

'Australia's Constitutional Government'

Power' includes a chapter on the powers of the Governor-General with reference to the double dissolution of 1975. It provides an overview of 11 principle criticisms of Sir John Kerr's decision, ranging from whether the governor-general ignored a convention that the Senate not reject appropriation bills essential to ordinary annual services of the government, to whether the governor-general had the reserve power to dismiss

the Whitlam Government, and whether it was right for the governor-general to have secretly sought the advice of the chief justice of the High Court, Sir Garfield Barwick, and Justice Sir Anthony Mason (and whether they should have given it). The chapter is fascinating.

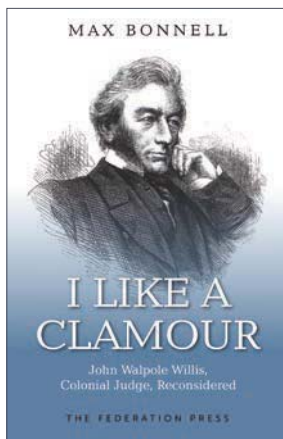
This book is not a Constitutional law textbook, but it includes thorough legal analysis on the most important aspects

of the Constitution. It also includes fascinating insights into the historical and contemporary workings of Australian federalism. I think it would be a worthwhile book for law students and a very worthy, enjoyable, and provocative read for practitioners.

Review by Charles Gregory

I Like a Clamour: John Walpole Willis, Colonial Judge, Reconsidered

By Max Bonnell | The Federation Press | 2017



On 16 March 2017 Chief Justice TF Bathurst AC was the guest of honour at the offices of King & Wood Mallesons to launch a new biography of Judge John Walpole Willis.*

It is a great pleasure to join you this evening in launching the first comprehensive biography of the colonial judge John Walpole Willis, *I Like a Clamour*, and to give a few short praises to the book and its author, Max Bonnell.

As some of you may or may not know, Max has been moonlighting as a sports writer and historian for some time; he is by no means a new entrant to the literary

world. But with the launch of his latest book, he takes the next logical step in his literary career, marking the collision of author, historian and lawyer.

For those who work with Max in commercial litigation and international arbitration, his choice for the subject of this book – an enigmatic colonial judge sitting in early nineteenth century Australia – might come as somewhat of an incongruence. Fittingly, it is paradox and incongruence that come to define the man at the centre of this book.

John Walpole Willis is a figure shrouded in controversy and intrigue. The book follows his life and legal career from his initial posting in Upper Canada, to his time as first *puisne* judge of the Court of Civil and Criminal Justice in British Guiana, and finally his position as a judge of the New South Wales Supreme Court and resident judge of Port Phillip, chronicling his ability to swiftly fall foul of the establishment in each fledgling community he visited. As Max highlights, for each contentious scenario 'there is a charitable explanation, and another that is less flattering to [Willis]'.² While historians to date have sought to

position themselves on either side of the battlelines, Max seeks to paint a more nuanced picture of mixed motivations. Was Willis a pedant or an activist? A man of principle and conviction or vindictive and self-promoting? Stubborn to a fault or courageously resilient? The answer to each of these questions raised throughout the book is, invariably both.

In one example, Max teases apart the motivations and reasoning underlying Willis' decision in *Bonjon*, a 'careful demolition of the *terra nullius* fallacy ... articulated 150 years before the High Court reached very similar conclusions in *Mabo*'.³ Max warns that this decision was not motivated by a genuinely sympathetic attitude towards the Aboriginal people but rather a conscientious and principled application of the law, coupled with a desire to prove this intellect to his superiors. In framing Willis in this way, Max manages to wrest him from the status of caricature and transform him into a thoroughly humanised, albeit tragically flawed, individual.

The enduring legacy of Willis today survives not in his judgments, as rigorous and learned as they were, but in his role as

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a bastion of judicial independence. While there is no doubt that Willis sought self-promotion at every turn, he never shied away from conflict, even when it came at the expense of his personal advancement. This 'noisiness', as the title suggests, goes some way to explaining the enigma that is Willis. Ultimately, what we can admire him for, and the reason why he is an historical figure worthy of reconsideration, is that, in Max's words, 'he chose to act as an independent judge even though he lacked the protections that make true independence possible'.⁴

Willis' story was ripe for the telling, its central protagonist is a character of colour and drama who attracted many a cause célèbre. As one journalist of the time recorded, 'as there was no theatre in town, Judge Willis was reckoned to be "as good as a play"'.⁵ Max's book is also peppered with amusing tidbits from history, from the unlikely first train accident to Willis' family connection to Queen Elizabeth II. While the facts alone paint a fascinating picture, this book is not just a recital of facts; it is accompanied by regular and incisive analysis, a credit to the author's perceptiveness and ability.

As with all good biographies, the book brings the historical period to life, providing an insight into the early colonies and, in particular, the establishment of the Supreme Court of this state. From this we can see the court room has changed significantly since the time of Willis, for one, moustachioed members of the profession were ejected from the court and chased to the nearest barber shop. If such a practice remained today in the age of the ironic hipster moustache, I'd be quite preoccupied. For another, the chief justice of the time, James Dowling, is recorded as having complained 'neither of my colleagues particularly love me'.⁶ I can only hope the office of chief justice garners more affection today.

Late last year, I gave a speech on the judicial career of Sir James Martin who, at various times in the nineteenth century, occupied the roles of chief justice of New South Wales, attorney general and premier. I found his career fascinating, but Max's account of Justice Willis' even more so.

It is evident from this book that Max has spent a great deal of time pouring through primary resources and surviving records, for what is no doubt set to

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become the authoritative work on Willis, and a valuable contribution to the early history of the legal profession in this state. I congratulate Max for his dedication and hard work in putting together such a well-researched and insightful book and commend it to everyone here tonight.

Endnotes

- * I express thanks to my Research Director, Ms Bronte Lambourne, for her assistance in the preparation of this address.
- 2 Max Bonnell, *I Like a Clamour: John Walpole Willis, Colonial Judge, Reconsidered* (Federation Press, 2017) 38.
- 3 Ibid 174.
- 4 Ibid 48.
- 5 Ibid 209, citing Edmund Finn, *The Chronicles of Early Melbourne 1835-1851* (Heritage Publications, 1888) 67.
- 6 Ibid 105.