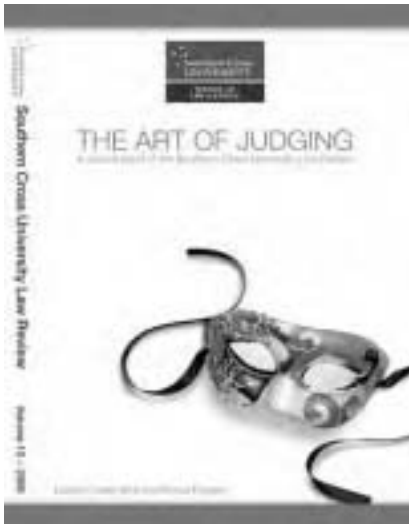


The Art of Judging

Greta Bird and Nicole Rogers (eds) | School of Law and Justice, Southern Cross University | 2008



Advocates persuade judges, or try to. Persuasion involves understanding what judges do and how they arrive at decisions. *The Art of Judging* is a welcome addition to the learning on this topic. Edited by Greta Bird and Nicole Rogers, and a special issue of the *Southern Cross University Law Review*, *The Art of Judging* is a collection of papers by current and former judges, some first published elsewhere and reproduced here, some published for the first time. The list of contributors is impressive. It includes the chief justice of the High Court of Australia, two judges of the New South Wales Court of Appeal, Justice Ipp and Justice McColl, Justice Kenny of the Federal Court of Australia, Justice Pagone of the Supreme

Court of Victoria, and many other distinguished jurists besides. Associate Professor Bird and Dr Rogers contribute an introduction, which draws many of the main themes together.

The paper by Sir Alan Moses, a justice of the English Court of Appeal, 'The Mask and the Judge' includes an erudite reflection on the use of the mask in theatre. The thesis developed in Sir Alan's paper is that judges must be to some degree formal and aloof in order to carry out most effectively their role:

Judges diminish the authority which a legal decision requires when they speak without a mask. Without the mask they can no longer be distinguished from any other member of the executive or government; they are deprived of authority. The judge is least himself when he talks in his own person. Give him a mask and he will tell you the truth.

Sir Anthony Mason's contribution analyses judicial decision making, the art of judgment writing and the question of whether and if so, to what extent, the judge represents the community. Justice McColl addresses among other things the constraints on the role of an intermediate appellate court, particularly in the light of the judgment of the High Court in *Farah Constructions Pty Limited v Say-Dee Pty Limited* (2007) 230 CLR 89. Justice Ipp considers the maintenance of judicial impartiality. Justice Kenny analyses the

views developed by Justice Gaudron in her judgments over the years, particularly in respect of the judicial process and the role and responsibilities of courts and their judges in the pursuit of justice:

Justice Gaudron's consideration of the judicial process – its features, its importance in the definition of judicial power and its effect on judicial responsibility – is, in my view, her most distinctive and remarkable contribution to the work of the High Court.

Justice Preston, chief judge of the Land and Environment Court of New South Wales, contributes a paper on the art of judging environmental disputes. Magistrates Jelena Popovic of Victoria and David Heilpern of New South Wales describe their experiences with decision making on the coalface; Magistrate Popovic includes an interesting discussion on the establishment of, and procedures in, the Koori Courts in Victoria.

It is not possible in a short review to refer, let alone do justice, to each of the papers in this volume. Each is different; each merits close attention. *The Art of Judging* is an important and contemporary consideration of the role and function of judges in Australia today.

Reviewed by Jeremy Stoljar