

## THE MAN AND THE JUDGE: JUDICIAL BIOGRAPHIES AND SIR RONALD WILSON

### ABSTRACT

Sir Ronald Wilson's life journey took him from humble beginnings to the top of the Australian legal system. But he was much more than a lawyer, holding positions and influence outside the law. His life journey is told in the biography *A Matter of Conscience*. This article discusses criticism of the biography and examines whether 'Wilson the man' explains 'Wilson the judge'.

### I INTRODUCTION

In contrast to the United States, judicial biographies are not common in Australia.<sup>1</sup> As noted by Burnside, 'judicial biography has received little academic attention in Australia',<sup>2</sup> with only a small number of full-length

---

\* BPE (Hons), Dip Ed, MIR (W Aust); LLB (Hons) (ANU); DPhil (Oxon); MLA, WA Parliament; Honorary Senior Fellow, Law Faculty, The University of Western Australia; Barrister and Solicitor of the Supreme Court of Western Australia and the High Court of Australia. The genesis of this paper comes from my participation in the judicial and political biography workshop at the University of Adelaide on 4 December 2009. I sincerely thank Professor John Williams and his team for inviting me to the successful and stimulating workshop.

<sup>1</sup> Judicial biographies abound in the United States: Sarah Burnside, 'Griffith, Isaacs and Australian Judicial Biography' (2009) 18 *Griffith Law Review* 151, 151. This is not surprising because US 'law makes giants of its judges': Norman Dorsen and Christopher L Eisgruber, 'Preface' (1995) 70 *New York University Law Review* 485, 485. As noted there by Dorsen and Eisgruber:

Jurists are central figures in the nation's politics, wielding considerable power and playing crucial roles in virtually every major policy dispute ... Yet in many respects judges are mysterious leaders: robed in black, ordinarily insulated from the public scrutiny of electoral campaigns, and expected to justify their acts by reference to legal principle rather than personal values or democratic will. It is no surprise that Americans should be curious about the lives of these people who participate so dramatically and yet so anonymously in the country's public life.

<sup>2</sup> Burnside, above n 1, 151.

biographies of High Court Justices:<sup>3</sup> Griffith,<sup>4</sup> Barton,<sup>5</sup> Isaacs,<sup>6</sup> Higgins,<sup>7</sup> Evatt,<sup>8</sup> Dixon,<sup>9</sup> Barwick,<sup>10</sup> Murphy,<sup>11</sup> Gibbs<sup>12</sup> and Wilson<sup>13</sup> (although a biography on Justice Kirby by A J Brown is due for release by The Federation Press sometime in 2011).<sup>14</sup>

How much interest does the average public citizen have in reading about judges? Surely, the main interest comes from those within the legal system, the lawyers, legal academics, law students, and fellow judges. This can present difficulties for the biographer. Does the biographer focus on the most obvious audience — that is the legal fraternity — or seek a wider readership? Sometimes the prospective publisher may take matters out of the biographer's hand. Commercial imperative may demand a focus on the wider audience, and this may come at the expense of academic rigour. It is possible to satisfy both demands, but it is a challenge.<sup>15</sup>

I faced that challenge when researching and writing *A Matter of Conscience*, my biography on Sir Ronald Wilson. However, the details of that challenge are

---

<sup>3</sup> Ibid. The following list is largely sourced from Burnside, above n 1.

<sup>4</sup> A Douglas Graham, *The Life of the Right Honourable Sir Samuel Walker Griffith* (Law Book, 1939); Roger Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984).

<sup>5</sup> John Reynolds, *Edmund Barton* (Angus and Robertson, 1948); Martha Rutledge, *Edmund Barton* (Oxford University Press, 1974); Geoffrey Bolton, *Edmund Barton* (Allen & Unwin, 2000).

<sup>6</sup> Max Gordon, *Sir Isaac Isaacs: A Life of Service* (Heinemann, 1963); Zelman Cowen, *Isaac Isaacs* (Oxford University Press, 1967).

<sup>7</sup> Nettie Palmer, *Henry Bournes Higgins: A Memoir* (Harrap, 1931); John Rickard, *H B Higgins: The Rebel as Judge* (George Allen & Unwin, 1984).

<sup>8</sup> Allan Dalziel, *Evatt the Enigma* (Lansdowne, 1967); Kylie Tennant, *Evatt: Politics and Justice* (Angus and Robertson, revised ed, 1972); Peter Crockett, *Evatt: A Life* (Oxford University Press, 1993); Ken Buckley, Barbara Dale and Wayne Reynolds, *Doc Evatt* (Longman Cheshire, 1994).

<sup>9</sup> Philip Ayres, *Owen Dixon* (Miegunyah Press, 2003).

<sup>10</sup> David Marr, *Barwick* (George Allen & Unwin, 1980).

<sup>11</sup> Jenny Hocking, *Lionel Murphy: A Political Biography* (Cambridge University Press, 2000).

<sup>12</sup> Joan Priest, *Sir Harry Gibbs: Without Fear or Favour* (Scribblers, 1995).

<sup>13</sup> Antonio Buti, *Sir Ronald Wilson: A Matter of Conscience* (University of Western Australia Press, 2007) (*'A Matter of Conscience'*).

<sup>14</sup> A J Brown, *Michael Kirby* (Federation Press, forthcoming).

<sup>15</sup> The eminent US jurist, Richard Posner, categorises biographies (in general) as 'ideological', 'scientific', or 'essentialist'. He views 'ideological' biographies as critical or hagiographical, where judges are presented as standing for a judicial philosophy. 'Scientific' biographies aim to answer specific questions, often of a causal nature. The aim of 'essentialist' biographies is to reveal the essential self of the biographical subject — 'the private self-concept that guides a given life': Richard A Posner, 'Judicial Biography' (1995) 70 *New York University Law Review* 502, 503. See also J Woodford Howard, Jr, 'Commentary' (1995) 70 *New York University Law Review* 533.

for another time. Rather, in this article I have two main objectives. First, I look at criticisms of and comments on Australian judicial biographies. I consider the work of James Thomson, who writes about what makes a good judicial biography generally,<sup>16</sup> and the Hon Michael Kirby's review of *A Matter of Conscience*.<sup>17</sup> Secondly, by referring to various aspects of *A Matter of Conscience*, I explore the question of whether individual traits, personality, childhood and professional experiences will determine what type of judge a person will be.

## II COMMENT, CRITICISM AND REVIEW

### *A James Thomson*

One can take many approaches to writing a judicial biography: it is a multi-faceted academic and literary pursuit. Some have described it as 'a unique, multidisciplinary form of scholarship, one that draws upon law, history, political science, and psychology but which integrates those fields by reference to comprehensible critical standards'.<sup>18</sup> Others have postulated that one reason for judicial biography is 'to tell a tale with all the drama and suspense of a good novel, except that the plot happens to be true'.<sup>19</sup>

James Thomson remarks:

perceptive judicial biographies can assist in understanding whether any and, if so, what correlation exists between a judge's personal commitments and decision-making processes, for example through the revelation, use and evaluation of previously undisclosed information (including draft judicial opinions; correspondence; memoranda; diaries and working files and private papers).<sup>20</sup>

Thomson goes on to say the biographer must delve deeper and wider than the usual materials such as law reports, scholarship in journals and books, speeches and private papers. The biographer needs also to search other sources such as draft judicial opinions, transcripts of argument, the judge's pre-appointment legal practice, and their personal library, not to mention family and friends.<sup>21</sup> He

---

<sup>16</sup> James Thomson, 'Biographies and Biographical Writing' in Tony Blackshield, Michael Coper and George Williams (eds), *The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001) 63–5.

<sup>17</sup> Michael Kirby, 'Review of *A Matter of Conscience: Sir Ronald Wilson, Antonio Buti* (2007)' (2009) 31 *Sydney Law Review* 331.

<sup>18</sup> Dorsen and Eisgruber, above n 1, 487.

<sup>19</sup> Philip B Kurland, 'Judicial Biography: History, Myth, Literature, Fiction, Potpourri' (1995) 70 *New York University Law Review* 489, 498.

<sup>20</sup> Thomson, above n 17, 63.

<sup>21</sup> *Ibid* 64.

adds that while biographies of Australian judges have been written, none of these biographies is great.<sup>22</sup>

I can take comfort in the fact that I wrote *A Matter of Conscience* after Thomson penned that lament. Even if his reading of *A Matter of Conscience* did not change his view, I hope he would be happy that I tapped into a wide variety of sources in my research.

Thomson's mention of the judge's personal library brought a grin to my face. I remember walking into Wilson's rather modest home (he lived by the motto: 'Living simply, so others may simply live'<sup>23</sup>) and being ushered to his 'study'. Actually, calling it a study would be generous. It was merely an alcove, a mess of papers and magazines on the floor and desk (to be fair, he was in retirement). There was no filing or catalogue system that could be observed. Still, the 'mess' provided a rich source of letters and draft speeches.<sup>24</sup>

Unfortunately, no draft judicial opinions were found in Wilson's study. It is uncertain whether any draft opinions even existed; Wilson did not think there were any stored away at home or elsewhere. This would no doubt disappoint Thomson, although in *A Matter of Conscience* I do provide some insights into Wilson's routine on the High Court and how he prepared for cases and wrote his decisions.<sup>25</sup> However, even though I do delve into some of Wilson's High Court decisions,<sup>26</sup> I believe Thomson would be disappointed that I did not provide more analysis of Wilson's High Court opinions and his time as a judge per se. The Hon Michael Kirby would agree.

### B Kirby's Book Review<sup>27</sup>

Overall, much to my relief, Kirby's review was complimentary. He had two major criticisms of the biography. First, that I did not devote enough space and analysis to what he saw as a conflict between Wilson's judicial and post-judicial remarks in relation to Aboriginal rights. Second, a lack of critical analysis on Wilson's judicial decision-making patterns. Kirby writes that while such analysis 'may not be all

<sup>22</sup> Ibid.

<sup>23</sup> Buti, above n 13, 1. See also Linda Spearman, *Sir Ronald Wilson and the High Court* (unpublished supervised legal research paper, Murdoch University, 2004) 12. Allegedly Mahatma Gandhi first coined the aphorism.

<sup>24</sup> After the writing of *A Matter of Conscience* was concluded, Lady Leila Wilson donated her late husband's personal papers to the National Archives in Canberra.

<sup>25</sup> See Buti, above n 13, ch 9. Thomson writes on judicial biographies in general: 'Insight into institutional working arrangements, revealed through exposition of a judge's daily routine, would add a touch of reality to studies of the history, practice, procedure and organisation of courts': see Thomson, above n 17, 64.

<sup>26</sup> For example, a significant part of Chapter 10 of *A Matter of Conscience* deals with *Mabo v Queensland (No 1)* (1988) 166 CLR 186 (*'Mabo (No 1)'*), including Wilson's dissent.

<sup>27</sup> Kirby, above n 18.

that interesting to a lay reader of his life' the biography would mostly be read by lawyers who:

will feel short-changed by the section on the High Court years and the failure of the biographer to come to grips with the arguable weaknesses in Wilson's reasoning as a High Court Justice. That was an important matter because, after all, that office was the most significant and influential that Wilson held in his lifetime.<sup>28</sup>

Kirby concludes his review:

For a country with few judicial biographies, Buti has chosen his subject well and presented a most readable text. The only real defect that I could see was the lack of sustained analysis of the values given effect during the subject's crucial years as a judge of the nation's highest court. Until we find biographers willing to do this, the myths of completely value-free judicial decision-making will persist in Australia. Sometimes, as possibly in Wilson's own case, they will be myths that the judges themselves are all too happy to express and even perhaps to believe in.<sup>29</sup>

Kirby's criticisms have much merit and I do not dispute them. But, I cannot agree with Kirby that Wilson's time at the High Court was the most significant and influential period of his lifetime. Wilson would strongly dispute that to be the case. Wilson's tenure on the High Court did not loom large in his psyche. He never craved to be on the High Court. In fact, he declined his first invitation,<sup>30</sup> but accepted two years later out of a sense of loyalty to his State Premier, who had urged him to accept in the interests of Western Australia.<sup>31</sup> That he accepted (even though, as he said later, it was the most unsatisfactory time of his professional career) is testament to his innate sense of duty and loyalty.

No doubt for Kirby, his own appointment to the High Court was the pinnacle of his career (he said as much at his swearing in ceremony) but it was not so for Wilson. In many respects, he was the accidental High Court Justice. Wilson might have gone so far as to describe the experience as incidental to his real life. I also believe Wilson's High Court period was not where he wielded his greatest impact, being on the High Court for only ten years out of a professional career of over 60 years. Some would say it was as a prosecutor that he made his true mark. I should add there were many other roles in which he exerted an influence in society to much greater effect than in his role as a High Court judge. I think it would be fair to say that for many others, particularly non-lawyers, it was Wilson's non-High Court

---

<sup>28</sup> Ibid 337.

<sup>29</sup> Ibid 340.

<sup>30</sup> Buti, above n 13, 175–6.

<sup>31</sup> Ibid 182–6.

roles, particularly his role on the National Stolen Generations Inquiry<sup>32</sup> and his subsequent advocacy of the *Bringing Them Home* report,<sup>33</sup> for which most will remember him.<sup>34</sup>

It was with this in mind that I placed added weight in the writing of the biography on the Stolen Generations period, and gave as much space to his other roles as to his role as a High Court Justice. Moreover, because I made the judgment that Wilson's High Court tenure was not his major contribution to Australian society, I wanted the biography to be attractive to a lay audience as well as an audience of lawyers. However, the fact remains that Wilson was a Justice of the highest court in the land. Thus his judicial life was an important part or influence in the writing of *A Matter of Conscience*, but as I have already noted, some, such as Kirby, wish I had given it greater prominence.

I attempted to chronicle Wilson's life and some of the major influences that shaped his character and career. In many respects, that is the convention of the biographical genre. But, when writing about a judge (even one who served in other roles that arguably made a greater societal contribution), it becomes more than a convention. I believe that individual traits, personality, and upbringing play a significant part in

<sup>32</sup> The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families ('National Stolen Generations Inquiry') was launched on 10 August 1995, in Adelaide. The National Stolen Generations Inquiry terms of reference were originally announced on 11 May 1995 by the then Attorney-General of Australia, Michael Lavarch. However, those terms of reference were revoked and replaced with similar but wider terms of reference, including the examination of compensation principles on 2 August 1995. The terms of reference of the National Stolen Generations Inquiry were: (a) tracing past laws, practices and policies that led to the removal of Aboriginal and Torres Strait Islander children from their families and the effects of those laws, practices and policies; (b) examining current laws, practices and policies with respect to services and procedures available to those affected by removal and recommending appropriate changes; (c) examining compensation issues; and (d) examining current laws, practices and policies with respect to child placement and care of Aboriginal and Torres Strait Islander children and recommending appropriate changes, taking into account the principle of self-determination: see Human Rights and Equal Opportunity Commission ('HREOC'), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Australian Government Publishing Service, 1997) 1–2.

<sup>33</sup> Ibid.

<sup>34</sup> Wilson, the then President of HREOC, like all other HREOC commissioners (ie Sex Discrimination Commissioner, Disability Discrimination Commissioner, Race Discrimination Commissioner, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights Commissioner, Privacy Commissioner) was a commissioner of the National Stolen Generations Inquiry. Additional female Indigenous commissioners were appointed for specific city and regional hearings. However, Wilson and Mick Dodson, the then Aboriginal and Torres Strait Islander Social Justice Commissioner, were the leading commissioners and both, particularly Wilson, were the public faces of the Inquiry report and the subsequent advocacy of the report's findings and recommendations.



determining the nature of the judge, and their approach to the role. A few excerpts from *A Matter of Conscience* will show why at least I believe this was the case with Wilson.

### III THE MAN AND THE JUDGE: SIR RONALD WILSON

#### *A Brief Profile*

Wilson was a remarkable and complex man. Orphaned early in life, he left school at fourteen to work as a courthouse messenger in Geraldton — his hometown.<sup>35</sup> From here, his spectacular career was to take him to England as a Spitfire pilot in the Second World War,<sup>36</sup> then to the Crown Law Department where he served as Senior Crown Prosecutor, Senior Crown counsel and, ultimately, Western Australian Solicitor-General.<sup>37</sup> His impressive performances in that role gained him national recognition, resulting in his appointment as Western Australia's first High Court Justice.<sup>38</sup>

A deeply religious man, he was a tireless worker for his church, rising to become Moderator of the Western Australian Presbyterian and Uniting Churches<sup>39</sup> and, later, President of the Uniting Church of Australia.<sup>40</sup> He later served as a royal commissioner investigating the 'WA Inc' period,<sup>41</sup> deputy chair of the Council for Aboriginal Reconciliation,<sup>42</sup> Chancellor of Murdoch University,<sup>43</sup> and President of HREOC.<sup>44</sup>

However, it was as the main author of *Bringing Them Home* that Wilson aroused conflicting emotions within the Australian public. Perhaps this was inevitable. Above all else, Wilson was a powerful prosecutor of the case or cause that he was championing at any particular time. Advocacy was his life and his passion. So,

---

<sup>35</sup> See Buti, above n 13, ch 1.

<sup>36</sup> Ibid ch 2.

<sup>37</sup> Ibid chs 4–8.

<sup>38</sup> Buti, above n 13, 182–6.

<sup>39</sup> Ibid 139–46, 178–82.

<sup>40</sup> Ibid 217–8, 228, 241–56.

<sup>41</sup> Ibid 267–76. 'WA Inc' refers to the commercial activities of the WA state governments from 1983 up to 1990. Refer to Hon Mr Justice Geoffrey Kennedy, *Report of the Royal Commission into the Commercial Activities of the Government and Other Matters*, Part 1 (Western Australia State Government, 20 October 1992) and Hon Mr Justice Geoffrey Kennedy, *Report of the Royal Commission into the Commercial Activities of the Government and Other Matters*, Part 11 (Western Australia State Government, 12 November 1992).

<sup>42</sup> Buti, above n 13, 281.

<sup>43</sup> Ibid 200–1, 228–30, 257–61, 297–300.

<sup>44</sup> Ibid 261–6, 276–9, 289–97. Also see the chapters dealing with the Stolen Generations (Chapters 13–15), where throughout the National Stolen Generations Inquiry he was President of HREOC. His tenure as President of HREOC came to an end on 31 July 1997.

when he heard first-hand the stories of those who had suffered the consequences of Australia's misguided and inhumane separations policy, he brought his considerable advocacy skills to bear on the task of ensuring that all Australians became aware of the enormity of the injustice perpetrated on Aboriginal families and communities.

Wilson honed his advocacy skills in the Crown Law Department in Western Australia, where he gained a reputation as a forceful and, some have said, fearsome Crown prosecutor. He prosecuted in the now infamous trials of Darryl Beamish and John Button respectively in the 1960s. Almost fifty years later, the Western Australian Court of Criminal Appeal having overturned both convictions,<sup>45</sup> there are those who wonder if Wilson's articulate and possibly overzealous prosecution led to the convictions of these two innocent men.<sup>46</sup>

Wilson rejected the notion that he was overzealous or insensitive.<sup>47</sup> As Crown prosecutor, he had a job to perform. He would countenance nothing other than performing the role entrusted to him to the best of his ability. There was never any doubt that he should keep separate his personal faith and his obligations to apply the law in the manner his role demanded.

On the other hand, he also rejected the view that his passionate advocacy of the Stolen Generations resulted from a Damascene experience, although he readily admitted that his involvement in the National Stolen Generation Inquiry was a liberating experience. Perhaps it was also a religious experience, compelling him to abandon technical legal reasoning and judicial constraint in favour of unrestrained advocacy for those who had entrusted their stories to him. He made no apologies for doing so; he simply believed he had no moral choice. Nor did he apologise for labelling the removal policies as genocide. He acknowledged that he may have been politically unwise, but he did not believe he was factually or legally wrong.<sup>48</sup>

Because he loved advocacy, Wilson never craved appointment to the High Court. He described his period on the High Court bench as the most unsatisfying period of his professional life.<sup>49</sup> In many respects, Wilson was a tortured individual on the High Court: sitting on the bench day after day listening to counsel arguments rather than doing the arguing himself, then spending endless hours drafting and settling his judicial openings. This did not come easily to Wilson. He was foremost an advocate and he could not act as one from the bench, where he felt intellectually inferior to his brethren. As I write in *A Matter of Conscience*:

The roots of Wilson's self-doubt lay in his narrow formal education and his lack of study of the classics and philosophy. He believed this prevented him

---

<sup>45</sup> *Button v The Queen* [2002] WASCA 35; *Beamish v The Queen* [2005] WASCA 62.

<sup>46</sup> On his prosecution days, see Buti, above n 13, chs 4–6.

<sup>47</sup> Buti, above n 13, 43, 65.

<sup>48</sup> On the Stolen Generations period and Wilson's involvement and views, see Buti, above n 13, chs 13–15.

<sup>49</sup> Buti, above n 13, 187.



from developing a sophisticated and renaissance intellect. This personal view is reflected in his comments about the writing style of his colleagues. For example, he opined that Sir Gerard Brennan treated each judgement [sic] as a work of art and an academic treatise. Reflecting his unpretentious demeanour, Wilson remarked that ‘to write like Brennan takes far more intellect than I possess’.<sup>50</sup>

His High Court colleagues were aware of his feelings of inferiority but thought Wilson was being too hard on himself. They valued his presence on the bench, and welcomed his expertise in criminal law and practice.<sup>51</sup> Furthermore, they respected his sound practical decisions. Sir Anthony Mason did not think that Wilson had a profound philosophical mind, but that he did have ‘an extremely nimble, quick mind’.<sup>52</sup> Significantly, Mason thought that Wilson best exhibited this attribute when he appeared as an advocate in the High Court.<sup>53</sup>

Although Wilson did not enjoy his period as a Justice of the High Court, he took the office and the institution seriously. This was the mark of the man — a dedicated professional who always believed in the institutions he served, whether that be the Crown Law Department, the High Court, the church, HREOC, or the law. For him, it was important to be honest to his professional duties even if that went against what his heart was saying. As a judge, he felt compelled always to reach a decision based solely on reasoned analysis and the law as he saw it. This led him to make decisions about which he was often questioned, particularly decisions that affected Aboriginal people, such as his dissent in *Mabo (No 1)*.<sup>54</sup>

### B *Psychobiography*

It is interesting to postulate as to whether ‘Wilson the man’ determined or explained ‘Wilson the judge’? This section examines this question.

Wilson’s wife has said that sometimes she thinks she did not really know him.<sup>55</sup> He seemed to place things in compartments. In letters he wrote to a Mariele Kuhn while in England during the war, and from on board the ship that was returning him to Fremantle, Wilson mentioned that it was difficult for him to fully cast aside his reserve and maybe he would only be able to do so when he had fallen in love.<sup>56</sup> Even when he proposed, he told Lady Wilson that she would have to come after his job and church.<sup>57</sup> Then there was his period as a prosecutor where

<sup>50</sup> Ibid 190.

<sup>51</sup> Ibid 190, 192.

<sup>52</sup> Ibid 190.

<sup>53</sup> Ibid.

<sup>54</sup> (1988) 166 CLR 186.

<sup>55</sup> Buti, above n 13, 384–5.

<sup>56</sup> Ibid 27. As part of a friendship scheme organised by the Royal Commonwealth Society, Wilson became friends with the Kuhn family (Mariele Kuhn, her husband Heine, and their children) and often stayed with them in Oxford: ibid 22.

<sup>57</sup> Buti, above n 13, 38.

he was prosecuting people for whom the penalty was death. However, he held no position on the death penalty as a moral dilemma.<sup>58</sup> There seemed to be a sense of detachment from issues that did not directly affect the task at hand.

Did this have any bearing on Wilson as a judge? It may have, but it is difficult to be decisive or unequivocal about this. It certainly had an effect on him as a prosecutor, where he was able to block everything out of his mind but the task before him — to prosecute.

Perhaps this ability to consign things to their relevant compartments in his mind helped when he was a prosecutor. His duty was clear. He knew what the law required. His task was simply to see that the requirement was met. As a prosecutor, there was neither need, nor place for equivocal feelings. As for the other side in the adversarial contest, well, somebody else had to worry about that. As a High Court judge, he did not have that luxury. For the first time in his legal career, he had to impartially consider both arguments; he had to decide between the two sides

Both the church and the air force, each authoritarian institutions in their own ways, would have given him rules — to follow without question. Perhaps this is why he was happy in each. Is it any wonder that when, in the High Court, he had to throw philosophy into the mix, he felt he was not up to the challenge.

One indisputable fact is Wilson's loyalty to the institutions he served. Until his elevation to the High Court, he had spent all of his professional legal life in the Crown Law Department of Western Australia. He was trained and grounded in representing the State of Western Australia's interest. This made him sensitive to issues of state rights. He felt loyalty to the Crown Law Department and the interest of the states, particularly the smaller states and more so his home State of Western Australia.<sup>59</sup> He carried this to the High Court, where judgments in cases such as *Mabo (No 1)* and the *Tasmanian Dams Case*<sup>60</sup> attest to his states' rights perspective. He might say that he was just upholding the Constitution and being faithful to his oath as a Justice of the High Court to apply the law.<sup>61</sup> Then again, all Justices of the High Court would say that (well hopefully they would). However, judges differ on their interpretation of the law, and on how they apply it to the particular situation that confronts them. That is why we have differing judgments

<sup>58</sup> Ibid 67. In response to this I wrote: 'It is surprising that an intelligent, deeply religious man, who was intricately involved in the death penalty cases, did not have or cannot recall having a particularly strong view. Maybe it was a way of coping with the issue at the time. He was a religious man, very much involved in the Presbyterian Church, which was part of a broad church movement opposing [the] death penalty; at the same time he played a significant role in sending people to death. Maybe he needed to detach himself from the religious and moral issues in order to do his job properly, while maintaining his strong commitment to his church.': ibid 67–8.

<sup>59</sup> Buti, above n 13, 189, 191, 239–40.

<sup>60</sup> *Commonwealth v Tasmania* (1983) 158 CLR 1.

<sup>61</sup> Buti, above n 13, 238–9.

in appellate courts. Judges' own value systems must affect how they see the law, whether or not they are aware of it.

Wilson's loyalty to the institutions he worked for, and the people who worked within them, can also be seen in another aspect of his High Court period. Wilson had gone to the High Court with two pleas from the Western Australian legal profession ringing in his ears. One was to write succinct judgments. The other was for more joint judgments. Practising lawyers did not want seven versions of the law.<sup>62</sup>

The general view was that Wilson's judgments were 'well crafted', displaying 'unusually careful attention to the argument of counsel'.<sup>63</sup> He also sought joint judgment whenever possible. He was more than happy to have other Justices add their names to his written decisions. He did not seek glory on the High Court.<sup>64</sup> Here too perhaps, he sought the same unity, order, and internal sense of security that institutions like the church and military offer.

Wilson prided himself on his professionalism and separating his personal views from the job at hand. He remarked: 'I didn't allow any personal views affect my professional role and duty.'<sup>65</sup> This is yet another example of the sense of detachment previously mentioned.

However, it is difficult not to think that Wilson's personal views significantly influenced his advocacy for reparations to be made to the Stolen Generations. As Wilson said himself:

I came to this inquiry [Stolen Generations National Inquiry] a couple years ago as a man over the hill at 73 with about 50 years or more behind me as a hardboiled lawyer mixing it with all sorts of antagonists and people in the courts here and in England and yet this inquiry changed me. The reason it changed me is that it penetrated the heart, it got away from my mind which I have had done for the rest of my life in all the briefs I have had.<sup>66</sup>

Commenting on this period in Wilson's life, Kirby notes that Wilson acted differently than he did as a judge. He was emboldened to make different choices and 'with his considerable skills as an advocate to the fore, he set out to convince people of the rightness of his causes'.<sup>67</sup>

---

<sup>62</sup> Ibid 195.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid 198.

<sup>65</sup> For example, see *ibid* 68, when discussing the death penalty.

<sup>66</sup> Buti, above n 13, 330, citing Ronald Wilson (Speech delivered at a community meeting, Old Parliament House, Canberra, 28 October 1997).

<sup>67</sup> Kirby, above n 18, 339.

Whatever Wilson's journey or 'transformation' from being a crown advocate, judge, to human rights advocate, he was contented with his life journey and works. He was happy and satisfied with his life and did not fear death. A year before he died, he said he would be content to die 'tomorrow'. But, he added that he hoped more people than not would regret his passing, and that they would think he had made a difference.<sup>68</sup>

### III CONCLUSION

I commenced this article by saying that satisfying the competing demands of academic rigour and of compelling true storytelling is challenging. I nevertheless took up that challenge with *A Matter of Conscience*. A judge is a person first, and who they are as a person will have some bearing (at least) on how they fulfil their role as judge. They will, of course, apply the law and honour the Constitution. However, the traits that define them as an individual will influence how they arrive at their judgment, and the level of emotional discomfort suffered along the way. Over the years, lecturers, law students, and others will read and make their own judgements on the judgments Wilson wrote. I will be satisfied as a biographer if my examination of Sir Ronald Wilson the man helps them read those judgments with a better understanding of how and why he arrived at them. I do not know whether that makes me a judicial biographer. If it does not, then I hope my approach will at least encourage future judicial biographers to look at the person before looking at the judge.

---

<sup>68</sup> Buti, above n 13, 390–1.