*John Gava**

JESTING PILATE AND OTHER PAPERS AND ADDRESSES BY THE RT HON SIR OWEN DIXON

EDITED BY SUSAN CRENNAN AND WILLIAM GUMMOW
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SIR OWEN DIXON'S LEGACY

EDITED BY JOHN ELDRIDGE AND TIMOTHY PILKINGTON
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Is the future of the law to be found by looking backwards or forwards? From what one might call a traditional perspective, it makes sense to look at the masters of the common law because the law of today owes its origins to the judges, lawmakers and scholars of the past. Most would agree that Sir Owen Dixon was one of the greatest judges Australia has produced, if not the greatest. But another tendency in Australian law and legal thought today is to focus on what can be done with the law and how it can be improved to overcome injustices and inefficiencies. From this perspective, spending time either reading Dixon or reading about Dixon misses the point by celebrating the past at the expense of the present and the future. So the answer to the opening question will likely tell you whether you will find these books interesting and important, or quaint and maybe even pointless.

This book review is not the place to describe and analyse these competing perspectives on law, let alone make judgments about the appropriateness of either. But recognising these different viewpoints does allow for understanding. For example, those with a more traditional bent should appreciate that those who do not share the veneration (if that is not too strong a word) of Dixon might not be perverse or ignorant; rather that those who concentrate on the future directions of law just do not see Dixon in the same way. And, similarly, the latter should not regard those with a

* Adjunct Associate Professor, Adelaide Law School, University of Adelaide.

traditional view of law and their respect of Dixon as being crusty old conservatives at odds with the present and in love with an imagined past.

I write as one who supports EP Thompson's description of the rule of law as 'an unqualified good',[1] and that the legalism associated with Dixon's view is one that should appeal to those on the left of the political spectrum as well as the right.[2]

So, what of these books? Susan Crennan and William Gummow's third edition of *Jesting Pilate and Other Papers and Addresses by the Rt Hon Sir Owen Dixon* ('*Jesting Pilate*')[3] juggles the order of Dixon's essays from the first edition published in 1965. It adds Dixon's paper on 'The Separation of Powers in the Australian Constitution',[4] deletes 'Sir Roger Scatcherd's Will in Anthony Trollope's "Dr Thorne"',[5] and provides revised versions of Dixon's tributes to Franklin Delano Roosevelt and his advisor Harry Hopkins.[6] This edition also contains Chief Justice Susan Kiefel's foreward[7] and two substantial contributions by the editors with Crennan offering a discussion of 'Sir Owen Dixon: The Communist Party Case, Then and Now'[8] and Gummow considering 'Sir Owen Dixon Today'.[9] Sir Ninian Stephen provides a short biography of Dixon which is as good a biographical sketch as one could expect in 15 pages,[10] while James Merralls[11] and SEK Hulme[12] offer short takes on the

1 EP Thompson, *Whigs and Hunters: The Origin of the Black Act* (Allen Lane, 1975) 267.

2 See, eg, John Gava, 'Another Blast from the Past or Why the Left Should Embrace Strict Legalism: A Reply to Frank Carrigan' (2003) 27(1) *Melbourne University Law Review* 186, 196–7.

3 Susan Crennan and William Gummow (eds), *Jesting Pilate and Other Papers and Addresses by the Rt Hon Sir Owen Dixon* (Federation Press, 3rd ed, 2019).

4 Ibid 225–31.

5 Sir Owen Dixon, 'Sir Roger Scatcherd's Will in Anthony Trollope's "Doctor Thorne"' in Cazimir Woinarski (ed), *Jesting Pilate and Other Papers and Addresses* (Lawbook, 1965) 71.

6 Crennan and Gummow (n 3) 94.

7 Chief Justice Susan Kiefel, 'Foreward by the Hon Susan Kiefel AC' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019).

8 Susan Crennan, 'Sir Owen Dixon: The Communist Party Case, Then and Now' in Susan Crennan and William Gummow (eds), *Jesting Pilate* (Federation Press, 3rd ed, 2019) 17.

9 William Gummow, 'Sir Owen Dixon Today' in Susan Crennan and William Gummow (eds), *Jesting Pilate* (Federation Press, 3rd ed, 2019) 48.

10 Sir Ninian Stephen, 'Address by Sir Ninian Stephen' in Susan Crennan and William Gummow (eds), *Jesting Pilate* (Federation Press, 3rd ed, 2019) 2.

11 James Merralls, 'The Rt Hon Sir Owen Dixon, OM, GCMG, 1886–1972' in Susan Crennan and William Gummow (eds), *Jesting Pilate* (Federation Press, 3rd ed, 2019) 30.

12 SEK Hulme, 'Sir Owen Dixon' in Susan Crennan and William Gummow (eds), *Jesting Pilate* (Federation Press, 3rd ed, 2019) 40.

Dixon they knew. Merralls has, in addition, contributed a delightful piece on Dixon's library — both his books and the place they were housed in Dixon's home.[13]

In her discussion of the *Communist Party Case*,[14] Crennan provides a detailed examination of Dixon's judgment, noting particularly the role played by the rule of law and judicial independence in the *Constitution*.[15] Crennan's argument is premised on the notion that Dixon's judgment sits comfortably with what has been described by Ronald Sackville as the creation of a due process clause or 'a truncated bill of rights' that has been drawn from the High Court's understanding of the separation of powers in the *Constitution*.[16] I have my doubts that Dixon would have viewed this development as consistent with the *Constitution* as he understood it.

Gummow's 'Sir Owen Dixon Today' provides an exhaustive and critical treatment of Dixon's legacy in Australian constitutional law.[17] He outlines carefully where Dixon's views have had continuing influence and where the High Court has moved on, as it has done, for example, in dealing with s 92.[18] While not questioning the accuracy of Gummow's analysis of Dixon's influence since his departure from the High Court, one can have doubts about the wisdom of some of the decisions of the Court after Dixon's departure. One only has to think of *Kable*,[19] perhaps the worst reasoned of all High Court cases, or of the development of the implied constitutional freedom of communication. As Sackville notes, the test drawn by the High Court for the latter is vague and has led to the invalidation of both Commonwealth and state legislation in a distinctly counter-majoritarian fashion, replacing the considered and publicly discussed laws of elected parliaments in favour of the views of unelected judges.[20] When it is remembered that in Australia there never has been a real threat that the general population would be denied the capacity to discuss politics in a robust fashion, it becomes clear that one unfortunate consequence of this implied right is that it protects large media companies rather than the general population.

Have Dixon's writings aged well? I think that they have. Dixon was a fine writer who conveyed his meaning lucidly yet economically. Some of the papers are of historical

13 James Merralls, 'The Library of Sir Owen Dixon' in Susan Crennan and William Gummow (eds), *Jesting Pilate* (Federation Press, 3rd ed, 2019) 44.

14 *Australian Communist Party v Commonwealth* (1951) 83 CLR 1 ('*Communist Party Case*').

15 Crennan (n 8) 17.

16 Ronald Sackville, 'The Changing Character of Judicial Review in Australia: The Legacy of Marbury v Madison?' (2014) 25(4) *Public Law Review* 245, 257.

17 Gummow (n 9) 48.

18 Ibid 57.

19 *Kable v DPP (NSW)* (1996) 189 CLR 51.

20 Sackville (n 16) 260.

interest, especially his tributes to Roosevelt,[21] Hopkins,[22] and Felix Frankfurter.[23] During his two years as Australian Minister (Ambassador) to the United States, Dixon met frequently with the high and mighty of American politics and law, and thus provides an eyewitness account of these American statesmen and jurists. His accounts are not critical, but nor are they thoughtless panegyrics. Dixon's discussions of university education would make useful reading for the managerial class that now runs our universities.[24] He clearly valued education for its own sake and as a vehicle for developing informed and enquiring minds, and cultivated personalities. Dixon's papers on science and law show him as a person and a judge who welcomed the development of science as an aid to the dispensing of justice.[25] His was not a closed mind. Dixon's discussion of the chemical history of ink, and how knowledge of this, handwriting, and the composition of paper shows a Sherlock Holmes-like mastery of the scientific basis for, in this case, consideration of forgery.[26] Holmes had his command of cigarette ash; Rumpole had his blood stains; now, we have Dixon and ink.

There are also several papers on criminal law and an essay on the development of the law of homicide which is a wonderfully clear and concise description of the legal development of law in that area.[27] Dixon's treatment of the separation of powers and the more general relationship of the common law to the *Constitution* will have continuing relevance to these very real topics of constitutional concern in Australia. His papers on judicial method have been both influential and often misunderstood. I will discuss these in more detail below. An afternoon spent reading these papers would be time well spent for lawyers and non-lawyers.

This brings us to the second book, *Sir Owen Dixon's Legacy*.[28] This book comprises 13 chapters by various authors examining Dixon's contribution and legacy across constitutional law, judicial reasoning, administrative law, criminal law, real property law, contract law, feminism and the law, torts and defamation. All these articles are worth reading and all show real effort by the writers to look in-depth at Dixon's influence and legacy. It is not difficult to imagine that all will be the starting points for anyone looking for Dixon's impact and influence across all these areas of law. Consider *Sir Owen Dixon's Legacy* in combination with *Jesting Pilate*, and we have a formidable and high quality body of work examining Dixon's judging in particular areas of law, as well as more general discussions of topics such as the rule of law and judicial reasoning.

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21 Crennan and Gummow (n 3) 87.

22 Ibid 94.

23 Ibid 104.

24 Ibid 264–7.

25 Ibid 134–44.

26 Ibid 137–8.

27 Ibid 151–8.

28 John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019).

In 'Sir Owen Dixon and the Common Law Method', Ruth Higgins provides a nuanced analysis of Dixon's judicial style.[29] In essence, Higgins views Dixon's legalism as manifesting a complex institutional attitude, the core of which is

> a disposition of restraint, and a method of decision-making guided by external standards and principles found in a particular body of positive knowledge, acquired over long study, and directed towards ascertaining the correct answer the standards and principles yield.[30]

For Higgins, a view that Dixon's understanding of judging is, instead, a form of practice or a craft tradition and not at all the equivalent of an academic discipline,[31] 'understates the nature of the judicial role and overstates the contrast between these various disciplines'.[32]

One way to appreciate the perhaps subtle differences between these views is to call in aid American baseball pitcher and amateur philosopher, Dennis Martinez. Readers of Stanley Fish will recall that he commenced an essay on theory and practice with a story in which a sports reporter, Ira Berkow, caught Martinez after the latter had spoken to his manager, Earl Weaver, just before the start of a game. The reporter asked Martinez what words of wisdom the manager had imparted. Martinez replied that he had been told to '"[t]hrow strikes and keep 'em off the bases," … and [he] said, "O.K."'.[33] Martinez added a clarifying note to the conversation: '[w]hat else could [Martinez] say? What else could [the manager] say?'[34]

As Fish notes, expecting either the manager or Martinez to have discussed their tactics in the language of a philosopher misses the point of how this activity is conducted:

> Clearly, what Berkow expected was some set of directions or an articulated method or formula or rule or piece of instruction, which Martinez could first grasp (in almost the physical sense of holding it in his hand or in some appropriate corner of his mind) and then consult whenever a situation seemed to call for its application. What Berkow gets is the report of something quite different, not a formula or a method or a principle — in fact, no guidance at all — simply a reminder of something that Martinez must surely already know, that it is his job to throw a baseball in such a way as to prevent opposing players from hitting it with a stick.[35]

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29 Ruth CA Higgins, 'Sir Owen Dixon and the Common Law Method' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 8.

30 Ibid 9.

31 See, eg, John Gava, 'When Dixon Nodded: Further Studies of Sir Owen Dixon's Contracts Jurisprudence' (2011) 33(2) *Sydney Law Review* 157, 159–61.

32 Higgins (n 29) 20.

33 Stanley Fish, 'Dennis Martinez and the Uses of Theory' (1987) 96(8) *Yale Law Journal* 1773, 1773.

34 Ibid.

35 Ibid.

In other words, Fish uses this lively example to make a point: Martinez is engaged in a craft and not a scholarly endeavour. Martinez *does* rather than *theorising about doing*.

Judging can be considered to lie on a continuum between pure philosophy, for example, and a craft like playing baseball. Philosophers devote their lives to understanding and explaining what they think about philosophical questions and they do so by painstaking elaborations of arguments, careful descriptions of their base assumptions, and rigorous attention to the logical development of their arguments. Judges, by way of contrast, operate under severe time constraints and are controlled to a greater or lesser degree by the decisions of the past. These decisions might be poorly reasoned or display competing, maybe even contradictory, lines of authority and judges are forced, again to a greater or lesser degree, to make the law (and hence their decision in the case before them) 'fit' the times in which they live.

We can say for certain that judges are neither academic philosophers nor the judicial equivalent of baseball pitchers. They lie somewhere on the continuum between the two. What separates Higgins' view of what judges do from, for example, my own view, might be best described as saying that Higgins thinks that judges' work is closer to that of philosophers, while I think that it is closer to what Martinez did during his professional career.

Tanya Josev's contribution, '*Parker v The Queen* and Dixon's Diminishing Confidence in the Privy Council',[36] provides a wonderfully detailed analysis of Dixon's growing disenchantment with the English judiciary during the 1950s and '60s, culminating in *Parker v The Queen* ('*Parker*').[37] In *Parker*, Dixon declared that despite his instinctive preference for unity between Australian and English law, he could not follow the House of Lords' decision in *Director of Public Prosecutions v Smith* ('*Smith*').[38] Dixon's considerable influence and reputation was to aid the subsequent legislative and political moves to give the High Court independence from British courts.[39] Given Dixon's reverence for British institutions, and especially the law, the story that Josev tells is a gripping one. It shows where this reverence clashed with Dixon's greater ties to what he saw as the proper approach to the legal issues presented in *Smith* and *Parker*. There is almost something of Greek theatre in this tale, with Dixon being pushed and pulled by competing views that he held very strongly but could only end with him following one over the other; in this instance, he followed principle, logic and authority over what he saw as essentially poor judging and inappropriate changes to provocation and criminal law by British judges.

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36 Tanya Josev, '*Parker v The Queen* and Dixon's Diminishing Confidence in the Privy Council' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 25.

37 (1963) 111 CLR 610, 632 ('*Parker*').

38 [1961] AC 290 ('*Smith*').

39 Josev (n 36) 39.

Mark Leeming provides a robust claim that Dixon's decisions involving the application of s 109 of the *Constitution* were both highly influential and consistent with a legalist view of constitutional judging.[40] Leeming notes that just after his appointment to the High Court, and faced with politically charged legislation enacted by the Lang government in New South Wales,[41] Dixon fashioned a new and long-lasting definition of s 109, one that is 'substantially the law which is applied almost a century later'.[42] In addition, Dixon was able to do this without making a decisive break with earlier authority. Leeming quotes Geoffrey Sawer saying of Dixon that he 'brought to constitutional problems an analytical acuity which fitted well [with] the steady development of systematic reasoning from precedent in this field instead of the open reference to broad political principles',[43] which had characterised the High Court before Dixon's appointment.[44] Students of Dixon's judging and in particular his constitutional judgments would be well-advised to consider to what extent, if any, Leeming's claims can be extended to other areas of constitutional law considered by Dixon.

Peter Gerangelos' contribution looks at Dixon's influence in the High Court's recognition (or creation) of legislative and executive powers based on the notion of nationhood.[45] He notes that Dixon's decisions dealt with the former but that his influence might have extended to the more recent High Court decision in *Pape v Commissioner of Taxation*,[46] where for the first time 'a majority of the High Court gave recognition to an inherent non-statutory *executive* power based on "nationhood", incorporated in s 61 of the *Constitution*'.[47]

For anyone concerned about expanding governmental power in Australia, Gerangelos provides a pessimistic view of the High Court's decisions in this area and raises genuine questions about how much Dixon's judgments have influenced this recent development.

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40 Justice of Appeal Mark Leeming, 'Fashioning the Keystone of the Federal Structure: Dixon's Influence on Section 109 of the Constitution' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 42.

41 Ibid 43.

42 Ibid 44.

43 Geoffrey Sawer, *Australian Federal Politics and Law 1901–1929* (Melbourne University Press, 1956) 321, quoted in Leeming (n 40) 55.

44 Leeming (n 40) 55.

45 Peter Gerangelos, 'Sir Owen Dixon and the Concept of "Nationhood" as a Source of Commonwealth Power' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 56.

46 (2009) 238 CLR 1.

47 Gerangelos (n 45) 57 (emphasis in original).

Matthew Stubbs presents a convincing description of the importance of Dixon's judgments in protecting judicial independence and the rule of law.[48] Dixon argued mightily for a complete separation of the judicial role from both executive and legislative intrusions, and Stubbs outlines rather well how he did this. Of course, in more recent times the High Court has effectively removed itself from what had been the staple of constitutional litigation: demarcation disputes over the extent of Commonwealth legislative powers. Chapter III has become the new scene of High Court endeavours which have largely taken the route of establishing a de facto 14th Amendment or due process clause in the *Constitution*. How much Dixon is to blame for this is something that Stubbs largely ignores, and wisely so, given his brief for this collection of essays.

As Neil Williams and Claire Palmer note, Australian administrative law was 'comparatively undeveloped' during Dixon's time on the High Court.[49] Nevertheless, they argue that Dixon's influence can be seen in modern Australian administrative law, especially in the crafting of the seminal *Administrative Decisions (Judicial Review) Act 1977* (Cth).[50]

Dixon seems to have had a distaste for criminal law but, as Tim James-Matthews argues, he was to have a significant impact on the development of criminal law in Australia.[51] As he says:

> Dixon made comparatively few interventions in the field of criminal law. However, those that he *did* make demonstrate the value of his characteristic jurisprudential rigour to the development of the criminal law and the law of evidence. In particular, Dixon's extra-curial interest in science precipitated a more modern approach to the criminal law which was distinctive at the time, and remains significantly influential today.[52]

No one, I think, would be unhappy with such a legacy.

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48 Matthew Stubbs, 'Protecting Judicial Independence and the Rule of Law: Dixon's Chapter III Legacy' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 80.

49 Neil Williams and Claire Palmer, 'An Enduring Influence: Sir Owen Dixon's Contribution to Administrative Law' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 98.

50 Ibid 98–9.

51 Tim James-Matthews, 'Sir Owen Dixon on Criminal Law and the Law of Evidence' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 113.

52 Ibid 113 (emphasis in original).

Arthur Emmett's chapter on Dixon and the law of property does not attempt to measure directly the influence of Dixon on property law today.[53] Rather, he considers Dixon's appreciation of the fundamental ideas behind the common law of property. He further discusses how Dixon used these fundamental ideas in his judgments on primary applications and possession under the Torrens system,[54] severance of cotenancies,[55] licences,[56] Torrens title mortgages,[57] ownership of property in Australia by non-residents,[58] competing equitable interests and legal personal representatives.[59] For Emmett, the principles behind these decisions continue to represent property law in Australia.[60]

Timothy Pilkington examines one of Dixon's most celebrated (and complex) contract law cases,[61] *McDonald v Dennys Lascelles Ltd* ('*Dennys Lascelles*').[62] While Pilkington accepts that Dixon's judgment clarified the law in important respects, he argues that the application of some of the principles outlined by Dixon are 'in need of further clarification'.[63] In particular, Pilkington is concerned with the situation where a contracting party is likely to incur reliance expenditure before each advance payment falls due, whether the right to recover an advance payment is best understood as arising from the parties' contract or from the law of restitution, and what are the implications arising from adopting a restitutionary view for a party who claims restitution despite having committed a fundamental breach.[64] As one who has devoted much time to understanding the development of Dixon's thinking about *Dennys Lascelles*,[65] I found much to learn from Pilkington's analysis of a particularly thorny area of law.

53 Arthur R Emmett, 'Sir Owen Dixon's Insight into the Law of Real Property' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 130.

54 Ibid 131–3.

55 Ibid 133–4.

56 Ibid 135–6.

57 Ibid 137.

58 Ibid 137–9.

59 Ibid 139–43.

60 Ibid 143.

61 Timothy Pilkington, 'Advance Payments and the Border of Contract and Restitution: *McDonald v Dennys Lascelles* Revisited' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 144.

62 (1933) 48 CLR 457 ('*Dennys Lascelles*').

63 Pilkington (n 61) 144.

64 Ibid 145.

65 See John Gava, 'A Study in Judging: Sir Owen Dixon and *McDonald v Dennys Lascelles*' (2009) 32(1) *Australian Bar Review* 77.

Radhika Chaudhri provides another fine analysis of another famous Dixon judgment,[66] *Yerkey v Jones* ('*Yerkey*').[67] Chaudhri is interested to see 'whether Dixonian legalism's commitment to framing judgments to cohere with existing law perpetuates power structures and stymies the disruption required for feminist reform'.[68] Chaudhri's analysis of Dixon's understanding of legalism, of the facts and law in *Yerkey*, of the competing and overlapping feminist positions on law and legalism, and the actual effect of *Yerkey* in protecting women, is first-rate. She concludes that, not surprisingly, Dixon's method is 'fundamentally incompatible with the feminist objective of deconstructing harmful gender narratives'.[69] However, she adds that this need not be the end of the conversation for feminist scholars as Dixon's legacy is 'complex',[70] and his judgment in *Yerkey* worked to protect women's interests.[71]

John Eldridge's chapter considers the more general topic of contract law but does so through an examination of two significant cases,[72] *Masters v Cameron*[73] and *Davis v Pearce Parking Station Pty Ltd.*[74] Eldridge argues that however well-known Dixon's judgments in these cases have proven to be, they have subsequently been misunderstood or mischaracterised.[75] For Eldridge, these cases provide a complex heritage:

> [W]hile all would agree that Dixon's pronouncements on the law of contract have offered a great deal of guidance to later courts and jurists, those same pronouncements have at times been permitted to obscure the very principles which Dixon was seeking to illuminate.[76]

Mark Lunney's examination of Dixon's tort judgments provides a succinct yet comprehensive analysis of Dixon and tort law.[77] As he notes, there are over 100 judgments where Dixon dealt with tort law (excluding defamation and the somewhat related

66 Radhika Chaudhri, 'Sir Owen Dixon and *Yerkey v Jones*: Considering the Feminist Implications of Strict and Complete Legalism' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 163.

67 (1939) 63 CLR 649 ('*Yerkey*').

68 Chaudhri (n 66) 163.

69 Ibid 181.

70 Ibid.

71 Ibid 179.

72 John Eldridge, 'Sir Owen Dixon and the Law of Contract' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 182.

73 (1954) 91 CLR 353.

74 (1954) 91 CLR 642.

75 Eldridge (n 72) 185.

76 Ibid 193.

77 Mark Lunney, 'Dixon's Tort Judgments: Master Craftsman or Competent Technician?' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 194.

area of workers' compensation cases).[78] Lunney finds that Dixon was wary of 'large generalisations' when deciding torts cases, instead giving 'attention to the specific liability rules the common law had accepted as providing remedies to injured parties'.[79] Lunney summarises Dixon's attitude as being one where judges

> should not 'innovate' by reference to broad notions of justice or policy but by reference to the more limited role granted to them by the history of the judicial function and the law they inherited. This did not prevent change, but it did prevent change that paid little or no attention to what the law had been.[80]

In the last chapter of this book, David Rolph looks at Dixon's contribution to Australian defamation law.[81] Rolph tells us that Dixon was one of the few appointees to the High Court who had a substantial defamation practice at the Bar. He also notes that during Dixon's tenure there were 'a number of landmark defamation cases' decided by the Court.[82] After concentrating his examination to the two areas of identification and the defences of privilege, Rolph summarises Dixon's impact on the Court in the following terms:

> Dixon's contribution to Australian defamation jurisprudence … is mixed, notwithstanding his expertise and experience in the area. The ongoing influence of his contribution to the law dealing with identification in defamation law cannot be doubted. However, even during his tenure on the High Court, Dixon was often unable to persuade his fellow judges to adopt his approach to cases involving privilege.[83]

Anyone interested in Australian law will learn a lot from these two books.

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78 Ibid 194. In somewhat of a coincidence, my studies of Dixon's contract judgments identified 102 judgments that could be classified as dealing with contract law. See, eg, John Gava, 'When Dixon Nodded: Further Studies of Sir Owen Dixon's Contracts Jurisprudence' (n 31) 159.

79 Lunney (n 77) 213.

80 Ibid 213–14.

81 David Rolph, 'Sir Owen Dixon's Contribution to Australian Defamation Jurisprudence' in John Eldridge and Timothy Pilkington (eds), *Sir Owen Dixon's Legacy* (Federation Press, 2019) 215.

82 Ibid 215.

83 Ibid 216.