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**The newsletter of the Francis Forbes Society for Australian Legal History**

**History reports itself**

People do one thing in public and another in private. People have one view of one thing when it is nowhere near them and another view when it is in their backyard. These inconsistencies are part of our humanity. Hypocrisy is the tribute that vice pays to virtue, as La Rochefoucault would have it. Of course, humanity isn’t binary anyway, at least in our hi-tech world. The public and the private merge and the foreign is a keystroke away.

This in turn can lead not only to conflict between people of different values, but a conflict for one person – or one party – with the same values. The recent travails of Mr Israel Folau provide an interesting tension for the freshly re-elected coalition government, from outside and from within.

One position was squarely raised by former federal Labour leader Mr Mark Latham in his maiden speech in NSW’s upper house:

No one should be sacked by their employer for statements of genuine belief and faith that have got nothing to do with their job.

This involves two things, a right to religious freedom and either a suggestion or a premise that the employer/employee contract is not a level playing field.

Another position was squarely raised by former Deputy Prime Minister Mr Barnaby Joyce:

You can’t bring people’s faith beliefs into a contract.

As is so often the case in public debate, this is both the same as and utterly different from, the first position: the employer/employee contract is not inherently uneven; the same as other contracts and subject to another profound right, that of freedom of contract; however, the right to religious freedom is not something which the mutual exercise of the right to contract can traverse.

In today’s paper, I see the Attorney squarely raise another position:

People enter into employment contracts of their own volition all the time, and contracts of a number of types with a number of terms… What I would say it that we’re not necessarily in the business in government of trying to prevent individuals privately contracting the terms of their employment in a fair and balanced and reasonable way with their employer in a range of circumstances.

Yes to freedom of contract, no to a general legislative injunction on traversal, with an out for the facts and circumstances of each case.

Each of these positions, of course, is an orthodox one, widely held over centuries. It is how the debate will play out which makes it worthy of comment. In Australia, the marketplace of ideas has largely operated well; while there are many examples of highly personalised attacks, this is a necessary evil and not evidence of the incorrectness of the proposition.

A rugby union player’s contract is not Brexit and not a debate about presidential conduct. Yet it is a profound issue. Brexit and the debate about presidential conduct have shown everyone in democracies everywhere how the marketplace of ideas can come perilously close to a killing field for democracy itself, or at least the respect which must underpin it. How Australia and its leaders behave in this debate, a debate with a variety of legitimate views, is our way of showing the world how things can be done.

As for the right answer to the dilemma, the editor is not that silly. He relies on another great maker of maxims, the patron saint of silks Francis Bacon: “The remedy is worse than the disease.”

**David Ash, editor**

**The Society’s 2019 Forbes Lecture**

The 2019 Forbes Lecture is to be delivered by Anne Twomey, professor of constitutional law at the University of Sydney. The lecture is titled “Pitt Cobbett - A Pre-Engineer's Ghost Speaks from the Grave”. The society’s blurb reads:

In Spence v Queensland, the High Court recently referred to the whispers of the pre-Engineers ghosts. One of those ghosts is Pitt Cobbett, a former Professor of Constitutional Law at the University of Sydney who died on the last day of Sir Samuel Griffith's term as Chief Justice.  Cobbett wrote a great opus on the Constitution but its publication was frustrated by the Engineers Case and the new constitutional order it created.  A century after Cobbett's death, his work is about to be published and his voice heard from the grave.  Join Cobbett's successor, Professor Anne Twomey, as she explores what is surprising and what we can learn from Cobbett's century-old understanding of the Constitution.

The lecture is to be given at 5.15pm on Wednesday 5 June 2019 in Court 13A of the Law Courts Building, Queen’s Square, Sydney. The nearest rail stations are St James and Martin Place. The author of this note is unable to attend the lecture due to a holiday in Western Australia. This is a constitutional, as the existence of Western Australia as a state of the Commonwealth can only be proved by reference to extrinsic materials. But for those who attend, Cobbett is with you. Almost. The earliest lectures in the Law School, before Pitt Cobbett's arrival from England, were given on the second or the top floor of an old building called Wentworth Court, which ran from Phillip to Elizabeth Streets on the site of the former Government Insurance Office. The Law School’s website records that soon after Cobbett's arrival in 1890, the Law School, with its 14 students and teaching staff of five, four of whom were part-time lecturers, moved a few doors along to 173 Phillip Street. In 1896 the Law School moved across Phillip Street to 174 Selbourne Chambers, on the site of the present Selbourne Chambers. It remained there until 1913.[[1]](#footnote-1) For those who believe that authors of troublesome wills are entitled to a posthumous 15 minutes, the editor invites you to read the following.

**Professor William Pitt Cobbett**

This note has been put together in haste. That is not an excuse but an explanation. Because a female giving a talk on Pitt Cobbett, let alone a female who is Pitt Cobbett’s successor, are two only of the ironies which we confront with this year’s lecture.

While Frank Hutley’s ADB entry gives us a flavour of the man, I wanted to draw together in more detail some of the ironies quickly, before the lecture is given.

That is not to divert from the importance of the lecture itself, which is the final distribution of a significant part of Cobbett’s estate to its intended beneficiary, our nation. Rather, the note fleshes out other aspects of Cobbett’s legacy. With four forays to the Supreme Court of Tasmania and two to the nation’s new High Court, Hutley was able to observe “In his death [Cobbett] joined the large band of distinguished lawyers whose unsatisfactory testamentary dispositions benefited his profession.” (Hutley was a distinguished Sydney alumnus and an expert on wills. Australian legal historians will want to know that Hutley’s own ADB entry records that from his Blue Mountains retreat, “[he] was able to indulge his delight in gardening, and to participate in acrimonious disputes among the local residents (including Dr Charles Currey) at meetings of the Mount Wilson Progress Association.”)

**A brief biography**

Cobbett was born in Adelaide in 1853 to wine merchant William Pitt Cobbett and Caroline nee Richards. The South Australian Government Gazette for the following years indicates a young father much involved in civic business, a founding member of the board of the town of Brighton and regularly appointed as a returning officer in the postnatal period of representative government. He returned to England and in 1864 was ordained a priest. (Those who are interested in the parents of lawyers who move from drink and to religion are referred to James Douglas QC’s note on Sir Charles Powers.[[2]](#footnote-2))

From 1869 Cobbett attended what is now Dulwich College. While the website promotes a school, and the school doubtless aims to be a place, “where pupils from all backgrounds feel equally valued”, it remains boys-only. Cobbett played rugby and moved to Oxford in 1873 or 1874. He won the amateur middleweight boxing championship.

Cobbett was admitted as a student of Gray’s Inn in 1875 and called to the bar in 1878. He had chambers, no practice, and a great reputation as a tutor. In 1885, he made his name with *Leading Cases and Opinions on International Law*.

In 1890, Cobbett was appointed to the Challis chair in Sydney. He lectured in everything and the rest, was on the senate, presided over the Solicitors’ Admission Board, edited the Commonwealth Law Review, was bested by Ada Evans, paid for the students’ common room, attempted but failed to get the department of commerce into the faculty (it went to Arts), contributed opinions in the wider media, and advised the new nation on international law.

In 1901, the father died with his son ie Cobbett’s brother Wilberforce at his side.

Cobbett retired in 1909 and moved to Hobart. He worked on the book the subject of Twomey’s work and her lecture, but died in Hobart 1919 before its completion. Cobbett left no issue but a will with issues. An instruction to his trustees and to (William) Jethro Brown to arrange for the book’s completion was thwarted by Engineers. Wilberforce qua trustee arrived in Hobart, did his job, and died there, I think in 1926.

**Cobbett’s family**

One cannot talk of Cobbett’s legacy without understanding his background. Anyone in England in the first half of the 20th century – and I do mean anyone able to read and with a modicum of intelligence and curiosity – would have known of William Pitt, William Wilberforce and William Cobbett, and had a view on what they stood for. Pitt the Younger, Tory reformer, brilliant administrator, rousing the population against the external danger of the French and the internal danger of Radicals. Wilberforce, the man who destroyed slavery. And Cobbett? Well, he is largely forgotten.

I cannot here do justice to Cobbett’s extraordinary life. I can only do one specific note before retreating to the general. The specific is the background to one of Anglo-Australian democracy’s most important records.

**William Cobbett, Hansard, and a touch of the OED**

William began reporting parliamentary debates in 1803. Or perhaps 1804, depending on the source. Anyway, in 1809 William started using Mr Hansard as his printer and onsold his interest in 1812. To quote Wikipedia, “*Cobbett's Parliamentary Debates* became *Hansard Parliamentary Debates*” and Hansard rather than Cobbett entered our language.

I think the OED does William an injustice in its etymology: “< the name of Thomas Curson Hansard (1776–1833), English printer, who published reports of parliamentary proceedings from 1809.” He printed them for William from 1809. William only sold out in financial difficulty in 1812.

By way of a distraction, the OED is a publication of the University of Oxford, and history tells us that Oxford supports the king over the commons. So it is that even in our online world, the above meaning of Hansard, its parliamentary meaning, is the second. The first is “Historical - A member of one of the establishments of the German Hanse.”

What gives this mercantile union a monarchic flavour is the fact that so many of the cities of the Hanseatic League eventually became part of the Electorate of Brunswick-Lüneburg, better known as the Electorate of Hanover and ruled for most of its life in personal union with Great Britain.

William was one of “a plethora of… Jacobite, Whig and Radical pamphleteers” who saw the King’s German Legion (1803-1816) as “the stationing of foreign mercenaries on British soil… an oppressive threat to the liberties of the English people.”[[3]](#footnote-3) At one stage, as he later recorded:

I had expressed my indignation at the flogging of English Local Militia Men, in the heart of England, under the force of Hanoverian bayonets and sabres.

Bad idea. The entry for Hansard in another Oxford publication gives the context:

An admirer of William Cobbett, he undertook, from the beginning of 1809, the printing of *Cobbett's Political Register* after Cobbett fell out with Cox and Baylis, his previous printers. An article on the flogging of militiamen at Ely, written by Cobbett for the 1 July 1809 issue, led to a charge of seditious libel against Cobbett, Hansard, and the distributors of the periodical. Only Cobbett contested the charge when the trial began at the court of king's bench on 15 June 1810; all the defendants were found guilty, and Thomas Hansard was sentenced to three months in the king's bench prison, with the further obligation to enter into a recognizance to keep the peace for three months with a bond of £200 from himself and two sureties.

Hansard had printed three major publications initiated Hansard had printed three major publications initiated by by Cobbett: *Parliamentary Debates*, *Parliamentary History*, and *State Trials*. Cobbett was persuaded to sell his interest in these titles by financial difficulties arising from his imprisonment, and after protracted and ill-natured negotiations Hansard purchased them in early 1812.

The senior judge of the Sheriff’s Court in London, Francis Maseres, was not unlike other some other judges before and since, mathematical in temperament. The author of *Dissertation on the use of the negative sign in algebra*, he was so unimpressed with the sentence that he would visit William in prison. In his wig and robes.

**Back to William Cobbett and the other Williams generally**

William Cobbett was a brilliant writer, he was a confused idealist, and he was an excellent hater. William Hazlitt essayed all the Williams, and he gets Cobbett perfectly:

This is one cause of the clearness and force of his writings. An argument does not stop to stagnate and muddle in his brain, but passes at once to his paper. His ideas are served up, like pancakes, hot and hot. Fresh theories give him fresh courage. He is like a young and lusty bridegroom that divorces a favourite speculation every morning, and marries a new one every night. He is not wedded to his notions, not he. He has not one Mrs Cobbett among all his opinions.

As to William and Pitt, William at first admired then came to loathe Pitt, or at least his administration. As to William and Wilberforce, the first could not abide the second. In short, William detested a man who worked to free slaves while attacking English workers. Peterloo, now a film, was one of their fallings-out.

Into this world in 1827, the professor’s father was born. It was two decades after Pitt’s death, but that was a long shadow, and William and Wilberforce still lived. The professor’s grandfather was either – I am still digging –the nephew or the grandnephew of William. The prospect that William remained avuncular at the baptismal font when Pitt was dropped in is, I would have thought, close to nil.

The plot thickens with the professor’s father. I can understand him passing on his own name to one son. But “Wilberforce” for his other? Things grow stranger still as the century gets towards its close. As we have seen, the professor published his great work in London in the mid 1880s. At the same time, his father had arranged his own work, a new edition of his uncle’s *Rural Rides*, written in the 1820s. The edition is online, and shows that the father was a sympathetic editor.

I said earlier “One cannot talk of [Professor] Cobbett’s legacy without understanding his background.” I have reconsidered my position. I turn to talk of Professor Cobbett’s legacy without having the slightest understanding of his background.

**Cobbett the international law scholar**

Admitted as a student of Gray's Inn on 4 May 1875, Cobbett was called to the Bar on 18 November 1878. Although he had chambers he did not develop a practice but tutored at Oxford and in London. He was reputed to be one of the best law coaches going. One of his pupils became Sir Edward Grey, he of “the lights are going out all over Europe.” I like to think Grey qua statesman felt Cobbett gave him a good grounding but how Cobbett felt about Grey qua student may be very different; the latter was an indolent student who was expelled, only allowed back for exams and a third.

It is touching to look back over the Sydney Morning Herald in August 1914, seeing Grey’s actions reported on one page and Cobbett – the local and unsurpassed expert – being quoted under such banners “Declaration of War – Is it essential?”

That, by the bye, is something besides the professorial title that Twomey has inherited. Her expert comments on our constitution – just like Cobbett’s over a century before on international law – are widely sought by media outlets in times of crisis.

And here is an interesting aspect of Cobbett’s development. He began as just that, an international law scholar. There was no Australian constitutional scholar. The constitution hadn’t been written.

As to Cobbett’s style of and approach to scholarship, a review appearing in The Saturday Review on 17 April 1886 said:

Mr Pitt Cobbett has discovered a “tendency on the part of English lawyers to regard that body of custom and convention which is known as International Law as fanciful and unreal, as a collection of amiable opinions rather than as a body of legal rules.” Undoubtedly there is such a tendency, and a very good tendency too. But let it not be supposed that Mr Cobbett does not appreciate its merits. On the contrary, he readily acknowledges that “the text writers have much to answer for,” and here again the court is with him. The object which he sets before himself in publishing a kind of handbook of “Leading Case on International Law” is neither to confute the lawyers, not to whitewash the text writers, but to discriminate.

Those of us who are domestic lawyers tend to forget that international law, just like other law, has to deal with the smaller as well as the great. Pitt Cobbett’s works dealt with the range, What is the State? How far does its jurisdiction extend? What is a public vessel? What are the rights in foreign courts of sovereigns and ambassadors? How may you treat a pirate? What will happen to you if you trade with an enemy or a belligerent? What is the effect of marine capture, of blockade?”

When we come to remember Cobbett the constitutional scholar, it is as well to remember that he was the local – and international – expert not on the law of the new nation but the law the new nation would face. This is well picked up by Doug Hassall in his essay on Cobbett’s successor A H Charteris:[[4]](#footnote-4)

In 1940, Sir John Peden, a later distinguished Dean of the Sydney Law School, wrote of Pitt Cobbett that

throughout the whole of his term as Professor of Law, Dean of the Faculty, and Fellow of the Senate he lived up to his own high standards of industry and thoroughness in his efforts to provide for the systematic training of cultured lawyers with an outlook beyond the technicalities of their profession and for the adequate equipment for their responsibilities of those who were to be concerned in public administration or in public life. He had a vision, too, at least as early as 1909, of the time when Australia would send and receive ambassadors, and the Law School would have its part in the education required for a Commonwealth diplomatic service.

Peden noted also that the Prime Minister WM Hughes KC and Sir Robert Garran had been so appreciative of Pitt Cobbett’s active and useful contributions as an international lawyer that after World War I, the “Commonwealth Government wrote to thank [Pitt Cobbett] ... and to say that his work had given more guidance than any other book dealing with the rights and obligations of the belligerents”.

**Pitt Cobbett’s attitude to female students**

Ada Evans enrolled in the faculty in 1899. She showed her sense in doing so, because it is well-recognised that Pitt Cobbett would have blocked any woman’s application and she knew he was on leave. It is alleged that Pitt Cobbett on his return slammed doors and banged the furniture in her presence, loudly demanding “Who is this woman?”[[5]](#footnote-5) It was fortunate for Cobbett that she only became an expert pistol shot years later.





**The Forbes Flyer pronounces you well and truly joined**

Two reasons to be joyful. First and obviously, Twomey is Cobbett’s successor and… a woman. Secondly, as to Jethro Brown, noted above. Brown, himself the first lecturer of law at the University of Tasmania, was appointed aged 24. Maitland was a friend and mentor at Cambridge.[[6]](#footnote-6) It was Brown among others who encouraged Evans to persevere with her legal studies, telling her reward would be “the glory of the pioneer”.

**Cobbett’s immediate legacy – the prizes**

Frank Hutley noted:

In 1909, when the date of Cobbett's retirement was known, Mr Justice R O’Connor had said 'It would be difficult to estimate what law and Bench of the States owes' to him; and (Sir) George Rich asserted that 'In Pitt Cobbett [the quality of distinction] was manifested in the stuff of the mind; intellectual energy, individuality of thought and utterance and intensity in the pursuit and dissemination of knowledge'.

(Rich was closely involved in the foundation of the Women’s College at the university and remained in correspondence with its first principal his whole life!)

Something of the affection in a more modest light was picked up by the university magazine “Hermes”. In 1915 – a year into the Great War – it was moved to ask:

What has happened to the Law students these days? ’Tis seldom we see any of them at the ’Varsity, and it seems as if “a recruiting campaign” must be initiated to keep alive the interests of Law students in the University. Some remarks attributed to Professor Pitt Cobbett by his chroniclers are worth repeating as a preliminary appeal: “You may cut the lectures if you like, but never neglect the Union. A lawyer must learn to express himself on his feet. You should never neglect ‘Union’ debates.”

Actually, the well-known Pitt Cobbett prizes at the university are not sourced from Cobbett’s will but from his supporters. In 1909 and upon Pitt Cobbett’s retirement, £175 was received from subscribers to a fund for the foundation of a prize in his honour. Cobbett’s father being an Anglican priest, Cobbett would have understood that one is sometimes three. And so the university’s calendar for 1962 tells us of three: “One prize of £2 in Constitutional Law I, one prize of £2 in Constitutional Law II, and one prize of £4 in Public International Law, are awarded annually.”

There are still three, but the organisation is different. The award is to the most proficient candidate, the three subjects are Administrative Law, International Law, and Constitutional Law. There have been many outstanding winners. Space permits no more than a snippet.

Suitably, the Federal Court has had winners of the administrative law prize, including the late Bryan Beaumont and current Justice Jayne Jagot. (I don’t want to press the point, but Beaumont built bridges as well as Rich, being a patron of The Women’s College Foundation.) As to the international law prize, anachronism survives. The biographer of John Ferguson notes that he won the prize in 1903. Despite this slip, the biography notes well the life of a great and cultured Australian. Ferguson was a contributor to the Commonwealth Law Review, to which Pitt Cobbett was consulting editor for its six-year life. As to the constitutional law prize, at least two High Court judges – HV Evatt and Cyril Walsh – took medal(s) in Arts, shared the prize when they started law, and went on to take the medal in Law.

By the way, a task for those interested in the history of women in the faculty. In its report of the 1933 year and of Walsh’s brilliance, the Herald notes “Miss Olga J. Saywell, B. A., achieved the distinction of being the first woman to obtain honours in Law at Sydney University.” I can find nothing of this student, and if anyone out there can, a note to the university’s alumni magazine may be in order.

**Cobbett’s death**

Cobbett retired because of ill-health and moved to Tasmania. He died in 1919 and his gross estate was sworn at just under £75,000, almost $6m in today’s money. Given that he left property in England, New Zealand, the Federated Malay States, Tasmania and elsewhere, it can be readily understood that various taxmen as well as no few beneficiaries looked closely at the will.

Before doing just that, it is a curiosity that an attack on Challis’s estate 40 years before almost kept Cobbett in London. The ADB entry sums it up:

Challis left an estate valued for probate at £60,000 in England and £101,000 in New South Wales. He left annuities to many friends and relations, and the residue to the University of Sydney, subject to provisions that his wife Henrietta, whom he had married about 1878, should have the income from the residual estate until she died and that it should then accumulate for five years before coming under control of the university. After Henrietta died at Hove, England, on 19 September 1884, the English Inland Revenue Commission claimed legacy duties on the estate in New South Wales because Challis had been domiciled in England. However, the chancellor of the university, Sir William Montague Manning, argued with such pertinacity that the commissioners abandoned their claim. In 1889 the Challis bequest, then valued at about £200,000, was transferred to the university, bringing a transformation to an institution which had long lagged behind the University of Melbourne. In 1890 the fund was used to establish chairs in anatomy, zoology, engineering, history, law, logic and mental philosophy, and modern literature.

**The first conundrum – loyal workers all (aka In re Pitt Cobbett, deceased (1921) 17 Tas LR 139)**

By paragraph 16 of his will, Cobbett directed his trustees:

… out of the residue of my trust fund to set apart a sum not exceeding £5,000 and to hold the same upon trust to expend the income thereof in such way as they shall think suitable either by payment of an annual grant or by an amount for a prize or prizes to any Australian University or Universities or to any Society or Association in Australia founded for the purpose of carrying on efficient propaganda work of which efficiency my trustees shall be sole judges designed (1) to educate employees in the principles of political economy and (2) to suggest methods for the establishment either by co-operation or otherwise of better relations between employers and employees or upon trust in the discretion of my trustees to apply the income of the said sum of 5,000l or any part thereof in affording relief to loyalists (being workers who continue to discharge their duties or who discharge essential duties notwithstanding a strike) and/or who may sustain or have sustained injury to person or property in the course of industrial strife the determination of the question as to what cases come within these categories being in the absolute discretion of my trustees.

History is an extraordinary thing. When Cobbett died, it was just upon the Great War and the Great Strike, and this shows just where he fell. Exactly a century before, it was just upon Waterloo and Peterloo, and that showed just where William stood.

The residuary legatee was the East London Hospital for Children and Dispensary for Women. The will omits the words “and Dispensary for Women” but I give Cobbett the benefit of the doubt. Clearly enough, it wanted the gift knocked out. Andrew Inglis Clark, the son of one of the authors of our Constitution, argued “Strikes may be justifiable and with regard to such strikes, strike-breakers are not worthy of countenance.” Sydney University – I suppose representing the prospective recipients – spoke in favour, an enthusiasm picked up by Crisp J:

When it is considered that strikes are frequently illegal, and practically always wastefully futile from such point of view, the benefit of such a gift to the community, perhaps indirect but none the less certain, is, to my mind, beyond a doubt.

By the way, Crisp J’s observation on how judges should read the words of others, such as testators, is an observation for the ages:

The use of the word “workers” is well understood unless one tries to make difficulties about it.

The NSW State Library has a copy of “Pitt Cobbett Essays and Addresses (Second Series)”, authored by Professor JB Brigden and published by the Workers’ Educational Association of Tasmania. Under the terms of the Pitt Cobbett Foundation, the author was appointed in 1922 to study and lecture upon the relations between employers and wage-earners, in the hope that the possibilities of improvement might be made more widely known.

Professor Brigden was in need of the pun. The coverpage refers to two issues, “The Economic System as a ‘Watershed’; income as rainfall”. One of the essays is “Bolshevik Communism”, which opens:

In a lecture entitled “The Bolshevik Theory”, which he delivered at the Town Hall last evening, under the aegis of the Pitt Cobbett Trust, Professor JB Brigden said that Communism was a menace only to the workers themselves, for it was a very effective ‘red’ herring diverting attention from real issues. Communism in Australia was nothing but a snarling cur, yapping at the heels of reform.”

In his introduction, Brigden said:

Readers familiar with the history of a century ago may be reminded of that inveterate pamphleteer, William Cobbett, from whom the creator of this Foundation was a collateral descendant. They will find, no doubt, some of the radicalism of Cobbett, tempered by the influence of Pitt, and directed against the new forms of conservatism.

It cannot be a red herring to record that the OED has as the inventor of the expression, one William Cobbett. Meanwhile and tellingly, Brigden had had early experience to establish the Shop Assistants’ Union. He went on to be severely wounded at Beaumetz and must have been one of the first winners of a Kitchener Scholarship. He became an economist and administrator who served the nation with distinction. To my mind, his own experience suggests a touch each way of William Cobbett and William Pitt. His ADB biographer writes:[[7]](#footnote-7)

In July 1938 Brigden welcomed an appointment as chairman of the National Insurance Commission, set up to introduce a national scheme of contributory health and pension insurance, somewhat along the lines of the English system. However, despite his enormous efforts to get satisfactory legislation passed, to build up an adequate organization, to defend the proposals against entrenched vested interests and to explain it to the public, the scheme foundered. After Munich the threat of war gave its critics the opportunity to claim that finance was not available simultaneously for war preparations and social reform. Brigden never quite recovered from the abandoning of this great project into which he had poured his very soul.

**The third condundrum – an illegal estate in tail (aka (1922) 18 Tas LR 47)**

Pitt Cobbett devised realty on trust for Wilberforce for life with the remainder for and in default of sons for daughters in the same fashion with the remainder to a cousin Hugh. In re Pitt Cobbett, deceased (1922) 18 Tas LR 47 involved the question, who gets the money when the devise is bad. Pitt Cobbett had left his home Holebrook to Wilberforce for life and then in Wilberforce’s sons severally and successively in tail male. The difficulty was that the realty had been Torrens’ed and such devises were bad. Needless to say, East London wanted the remainder knocked out so that it would fall to residue. East London succeeded before the Full Court and in the High Court. A collateral debate involved Hugh. The appellants to the High Court were Hugh, and Wilberforce as guardian ad litem for Hugh’s six-year-old daughter Helena Elsie. She lost. This High Court is in the Tas LR report.

**The next conundrum – the commissioner**

The loyal workers case, the first conundrum, also considered questions about the interplay of various estate duties. The questions stated for the court may be read as an examination set by a scholar in the field:

(6). (a) Whether the various probate estate and succession duties paid should be apportioned against each separate legacy in accordance with the Tasmanian Act (the testator being domiciled in Tasmania) and the Federal Act; or (b) Whether the dutie8.on assets outside Tasmania (and in the case of the Federal Estate Duties Act outside Australia) should be chargeable in accordance with the separate laws of each country or State; or (c) Whether the duties or assets outside Tasmania (and in the case of the Federal Estate Duties Act outside Australia) should be chargeable against the residuary estate of the testator.

This aspect went up to the High Court and lives as (1922) 30 CLR 279.

The same provision but a different issue went up in 1923. The provision said “When I the tax man come to take my cut of an estate, I’ll allow foreign duties paid before assessing”. Cobbett left property in NZ upon which succession duty was paid. The commissioner, bless him, argued that the reference to duties did not include succession duties, paid by a successor, but only estate duties, paid by the state. This trans-Tasman double-dipping failed to impress Crisp J: Re Pitt Cobbett’s Estate (1922) 18 Tas LR 34.

**The final conundrum – animals and love (aka In re Pitt Cobbett (1923) 19 Tas LR 43)**

By 1923, the Tasmanian equity bar was still in with a shot. Pitt Cobbett left £100 each for animal protection societies in each of the six states. An issue arose as to what happened when one state had more than two such societies. Counsel for the trustees and for the residuary beneficiary each appeared. One counsel appeared for the Women’s [!] Society for the Prevention of Cruelty to Animals (NSW); the Nature Lovers’ League of Queensland; the North Queensland Society for the Prevention of Cruelty; the Lost Dogs’ Home of Melbourne; and the Rockhampton Society for the Prevention of Cruelty.

The issue boiled down to how the the Queensland penchant for love generally affected the prevention of cruelty in Cairns or Rockhampton. In a fair result, each city took a third and the last lot went to love.

While the bar may have rued the will’s passing, I rather like the spirited irritation of the law reporter. In previous litigation, the deceased was referred to as Professor Pitt Cobbett [subtext, no explanation needed]. By 1923, the source of the litigation for any Tasmanian was clear: “By his will, made in 1919, Pitt Cobbett, formerly a Professor of Law at the University of Sydney, but afterwards of Hobart, made the following bequest”.

**A final bequest**

The Pitt Cobbett Scholarship was established at Sydney in 1939 upon a bequest from the professor of £2,130 2s. 4d, about $190,000 in modern money. Given that Cobbett died in 1919, there is still work to be done on how it got through. The University’s 1962 calendar has it awarded “to the most distinguished graduate in Arts entering the Faculty of Law and in need of financial assistance”, with the rider that if there is no person of sufficient merit, the scholarship could go to the most distinguished student entering the Law School on passing the second year examination in the Faculty of Arts. Today, it still supports the study of law by students in need of financial assistance. However, it is more a grant: “Applicants must be seeking financial assistance for a special project or extracurricular activity related to their studies.” A past winner is Ian Freckleton QC, the author of Expert Evidence.

**Recent books**

**The Federation Press has published the second of Greg Woods’ extraordinary overview of the history of criminal law in NSW. This volume covers the early years of statehood, through two searing wars and the great depression. A** [review](http://www.forbessociety.org.au/wordpress/wp-content/uploads/2014/02/G-D-Woods-A-History-of-Criminal-Law-in-New-South-Wales-vol-2.docx) **is available on the Society’s website. Details of how to order the book from the publisher are** [here](http://www.federationpress.com.au/bookstore/book.asp?isbn=9781760021931)**.**

**A list of non-practice published works by members of the NSW Bar**

This is a fascinating account of the many contributions to Australian literary life made by NSW barristers. The [list](http://www.forbessociety.org.au/wordpress/wp-content/uploads/2014/02/List-of-non-practice-published-works-by-members-of-the-NSW-bar.pdf) is alphabetical by author and includes man well known barristers, including CEW Bean, HV Evatt, Ian Barker QC and many others.

**Membership**

For information on how to become a member of the Society, please go to its [membership page](http://www.forbessociety.org.au/?page_id=1119).

1. sydney.edu.au/law/about/history.html. [↑](#footnote-ref-1)
2. <http://classic.austlii.edu.au/au/journals/QldJSchol/2003/27.pdf> . [↑](#footnote-ref-2)
3. Jasper Heinzen, [Transnational Affinities and Invented Traditions: The Napoleonic Wars in British and Hanoverian Memory, 1815—1915](http://www.jstor.org/stable/23362196) [↑](#footnote-ref-3)
4. Doug Hassall, ["Professor AH Charteris and the Study of International Law in Australia"](http://www5.austlii.edu.au/au/journals/AUYrBkIntLaw/1997/5.html) [↑](#footnote-ref-4)
5. Tony Cuneen, “[Pioneers and pariahs: a century of women in law](https://lsj.com.au/articles/pioneers-and-pariahs-a-century-of-women-in-law/), 2018 [↑](#footnote-ref-5)
6. [Campbell, Enid, Preface: Occasional Address Law Graduation Ceremony University of Tasmania 30 April 1993, [1993] UTasLawRw 1](http://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/UTasLawRw/1993/1.html). [↑](#footnote-ref-6)
7. [Brigden's ADB entry](http://adb.anu.edu.au/biography/brigden-james-bristock-jim-5358). [↑](#footnote-ref-7)