

Review of the Companion

The *Oxford Companion to the High Court of Australia* was launched on 13 February 2002 at the High Court. The Companion contains some 400 entries, which cover all of the justices of the High Court, the major areas of law to which the Court has contributed and its most significant cases.

The contributors to the *Companion* include present and past judges of the High Court and of other courts, academics, practitioners and others with interests in the High Court.

Some of the contributions on justices of the Court are piercing. For example, Professor Graham Fricke writes of Frank Gavin Duffy, justice 1913–1931 and chief justice 1931–1935:

Gavin Duffy was 78 when he became chief justice. His capacity for effective output was minimal. Weak and ineffectual in administration, he did nothing to facilitate conferences or exchange of draft judgments, let alone to assist or influence the Court by circulating his own draft judgments. His judicial contribution was scanty in the extreme . . . in seven cases, Gavin Duffy delivered no judgment at all — delegating to another Justice the task of announcing his concurrence. Initially courteous, these announcements grew noticeably more terse. In the end, Dixon was saying simply: ‘The chief justice agrees in this judgment’.

Other portraits are more admiring. David Jackson and Joan Priest describe Harry Gibbs as bringing to the High Court great strength of intellect, wide knowledge and experience, a swift grasp of complex issues, a strong underlying sense of fairness and justice, and outstanding clarity of expression. This portrait also discloses a Jacksonian sense of humour:

An early interest in constitutional matters was shown when [Gibbs] secured the presidency of the University’s Women’s Club, having discovered that there was no

requirement that its members, or its president, be a woman. Chivalrously, he and the supporters who had procured his election resigned shortly afterwards.

Other portraits include Michael Kirby on Edward McTiernan, Bret Walker on Murray Gleeson, Simon Sheller on Michael Kirby, Stephen Gaegler on Gerard Brennan, the late John Lehane on William Gummow, Nicholas Hasluck on Ian Callinan and Kenneth Hayne on Owen Dixon.

There are interesting pieces on important cases. For example, the note on the *Bank nationalisation case* (1947) records the sharp interchanges which occurred between Starke and Evatt. On the 17th day of his address to the Court, Evatt was told by Starke that nothing he had said had added anything to what had been articulated the day before. Evatt replied that he had said more on a certain point ‘if your Honour had been listening’ to which Starke retorted ‘I have been listening for two weeks.’ The case ran for 39 days. After 36 days in Melbourne it was adjourned to Sydney for three days. The case captured headlines as the longest hearing in the High Court and as the biggest and most expensive case in Australian constitutional history, at an estimated cost of £58,000.

Philip Ayres offers an important analysis of the Dixon diaries. He notes:

The Dixon they reveal is largely consistent with the public persona — intensely hardworking (regularly to 1.00 a.m., frequently to 3.00 a.m. or later), civic spirited, skeptical, ironical, dry in wit, classical insensibility (a reader of Greek and Latin literature in the original languages), devoted to a wife and children from whom his work separated him more than he would have liked, an Anglophile through and through, a leading light in the English-Speaking Union and the Australia Institute for International Affairs, supportive of a White Australia like almost everyone else. The diaries also reveal a Dixon easily depressed, even over little matters. For instance, after a day on the Bench putting up with Starkes’ rudeness and Latham’s depressing political statements, he was looking forward to seeing his barrister friend, TS Clyne, whom he had invited to tea through his associate, but there was no answer — ‘another example of the hopeless condition I have attained’ (4 November 1937).

There are entries debating a number of more philosophical topics including values (by Gerard Brennan), sovereignty, originalism, natural law, metaphor and jurimetrics.

There is an entry on notable litigants: a detailed and fascinating review of the Murphy affair by Tony Blackshield; and an entry on women that is critical of the Court’s decision in

Garcia v National Australia Bank (1998).

Philip Goad provides entry on the architecture of the High Court which places it in the tradition of 20th Century Modernism and, more particularly, Brutalism. It was ‘an ethic of design that dictated truthfulness to material and structural expression, and clear and direct expression both internally and externally of the building’s internal functions. Such an aesthetic of clarity and honesty seems eminently appropriate for a building devoted to justice.’

Biographies are the focus of the entry by James Thompson. He notes that great biographies of Australian judges remain to be written. Compared to the US (and to a lesser extent Canada and England), biographies focusing on the lives, intellect and professional careers of Australian judges are rare. Major biographies of High Court justices — Griffith, Barton, Isaacs, Higgins, Evatt, Barwick and Murphy — tend to focus on the political aspects of the career of the subject, with relatively little material devoted to their judicial careers. Justices’ papers, draft opinions, correspondence and diaries have not always been fully utilized. Thompson also points out that the situation is exacerbated by the virtual absence of biographical scholarship devoted to other less political justices. He concludes that for those interested in the High Court as an institution of government in Australia much work remains to be done.

Any serious literary work on the High Court could not be complete without a reference to *The Castle*. Rob Sitch writes about the making of the film:

We had no idea how a challenge based on section 51(xxxi) would proceed in the High Court, but like to think that one of the less legal arguments would hold some weight. This is summed up in the statement made by Bud Tingwell’s character: ‘I can’t speak for those who wrote this document but I’ll bet when they put in the phrase ‘on just terms’ they hoped it would stop anyone short changing someone like Darryl Kerrigan’. That struck us as being about right. If you sat down to write a constitution today you would like to think that it protects decent people in the future from being out-manoeuvred or unfairly dealt with by the laws of the country.

In all, this is a lengthy, comprehensive and important work with points of interest in it for scholars, practitioners and lay readers alike.

Reviewed by Justin Gleeson SC