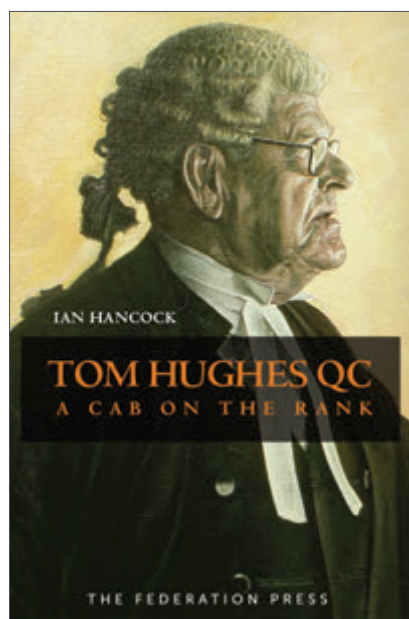


Tom Hughes QC: A Cab on the Rank

By Ian Hancock | The Federation Press | 2016



It is not uncommon for barristers to have a background in military service, politics or agricultural pursuits, and even to combine practice at the bar with one of these endeavours. However, Tom Hughes must be the only Australian barrister who can boast of all of the following: serving as a pilot in World War II, combining a political career with his practice at the bar and later serving as the Commonwealth attorney-general, being regarded as one of the best barristers of his time, contributing energetically to the running of a large farm in his spare time, and continuing practice at the bar to the age of 88, including winning a High Court case at the age of 86.

At over 350 pages, this is a thorough and well-researched biography. Ian Hancock introduces the life of his subject not by reference to Hughes' parents as many biographies do, but by reference to the arrival of his great-great-grandparents in New South Wales in 1840. The book draws on interviews with Hughes and members of his family, colleagues and friends, and voluminous primary material including many letters. It includes charming and amusing

anecdotes of Hughes' early life, including descriptions of family holidays at Yaouk in the Snowy Mountains and Hughes' early experiences at school. A letter from Hughes' father to his grandparents in 1928 records of the then five year old, 'Tom is a most important person going off each morning to school'.

One of the strengths of this book is its detailed attention to all periods and aspects of Hughes' life, whether professional, personal or spiritual. It does not only address the good times – Hughes' sacking as attorney-general by Billy McMahon in 1971 and the breakdown of his first marriage are handled candidly yet carefully.

The book depicts the life of a man who achieved great success in the law, but not only that. It provides insight into the reflections of a young man serving as a RAAF pilot at the time of the Allied invasion of Normandy in 1944, and the chapters addressing Hughes' time as a member of parliament and federal attorney-general portray the political mood in Australia in the late 1960s and early 1970s. The infamous 'cricket bat' incident of August 1970, in which Hughes brandished a cricket bat at a group of anti-conscription protesters outside his home in Bellevue Hill, is recounted with considerable detail and colour. The book records a variety of responses: son Michael Hughes, then aged five, remembers seeing lots of 'hippies' outside the house and later drew a drawing of 'hippies in our garden'. Hughes received a number of expressions of support, including one from Jack Fingleton, a former opening batsman for Australia who wrote to Hughes: 'Footwork magnificent – cannot be faulted. Grip with bat just a little suspect. Perhaps hands should have been closer together although gap is permissible if stroke is improvised'. In

the following weeks, students dressed in cricket gear greeted Hughes when he attended a university to address a Liberal Club meeting. Journalists were by and large, critical of Hughes. One protester brought a charge of assault against Hughes as a result of the incident, claiming that Hughes poked him in the ribs with the bat. At the hearing, Hughes was asked whether the people who came down his driveway did so with hostile intent, and Hughes replied, 'Well, I didn't think they were a friendly delegation of young Liberals come to admire me'. The charge was dismissed.

A number of Hughes' cases are featured, including the *Concrete Pipes Case*, the West Indian cricketer Clive Lloyd's action against David Syme & Co Ltd in which Hughes was victorious in the Privy Council, Rene Rivkin's defamation action against Fairfax in relation to articles linking him with the death of Caroline Byrne, and Gina Rinehart's action against Rose Porteous in 1999, in which Hughes acted for Rinehart. Entertaining snippets of Hughes' cross-examination of Porteous are included, where upon seemingly becoming frustrated with the long explanations Porteous gave by way of answers to Hughes' questions, he said, 'Do you mind if I interrupt you to ask a question?' Later, when Hughes asked whether Porteous had poor relations with Rinehart, Porteous answered, 'Yes, or we wouldn't be here and you wouldn't be earning so much money.'

Members of the New South Wales Bar will be interested in its evolution over the course of Hughes' time in practice and his observations of those changes. There were 335 barristers at the New South Wales Bar in 1949 when Hughes started practice, and all but one were male. He ran a lot of 'collision cases' and minor criminal cases in the Court of Petty

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Sessions and District Court when he first started out and remembered having his ears 'boxed' a few times when appearing against senior juniors. He reflected that nowadays, junior barristers spend much less time on their feet whereas he had the benefit of learning by trial and error and being forced to live with his mistakes.

When Hughes returned to the bar after retiring from politics in 1971, a single room on 11th floor Selborne Chambers cost \$8,500 (at a time when the average Australian male full-time earnings were

approximately \$5,000 per year). In 1973, when Hughes was president of the New South Wales Bar Association, there were 562 practising barristers in New South Wales, almost three-quarters of whom had chambers on Phillip St, compared with over 2000 today.

Hancock does not attempt to provide his own assessment of Hughes as a person, barrister or politician. He allows Hughes' diary entries, letters, interviews and the opinions of others to speak for themselves. One aspect of

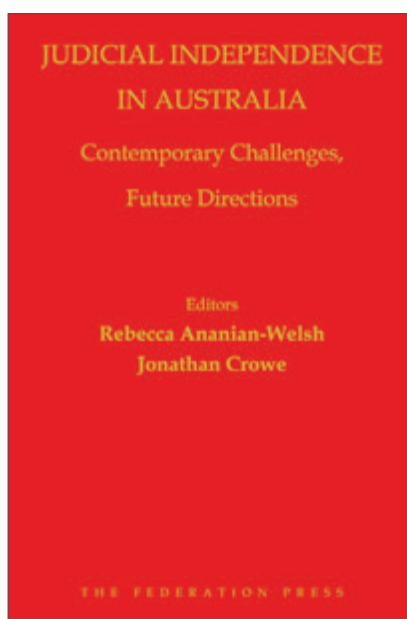
Hughes' personality which appears to be undisputed is that despite his abiding success at the bar, he never got over the (unfounded) fear that he would not have enough work, a fact which may both comfort and trouble members of the bar.

Ian Hancock is to be commended for an entertaining, thorough and well-researched portrait of one of the bar's greats.

Reviewed by Victoria Brigden

Judicial Independence in Australia: Contemporary Challenges, Future Directions

By Rebecca Ananian-Welsh and Jonathan Crowe (eds) | Federation Press | 2016



In the introduction, the editors Rebecca Ananian-Welsh and Jonathan Crowe, do a quick run-down on High Court cases dealing with judicial independence, from the not-so-recent *Huddart, Parker & Co Pty Ltd v Moorehead*,¹ through to *Brandy*,² *Kable*,³ and *Re Wakim*.⁴ These are some of the high profile cases of the

last century. But there are other, less elucidated but equally important aspects of judicial independence that creep under the radar: court-funding, extra-judicial activities like vice-regal and academic posts, the use of social media by judges, lawyers and counsel, and diversity in the judiciary. This book tackles all of these subjects, and so it ranges from abstract, philosophical inquiry (see the chapters on 'Conceptualising Judicial Independence' in Part I and on *Kable* and 'Institutional Integrity' in Part III) to practical and empirical analysis of current social trends (see, for example, Part VI on 'Courts in Social Context').

The Centre for Public, International and Comparative Law at the T C Beirne School of Law at the University of Queensland hosted a conference in July 2015, and most of the essays spring from papers presented there. The content is fascinating; the breadth of subject matter all-encompassing. While none of the reading is light, some is more demanding, giving the book a flexible range, which allows the reader to pick and choose

depending on mood or interest.

Sir Anthony Mason opens the book with a look at contemporary challenges to judicial independence in Australia. Amongst many topics, Sir Anthony considers the Hon Dyson Heydon's controversial article 'Threats to Judicial Independence', in which Heydon considered the negative impact an overbearing judge could have on judicial independence in a multi-member court, identifying Lord Diplock as one. Sir Anthony suggests Heydon had in mind at least one High Court colleague too.

Six parts then follow, each with two or three chapters conceptualising divergent aspects of judicial independence. Part I tackles the philosophy of the separation of powers. Emeritus Professor of Public Law at the University of Queensland, Suri Ratnapala provides an overview of two theses of the separation of powers – the diffusion and methodological theses – and concludes the principle of the separation of powers does not promote the rule of law and liberty of citizens without