someone they

knew well serving overseas. Already there had been some high profile deaths of well known lawyers such as 'Nulla' Roberts and Henry Normand Maclaurin, who were both well connected members of the Australian Club – a popular meeting point for many lawyers, academics, businessmen and other professionals. In 1917 nineteen-year-old Jean Curlewis, the daughter of Judge Curlewis and Ethel Turner, and well connected to the wider legal profession wrote in the *Bulletin*

This is a very patient people God has made:

All day long they go about their business,

And all the time they are being tortured

Worse than ever God's son was tortured

on the Cross.

The mothers go about their daily business. . . .

You would not think when you see them at

Breakfast that they have been lying

Awake since the small hours, watching

The light creep in among the shadowy

Furniture,

Wondering

If he was killed while they were snatching a few hours sleep –

If he suffered.

The fathers go about their business –

You would not think, perhaps, that they cared

Very much until you meet them on the

Tram and straightway they show you

Their son's letters.

The daughters go about their daily business –

Only the sons do not go about their business:

They are not there.⁴⁶

Jean Curlewis lived at the heart of the legal profession and had already lost her cousin to the war – one of the first men to be killed in action, Captain Pockley⁴⁷, shot in New Guinea in 1914 after giving his doctor's armband to a wounded soldier. Perhaps this personal strain went some way to explaining the extraordinary passion with which a normally restrained profession engaged with social issues in 1917. The endless tension and worry intensified their passionate commitment to the war. In this way they were living out the values of persistence and loyalty to a cause which was inherent in their education and social networks.

Lawyers at the Front

It is impossible to account for all the experiences of all the lawyers in the armed forces. This narrative will feature the experiences of Adrian Consett Stephen whose accounts were written up in the local press and preserved and published by his father after the war. The experiences of a few lawyers who fell outside of the normal stream of activities will also be mentioned. In addition there will be brief accounts of the circumstances in which lawyers lost their lives.

Lawyers proved to be particularly prolific and capable correspondents. Many of them had justifiable literary ambitions. Their letters home early in 1917 concerned their distress over the failure of the Conscription Referendum and the endless discomfort of the horrors of winter. Keith Ferguson's letters to his father Mr Justice Ferguson record his travels to the UK and meeting friends in the legal profession. Like many lawyers he had family connections in England or had introductions to people to whom he became close. But for the beginning of 1917 the most common topic was the cold.

The River Seine froze over so supplies were difficult to move. Adrian Consett Stephen graphically described how "One's shaving brush is like wood in the morning; icicles clog one's razor; one's boots are as stiff as tin, and the food on one's plate hardens as you eat."⁴⁸ He was serving in the Royal Field Artillery and while he was able to form friendships with the men in the unit he was not able to be a part of the close community of lawyers that fought and socialised together, although his letters describe how eagerly he would seek out acquaintances whenever an Australian unit was nearby. He was one of a number of lawyers who enlisted directly into English units. Some were in England at the outbreak of the war and did not want to lose time returning to Australia but others travelled there to enlist, as a purer form of helping the Empire.

There was a shortage of wood and coal for heating at or near the battle front. In this environment some Australians were tempted to take what they wanted

from the local area. Fence posts, trees and other wooden object disappeared into the fires. The French complained and so the claims had to be examined, evaluated, tested. Two well-known Sydney lawyers, barrister, Dr Edwin Mayhew Brissenden and solicitor Arthur Wellesley Hyman would become particularly successful as Claims Officers – an overlooked but important field of activity. Brissenden in particular was well-known in Sydney.

Brissenden is a fascinating character. There are many stories told of his behaviour in court. He was a senior member of the bar but had enlisted at the age of 55 years (by putting his age down ten years) as a private soldier in 1916, acting on a genuine desire to set a good example. While he was motivated by the best of intentions his letters to Justice Ferguson suggest that once he had announced his decisions to enlist people said he was a ‘damn fool.’⁴⁹ Brissenden had been one of those steeped in the war. He had been present as senior member of the bar in Justice Ferguson’s court when the judge expressed his regret at the death of the Sydney barrister, Major James Fraser McManemy, on Gallipoli in 1915. He had then spent his Sundays teaching himself to operate signals equipment on the hills around the Eastern Suburbs.

Brissenden remained close to the Justice Ferguson as evidenced by the regular correspondence between the two men when Brissenden was overseas. Some of his exploits were reported in *The Sydney Morning Herald*. He can be seen as personifying the desire by the profession to set a good example for others as well as a passionate commitment to the British Empire.

There is a kind of quixotic grandeur in his willingness to forego a successful career and seniority at the Bar to enlist as a private soldier.

Brissenden's letters were generally cheerful and gossipy. He enjoyed seeing fellow lawyers in Europe and was well known as the Divisional Claims Officer. Before he was given legal duties he revelled in his role as an ordinary soldier – proud that he could endure the rain, cold, mud, heavy pack and long marches. One writer who saw him in the freezing winter of 1916/1917 described how Brissenden 'whistled and sang about the joys of soldiering, [while] men 30 years his junior grumbled about things in general. . . . When I met the doctor (Brissenden was a Doctor of Laws) he had not had his clothes off for four days. I never saw a man appreciate a hot bath as much as he did.'⁵⁰ Brissenden was a long way from Wentworth Chambers in Sydney but he remained a real personality in the Sydney legal scene, despite his absence.

Brissenden described his military life in a typically light-hearted letter to Justice Ferguson:

I still look after Courts martial and Courts of Inquiry . . . You would smile if you could see me rushing round the country on a stolen motor-cycle, butting into the premises of the local farmer or shopkeeper, and discussing the value of damaged sheds or broken windows in a language [which] bears no resemblance whatever to any human speech. . . . The chief rule is to talk very loud, and pay no attention whatever to anything the other man is saying.⁵¹

Brissenden's light-hearted style belies the danger which could become fatal at any moment. In June 1917, while at work in the bureau de poste in Armentieres he was lucky to survive a shell burst which killed five people in the same building. Later, his lunch was interrupted by shell splinters – so he finished his strawberries in the cellar.⁵²

Seniority at the bar was a sticky issue and meant that others, such as Mr Richard Windeyer, who may be made King's Counsel before him accepted that Brissenden would take precedence should he apply to be appointed a King's Counsel within 12 months after the conclusion of the war.⁵³ Varying the rules of precedence was one of the changes brought in by the New South Wales Bar Association during the war. In addition to barristers, articled clerks could have their war service counted in articles of clerkship on application to the Supreme Court, or have the period of articles extended for the duration of service overseas.⁵⁴

Battle Casualties

Of course the reality of battle kept intruding on the profession as increasing numbers of lawyers fell in action. On 31 March a 40-year-old solicitor from Parkes, Francis Commins, who had attended St Stanislaus at Bathurst was killed at Lagnicourt near Bapaume with the 53rd Battalion. He was killed by artillery fire and was buried nearby. A rough cross, made of two pick handles, was erected over the grave but this was soon destroyed by the battle and the site was lost. Less than six weeks later his brother James was also killed in

action. Commins had practised as a solicitor in Parkes for 14 years and left a widow and two children.⁵⁵

On the same day as Francis Commins was killed, Keith Ferguson, the son of Mr Justice Ferguson, was in action nearby with the 20th Battalion. He could have been kept out of the front line because of the death of his brother, Arthur, the previous year, but both he and his father had insisted on him going into action. He was taken onto the personal staff of Brigadier-General William Holmes, who was also a regular correspondent with Justice Ferguson.

Holmes had a policy of personally reconnoitring each part of his line and visited one of them north of Lagnicourt accompanied by Lieutenant Keith Ferguson - his aide-de-camp. Holmes wore his usual staff cap with red band and walked to the front line during the day. He was sniped at and while he escaped injury Keith Ferguson was hit and had to be left at the post until nightfall. Shortly afterwards the post was shelled, possibly due to the activity caused by Holmes' visit and Ferguson was injured again, more seriously.⁵⁶

The Ferguson family had to endure another telegram with grim tidings then the resulting tense wait for news of Keith's recovery. At least they were kept well informed of his progress by their many friends in the military.

In the strange lottery of war, on the same day as Ferguson was wounded and Commins was killed, 31 March 1917, Adrian Consett Stephen simply walked over to the old German Lines travelling safely over the area which so many men had died trying to capture. He recorded his observations with his typical eye for detail.

Some of the billets . . . were good,, some were stone floors only, with rats scampering over our faces; some were odd little rooms where all the winds did blow, but some . . . were good with mountainous French beds , that one could only enter by taking a running jump, and trusting to providence and strong springs, but after the first plunge, when one had fought one's way to the top again, there was a feeling of pomp, almost 'lying in state' about it. A lot depends on the peasant; some are genial and hospitable, making omelette and coffees as soon as we arrived, and giving cream for our porridge in the morning – others were sour and slammed the door and would not open it without payment on the spot. How is it from such soil, from these wretched farms and squalid villages, sunk in the mire of winter, has risen the Army of France?⁵⁷

On 13 April 1917 he went into a captured dug out near Givenchy

"We went into one deep dug-out, groping our way with the aid of a match. It was an uncanny business. Of course no Boche was there, but one was brought face to face with all the outward trappings of a life suddenly cut off – the man's clothes, food, cooking utensils; even his tobacco was there on its appointed shelf. . . An air of utter desertion brooded over it. There was a "Pompeii" sensation about the whole expedition." They wandered on, not knowing where the enemy were "until the 'ping' of a bullet reminded (them) this was open warfare – too open." Then jumped into a shell hole and

“Bolted, under fire from friend and foe” towards their own lines.⁵⁸ Consett Stephen was clearly riding his luck.

The reality of war was now far removed from any grand illusions of cavalry charges and splendid parades. As usual Adrian Consett Stephen was most perceptive and eloquent when he wrote on April 16 of action on Vimy Ridge:

“pouring and bitterly cold – miserable beyond words. The great advance seemed a poor thing. Roads there were none; only tracks of mud along which the transport seethed like a serpent in slime. Vast ammunition dumps covered the country; trains puffed up and down among the lines of mud-covered tents; transport of every description, from big guns and caterpillars to cook carts and travelling kitchens, ebbed to and fro; here was no ordered sweeping forward of a great army, no thrill of hot pursuit, only movement this way, that way, any way apparently without definite reason: drivers muffled to the ears sitting on their horses with loose reins, looking neither to right or left, taking no interest, occasionally cursing or wiping the splash of mud from their faces. At one point we passed a pile of 27 dead horses. Where was the ring of hoofs and the flash of sabres of this great advance? A muddy dull-eyed mob! It was a cynical jest.

And yet the aimless transport bent out a definite rhythm: ‘Moving forward, moving forward.’ You heard it or perhaps rather you felt it in the jolting of the creeping Batteries, the grating of lorries and trains, and in the clatter of horses: ‘Moving forward;’ and you felt it as a warmth within

you, vague, indefinable, but there is was. 'Moving forward, moving forward.'"⁵⁹

Consett Stephen's account captures the idea of the war as a vast machine, grinding forward inevitably sweeping up people in some form of grand epic. The sheer scale and spectacle of it all resonated throughout lawyers' letters home. Consett Stephen wrote that they "walked onto the ridge and down into the plain beyond, where we chose a position not far from the village of Vimy. The approach was appalling, the road consisting of shell holes and mud only half dried and treacherous in the extreme. It was lined with horses sunk in the mud, some dead, some shot by their owners, and worse still, many still alive and struggling piteously. . . . It snowed all night."⁶⁰

Adrian Consett Stephen was one of many lawyers who received decorations. His exploits were well reported in the New South Wales Press, but still the deaths kept coming. On 20 April Lieutenant William Keating Brennan on 12 Light Horse died as a result of severe wounds suffered inaction in an attack on Gaza when British and Anzac forces were attempting to capture a Turkish stronghold. It was a disaster and Brennan was wounded while going to the aid of a fellow officer on 19 April. While in the Casualty Clearing Station Brennan had been hit again by a shell.⁶¹ In October 1917 there were numerous Red Cross searches done to determine Brennan's fate by the Sydney solicitor HS Osborne. By this time, the Red Cross Missing and Wounded Enquiry Bureau, under the direction of Langer Owen KC had become one of the most

respected, if not revered institutions in the country. Many lawyers spent hours searching for witnesses to men lost in action.⁶²

In Australia, enlistments were falling and the campaigns to attract new recruits became increasingly gimmicky. In April there were a number of campaigns that attracted some lawyers, but numbers were very thin, and tended to be older recruits from country districts.

At some recruiting rallies, fully uniformed members of the Light Horse clattered along the pavement at Macquarie Street and Martin Place. Lawyers in nearby chambers could not avoid hearing and seeing the dramatic displays. Each Light Horseman would be leading a horse with an empty saddle and urging young men to mount up and literally ride away to the medical tent in Hyde Park or the Showground thence to war. Occasionally wounded Light Horse veterans would take off their woollen army greatcoats and wrap them around new recruits as a welcoming ritual into the corps. On more exotic occasions enthusiastic young men could get a ride in one of the new fangled motor cars to the tent next to Queens Square to sign up for service before the real battles began. The recruiting personnel had learnt not to allow men to lose their patriotic ardour by going home to talk things over with their families. At one rally at the time, Miss Gladys Owen, the energetic daughter of Langer Owen KC, snatched up a .303 Lee Enfield rifle and flourished it above her head challenging young men to take it up themselves while exclaiming her regret that she could not go herself.⁶³ This wildly passionate atmosphere in

Martin Place, near the heart of the legal profession must have been hard to resist. It obviously influenced the Sydney solicitor Leslie Seaborn of the firm Garland, Seaborn Abbot to follow suit and enlist as an example to others, and in the hope that he could drag as many associates as he could in his wake. He was a well known rugby player and he was one of those to enact the romantic idea of the 'Sportsmen's Battalion' – yet another war related scheme initiated by lawyers.

'The Sportsmen's Battalion' was launched at a large meeting at Sydney Town Hall on 3 April 1917 chaired by a prominent citizen and leader of the Comforts Fund, Henry Yule Braddon of Turramurra – whose sons, including the Sydney barrister, Henry Russell Braddon, were already in the army. Another speaker at the meeting was the Sydney Lord Mayor, Richard Meagher who had been struck off as a solicitor as a result of his conduct in the celebrated Dean case in the 1890s.⁶⁴ Meagher's colourful political career went on despite that and subsequent scandals. His long-running efforts to be readmitted as a solicitor of the Supreme Court saw him appear before a variety of courts and involved a much-publicised battle with the Chief Justice, Sir William Cullen. The Meagher matter provided much compelling copy for the Sydney press, some of which occurred at the same time as Seaborn's campaign.⁶⁵ There were a number of public meetings in support of Meagher throughout the year, but presumably that was not mentioned on the night that he so passionately advocated enlistment in the unit dedicated to sporting fellows across the state.

Also on the Sportsmen's' committee was the Sydney solicitor Rupert McCoy⁶⁶ of the firm McCoy and McCoy of Castlereagh Street. The aim of the committee was to recruit 150 men initially for the unit with Seaborn and Diamond leading them overseas thence into battle. These two men were constantly featured as being the ones who would lead the men into battle.⁶⁷ A range of people assisted the recruiting process.⁶⁸

Leslie Seaborn appeared repeatedly at public meetings in Martin Place and around Sydney's outskirts throughout April 1917. He often shared the platform with other lawyers. Ralston KC spoke eloquently about his sons in action. To him, the war was about both honour and safety. Norman McGhie another barrister also spoke of his service. McGhie had been wounded and lost a leg in action in France. It is a moot point as to whether or not a limbless soldier would inspire others to enlist or be counterproductive to the process.⁶⁹ Nonetheless he was a hard worker at recruitment rallies. Seaborn threw himself into organising many different activities to encourage recruits. By the end of April the *Sydney Morning Herald* reported that the city was 'absolutely plastered' with appeals to "Be a sport and enlist."

Seaborn may well have been encouraged by the example of his fellow solicitor Guy Kennedy Davenport of the firm Frank A Davenport and Son who was killed on 10 April 1917 serving with the Australian Field Artillery.

Davenport's death was reported in *The Sydney Morning Herald*. He was another case which demonstrates how closely knit the legal community was in

its involvement in the war. The 26-year-old lieutenant Davenport had been keen sportsman and educated at Kings College Goulburn, Leslie Seaborn's old school, and the law firm he shared with his father was in 22 Moore Street Sydney, just four doors away from Garland, Seaborn and Abbott. Davenport had been awarded the Military Cross for his 'gallantry and devotion to duty' while operating under the fierce shellfire at Pozieres in July/August of 1916. The news of Davenport's death had come just two hours after the family had joyously welcomed the safe arrival home of his brother Captain PAC Davenport. The Davenports were connected to the Manning legal family of Hunters Hill, whose barrister son, Charles, had been killed in action in 1916, and other son, Guy, had been accidentally killed in New Guinea in 1915. Death was all around and the legal profession were keen to set the example of how to respond.

Frank Wadhurst Fry, a solicitor from West Maitland was killed in action near Hermies, France on 15 April aged 25 years. He was another victim of the battles near the Somme River. He had been in charge of a Lewis Gun crew and a sergeant had gone out reconnoitring. Fry tried to save him and was shot about 10 yards out from the post.⁷⁰

Adrian Consett Stephen described his experiences at the battle for Vimy Ridge and as usual managed to convey the personal experience in a vivid manner.

The barrage was magnificent – in one moment the sleepy outline of the ridge sprang into life,, blazing with the scarlet of shrapnel and sparkling with a hundred different coloured rockets. The smoke drifted down the flank of the ridge or rose upwards so that the ridge itself seems like a great funeral pyre. . . We were called upon to silence a MG, which we did – and that was our only excitement at the Battery. I'm afraid the popular notion of a Battery, stripped to the waist, firing hell for leather amidst shot and shell, and proving heroes, is a romantic fiction of the past. As a rule our main excitement is waiting for new, and very seldom are the gunners so hurried that hey can't smoke cigarettes all the time, and discuss the great problems of beer and food between shots⁷¹.

On 13 April 40-year-old Fitzroy Stacy, a solicitor from Gulgong enlisted at Showground Camp in Sydney then went into the 7th Light Horse at Menangle Camp. Stacy would appear to have been caught up in the great spectacle of enlistment meetings surrounding the Royal Easter Show, which was on at that time and was the focus of all manner of Light horse pageants. There were constant parades at the Showground and at Martin Place in the city.

Continuing the legal connection, Stacy's enlistment papers show that his certifying officer for the reinforcement unit was the Sydney barrister Selwyn Frederick Betts, who was then an honorary captain with the Light Horse.⁷²

Solicitors were constantly in the news in April 1917. Ronald Osborne, who had been a solicitor with the firm Windeyer and Williams at the time of his

enlistment, was one whose exploits provided a leading example to others. He was awarded the Military Cross for volunteering to operate an artillery observation post within 50 metres of the enemy. He survived the operation by pretending to be dead during the day, then crawling back through the frozen mud. His exploits were well reported in April 1917. As was common, extracts from his letters home were reprinted in *The Sydney Morning Herald*. The firm of Windeyer and Williams had many connections to the battle. William Archibald Windeyer was a keen supporter of conscription. His nephew, Charles, the son of barrister, Richard Windeyer was in action in Europe. Richard Windeyer's wife and daughters were in England working with the Red Cross and as VADs during the war.

While some lawyers lost their lives in the escalating violence on the Western Front, so in Australia the legal profession became increasingly energetic in their attempts to encourage enlistments. Solicitor, Leslie Seaborn's appeal for the Sportsman's Battalion dominated the Recruiting Section of *The Sydney Morning Herald* in May 1917. One rally, held on 4 May at the Sydney Stadium in Rushcutters Bay, had the usual patriotic speeches by Leslie Seaborn, Lord Mayor Richard Meagher and others, along with free entertainment 'boxing exhibitions, wrestling displays, jiu-jitsu, blindfold boxing, fancy and speed skipping by ladies, bugle blowing competition for soldiers and sailors, singing by well known vocalists, and several high class vaudeville artistes (along with) massed bands from all over the city.'⁷³ Seaborn travelled about the state urging recruits, and trying to get a second unit together, visiting Armidale then Northern Rivers towns in the second half of May before returning to his unit in

camp. Rupert McCoy also toured the country and organised a successful recruiting meeting in Goulburn. Seaborn was well connected to Goulburn through his family and school, Kings' College and number of local men enlisted in the Sportsmen's unit. On the same day as the sportsmen were meeting young John Clancy was wounded in action with the 20th Battalion. He would later serve as a judge and become acting Chief Justice in 1964-65.

The appeal to join the Sportsmen's unit was distinctively masculine and heroic and challenged young men to think of themselves as being at the end of the conflict and asking: 'are you going to march through the streets or sit back in one of the motor cars with your honourable scars, a man amongst men?' The offer was to go on some kind of extended football tour. Seaborn and the committee wrote: 'You can go with your own kind, the crowd of boys that love a good horse, the boys who like a good rugged scrap, the boys who delight in rough and tumble game of footer, or who will go through blazes to do a thing for which they will gain little but the experience. These are the men Lieutenants Les Seaborn and Austin Diamond are looking for – the real dinkum oil, 24 carat-all-the-way-through "sports"'⁷⁴

It was hard work and put enormous strain on both Leslie Seaborn and his family⁷⁵. One particular meeting in Martin Place, just down the road from the offices of Garland, Seaborn and Abbott had a long list of speakers. It attracted only six recruits, two of whom were over age. Seaborn also made appearances at the wharves where in his own words he 'struck a lot of old football chums among the wharfies' and several 'brawny men on the wharfs'

enlisted to be in the unit with him so they could be with Seaborn personally 'in camp, on the voyage and at the front.'⁷⁶ On 16 July 1917 Lieutenants Seaborn and Diamond, and the 150 men of the Sportsmen's Unit were designated the 20th Reinforcements for the 19th Battalion⁷⁷ and boarded the transport *Port Melbourne* and sailed out of Sydney Harbour to war. Seaborn felt achingly homesick for his family and aware that he was 'going on a long, long trek' and that the ship was full of men just the same as him.⁷⁸ It was no wonder that there was a great deal of tension surrounding the departures. As the Sportsmen left so the death toll of lawyers kept rising. On 5 June 1917 Lieutenant Parker Roy Allworth, a 22-year-old articled law clerk on enlistment was killed while serving with the 8th Field Artillery. Eyewitness accounts suggest he was asleep in his dugout when an artillery shell killed him and his fellow officer instantly.

'A Government of Lawyers'

As lawyers fought hard overseas, so the profession became more deeply embroiled in the political scene in Australia. Premier William Holman's Nationalist Ministry which took office in New South Wales Parliament on 17 April 1917 was understandably labeled a 'government of lawyers'.⁷⁹ They had won the State election held on 24 March. Holman's coalition government was comprised those members who had been expelled from the Labor party over the conscription issue in 1916 and their Liberal Party opponents. This coalition included all the lawyers who had been expelled from the Labor Party. In a well known comment on the expulsions, one scathing commentator made the caustic observation that the Labor party was said to have 'blown out its brains'⁸⁰ a suitably violent metaphor for a wartime audience. On the other

hand the willingness of these previously committed labour lawyers to leave rather than forgo their passionate support for the promulgation of the war indicates just how entrenched the profession had become in its support for the conflict – it had virtually become a holy war. As Adrian Consett Stephen wrote, it was a ‘spiritual’ thing.

The tension overseas was matched by the increasing tension at home.

While the election was on, there was a report of the Sydney barrister, Lieutenant-Colonel Alexander Windeyer Ralston, the son of AG Ralston KC, being awarded the DSO. Sydney lawyers were prominent in the news in one way or another in March 1917. Ralston KC would be a regular speaker at enlistment rallies throughout the year. At one rally he enunciated his reasons and thereby gave a fair summary of his opinion as to the reasons for the war and the issues facing the new Commonwealth. As reported by *The Sydney Morning Herald* he said that

The future of no country in the world would be more affected by the success or failure of the Allies than their won. The permanent annexation of the German possessions in the pacific and the preservation of the Northern Territory as part of a White Australia were two things of vital importance to the Commonwealth. By doing their duty now they would defeat the scheme of German expansion in this part of the world and prevent the threatened inrush of Asiatics.⁸¹

Social concern, if not outright paranoia was rampant amongst the community concerning all manner of things. The social tension was reflected in the State Parliament.

The New South Wales National Cabinet which came into power in 1917 was dominated by Sydney lawyers. Premier Holman and his Attorney General David Robert Hall were both barristers in Sydney, having trained in the early days of harmonious concordance within their Labor careers with the then Prime Minister William Morris Hughes. The other barristers in the New South Wales Cabinet included: the Irish Home Rule supporter, John Daniel Fitzgerald, MLC, who was Vice-President of the Executive Council, as well as Minister for Public Health and Local Government; Augustus George James, the Member for Goulburn and Minister for Public Instruction; John Garland KC, MLC who was Minister of Justice and Solicitor-General; George Stephenson Beeby, another ex-Labor politician, who was Minister for Labour and Industry. In all six out of a ministry of twelve were listed as Sydney Barristers. There were seven barristers and six solicitors – thirteen lawyers out of a 71 Members in Legislative Council. There were five solicitors and six barristers out of 90 members in the Legislative Assembly. The legal community had a history of representation. Pilcher KC had been a member but had died only recently. So too had the influential Bernard Ringrose Wise who had been a Member of the Legislative Assembly, Minister for Justice, Attorney General and Acting Premier. He had died in 1916. His replacement had been a long standing friend and another barrister: Thomas Rainsford

Bavin. He brought a knowledgeable understanding of legal precedent to parliamentary debate.

Thomas Bavin's path to politics was not easy, unlike Law Professor Peden who was appointed to the Legislative Council by Premier Holman. Bavin wanted to be in the Legislative Assembly and tried to gain selection for the safe conservative stronghold of Gordon on Sydney's North Shore. Bavin had already been Alderman for nearby Willoughby Municipal Council. With the sitting member, another barrister, GG Wade gone to London to be Agent – General (reportedly in the hope of a judgeship on his return⁸²) Bavin tried in 1917 to take his place. There was no Labor candidate but the competition for preselection was 'a struggle of unparalleled ferocity in that dignified suburb'.⁸³ Bavin was opposed by, among others, the Independent candidate and Barrister, EJ Loxton KC. Even after the ballot in March there was no clear winner. Loxton and Bavin went to a second ballot. The solicitor and Willoughby Alderman, FC Petrie and another solicitor WC Clegg led the supporters group for Loxton. Bavin made it through to parliament and had a long successful career.

Not all lawyers were successful in the election. One of the colorful figures to lose his seat in the Legislative Assembly in the election was the ex-solicitor Meagher, which he blamed on a 'hurricane of hate from the worst elements in society.' He had a very colorful turn of phrase.⁸⁴ He was about to be disappointed in his clash with Sir William Cullen.

This tendency amongst lawyers to enter politics is an indication of their sense of duty. This sense is reinforced by their willingness to be energetic contributors to charitable causes, their investment of personal energy in supporting enlistment and their dedication to shaping the new country. This parliament would finally bring in legislation making it possible for women to become lawyers. Despite, or because of, the number of lawyers in parliament there was a successful effort was commenced to introduce legislation in 1917 to fix the retirement the age of judges at 70 years, opening the way for Australia judges to move onto the bench.

Court Cases early in 1917

Among the various proceedings involving divorces, damages, wills, assaults, robberies and occasional murders some cases attracted particular public attention, if not for their legal implications then their scandal value. The press were as tempted by the opportunity for a frisson of voyeurism on the upper classes as they have ever been.

One case which occupied much space was that of David Clayton Howell-Price who was tried for embezzling money amounting to 60,000 pounds from the Commonwealth and spending it on racehorses, motor cars and expensive living when he was the adjutant of the Ninth Regiment of the Light Horse. Howell-Price was the son of the Reverend John Howell-Price, the vicar of St Silas' Anglican Church at Waterloo. Five of his brothers were serving

overseas in the armed forces. One had been killed in action in 1916. David Clayton Howell-Price was prosecuted by ME Manning before Judge Scholes, who gave a particularly strong address when sentencing the embezzler to two four year terms in jail. He stated that 'our country is at war with an all-powerful enemy' which was threatening the Empire. Defence counsel, Mr Abigail had mentioned that Howell-Price should avoid jail because he was 'highly born' but Judge Scholes considered this made his actions all the more reprehensible.⁸⁵

As was common in a number of cases, class was both a privilege and a responsibility. The case received extensive coverage and indicated both the degree to which the judiciary took the war into account in their cases as well as the open acknowledgment of a class based society in which those of the upper classes had a responsibility to act as an example to others. Enlistment in the armed services was just one way that that such responsibility was acted out. Various social institutions: schools, churches, the University of Sydney and families combined to inculcate values such as service, commitment, charity and leadership as well as the need for physical courage. The legal community saw itself as part of the leadership group of society and acted accordingly. It was in the area of Industrial Relations that these values and attitudes would become manifest in one of the most divisive events of 1917 – The Great Strike.

Industrial Relations and the Great Strike

The large number of cases involved Industrial matters in the first part of 1917 indicate the increasing tensions in this domain as the new Industrial Courts fretted away trying to establish their roles, their jurisdictions the conventions of a new system with new parameters within the violence and stress of war. One lurid concerned a Mrs Frances Egan who claimed one thousand pounds damages against the Barrier branch of the Amalgamated Miners' Association.

Mrs Egan alleged that she was dismissed from her job as a cook in Broken Hill because her employer had been threatened with a boycott for employing her. She had been identified as a 'scab' worker at a previous place. Mr Justice Pring was most sympathetic towards her plight stating that he 'was surprised that such a thing should be tolerated year after year in a civilised community.' Pring had already revealed that he held little sympathy for the union cause in the famous IWW case at the end of 1916 – in which he had handed out sentences ranging from five to fifteen years hard labour to the 12 men who had been foolish enough to indulge in rabble rousing rhetoric in a time of national crisis. The case revealed Broken Hill to be more like the images of the mythological *Wild West*. Mrs Evans was not entirely without resources. She admitted carrying a revolver and approaching certain union officials with it at various times to press her case. She had on one occasion entered the room of Mr Evan Marshall, President of the Hotel, Club and Restaurant Employees Union herself. Not happy with his actions she had taken the law into her own hands and personally made sure that he was tarred, feathered and whipped⁸⁶

Mr Marshall had been found wearing only his 'trousers and boots but adorned all over the body with tar and feathers' in Argent Street Broken Hill on 17 July 1915.⁸⁷ While this event was mentioned in proceedings, there is no indication that it affected Mrs Egan's application. Mr Justice Pring awarded her four hundred and fifty pounds (about the equivalent of two and a half years wages) The decision was upheld on appeal by the Supreme Court comprising the Chief Justice, Sir William Cullen, Mr Justice Sly and Mr Justice Ferguson – all fervent supporters of the war and thereby believers that any industrial action was treasonous. There was a further appeal to the High Court but the appellants did not appear and the appeal was struck out with costs awarded against them – perhaps they finally got the message. Scab or not, there is something admirable about Mrs Egan and her stand against what she perceived as bullying tactics. The strong actions of the Industrial Courts against unions were certainly supported by some people in the community.

Mr Justice Pring's notoriety amongst the union was well established.⁸⁸ In the Egan case in 1917 he became quite critical of the problems tribunals faced in getting parties to agree to a decision. He said that such a difficulty showed 'the utter worthlessness of wages boards and industrial courts. I do not know what would happen if a judge here had to have a conference with the parties to get them to obey an order of the court . . . It is a grotesque travesty.'⁸⁹ Unions were particularly keen that their members should not work with those they declared 'scabs'. Actions to prevent such contact led to some unions be put before Mr Justice Heydon either in court or in chambers.

In April one such application by the Minister for Labour and Industry for the Operative Baker's Association to show cause why its registration as an industrial union should not be cancelled.' The issue was again working with someone declared a 'scab'. The Minister declared that the Association was guilty of an industrial offence.⁹⁰ Justice Heydon was sympathetic to this point of view and his increasingly hard line against unions led to him becoming more unpopular with the Labour Representatives than Mr Justice Pring. Heydon's judicial decisions would be among the factors that led to 'The Great Strike' of August 1917. In addition to Heydon's antipathy towards unions Judge Edmunds, after having to hear a series of disputes involving striking workers was reported to be 'so disgusted with the coalminers that he had closed his court.'⁹¹

Justice Heydon was not the only judge to be frustrated with industrial action. Mr Justice Edmunds also resented the miners' attitudes when they did not guarantee their adherence to the rulings of the coal tribunal of which he was the chairman. There was clearly a sense of frustration developing in the judiciary over the manner of workers' industrial actions. Strikers were portrayed in lurid terms by counsel as 'helping Germany' as if they were holding Australian soldiers while they were being 'bayoneted' by the enemy.⁹² The judiciary particularly resented anything that they construed as a threat to their own authority or an attempt to compel them in any way.⁹³

The emerging industrial landscape was made hazy by the sometimes overlapping Federal and State prerogatives. The situation was exacerbated by the fact that the Federal Arbitration Court under Justice Higgins often sat in Sydney. Higgins was a regular speaker at various engagements and while he did not always articulate the same degree of rabid support for the war as some others he was still firmly loyal to the British Empire. He advocated free speech, respect for minorities and that 'the firstly greatest contribution Australia [was] to make to civilisation [was] in the direction of labour legislation.'⁹⁴

Higgins' attitudes to labour legislation were admirable enough, but he was himself sometimes the unwitting cause of labour strife. One example involved a group of wharf labourers who went on strike for above award wages for unloading some cases of oil from a steamer to a lighter. Their union representative claimed that the men had acted as they had 'consequent to some remarks by Mr Justice Higgins in a case in the federal Arbitration Court. These remarks were to the effect that if the men could obtain a higher rate than the legal minimum then they were at liberty to do so.' Mr Justice Heydon was not impressed by this defence and fined the men for the strike and said that in respect to Mr Justice Higgins' remarks that 'he could hardly understand that his Honour had meant his words to convey the meaning which the respondents had read into them.'⁹⁵ The case is a clear illustration of the confusion the overlapping jurisdictions could cause. A deputation to the Minister for Labour and Industry, Mr Beeby, in June 1917 tried to have the situation resolved. People could apply to the State Court on the grounds that

the Federal Court ruling on much the same occupation was different as that court had different ideas as to what a minimum wage should be. However the Federal Court 'could not prescribe a common rule, and, in fact its awards in many directions did not cover the whole of the industry, but only such persons engaged in the industry who were actually before the court.'⁹⁶ Beeby was frustrated with Higgins' rulings and stated that Mr Justice Higgins' judgment in the wharf labourers case, had 'wiped out the idea of collective bargaining.' Furthermore this judgment 'had done more to bring about industrial confusion in [New South Wales] than any other judicial decision.'⁹⁷ Beeby saw the Federal Court as overturning Industrial Legislation and naturally tied the resulting confusion to the war. He believed that only those countries which were 'well organised industrially' would survive the war.⁹⁸ Add to this lack of definition the vagaries of the *War Precautions Act* and the propensity of judges to view cases through the lens of the demands of the war and the situation became increasing unstable. The problem was that the industrial relations stakeholders were trying to establish the rules and conventions of an inherently combative enterprise with deeply conflicting agendas in a time of national crisis.

Other common cases involved the transgression of the *War Precautions Act* administered by the Solicitor General Garran. The Act gave virtually unlimited powers, which the Prime Minister, William Morris Hughes, was only too ready to acknowledge.⁹⁹ The Act was a particularly powerful instrument in relation to the control of aliens. Across the years it is hard to concede the justice in cases such as that of 60-year-old Carl Bergman (aka Berguean) being

charged that being an alien enemy within the meaning of the war regulations that he did not within seven days of having changed his address notify the authorities of his change of abode.¹⁰⁰ He pleaded guilty in the Water Police court and explained that he was a Swede and had been in the country since 1885. Aliens were subject to close scrutiny, but even more attention was paid to the members of the International Workers of the World – the IWW.

The IWW had been declared an Unlawful Association in December 1916. The ban was to last for the duration of the war and for six months thereafter. The IWW was the bete noir of the Establishment and the government was either paranoiac or at best greatly exaggerated their response to this organisation. However the IWW had played into the hands of its upper class opponents through its lurid rhetoric of class warfare and smashing the system. While such hyperbole was typical of any group at the time it could not be seen as unreasonable when the IWW's opponent took them at their word.

The legal profession were united in their condemnation of IWW. Garland KC, Solicitor General appeared before the Millions Club and said that 'the vast amount of unrest has come from agitators who have recently come to our shores' particularly the IWW and anarchists who will 'absolutely ruin Australian industry'. War would mean that a 'new order would emerge, which would enable Australia to take an even more important part than hitherto in the councils, commerce and trade of the British Empire.'¹⁰¹ The same edition mentioned Adrian Consett Stephen's Mention in Dispatches

The suppression of the IWW intensified throughout the year. In September 1917 34 men in one day hauled before a magistrate and charged under Unlawful Associations Act with being members of an unlawful association, to wit the IWW they were sent to gaol for 6 months.¹⁰² There were lurid accusations of all manner of crimes against the IWW including the encouragement of arson. Evidence against the accused was often based on the handwritten notes of police officers stationed in the crowd inside halls or the Domain. Defence counsel made much of the accuracy of these accounts.¹⁰³

Incitement to strike or hinder the transport of goods was sufficient for a jail term. Judges were very ready to sentence men to jail and could be swayed, as Judge Scholes was in April 1917 if the defendant displayed 'a certain amount of impudence' in what he was alleged to have said.¹⁰⁴ Membership could create all manner of trouble. When one Roy Darcy was found with an IWW membership pay card he tried to explain to the magistrate that he must have joined when he was drunk and had no sympathy with the IWW movement. He had already been found guilty of using the words "scab" and "mongrel" to a tram guard. He was imprisoned with hard labour for three months.¹⁰⁵ It was not a good time to get convicted of anything, regardless of whether or not the defendant was a member of the IWW or not. One Thomas Leslie Bathurst was found guilty of larceny of ten pounds [about two weeks wages for a clerk] from the Returned Soldiers' Association. Judge Backhouse sentenced Bathurst to six months hard labour in the Long Bay Penitentiary.

The sentence was suspended, but it was still a stiff price to pay for what might be termed a minor misdemeanour.¹⁰⁶

The middle of 1917 saw all manner of hysteria regarding the IWW. One area where again workers were pitted against the Establishment was over the cause of the mice plague which cause such depredations in the countryside, particularly in the southern districts. Mice were measured in tons, not numbers and the attitude of workers was part of the blame. When wheat stackers asked for an increase in pay from 12 or 14 shillings to 16 shillings a day Mr Justice Heydon stated that 'their fellow citizens will say they have taken Australia by the throat . . . when she was in great difficulty.' He awarded them 12 shillings and urged them to return to work 'as men would work on the pumps of a sinking ship.'¹⁰⁷ It is easy to see how a gulf could open between workers and the judiciary at the time. Justice Heydon was convinced that the pressing need for commitment to the war overrode every other consideration. On the other hand, workers were faced with rising prices and a stagnant wage rate. Both parties were unfamiliar with the new arbitration system. The scene was set for a confrontation.

In early November a number of industrial unions which had been deregistered due to their participation in the Great Strike applied for registration. It was decided that Mr Justice Heydon, the Chief Industrial Arbitration Judge would sit with Judge Rolin and Judge Curlewis of the court as a Full bench on 12 November 1917– the first time in the history of the court that a Full bench was constituted. The barrister representing the employer's group opposing the

registration was Thomas Rainsford Bavin. The union did not have an easy time of it. There were persistent references to class differences at the time. All levels of society were conscious of their social position and the various obligations or vicissitude which their position entailed. The Labour Conference regularly heard speeches in which contained claims that when the soldiers came home they would find 'their country belonged to a handful of landowners.'¹⁰⁸

By late 1917 the judiciary was involved in all manner of political, social and judicial issues. Justice Heydon was a most significant figure. As head of the Industrial Court he had the discretionary power to determine which cases he heard as well as their outcomes. He wielded these powers in accordance with his particular world view of service, loyalty and the need for patriotic restraint. In the war years. Strikes were treasonous and the responsibility of the appropriate union, whether or not the Executive had sanctioned the stoppage or not. By November 26 unions had been deregistered. By the end of 1917 the New South Wales legal profession were acting in a manner which showed their rock hard loyalty to the cause of service, war and Empire. The Sydney 'Labor' Barristers, William Morris Hughes, Premier Holman and Attorney General Hall along with other leading lawyers, Garran, Heydon, Thomas Hughes were advocating suppression of unions, treason charges against anti-conscriptionists and a repudiation of any pre-war improvement in industrial conditions despite the fact that they had once been so reform minded. Heydon had introduced the first notion of a minimum wage.

Battles Overseas

While all the drama was going on in the courtroom, Adrian Consett Stephen spoke for all the lawyers serving on the Western Front when he contemplated the battles which lay ahead. For him it was Vimy Ridge, which he saw as “a rampart as evil and sinister as ever lay between an army and its goal. . . The weather lately has been too appalling for words, blizzards and winds in which horses froze to death, and in April too. . . .Why is it that anyone can live in this God forsaken country, when there are warm, sunny places in the world?”

The battlefield had developed a sinister ugly personality. He wrote again of Vimy Ridge as: “a more venomous, ‘unnatural’ looking barrier it is hard to imagine. No grass, no shrubs, or stumps of trees – just a piebald lump of mud and chalk, eaten into by dug-outs and tunnels. It is the sort of evil mess a child would build in a gutter, or perhaps it is more like a vast decaying carcass sprawled between us and the busy towns and pleasant fields beyond . . . our objective.”¹⁰⁹

May in Australia

As if to match the increasing violence in Europe in May, in New South Wales the legal profession had plenty to talk about and were commencing to display a kind of intense, hectoring energy in any social reform they encountered.

One lady in particular gained significant prominence during this time: the wife of Langer Owen KC became embroiled in a number of issues. In May she led

the legal community's involvement in the collection of signatures for a petition to the Prime minister complaining about the habits of men in hotel getting into drinking parties, known as a 'shout'.¹¹⁰

The movement was known as the 'Anti-Shouting Campaign' was initiated by the National Council of Women on 10 May 1917. The campaign can be categorized as either a genuine attempt to help women at home or the overenthusiastic actions of women acting as 'God's Police.'¹¹¹ Whatever the nature of the response, the issue also allowed a direct address of the problem of domestic violence. One article on the topic of shouting drinks mentioned the plight of women at home when the "jolly good sport" in the bar, ready with a smile and a slap on the back for all and sundry, and an invitation to "have another", turns into a very sour and bad tempered specimen as soon as he gets on the inner side of his front gate . . . Truly the wife of the "shouter" has an unenviable lot.¹¹² Again it was the wives of lawyers who dominated the campaign.

There had been a strong movement against excessive drinking amongst many people. Ethel Curlewis, the wife of barrister and later judge, Herbert Curlewis wrote a book, in her role as author Ethel Turner, in 1917, *St Tom and the Dragon*. In this novel one character's transformation to a different, ugly personality when under the influence of alcohol is a graphic lesson in the dangers of excessive drinking. One of the leading advocates of the anti-shouting campaign was the passionately hardworking Mrs Langer Owen. She was president of the sub-committee which conducted the campaign. A

number of petitions urging that the government use the *War Precautions Act* to limit the custom of men 'shouting' one another in a hotel were circulated with Mrs Langer Owen's enthusiastic support. A range of lawyers supported the campaign, including the Chief Justice and Lieutenant-Governor, Sir William Cullen.

The lists of over 103,000 names were eventually given to the Prime Minister, William Morris Hughes, by Mrs Langer Owen and a delegation of prominent people on 28 June 1917 after an energetic public campaign which rivalled the war-related recruitment and charitable activities. Hughes was most jocular in his response and stalled any commitment by stating that licensing laws were a matter for the states.¹¹³

Judges were also conscious for the need for social reform. When Mr Justice Pring, Mr Justice Street and Mr Justice Gordon, on 27 November 1917, had to find against the appeal of deserted wife they found that 'the state of the law led to a position involving unfairness and an inequality which the Legislature should see fit to remedy.'¹¹⁴ This was part of a raft of declaration to attempt to improve the lot of women. Another issue was the constant lobbying for the legal status of women to be established so that they would have the right to become lawyers and be members of the New South Wales parliament. There were repeated references to ideas regarding the new roles of women with one article in July on the topic 'What is Feminism?'¹¹⁵ Women were certainly in the public eye and very active in a range of public venues – sometimes at great personal cost. Mrs Langer Owen's concern for the well being of her fellow

citizens was not restricted to their sobriety. In May, 1917, she was fired with a passion that placed enormous strain on her health.

Mrs Langer Owen had also been instrumental in formulating programs for the rehabilitation of disabled soldiers. Her enthusiasm to help the returned soldiers led to a nasty public confrontation with Senator Millen. On 11 May 1917 a letter by her appeared in *The Sydney Morning Herald* in which she claimed that Senator Millen did not seem aware that certain rehabilitation schemes were working successfully in France.¹¹⁶ The rehabilitation of injured soldiers was one of the schemes which Mrs Langer Owen supported with her usual energy. But Senator Millen was not likely to take kindly to public criticism without wanting to put his story on the record. Millen was not happy to read this and responded that Mrs Owen was so 'commendably sympathetic' to her own branch of work at Randwick Hospital that she was 'losing sight of the many other branches' working to the same end.¹¹⁷ His comment is indicative of the sort of over enthusiastic and somewhat narrow-minded, blinkered approach to the war-related issues by the legal community. Once again, Mrs Langer Owen, however admirable her motives may have been, displayed the sort of zealotry which was endemic amongst the legal community at the time and which led them to misread the public mood on issues such as Conscription.

On 30 November there was great grief in the legal community when Mrs Mary Langer Owen died suddenly. Her death was widely reported and greatly

mourned. Pages of eulogies were printed, praising her work with the Red Cross, the Win-the-War league and other patriotic bodies. "It was felt as if the soul of the Red Cross had gone."¹¹⁸ Writing to the Red Cross executive at the time Mr Langer Owen KC said that 'the whole idea of the (Missing and Wounded) information bureau was conceived by Mrs Langer Owen, and that before the inquiry bureau on the other side of the world was really in working order she was already in communication with Lady Northcote about the matter.'¹¹⁹ It was said that her efforts on behalf of the war had hastened Mary Langer Owen's death.¹²⁰ Her funeral attracted a great range of senior judges, barristers and solicitors. She was a much respected member of the extended legal community. Her energetic public life was one of the contributing forces to the case for admitting women to the legal profession and being allowed to sit as members of the new South Wales parliament as allowed by the *Women's Legal Status Act* of 1918. In her own way, she was another victim of the war and personified the legal communities almost obsessive desire to contribute to public life..

This passion to support the war became increasingly entrenched, despite the beginnings of doubts about the worth of the conflict. In June 1917 Siegfried Sassoon published his celebrated statement against the war in *The Times*. London. While this was a long way from Sydney it showed that sensitive, brave literary people were beginning to have doubts about the cost of the enterprise. We can see this appear in the writings of Adrian Consett Stephen.

With so much tension involving judges it was perhaps inevitable that there would be some attempt to exert control over them. May 1917 saw a most extraordinary performance in court.

'Painful Scene in Court'

On Tuesday on 1 May 1917 when the *Sydney Morning Herald* reported a 'painful scene'¹²¹ in Sydney's Banco Court. The defendant was one Hugh Beresford Conroy. He was a candidate in the then current Federal parliamentary election, and when his application for an adjournment to prepare his case was not allowed by the Chief Judge in Equity, 74-year-old, English-born Mr Justice Archibald Simpson¹²² Conroy let fly at the ailing Justice Simpson railing that he had

reached a stage of life when it is impossible in the afternoon to remember what took place in the morning. It has gone past your mind. You are not fit to sit and conduct such cases as the present.'

That comment was just the beginning of the extraordinary tactics Conroy employed in his own defence. He also claimed that he had been to visit the Attorney General, David Robert Hall who 'was of the opinion that (Justice Simpson) had reached a stage when (he) should no longer sit on the bench.' Furthermore, Conroy claimed that Hall said that: 'A bill was being prepared fixing a Judge's retirement at the age of 70 years.' Conroy also claimed that Justice Simpson was 'unable to recognize matters of public interest' and that

the New South Wales Bar agreed with this assessment. Conroy's manner was described as 'dramatic in style and almost threatening' by the *Sydney Morning Herald*.

Joseph Browne, a member of the New South Wales Legislative Council, was counsel for the applicant. He objected to the attack and said 'it was very painful to listen to such insulting remarks'. But this had little effect. Browne would get an opportunity make some interesting comments on the Judges' Retirement Bill when it was later discussed in parliament.. For the time being, he kept his comments to a minimum. The exchanges between Conroy and Mr Justice Simpson continued with Conroy becoming increasingly agitated and eventually the *Sydney Morning Herald* reported that he 'made a remark' which caused

'considerable excitement . . . throughout the court. The tipstaff approached Mr Conroy and shouted "Silence!" Mr Conroy's excited condition indicated a possibility of something more forcible than his language. The constable attached to the court came into the room.'

The Judge and his associate left the court and as they did so Conroy shouted at the top of his voice 'I address you so that you can hear me. I know that you are deaf.' Conroy was still passionately fired up after two brief adjournments. When Justice Simpson refused again to grant the application Conroy shouted: 'You've got a maggot in the brain' amongst other things, and made particular reference to Mr Justice Simpson's supposed deafness and mental acuity. It

must have been a particularly worrying time for the judge, regardless of the rights and wrongs of the criticism. He had already lost his son George in action at Gallipoli. His other son Adam had survived Gallipoli and a variety of life threatening illnesses as well as the hazards of battle. He had been at an officers training school in England for the early part of 1917 but that safe period was about to end and he would return to the front line in France was to return to active service as a battalion commander – a position in which many good men lost their lives. Perhaps the all pervading background of grief and constant worry over loved ones at the battle front made the naturally combative world of court appearances even more intensely emotional than they would normally have been.

After the account of the court room scene the *Sydney Morning Herald* included a short disclaimer from the Attorney General Hall and the Acting Premier Fuller admitting contact with Conroy but stating that they did not support his attempt to remove Justice Simpson from the case.¹²³ There was no denial about the proposed legislation. Mr Justice Simpson wrote to Attorney-General Hall in late July suggesting that he should go on leave after serving 21 years on the bench. Hall granted the application. Legislation was introduced in late 1917.¹²⁴

The Composition of the judiciary was the subject of a deputation of magistrates in July 1917 when members for the New South Wales Justices Association waited upon the Minister for Justice, Mr Garland KC to suggest the inclusion of selected JPs to sit on metropolitan courts.¹²⁵ Judges were

becoming increasingly controversial. There was ill will between the Labor party under the parliamentary leadership of John Storey and the judiciary which worsened as the war and controversies over industrial legislation escalated into the Great Strike of 1917.¹²⁶

A number of laws affecting the new South Wales legal profession were introduced, or at least contemplated, during the tense months of 1917. At the end of 1916 Attorney General Hall had attempted to introduce a bill to allow women to become lawyers as well as enter State parliament. The bill had been thwarted on a procedural issue then lost in the boiling bitterness of the state election and subsequent controversies. But lobbying for the rights of women continued throughout the period and the law would eventually be brought in in 1918, although the admission of women to the Upper House of State Parliament would be another eight years into the future beyond that.

The Meagher Case and 'Septic Prejudice'.

May 1917 saw another controversial intersection of judicial power and politics when Richard Meagher made his fifth application to be restored as a solicitor of the New South Wales Supreme Court. Richard Meagher provides an interesting case of how a man with some dispute with the judiciary was also, as a member of parliament, involved in the passing of laws that would affect the composition of the bench. Meagher had been involved in a protracted series of attempts to be reinstated as a solicitor. He had been struck off because of his involvement in the celebrated Dean case¹²⁷. On 28 May, 1917,

not long after Conroy had been so inflammatory in his conduct in front Justice Simpson in Banco Court, Meagher's application reinstatement as a solicitor was heard by the Full Court, consisting of the Chief Justice, Sir William Cullen, Mr Justice Pring and Justice Gordon. Meagher fully expected to be reinstated.¹²⁸ The high profile of the case meant that 'large numbers of the legal profession' crowded the gallery. The Honourable John Jacob Gannon KC MLC and another well-known barrister, HE Manning, represented Meagher.

The application was made on the grounds of Meagher's conduct in recent years. *The Sydney Morning Herald* had a two full columns devoted to the case, which was understandable as Meagher was the Lord Mayor of Sydney and had previously been speaker in the Legislative Assembly – although he had lost his seat in the recent election and subsequently been appointed by his friend, Premier Holman, to the Legislative Council. Meagher's appointment can be seen as a reward for his loyalty to Premier Holman during in the Labor Party split over conscription in 1916. Supporting Meagher's application to the court for readmission were affidavits from barrister and Speaker of the Legislative Assembly John Jacob Cohen KC as well as Frederick Flowers, President of the Legislative Council and William Brooks, Member of the Legislative Council. Much emphasis was laid upon Meagher's political career as a reason for his readmission.

The Chief Justice Sir William Cullen responded to the reference to political success in particular. He asked if 'success in politics' was 'solid and

substantial' evidence of a changed character. Counsel said it was. Sir William Cullen replied: 'Then it is easier for a successful politician to obtain reinstatement than for an obscure and friendless solicitor?' Counsel said that it gave the person a chance to prove his rehabilitation then Sir William Cullen asked 'Is the Court to take the opinion of politicians as evidence guiding its own opinions?' Counsel stated that he was only submitting it as evidence.

The defendant in the case was the Incorporated Law Institute. Its counsel argued that a man 'must be judged on his whole life' and submitted that the affidavits should not be able to sway the judgment. Meagher's political success should not, according to counsel, sway the Court. Sir William Cullen agreed. The application was refused and within a few months Meagher found himself as a Member of the Legislative Council and having the opportunity of speaking in support a motion to limit set the retirement age of the same judges who had so recently sat in judgment over him. The debate provided him with a good opportunity to air any grievances he may have harboured. In fact Meagher could best be described as incandescent with rage against the Chief Justice. He made repeated inflammatory speeches on the topic in subsequent years, attained the support (by his own account) of a number of prominent citizens and produced, in 1920, a vitriolic account of his life in which he accused Chief Justice Cullen of all manner of transgressions, including 'gross bias' and 'despicable' and 'septic' prejudice' regarding the case for his readmission as solicitor.¹²⁹

Holman's Nationalist Government was also involved in a tense exchange with the New South Wales Bar Council in May 1917. The Council opposed the Speaker of the Legislative Assembly, John Jacob Cohen KC as an Appointee to the bench immediately after the April elections. The Attorney General Hall did not take this well and is reported by HTE Holt to have condemned the Council as an 'irresponsible body.'¹³⁰ Interesting enough and perhaps in the best tradition of politics there were firm denials in the media in May 1917 that Cohen was even being considered as a judge.¹³¹

The year, 1917, was often stressful but relations between judges and politicians were not always strained. They appeared together in many patriotic forums. In April 1917 Premier Holman announced a trip overseas for 'financial reasons' on behalf of New South Wales. He would have a very interesting time of it. There was an official farewell for Premier Holman before his departure overseas. Judge Backhouse spoke saying how much his respect for Holman as a lawyer was 'real and earnest' and that he had done good work in a variety of social fields.¹³² This comment was only one of many in which judges' views on a variety of matters, judicial and social, were mentioned. Judges were in the news throughout the year as they supported war-related causes or had their judgments extensively reported in the press. The *Sydney Morning Herald* regularly devoted a full closely typeset page reporting legal proceedings with long verbatim accounts of statements, cross examinations and judges' comments.

May 1917 saw a Federal Election with the Prime Minister William Morris Hughes echoing his fellow Sydney barristers in saying that the country stood 'at the parting of the ways' [where she could] take the high road to duty honour, national safety, or the low road to national dishonour and destruction.'¹³³ For the legal profession the war had become a holy crusade in which the national identity, loyalty to the Empire, national security and spiritual redemption combined to form an absolute commitment to the cause. In the process they appear to have lost contact with the national mood – as evidenced by the loss of the Conscription referendum in both 1916 and 1917. In both cases the legal profession were stunned when the result was a majority 'No!' to the question. At the same time, Ernest Bentley a law clerk from Tenterfield died of illness at Randwick Military Hospital. He had already lost a brother in August 1916 on Hill 60 on Gallipoli.

Sydney University law School

The influence of the Sydney legal profession extended well beyond State politics and was cemented by personal alliances and friendships which originated in shared chambers, tutelage and the increasing influence of Sydney University Law School. In April 1917 there was the annual meeting of the Sydney University Law Society with Thomas Bavin in the chair. The society was particularly encouraging of the involvement of lawyers in the war and the annual report stated that about 100 members of the society were on active service and eight had fallen in action so far.¹³⁴ Such patriotic fervour was only to be expected considering that Sydney University was a keen institutional supporter of the war. In addition the president for the Law Society

was Mr Justice Ferguson who had lost one son to the war, had another still serving overseas and was a passionate letter writer to soldiers and fund raiser for the various charities.

The Law Society was keen to report on the part it had taken in connection with the war, which suggests that the war was seen as an opportunity to advance the profession, and for it to prove itself to the wider society. In the middle of 1917, Professor John Peden of the Sydney University Law School was appointed lifetime member of the Legislative Council. Peden's and the Sydney University Law School's influence was on the rise. Peden's appointment to the New South Wales Legislative Assembly indicates both his own ability and the ascendancy of the Sydney University Law School. The war was one of the factors which gave the school its impetus. The students had volunteered enthusiastically and a number wrote to Peden from overseas. In their letters they enthusiastically mentioned the news of any others from the Law School. They also wrote of their keenness to return to their law studies. But there was little cause for romantic illusion. One correspondent wrote 'All the chaps I came out with . . . are either killed, gassed, wounded, or in *Blighty* for Home Service.'¹³⁵ While HV Evatt¹³⁶ wrote in a private letter to Peden: 'of the death of Morven Kelynack Nolan that he was his 'in many ways, fearless, upright, noble, true (and his) best friend.' Evatt continued: 'I often think that the Law School must do much more to honour the precious memory of these great and generous souls. . . The whole future of our University Law School should rest upon the priceless devotion and sacrifice of these men.'¹³⁷

11 June 1917 While Seaborn prepared his Sportsmen's Unit for departures, over seas Adrian Consett Stephen was receiving news of his latest decoration. He described it vividly in a letter to his parents:

On June 1st the colonel asked me if my name was Adrian Consett Stephen. I said 'Yes, more or less.' ' Well , you've got the Croix de Geurre.'

I said, 'Thank you, sir. That's very nice.'

And that's that! . . . I am now open to be embraced by all the hairy poilus I meet – kissed on both cheeks in fact be the entire French Republic.. .

But in the same letter he wrote: "One of pour servants has been killed and my best sergeant has died of wounds. I have just written to his wife. At such times one feels sick and weary of this world silliness, this mud and death called War. There are times when the greatest victory seems small compared to the grief in one little home.

Well, well – we must on, on!"

Consett Stephen was a well known personality and within a week of his learning of his award it was also announced in *The Sydney Morning Herald*.¹³⁸ As an indication of the social profile of the legal profession that 'Personal' column in which Consett Stephen was mentioned also had references to Lady Cullen, the wife of the Chief Justice, the situation of struck-off solicitor RD Meagher, the admission of John Youll as a solicitor and the medical situation of Judge Pickburn. The lives of lawyers and their families provided much interest to the readers of *The Sydney Morning Herald*. The influence of the

war on the law is apparent with the appearance of John Youll in uniform when he was admitted as a solicitor despite not completing his articles. Enlistment in the armed forces gave him preferential treatment.¹³⁹

In June 1917 a significant death in action of an Irish barrister caused much sadness amongst the catholic legal community in Sydney. Major William Redmond MP was killed fighting for the British army. His enlistment had been most controversial as it was clear statement that he thought that Irish republicans should shelve their plans for agitation and independence and help Britain during the war. It was controversial decision, much opposed by some in Ireland. There was a memorial service to him at St Mary's Cathedral. Redmond had first visited Australia in 1883 and had strong ties with local catholic Lawyers, many of who supported the cause of Irish Home Rule. Like Redmond they were keen to express their loyalty to the British Empire and avoid conflict with Protestant supporters.

The Great Strike

Despite the prevalence of men of Labor backgrounds in politics, In the lead up to the elections, Premier William Holman had pledged to 'amend the arbitration laws so as to minimise strikes.' His reason was that 'the National party place(s) the needs of Empire and the good of Australia above all personal and party considerations.'¹⁴⁰ With this in mind strikes could be seen as treasonous activities. The split over industrial action during the war had its origins in the very first days of the conflict. The unions were incensed that

they were expected to maintain a wage freeze while prices and unemployment rose.

July also saw an escalation in tension between the government and the union movement. Unions were keen to maintain or improve their members' conditions and were very willing to take industrial action. In return the government and the courts took a very hard line. There was a clear issue within the legal community that workers should suspend industrial demands for the duration of the war. In addition lawyers in government and the courts tended to interpret industrial action as a challenge to legal authority. One of the centres of tension was the transport industry. In response to a strike in the Randwick tramways workshops in early July 1917 Mr Beeby, the Minister for Labour and Industry, echoed his fellow lawyers when he asserted that the 'government [was] not disposed to allow strikers to ride roughshod over the arbitration laws.'¹⁴¹ This assertive tone would be echoed by Mr Justice Heydon in August and explains in part the escalation of a local dispute into the 'Great Strike' of that year. Unions felt that they were not getting justice while the judges believed they were being defied by a rebellious mob. As Sir William Cullen put it 'You cannot have a lawful association to commit unlawful acts'¹⁴² and since strikes were illegal under the *War Precautions Act*, unions were in trouble. Arbitration was supposed to end strikes. Cullen led his profession when he displayed a most sentimental form of patriotism referring lovingly to the Australian 'flag of our fathers' when it was unfurled on public occasions.¹⁴³

Relations between the government and the industrial courts on one side, and the union movement on the other deteriorated to an extraordinary extent such that when employers attempted to bring in a work card system in the rail yards, on 2 August 1917, 3000 out of 4000 workers went on strike. Soon other workers followed and what was known as 'The Great Strike' had begun. The Strike occurred when the legal profession were dealing with their grief over the loss of friends and relatives in battle.

As if to remind the legal community of the price its members paid on the battlefield, on 3 August Captain Roy Hector Blashki, an articled clerk was killed in action. He was the son of a prosperous Sydney Merchant, Aaron Blashki¹⁴⁴ and like so many of those lost in action his death was part of the fearful lottery of artillery fire. Blashki had been on duty in their gun position with the 53rd Field battery near Roulers Railway station about 3 kilometres from Ypres. The Germans started shelling the Australian ammunition dump and Blashki went towards it, but a shell landed about 10 metres away killing him instantly. His father made extensive enquires as to his fate and the fate of his effects, which were as usual slow to return to Australia. The family's pain reaches out from the copperplate writing as Aaron Blashki as that the return of his effects be affected, pleading in one letter: 'If you could only realize that this delay is keeping open our wound.'¹⁴⁵ Blashki's mother had been one of the many women who had been active in the Red Cross. She had been part of a group who wrote to Australians serving in British forces offering to send them the sort of 'Comforts' which the Australian people sent to their own units.

In Australia the Great Strike caused all manner of consternation and is still the subject of much strong feeling. The government, supported by Justice Heydon of the Arbitration Court effectively destroyed the strike by deregistering any union which became involved even if not all members had been involved. Heydon's interpretation of the court's role went against the general legal interpretation of his powers at that time¹⁴⁶. The strike became a bitter battle and all manner of people became involved. Even a young Adrian Curlewis¹⁴⁷ was one of many GPS¹⁴⁸ students to work as a volunteer in the Redfern Railway Yards. His father, who had only recently been appointed a Judge of the Court of Arbitration curtailed his son's strike-breaking activities in the name of being seen to be even-handed.

Not all the dramas overseas were on the battlefield. William Francis Langer Owen, the law student son of Langer Owen KC was caught out overstaying his leave pass. He was sentenced to 21 days Field Punishment No.2 and forfeited four days pay. While only a minor infraction it may be one of the few times a Justice of the High Court saw the inside of a cell in his younger years. In later life, Sir William Owen served as a Puisne Justice on the High Court from 1916 to 1972 immediately before Sir Keith Mason.

September in New South Wales.

In September the Allies in France were engaged in a series of battles using the 'step-by-step' tactic of trying to move forward in short manageable stages

supported by artillery. It was marginally better than a simple frontal assault but still caused enormous casualties and the New South Wales legal profession were again left wondering when the next telegram would arrive. As if to prove that they were equal to the task, and to distance themselves from the strikers, the profession became enthusiastic supporters of a major fundraising effort for the charitable group known as the *War Chest*, which supplied comforts to soldiers at the front. The focus was a fundraising day known as War Chest Day held on 26 September 1917. In the lead up an most influential group of lawyers including the mercurial disbarred solicitor but still Lord Mayor and MLC Richard Meagher, along with Judge Docker, Judge Backhouse, Judge Rolin, Mr Justice Gordon and Mr Justice Ferguson, prominent barristers Richard Teece, Adrian Knox KC and many other leading citizens. As usual, Mrs Langer Owen was on the organising committee as were a number of the lawyers' wives. .

On 18 September an application to cancel the registration of the Gas Employees' Union was dealt with by Judge Rolin in No. 3 Industrial Court. The members of the union had decided not to handle 'black' coal. The men had returned to work before there was any interruption to gas supplies but despite this Judge Rolin felt it necessary to punish the union and took the opportunity to say that the law did not give them the right to strike, that such action was mob rule , anarchy and a repeat of the cry 'Release unto us Barrabas.' Strikes were opportunities for men to avoid work and attempting to starve the community and embarking on a 'callously cruel course' the equivalent of 'having a few rounds of drinks instead of taking their wages

home to their wives and children.¹⁴⁹ Judge Rolin had only been appointed the Industrial Court in January 1917. Like so many he was an enthusiastic supporter of the war and had been one of the principal founders of the Sydney Golf Rifle Club at the beginning of the war.¹⁵⁰ This club supplied many recruits to the war. No wonder the strikers were in trouble before him as they were before others as their industrial concerns were persistently characterised as being unpatriotic, disloyal and disruptive.

When the strike was over, and the strikers largely defeated the legal profession looked to try and define the industrial landscape. Some of the issues were articulated by people such as the solicitor A M Hemsley who urged no strikes to essential industries, secret ballots and the attendance of all members of a meeting not just the 'extremists', very heavy penalties to those who discriminate against non-strikers and banning of any 'go-slow' activities.¹⁵¹ His suggestions indicate the particular mindset of lawyers – that social responsibility in support for the war should override any concerns, industrial action. The strike coincided with some of the worst fighting of the war, casualties were at a peak and the legal community were in a constant state of tension as men they knew fell in action and grief and anxiety spread throughout chambers across the state.

Lawyers on the Battlefield

Many lawyers found themselves in demand for their legal skills during the war.

A number of lawyers served on Courts Martial in 1917. Colonel le Gay

Brereton, a solicitor and member of the militia acted a president for one in June when the prisoner was charged with malingering. It was only natural that lawyers should find themselves involved in legal duties when they were overseas. On 1 February Adrian Consett Stephen was 'prisoner's friend 'at a court martial and got his man off. Thus, he commented that he had his "first case."¹⁵² Obviously lawyers were in demand as law officers but for the most part they were reluctant to do so, in fact many actively sort release from such duties and subsequently lost their lives in action.

On 20 September Lieutenant Frederick Edgington, a law clerk from Woolwich on Sydney's Lane Cove River, was serving in the 20th Battalion – the same unit so closely supported by Justice Ferguson. Edgington was leading his men forward at Ypres when he was close to an exploding shell near Polygon Wood. The concussion rendered him unconscious. He died in the dressing station, a captured German pill-box at Zonnebeke. On the same day, Raymond Evatt, the brother of a young Herbert Vere (HV) Evatt¹⁵³, was killed in the same unit as Edgington. Evatt was shot while attacking a machinegun. His brother FS Evatt would be killed in 1918. On 20 September the young law student William Langer Owen, the son of Langer Owen KC was shot in the face while serving with the 7th Field Engineers in the same battle.

On 26 September Captain Hubert Gordon Thompson, a 30-year-old solicitor from Bathurst was killed in an attack at Polygon Wood near Ypres. He was advancing with the 56th Battalion in battle. His cousin Raymond Single was killed on the same day in the same battle in the same unit. Some eyewitness

accounts stated that the two cousins were next to each other in the battle and were killed by the same artillery shell. Whatever the circumstances, the two cousins were buried near to each other on the battlefield. Thompson was the son of Bathurst solicitor Alfred Gordon Thompson. Within a few hours another cousin, Wilfred Single was killed in the same area of Polygon Wood. This battle took a number of officers well connected with the legal profession. These incidents show the extent to which the profession could be suddenly affected by the trauma of war. Polygon Wood took many lives.

Frederick Knight, a British born law clerk was killed with the 53rd Battalion on the same day and his body was never recovered. On 21 October 1917, Robert Owen Pickburn, the younger brother of Judge Pickburn (deceased) of the Arbitration Court died of wounds received at Polygon Wood. There was hardening of attitudes amongst lawyers who left comments towards those who did not support the war, considering the death notices that streamed in it is not surprising.

On 2 October Captain John Rowland Tillett, the son of the Crown Solicitor for New South Wales, John V Tillett was killed in action. Young Tillett was only 23 years old and had been in the army for barely a year. He had joined within a few months of graduating from Sydney University with Honours. He served as a Captain in the Army Medical Corps with the Field Artillery. He was hit by a gas shell but continued working with the wounded. In the small world of the law, the Red Cross Searcher who travelled about London collecting information regarding Tillett was himself a solicitor of long acquaintance with the young man's father.

Also in the vast battles in October, young Lieutenant Adrian Consett Stephen was again awarded a decoration – the military cross for his courage and example during the battle for Passchendaele Ridge while serving with the Royal Field Artillery. He carried wounded to safety, kept his guns firing despite his own battery being subject to days of heavy shelling. His was well known in Sydney as his exploits and writings were widely reported.

On 12 October Lieutenant Charles Robert Windeyer, the son of Richard Windeyer KC was killed in action. Charles Windeyer, who came from the landmark estate, *Tomago*, near Hexam just outside of Newcastle was killed instantly when he was sitting talking to one of his men. He had served on Gallipoli but been evacuated home to Australia sick. He had recovered at the family property then returned to Europe and joined the 49th Battalion. He had been rapidly promoted, but also rapidly killed. Life expectancy for young officers was not great. Charles Windeyer's mother, Mabel, was in England at the time working with the Red Cross. She was able to talk to members of her son's unit to discover the details of his loss. His body was buried on the battlefield, but was subsequently lost. He is commemorated in Ypres on the Menin Gate. Eventually she recovered his possessions and returned home to Australia with them only to have them go missing on the ship. There was considerable distress over their loss.

On 24 October 1917, Barrister, Major Geoffrey McLaughlin went back into the line near Westhoek in Belgium with his unit. On 2 November he was in his dugout when the Germans continued their tactic of drenching the rear areas, which included the artillery positions, with a mixture of high explosive and mustard gas. Eye witness accounts had him carried pitifully wounded from the battlefield. The bare reference to him being 'gassed' does not do justice to his condition. It would have been an evil death. CEW Bean wrote that 'the condition of the worst cases was pitiful, eyes swollen and streaming, voices gone, and bodies blistered.' McLaughlin lingered for 48 hours before he died. Among the many distraught people who sort information was the family of the barrister Reginald Long Innes of Denman Chambers. Miss Mary Long Innes of The Cottage, Marlow, and the sister of Reginald Long Innes was most concerned to find out what had happened to her friend who used to visit them in the countryside. McLaughlin's obituary in the *Sydney Mail* reported that he had been one of the first four men in New South Wales to enlist at the start of the war. He had already been twice wounded and been awarded the Military Cross.¹⁵⁴ He had been a regular correspondent with Justice Ferguson.

As these battles took place, the traumatized Lieutenant Colonel Macnaghten nevertheless, who had reenlisted under another name, was trying to re-establish his career and ended up on the Western Front. His well-known face, his CMG ribbon and accent marked him out among the close knit front line communities. Eventually he met up with his old associate, the solicitor Hector Clayton who told him "Don't be such a bloody goat, Charles!"¹⁵⁵ Macnaghten

had a great deal of trouble adjusting to life after the battle at Lone Pine. His condition deteriorated over the year until he suffered a complete nervous breakdown characterized by loss of memory and sleeplessness. Lone Pine had pursued him mentally and physically. He remained a regular correspondent of Justice Ferguson who tried to help him gain admission as a solicitor in England. Ferguson was noticeably loyal to the traumatized Macnaghten when many other people fell away from contact with him.

The Judges' Retirement Act

Against the background of war and intense industrial dispute the bill to set the retirement age of judges at 70 was introduced by the Nationalist Government into New South Wales Parliament on 23 October 1917. It was the first time such a law would be passed in the British Empire.¹⁵⁶ The bill created a strange alliance between otherwise bitter enemies. The Labor party was understandably antipathetic over the way they had been treated in the courts by Justice Heydon or Judge Rolin, but the motivation for the Nationalist support is more opaque.

The Attorney General Robert Hall introduced the *Judges' Retirement Bill* on 23 October 1917 by stating that: 'There must come a time in the life of every man when the passing of the years renders him unfit to continue the work in which he was engaged in earlier life.'¹⁵⁷ Hall was of course referring only to men. At the time women were precluded from any legal appointments in New South Wales.¹⁵⁸ Hall had little to offer as a justification of the bill. He said that when a man 'obtains a position on the bench . . . he has reached the end of

his hopes and the end of his fears.’¹⁵⁹ Hall admitted that the measure would mean that some judges ‘who are so blessed that they go down into old age with an eye undimmed and a brain unclouded by the passing years’ but he continued to say that the ‘principle of allowing a man to decide for himself when he ought to resign is not a good one.’ There has never been a clear reason for the bill and subsequent Act.

There have been suggestions that it was to get rid of Mr Justice Simpson, but he had taken leave in July 1917. Others say it was targeted at Justice Heydon, and there is little doubt that he was a *bete noir* to the Labor Party – but he had supported the government throughout the Great Strike. Another suggestion is that it was a political deal to allow Wade KC to become a judge when he returned from England. The bill did open up a number of positions. Others mention the bad blood between politicians and judges, and certainly the Lord Mayor of Sydney and MLC, Richard Meagher, was antipathetic towards the Chief Justice Sir William Cullen. More than likely the bill came as a result of a range of personal and political reasons.¹⁶⁰ Regardless, it was a clear message that the legislature held some sway over the judiciary.

Lawyers overseas in October.

Perhaps the fact that the war kept intruding on lawyers lives kept them all in a state of agitated tension where it was easy for emotions to spill over into other areas. Two days after the bill was introduced Henry William Bowd, articled to Anderson & Halloran in Inverell who had joined the Australian Flying Corps in

Egypt and fell to his death on 25 October when the plane he was piloting fell apart in mid air as he attempted to put it into a tight manoeuvre.

By this stage of the war a number of lawyers had received decorations for bravery. Adrian Consett Stephen wrote to his family describing, with his usual panache what the experience of the presentation at Buckingham Palace was like

The Colonel called for me in his taxi and we set off – both trembling. Once inside the palace we ceased to exist, except as puppets in the hands of magnificent personages. We were separated at once. MC's one way, DSO's the other, and I found myself in a large room with about 100 other officers. We waited about 45 minutes, and were then lined up in alphabetical order. Hats and sticks were in the cloak room, left glove worn, right glove carried. Then instructions were given to us by a magnificent Colonel of Guards. We then filed into the room where the King was, our names were read out, we marched in, bowed to the King, and tried to look pleasant. The king placed the Cross which he picked up from the tray, held by an aged general, and hooked it on to a little pin which had been previously stuck in our tunics. The King looked needless to say – exactly like his photographs; his voice was very low. In most cases he said nothing at all. 'You have the Croix de Guerre?' He said to me. 'Did you get it at the same time?'

'No sir. I got it before.'

'When was that?'

'On the Somme sir.'

'Ah yes. I am very pleased to give you the Military Cross.'

He shook hands. I stepped back, bowed and was taken into custody by numerous Major-Generals (or Major Domos), I don't know which.

Somebody seized the medal. Somebody else put it in a case. Somebody else shut the case. Somebody else gave me a push, and I found myself in the cloakroom again. I spent an agonized five minutes trying to decide whether I should tip the magnificent man in charge of the hat and stick department. But he was so big, and had so many ancient medals he seemed so aloof that I am sure money had no value to him. Perhaps in his spare time he commands a battleship. I was thrust against a larges policeman, who cannoned me on to another, and so on till I found myself darting for the street. A taxi shoved me and I woke up. I felt myself all over. Physically I was safe and sound. I still had my watch, and neither of my spurs had fallen off. I had done well. But should I have tipped the rear-admiral in charge of the hats and sticks? I sought cover and consolation in the nearest Estaminet. The medal? Great Scott! I had left it behind. But no! Here it was in a pocket where some kind general or 'Broken reed in waiting' had placed it. I had it. The general impression left by the ceremony was the pleasant smile of the King and the intense almost funeral quietness of it all. Too quiet I thought. After all it was the glory of war, not its horrors, we were there to commemorate. The French ceremony with the Guard of honour, the blare of the Marseillaise, and the rows of glittering generals was more in keeping, more of the pride and pomp of war about it. But that is the difference between the nations, isn't it?¹⁶¹

It's hard to imagine the obsessive nature of the New South Wales legal profession at the end of 1917. It would seem that any action which was in support of the war was greeted with enthusiasm and support.

On 26 November a group of Sydneysiders met to form a Navy League – no doubt discovering in their zeal that there was some arm of the service not specifically targeted for support. The usual people turned up to support the idea, as if they did not have enough to do already. This scheme was the particular favourite of the solicitor Alfred Consett Stephen, who was honorary solicitor for the New South Wales Red Cross and whose son, Adrian, was so eloquent in his letters from the front. The president was Sir William Cullen and among the various luminaries were Judge Docker and the ubiquitous Mr Justice Heydon, who was having an extraordinarily busy month, with the furore over his letter concerning Cardinal Mannix still provoking strong responses in the press. Perhaps the fact that Hughes and Garran were both originally Sydney lawyers as were the senior members of the State government contributed to the overwhelming support for any war-related cause.

The Second Conscription Referendum

The campaign for the Second Conscription Referendum took place in the second half of 1917. Once again the New South Wales legal profession supported the cause of Conscription to fight overseas. If anything they were more involved. One of the key opponents of conscription was the feisty

Catholic Archbishop of Melbourne, Daniel Mannix. His views were not shared by the Sydney Catholic Establishment, of which two leading lights were Judge Charles Heydon and solicitor and Member of the Legislative Council, Sir Thomas Hughes. When a new Papal representative, Archbishop Cattaneo, arrived in Australia in early -November 1917 Hughes and Heydon visited him at 'Rockleigh Grange' in North Sydney to have, in Hughes' words, 'a solid hour of hard talk' to ask Cattaneo to 'suggest to Mannix to moderate his ardor' in the anti-conscription cause.¹⁶² Heydon and Hughes had already approached the previous delegate, Archbishop Cerretti in 1916 regarding the previous referendum. Cattaneo did not intervene. Mannix persisted in promulgating his position regarding conscription so Heydon, with Hughes' approval wrote a letter to all the daily papers in Sydney. *The Telegraph* passed it on to *The Age* in Melbourne. Heydon did not hold back in accusing Mannix of 'faithless disloyalty and enormous folly'. In part, Heydon wrote: 'In proclaiming his sympathy with Sinn Fein, in urging us to put Australia first and the Empire second, the Catholic Archbishop of Melbourne has shown himself to be not only disloyal as a man, but – I say it emphatically, archbishop though he may be, and simply layman though I be – untrue to the teachings of the churchFor a Catholic archbishop to lead his flock along the path of sedition is to disobey the clearest teachings of the Catholic Church.' There was more in this vein, about the 'tyrannical invaders' of Belgium and the abuse of freedom which allowed such ideas to be promulgated, but then there were even darker hints about 'the time chosen to inflict this stab in the back of the Empire – this time of strain and difficulty, with the heavy clouds of disaster lowering around. . .'¹⁶³ Apart from Sir Thomas

Hughes, Heydon was also supported by another leading Catholic jurist, Mr Justice Gavan Duffy of the High Court, whose sons had attended St Ignatius, Riverview along with those of the Hughes family. Still the deaths kept coming, and must have intensified the sense of holy mission which drove these men.

Heydon's letter was controversial, but Mannix's response sent the argument into overdrive. Mannix was reported in *The Argus* of 21 November as saying that Heydon was a 'second or third class judge of some kind or another' and the Catholics whom Hughes and Heydon 'led' would comfortably 'fit into a lolly shop'.¹⁶⁴ Despite the colourful hyperbole of the comment, Mannix may well have had a point. A variety of lawyers, including the barrister Richard Teece, Andrew Watt wrote letters of support for Heydon, but the Sydney legal profession were not closely connected to mass of ordinary citizens. The paranoia regarding Fenians and IWW displayed by the legal profession including the Prime Minister William Morris Hughes was not necessarily as well supported by the broader population. The legal profession could be certainly be open to accusations of elitism, but in other ways Mannix was unfair. His slur about the way these prominent Catholics were denying their origins to prove themselves loyal members of a new class only intensified the 'deep anguish' of the Hughes' family when they learnt of the deaths in action of Roger Hughes and his cousin Bryan.¹⁶⁵ Lawyers in no way tried to shield their families from the ugly reality of enlistment, battle and the risk of death. But their whole hearted support and for Conscription and their assumption that the remainder of the country shared their views, apart from the IWW and

Fenians, was simply wrong. Despite all their efforts the Australian electorate again voted *NO* to Conscription on 20 December 1917.

The actions by Hughes and Heydon were indicative of an intensification of support for the war amongst some groups of lawyers. The legal profession appears to have become more intense in its support for the war as well as more concerned about the political direction of Australia. The PM Hughes was becoming concerned about Sinn Fein. The IWW had been disbanded and associates deported. In 1918 Premier Holman introduced an anti-sedition Bill to the New South Wales parliament which was too extreme even for the conservative members. Also in 1918 Judge Heydon actively supported a group who called themselves 'The King's Men' who advocated an enthusiastic continuation of the war.

The New South Wales lawyers were not joined by all their colleagues in the strident support of conscription. The Labor Premier of Queensland, Thomas Joseph (Tom) Ryan was an Irish Catholic barrister. At the expense of his friendship with William Morris Hughes he opposed conscription. Ryan combined politics with a successful legal career. There was some subdued reluctance about conscription amongst a few New South Wales lawyers as well. HV Evatt remained loyal to Labour despite the furore as did George Stephenson Beeby who was later a judge in the Industrial Court. In Victoria the young lawyer (later Judge) AW Foster wrote 'Few public men on the anti-conscription side escaped prosecution or conviction. . . I myself was prosecuted and subjected to a long trial for a speech I made in a city hall, in

which I had the audacity to criticise the Prime Minister, the Rt Hon WM Hughes. Fortunately I escaped conviction.”¹⁶⁶ But these people were the exception. The country came close to dictatorship. Under the aegis of the *War Precautions Act*, as interpreted by Solicitor General and Sydney lawyer Garran police recorded speeches, military officers monitored and approved anti-conscription literature, all without redress.

Other war related cases involved trading with the enemy. One such case went to the High Court where the appeal from the Baltic Separator Company concerned a ship from which had been interned in Hamburg, then the goods released and shipped to thence to Australia. The company had been found guilty of trading with the enemy, and while the High Court were sympathetic that no crime was intended the appeal was dismissed, despite their counsel being the redoubtable Thomas Rainsford Bavin. The status of ships at sea when the war started or originating from neutral countries exercised judicial minds quite regularly during the war.

Once again the ‘No’ vote in conscription stunned the New South Wales legal community. Perhaps they were too removed from the daily life of many people. The constant reference to class differences in politics suggests that there were certain sections of the community who simply did not communicate or have any significant contact with each other. HV Evatt wrote of the result that: ‘It was Holman’s misfortune that , at the crucial time, neither he nor his

advisers seemed capable of recognizing the fact that opposing to conscription of Australians was perfectly consistent with loyalty and patriotism¹⁶⁷

Even the most ardent of supporters became war weary by the end of 1917.

The war at this time was 'depressing' for Adrian Consett Stephen. On one occasion they 'were shelled for 36 hours without cessation, the intensity of the shell-fire reaching 30 rounds a minute (a veritable tornado).

How anyone lived through it is a marvel.' In December he was out of the front line again and busy organising Christmas 'revels' in the battery.

Conclusion

Time cannot diminish the tragedy involved in the deaths of so many young men with so much promise. The key historical task now is to try and conceptualise just how the grief and worry regarding the battle front impacted on Australian society at home. Early in 1918 the public learnt of the death in action of the talented young writer, Lieutenant Adrian Consett Stephen. He had finally run out of luck and a shell screamed into his position. He was eulogised in *The Sydney Morning Herald* as being 'a genius'. Helen Rutledge was a cousin of Adrian Consett Stephen and part of the circle of friends around the family. She wrote that Adrian Consett Stephen's mother Kate, 'never smiled again when her son was killed in France. He was such an exceptionally clever and gifted young man, with a charming and outgoing way; many grieved his loss.'¹⁶⁸ Helen Rutledge also witnessed first hand the way the terrible grief affected others in her group including the family of Anthony Street who was connected to so many lawyers. Anthony died of pneumonia in

England in 1918 but his letters kept arriving for months after news of his death had been relayed. The stream of letters only added to the pain.¹⁶⁹

No doubt the same could be said for thousands of others.

A Note of Sources

With so many lawyers on active service during the year it would be difficult in the scope of this paper to do justice to all of their exploits, and the great sweep of military action which took over their lives. I favoured those sources which were written by lawyers themselves to give an indication of their experiences. In particular, the writings of Adrian Consett Stephen are articulate and detailed and give a good biographical account of the experience of men at the battle front. Next, the various letters to, or collected by Justice Ferguson are an indication of both the experiences of lawyers as well as the sort of information fed back into the legal community from the front. In addition the letters collected or sent by lawyers such as Leslie Seaborn or Sir John Peden give an indication of the kind of personal engagement certain lawyers had. A major source has also been the archives of *The Sydney Morning Herald* as well as the resources of the Australian War memorial and the National Archives of Australia.

Footnotes

¹ 'Papua – A year of Progress' *The Sydney Morning Herald* 4 June 1917, 9.

² Patterson had been in partnership with the solicitor JW Street and knew the Street family well. The present Sir Laurence Street remembered as a child he called the aging poet 'Uncle Bartie' such was his familiarity with the family.

³ JM Bennett *A History of the Supreme Court of New South Wales*, 56.

⁴ Karl R. Cramp *The State and Federal Constitutions of Australia*. Angus & Robertson, Sydney, 1914, 187.

⁵ Hohnen Peter, *Reginald Long Innes* *Australian Dictionary of Biography*

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- ⁶ ‘Sydney Grammar School’ *The Sydney Morning Herald* 25 May 1917, 13
- ⁷ The term ‘Carry on’ was made popular by the Wife of the Chief Justice Sir William Cullen.
- ⁸ JM Bennett Some Reflections on *A History of the New South Wales Bar* 62 – 63
- ⁹ ‘France’s Day – Lieutenant-Governor’s Letter’ *The Sydney Morning Herald* 10 July 1917, 7.
- ¹⁰ ‘Empire League; Town Hall Luncheon’ *The Sydney Morning Herald* 25 May 1917, 9.
- ¹¹ Adrian Consett Stephen 86
- ¹² ‘Nulla’ Roberts’ story is well represented in the Archives of The King’s School, Parramatta, where he had been a student, along with Mr Justice Pring, who as President of the Old Boys Union, regularly attended memorial services to his fellow ex-student.
- ¹³ William Cope was a veteran of both the Sudan and the Boer War. He was so keen to help on the Western Front that he eventually worked helping wounded with the French Red Cross, for which he was awarded the Croix De Guerre in 1918.
- ¹⁴ He was a partner in the firm Garland, Seaborn, Abbot of Moore Street, now known as Martin Place. The firm is now known as Garland, Hawthorn, Brahe
- ¹⁵ ‘Getting the men – Recruiting problems’ *The Sydney Morning Herald* 24 July 1917 16.
- ¹⁶ Ethel Turner wrote a number of books, including *Seven Little Australians*.
- ¹⁷ The house sadly is now demolished. *Tregoyd* still stands, but the land around it has been subdivided. It was a splendid estate.
- ¹⁸ Philippa Poole (ed) *The Diaries of Ethel Turner* Collins Publishers Sydney 1917, 253.
- ¹⁹ ‘War Chest Fete’ *The Sydney Morning Herald* 25 April 1917, 12.
- ²⁰ Ethel Turner ‘Lady Cullen: Some memories’ *The Sydney Morning Herald* 17 June 1931, 10.
- ²¹ ‘V.A.D. Parade’ *The Sydney Morning Herald* 8 October 1917, 6.
- ²² This right was granted by the Women’s legal Status Act 1918, in which a variety of speakers mentioned the role of women in organizations such as the Red Cross.
- ²³ The details of the recommendation for this award are not recorded on the website of the Australian War Memorial, although it is gazetted.
- ²⁴ Their son, Dudley, was admitted to the NSW Bar in 1915 while serving overseas with the British army as a captain in the Royal Field Artillery. He was awarded the Military Cross and MID twice for his bravery in action. He later served on the Australian High Court from 1940 to 1958.
- ²⁵ ‘Sydney Ferries – Royal Commission’ Curtailment of Sport’, *The Sydney Morning Herald* 21 July 1917, p 14
- ²⁶ ‘Curtailment of Sport’, *The Sydney Morning Herald* 21 July 1917, p 16
- ²⁷ The cases were widely reported in the Sydney Morning herald throughout 1917 and into 1918.
- ²⁸ Garraway had been admitted as a barrister on the petition of Adrian Knox KC
- ²⁹ Adrian Consett Stephen 154.
- ³⁰ ‘Win the War league: Women’s Sphere of Help’ *Sydney Morning Herald*. 4 January 1917, 7
- ³¹ ‘General Legge – Story of German Cruelties’ in *The Sydney Morning Herald* 14 April 1917, 8.
- ³² ‘General Legge – Story of German Cruelties’ in *The Sydney Morning Herald* 14 April 1917, 8
- ³³ ‘Recruiting Train’ *The Sydney Morning Herald* 4 June 1917, 6.
- ³⁴ ‘Recruiting Mr Hughes’ Appeal’ *The Sydney Morning Herald* 6 April 1917, 7
- ³⁵ ‘Recruiting – Martin Place’ *The Sydney Morning Herald* 28 July 1917, 13.
- ³⁶ TW Heney, quoted in Ernest Scott *Official History of Australia in the War of 1914-18* Vol. XI Australia During the War. Angus & Robertson Australia. P 317.
- ³⁷ ‘Win the War league: Women’s Sphere of Help’. *The Sydney Morning Herald* 4 January 1917, 7
- ³⁸ John D Fitzgerald ‘The new Recruiting Campaign’ in *The Sydney Morning Herald*, January 1917, 12
- ³⁹ ‘Recruiting – Martin Place Meeting’ *The Sydney Morning Herald* 30 march 1917, 12.
- ⁴⁰ E J Loxton ‘Mr Loxton on Arbitration’ in *The Sydney Morning Herald* 27 March 1917, 9.
- ⁴¹ Ferguson Papers Mitchell Library.
- ⁴² Rammaciotti had previously been the managing clerk of the conveyancing department of the Sydney solicitors, Minter, Simpson & Co
- ⁴³ *Sydney Morning Herald*. 28 June 1916. p9
- ⁴⁴ John Rickard *HB Higgins: The Rebel as Judge* George Allen and Unwin, Sydney 1984, 205.
- ⁴⁵ Higgins to Ferguson papers of Justice David Ferguson Mitchell Library
- ⁴⁶ Jean Curlewis in Millicent Poole *Of Love and War: The Letters and Diary of Captain Adrian Curlewis and his Family 1939-1945* Lansdowne Press, Sydney, 9.
- ⁴⁷ Pockley’s mother Rose, was Ethel Turner’s sister.
- ⁴⁸ Adrian Consett Stephen 156.
- ⁴⁹ Brissenden to Ferguson, 20 April 1917, 3.

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- ⁵⁰ ‘Dr Brissenden. A Soldier Barrister’ *The Sydney Morning Herald* 9 January 1917, p.6.
- ⁵¹ Brissenden to Ferguson, 20 April 1917, 1
- ⁵² Brissenden, Diary Private Collection lent to the author.
- ⁵³ Windeyer was appointed a King’s Counsel in August 1917. *The Sydney Morning Herald* 2 August 1917, P.12
- ⁵⁴ ‘Articled Clerks and Soldiers’ *The Sydney Morning Herald* 11 May 1917, 6.
- ⁵⁵ His son, John Bede Commins became well known political journalist in Canberra after World War II
- ⁵⁶ CEW Bean Official History 1917, 358n
- ⁵⁷ Adrian Consett Stephen 150
- ⁵⁸ Adrian Consett Stephen 167
- ⁵⁹ Adrian Consett Stephen 175
- ⁶⁰ Adrian Consett Stephen 176
- ⁶¹ Brennan’s brother, John, was gassed in 1918 and their sister, Kathleen, died in the influenza epidemic in the same year while working as a nurse with a VAD detachment with the Australian Red Cross in Leicester, England. Details from James Rodgers *To Give and Not to Count the Cost-Riverview and the Great War Saint Ignatius*’ College Riverview, 2009, 50-53
- ⁶² A full account of the Red Cross Missign and Wounded Enquiry Bureau is by the author titled ‘What has happened to out dear boy?’ available in *Wartime* Issue 56, October 2011. Copies are available from the author.
- ⁶³ ‘Recruiting – Martin Place’ *The Sydney Morning Herald* 28 July 1917, 13.
- ⁶⁴ Details of this case can be found on the Website for the Forbes Society for Australian Legal History Website. Background Papers to the 2007 Legal History Essay Competition by Geoff Lindsay SC.
- ⁶⁵ See the *Sydney Morning Herald* 29 May 1917 for a detailed account of his appearance before the full bench of the New South Wales Supreme Court as an example.
- ⁶⁶ Rupert McCoy did not join the AIF but appears to have had some involvement in the military as he is listed in National Archives and The State Library as having been co-author of *The Anzac Drill Movement and Demonstrator* – which was an instruction kit for simulating the movement of military units on a board for the purpose of training officers.
- ⁶⁷ The distinctive character of the unit was emphasised by the fact that each man had his Attestation Papers marked ‘Sportsmen’s Unit’ to set him apart from others. The unit had its own letterhead on notepads. For the most part the men in the unit had consecutive serial numbers.
- ⁶⁸ One of the key concerns preventing men from enlisting was their insurance. A public subscription by wealthy individuals ensured that any men killed in action were properly covered. The families of those men in the unit who were killed could at least be compensated in some way for their loss.
- ⁶⁹ McGhie went onto become a District Court Judge.
- ⁷⁰ Red Cross Missing and Wounded Files Frank Wadhurst Fry.
- ⁷¹ Adrian Consett Stephen 179
- ⁷² Selwyn Betts later became a District Court Judge and served overseas briefly at the end of the war. He had lost one eye in childhood accident and this precluded him from active service earlier in the war. See HTE Holt for further details on his life.
- ⁷³ *The Sydney Morning Herald* 25 April 1917.
- ⁷⁴ *The Sydney Morning Herald* 27 April 1917
- ⁷⁵ Subsequent letters from Leslie Seaborn to his wife Edith contain a number of references to his distracted and stressed nature during this period. They are continued in the. *Rodney Seaborn Papers*, SBW Foundation Performing Arts Collection.
- ⁷⁶ *Sydney Morning Herald* 18 April 1917
- ⁷⁷ The 19th Battalion had contained many ex-rugby players and had been referred to as ‘the Union battalion’ within Union circles as indicated by an undated, but probably originating in 1914, news clipping in the *Rodney Seaborn Papers*, SBW Foundation Performing Arts Collection.
- ⁷⁸ Leslie Watson Seaborn to his wife Edith Ruby Seaborn, postmarked Sunday July 1917. Probably written on board ship to South Africa. *Rodney Seaborn Papers*, SBW Foundation Performing Arts Collection.
- ⁷⁹ Parliamentary debates.
- ⁸⁰ ‘The Labour Conference’ *The Sydney Morning Herald*, 5 June 1917, 16.
- ⁸¹ ‘Recruiting Rally’ *The Sydney Morning Herald* 7 June 1917, 10.
- ⁸² HV Evatt

- ⁸³ M. Dalrymple Hay *Reminiscences of the Law School and Barristers Practising*. Unpublished and undated manuscript. New South Wales Bar Association . 9. The events mentioned by the author of the Reminiscences are well described in the *Sydney Morning Herald* of the period.
- ⁸⁴ Interview with Mr Meagher *The Sydney Morning Herald* 26 March 1917. p 14.
- ⁸⁵ 'Howell-Price Case – Four Years' Imprisonment' *The Sydney Morning Herald* 27 March 1917. 12.
- ⁸⁶ 'Law Report: A Cooks' Complaint' *The Sydney Morning Herald* 24 March 1917 12.
- ⁸⁷ 'Tarred and Feathered – Union Official Dealt with' *The Sydney Morning* 17 July 1915, 16.
- ⁸⁸ The IWW case is well documented and his sentencing in particular put Mr Justice Pring firmly at odds with the Union movement.
- ⁸⁹ 'Union methods – Judge's Strong Comments' *The Sydney Morning Herald* 27 March 1917. 14
- ⁹⁰ 'Application before Mr Justice Heydon' , *The Sydney Morning Herald*, 3 April 1917, 14.
- ⁹¹ 'Conspiracy' *The Sydney Morning* 3 August 1917, 8.
- ⁹² 'Helping Germany: Idle Collieries' *The Sydney Morning Herald* 11 May 1917, 8.
- ⁹³ 'Coal Disputes – Judge resents Miners' attitude' *Sydney Morning Herald* 24 July 1917, 7.
- ⁹⁴ 'Mr Justice Higgins on Workers' Ideals' *The Sydney Morning Herald* 17 April 1917, 7.
- ⁹⁵ 'Wharf-Labourers' Strike' *The Sydney Morning Herald* 12 April 1917, 15.
- ⁹⁶ 'Industrial Awards – Federal and State' *The Sydney Morning Herald* 6 June 1917, 14.
- ⁹⁷ 'Labour laws – Mr Beeby's Policy' *The Sydney Morning Herald* 1 June 1917, 8.
- ⁹⁸ 'Labour laws – Mr Beeby's Policy' *The Sydney Morning Herald* 1 June 1917, 8.
- ⁹⁹ There are multiple references to him making statements about its powers. One comment will suffice as evidence for a range of others. Hughes said that, 'There are very few things [the Act] wont do.' He made this comment on 28 June 1917 and reported in *The Sydney Morning Herald* 29 June 1917, 6.
- ¹⁰⁰ 'Alien Fined' *The Sydney Morning Herald* 23 July 1917 P18
- ¹⁰¹ *Sydney Morning Herald* July 1917, 12. It is significant to note that the same edition also mentioned that Adrian Consett Stephen had been awarded a Mention in Despatches.
- ¹⁰² Scott 694 - 695
- ¹⁰³ One example may be found in 'Alleged Inciting to Commit Arson' *The Sydney Morning Herald* 7 June 1917.
- ¹⁰⁴ 'Another IWW Appeal' *The Sydney Morning Herald* 25 April 1917, 6.
- ¹⁰⁵ 'Member of I.W.W.' *The Sydney Morning Herald* 1917, 16.
- ¹⁰⁶ 'Quarter Sessions – ex RSA Secretary Sentenced' *The Sydney Morning Herald* 26 May 1917, 9.
- ¹⁰⁷ "At the Country's Throat" Judge on the Wheat-stackers' *The Sydney Morning Herald* 25 May 1917, 14.
- ¹⁰⁸ 'PLL Conference – Attitude on the War' *The Sydney Morning Herald* 5 June 1917, 5.
- ¹⁰⁹ Adrian Consett Stephen 168
- ¹¹⁰ A 'shout' was a distinctively masculine ritual enacted in hotels in which there were subtle but powerful rules about buying drinks in return for those brought for you. It was considered poor form to leave a shout before the full round of drinks from the participants had been consumed. Some honour could be salvaged if the prematurely departing member bought a full round, regardless of whether or not it was his turn – although others could feel aggrieved and insulted that they owed him a drink and did not have the chance to repay the debt, but could be forgiven if it did not happen too often. It was a heinous social death to leave a 'shout' without buying the requisite round of drinks commensurate with those already purchased. A man was under great social pressure to stay until each member of the 'shout' had bought his round of drinks in turn. To be a member of a group of a dozen men involved in a 'shout' could be a long, expensive and drunken evening. Going home to wife and children, unlike leaving for war, was not considered a sufficient reason for leaving a 'shout'.
- ¹¹¹ A strand of literature highlights the contrasting roles and depiction of women in Australian history. Anne Summers' book *Damned Whores and God's Police* Penguin Books 1975, explores this dichotomy in great detail.
- ¹¹² 'Anti-Shouting' *The Sydney Morning Herald* 9 May 1917, 6.
- ¹¹³ 'Anti-Shouting – deputation to the Prime Minister' *The Sydney Morning Herald* 29 June 1917, 6
- ¹¹⁴ 'Deserted Wives Law: "Unfairness and Inequality"' *The Sydney Morning Herald* 28 November 1917, 8.
- ¹¹⁵ 'What is Feminism?' *The Sydney Morning Herald* 25 July 1917, 8
- ¹¹⁶ Mrs Langer Owen 'To the Editor of the Herald' *The Sydney Morning Herald* 15 May 1917, 6.
- ¹¹⁷ 'Repatriation' *The Sydney Morning Herald* 17 May 1917, 8.
- ¹¹⁸ 'The late Mrs Langer Owen' *The Sydney Morning Herald* 3 December 1917, 6.
- ¹¹⁹ 'Red Cross' *The Sydney Morning Herald* 14 December 1917, 6.
- ¹²⁰ Ernest Scott *Australian During the War*, 732.

- ¹²¹ *The Sydney Morning Herald*, 2 May 1917, P.11.
- ¹²² Justice Simpson had been on the Supreme Court bench since 1896 and had been Vice-Chancellor of the University of Sydney 1902-1904. He lived in Hunters Hill and had already lost one son in the war, killed in the fighting at Lone Pine on Gallipoli.
- ¹²³ The incident was widely reported around the country including *The Argus* in Melbourne, *the Adelaide Advertiser* and the *Hobart Mercury*. Conroy did not appear in court the following day and Justice Simpson found for Conroy's wife who was the plaintiff.
- ¹²⁴ A full account of the passage of this legislation is available in Tony Cunneen "A Creature of a Momentary panic: The Passage of the Judges' Retirement Act" in *Bar News* Summer 2010 or online at <http://www.forbessociety.org.au/>
- ¹²⁵ 'Metropolitan Justices' *The Sydney Morning Herald* 23 July 1917, 14.
- ¹²⁶ JM Bennett 54 – 55.
- ¹²⁷ The Dean Case involved an instance where lawyers, including Meagher, defended a man they knew to be guilty. It is described in a number of places, including Cyril Pearl *Wild Men of Sydney* 1958 WH Allen London, 84-109 and the Website for the Francis Forbes Society for Legal History: <http://www.forbessociety.org.au/>
- ¹²⁸ 'Mr RD Meagher's Application' *The Sydney Morning Herald* 28 May 1917, 12.
- ¹²⁹ Richard Denis Meagher Speech in Banco Court 7 November 1919. in The Hon. RD Meagher *A Twenty Five Years Battle* William Brooks & Co. Sydney . 43 See also the front piece of this publication.
- ¹³⁰ HTE Holt 166.
- ¹³¹ *The Sydney Morning Herald* 19 May 1917 'Mr Cohen not resigning'. 13
- ¹³² 'Proposed luncheon to Mr Holman' in *Sydney Morning Herald* 11 April 1917, p14
- ¹³³ 'The War before All – the Prime Minister's Message' *The Sydney Morning Herald* 2 May 1917, 7.
- ¹³⁴ 'University Law Society' *The Sydney Morning Herald* 6 April 1917, 8.
- ¹³⁵ Philip Summers Letter to JB Peden 15 May 1917. Peden papers. Mitchell Library
- ¹³⁶ Evatt was unable to enlist himself and became one of Australia's leading Labor politicians.
- ¹³⁷ HV Evatt Letter to JB Peden 9 April 1918. Peden papers. Mitchell Library.
- ¹³⁸ 'Personal' Column *The Sydney Morning Herald* 7 June 1917, p8.
- ¹³⁹ 'Articled Clerk and Soldier' *The Sydney Morning Herald* 22 May 1917, 9.
- ¹⁴⁰ 'Mr Holman's Last Word.' In *The Sydney Morning Herald* 24 March 1917. p13
- ¹⁴¹ 'Boys' Strike – Firm Attitude by the Minister' *The Sydney Morning Herald* 11 July 1917, 8.
- ¹⁴² 'Supreme Court – Union Appeal Fails' *The Sydney Morning Herald* 16 May 1917, 9.
- ¹⁴³ 'The Day of the Red Triangle' *The Sydney Morning Herald* 2 June 1917, 13.
- ¹⁴⁴ The firm is still in operation today
- ¹⁴⁵ Aaron Blashki Letter to Base Records AIF 4 March 1918. Roy Hector Blashki Service Records www.naa.gov.au, 39
- ¹⁴⁶ Andrew Frazer 'Charles Gilbert Heydon 1905-1918' in Greg Patmore (ed) *Laying the Foundations of Industrial Justice: The Presidents of the Industrial Relations Commission of NSW 1902-1998*, The Federation Press, Sydney, 2003, 95.
- ¹⁴⁷ Later Sir Adrien Curlewis, Judge of the District Court
- ¹⁴⁸ The term GPS refers to Great Public Schools, a sporting competition of elite schools in New South Wales. Curlewis went to *Shore*.
- ¹⁴⁹ 'Gas Workers – penalized for strike' *The Sydney Morning Herald* 18 September 1917, 6.
- ¹⁵⁰ 'New Industrial Court Judges' *The Sydney Morning Herald* 2 February 1917, 8
- ¹⁵¹ A W Hemsley 'The Strike and its Lessons' Letter to *The Sydney Morning Herald* 8 October 1917, 9.
- ¹⁵² Adrian Consett Stephen 157
- ¹⁵³ HV Evatt went on to become one of Australia's leading Labor Politicians, a Justice of the Supreme Court, Member of Parliament and Chief Justice of New South Wales
- ¹⁵⁴ Daily Mail
- ¹⁵⁵ Chapman I (1975) *Iven G Mackay Citizen and Soldier*. Melbourne: Melway Publishing Pty Ltd. 93
- ¹⁵⁶ New Zealand had passed a law limiting the age of judges but it did not apply to those already on the bench.
- ¹⁵⁷ NSWPD Vol 70., 2029
- ¹⁵⁸ Hall had attempted to remedy that deficiency in 1916. He would be successful in 1918 with the passing of *The Women's Legal Status Act 1918*.

¹⁵⁹ NSWPD Vol 70., 2030

¹⁶⁰ For discussion of these issues see HTE Holt *A Court Rises*; Andrew Frazer ‘Charles Gilbert Heydon’ in Greg Patmore, (ed) *Laying the Foundations of Industrial Justice.*, 102; HV Evatt *Labour Leader*; JM Bennett *A History of the Supreme Court of New South Wales*, 54-55. A full account by the author of the passage of the bill can be found in *Bar News*, Winter, 2010

¹⁶¹ Adrian Consett Stephen, 189.

¹⁶² B A Santamaria *Daniel Mannix: A biography.*84 - 85

¹⁶³ B A Santamaria. 85

¹⁶⁴ Ernest Scott , 422

¹⁶⁵ B A Santamaria, 86

¹⁶⁶ AW Foster quoted in HV Evatt, 413.

¹⁶⁷ HV Evatt, 416.

¹⁶⁸ Helen Rutledge *My Grandfather’s House – Recollections of an Australian Family*, Doubleday Sydney 1986, 145.

¹⁶⁹ Rutledge, 145