

code would be unfathomable. Get two people with plummy accents, stick them in black capes, shove horsehair wigs on their heads, arm them with books of rules weighing as much as a grown pig and use them as proxies to verbally joust in front of a bewigged sexegenarian in a big purple gown, while twelve people yanked off the street sit and watch and try to make sense of it all and decide who's in the right. The winner gets nothing. The loser ends up in a concrete box.'

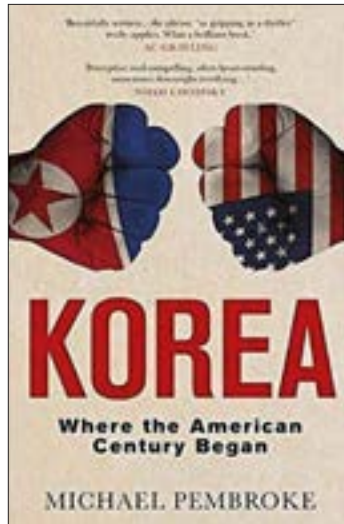
Ultimately, *The Secret Barrister* is a celebration of our system of criminal justice as much as a lament for what it is becoming. In chapters 8 and 9, the SB explores the many procedural and tactical dilemmas faced in a trial and the feeling counsel often gets that justice is not always achieved in the adversarial system. He then balances this out by considering the alternative: reposing all of the adjudication functions in the State in the manner of the inquisitorial system, and concludes that a system of independent fact finding with a non-State contradictor, with all of its flaws and difficulties, is fundamentally the one that he would prefer.

*The Secret Barrister* is a little like a horror blockbuster in nerdy book form: a *Jurassic Park*, if you will. Both depict bunch of well-meaning, educated, reluctant heroes shepherding vulnerable people through a landscape of ancient monsters let loose by the greedy cynical rich, and if negotiated correctly, the T-Rex might just save you from the Velociraptor. *The Secret Barrister* might not be quite as entertaining as a Spielberg thriller but it's close, and the dangers it depicts are much more frightening.

Reviewed by Catherine Gleeson

## END NOTES

- 1 We don't know the gender of the SB but as the barrister on the book cover appears to be male, I'll go with that pronoun.
- 2 A good example is a recent article in the *Sydney Morning Herald* about solicitors being forced to turn down legal aid work because the rates don't meet their practice overheads, entitled 'the \$150 an hour lawyers threatening to quit.'
- 3 The NSW Attorney-General announced on 19 June 2018 that \$10 million has been added to a \$29 million dedication in the budget to facilitate the early guilty pleas reforms.
- 4 The impact of this state of affairs on criminal and family barristers was measured in a recent report by the UK Bar Council, with stark results: more than half of these practitioners reported being under too much pressure from their work, when compared with civil practitioners, while barristers across the board reported that they found their work intellectually satisfying. A number of the responses from the Criminal Bar communicated the stress of not being paid properly, or at all, for the work that they do. The Bar Council *Barristers' Working Lives 2017* [https://www.barcouncil.org.uk/media/661503/working\\_lives\\_-\\_final.pdf](https://www.barcouncil.org.uk/media/661503/working_lives_-_final.pdf) at [2.5].
- 5 A murder charge was set down for trial at the Old Bailey in September without counsel: Pennick, E 'Murder case first to be hit by barrister action' *Law Gazette* <https://www.lawgazette.co.uk/law/murder-case-first-to-be-hit-by-barrister-action/5065517.article> 4 April 2018.



## *Korea; Where the American Century Began*

By Michael Pembroke

Success is achieved by a combination of talent and luck. There is no doubt that Michael Pembroke is a talented author and, with the timing of his latest book *Korea – Where the American Century Began*, he has been lucky.

He began writing this book in 2015, inspired by a longstanding desire to understand the battle of Maryang San in which his father had fought in the Korean war in 1951, but, as he states in the Preface: 'It is a wider account, a cautionary tale, an explanation of the modern era. It is a story of politics and militarism, hubris and overreach'.

By the time Pembroke finished the book in November 2017, Donald Trump had become President of the United States, had ridiculed Kim Jong-un as 'Little Rocket Man' and had threatened to 'totally destroy' North Korea. These developments are incorporated as part of a consistent and worrying narrative: whilst the United States has purported to act as the world's policeman since 1945, it has made mistakes and has not learnt from them. With a modicum of humility and compromise, the world could have been a much safer place.

As Pembroke notes, Korea's abiding problem is its geography. It is squeezed between China and Russia to the north and Japan to the south. A unified Korean kingdom existed from at least the seventh century; and, after the expulsion of Kublai Khan, the Chosun dynasty ruled from 1392 up to a Japanese invasion at the turn of the twentieth century. Britain, Russia, China and the United States were all involved in the events that led to the establishment of a Japanese protectorate in Korea, with

each driven by considerations of trade and establishing 'spheres of influence'.

After the Japanese surrender in 1945 and as Russia advanced through Manchuria and then southwards down the Korean peninsula, the United States decided that it had a strategic interest in declaring an artificial division at the 38th parallel in order to halt the Soviet advance; and then in securing and cementing that division by a military occupation. A unilateral decision was made without regard to the wishes and interests of the Korean people. Thus, the ensuing conflicts between the North and the South have been driven not by a desire to destroy or conquer the other, but rather by a wish to re-establish what had been taken away by the United States - a united Korea.

It was the North that moved first (with Chinese and Russian acquiescence), driving down over the 38th parallel in June 1950 and deep into the South. The Americans responded and pushed the North back to the 38th parallel in September 1950 and that is where matters should have rested, three months after they began. Instead, and in spite of warnings from China, the Americans continued over the 38th par-

*But American indignation and embarrassment led their forces to destroy everything as they retreated: rations, crops, towns and villages; and then a bombing campaign of total destruction was unleashed.*

allel, up through North Korea and with the intention of crossing over the Chinese border and into Manchuria.

Having lured the American forces deep attacked and, as Pembroke puts it, 'the nightmare unfolded' with nightly attacks and each worse than the night before as the Americans retreated or, perhaps more accurately, scattered and ran away. The annihilation of the American forces only ceased when the Chinese could not keep up with the American retreat, which left the forces in March 1951 (nine months after they had begun) divided at the 38th parallel, which was of course where they had started. And for the second time, that should have been that.

But American indignation and em-

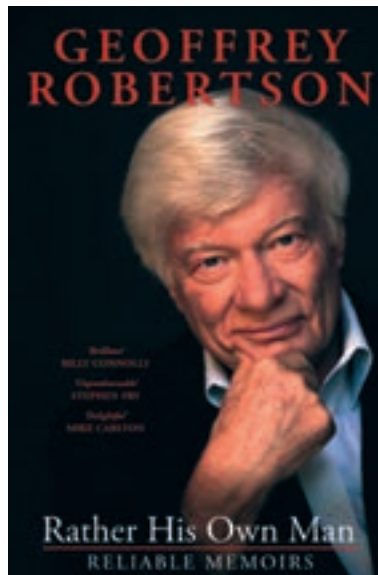
barrassment led their forces to destroy everything as they retreated: rations, crops, towns and villages; and then a bombing campaign of total destruction was unleashed. It continued for over another two years (including for over a year when the only outstanding issue at the ongoing peace talks was in relation to prisoner repatriation), 'systematically bomb[ing] town by town' and killing about three million mostly non-combatants. It seems likely that biological weapons were deployed; and atomic strikes were only very narrowly avoided. The expressed purpose was to induce 'a more cooperative attitude at the truce talks', but a more accurate description quoted by Pembroke was a 'war by tantrum'.

And so American defeat in the Korean conflict led to its mistakes being repeated in Vietnam and, later, Iraq. The war crime of the American bombing went unpunished and America has continued to refuse to sign various international treaties. President Trump's suggestion that America no longer wishes to be the world's policeman is hardly consistent with its maintenance of military bases around the world and its insistence that peace in Korea can only be achieved by a conflict (military or diplomatic) between the United States and North Korea. It is clear that peace in Korea requires, rather than an increasing involvement of the United States, the encouragement of increasing rapprochement between the North and the South (building on measures such as the unified ice hockey team at the 2018 Winter Olympics and the leaders' recent handshake) and a withdrawal of American forces.

A treaty between the United States and North Korea of whatever type will never be sufficient to ensure peace in the Korean peninsula: Korea should never have been divided and it needs to be reunified.

This is a book that is extremely and consistently easy to read, but with sufficient well-sourced detail to leave the reader better informed on what has become one of the essential topics of the day. I was at various times astonished, angry, worried and in despair at what Pembroke describes as 'the ignorance and intransigence of some men and women'. It was never anything other than enjoyable and thought provoking; and its scope, content and timing is such that it should be read by anyone with an interest in the current situation in Korea or indeed in America's ongoing efforts to shape and dictate events across the globe.

Reviewed by Anthony Cheshire SC



## *Rather His Own Man - Reliable Memoirs*

By Geoffrey Robertson

Each year, I make a point of warning the new readers on the Bar Course that whatever intellectual stimulation they may provide, their own cases are not interesting. Anyone who has ever attempted to entertain a dinner party with tales of equitable estoppel or the second limb in *Barnes v Addy* should, by now, have realised that to be the case, or else lack self-awareness and, most likely, invitations to dinner. Criminal barristers often make better dinner companions since their cases are generally more factually interesting, but the content is not always well-received or appropriate; and the caricature of the ageing silk with his war stories has always been one of the worst offenders.

Geoffrey Robertson is a wonderful exception. He has had an extraordinary and successful career. Although born in Sydney, he made his name in London, arriving only a few years after Germaine Greer, Clive James, Robert Hughes and Barry Humphreys. As such, it would be easy to dismiss *Rather His Own Man - Reliable Memoirs* as the pompous (a word he uses to describe himself) war stories of a tall poppy ex-pat.

That, however, would be completely inaccurate and unfair. These are the rollicking adventures of an exceptional talent with an unwavering commitment to human rights allied with, one suspects, a large dollop of good fortune. Add in a bucket of popcorn and it might even make a good film - I suspect Robertson would choose George Clooney, a personal friend, to play him.

Brought up in Eastwood with a love of tennis (Lew Hoad and Ken Rosewall) and

cricket (Alan Davidson, Richie Benaud and Ian Meckiff), Robertson describes his family as 'a middle-class family in a middle-class house in a middle-class suburb, with a Hills hoist in the backyard and a small car in the carport'. They took the Fairfax *Sydney Morning Herald* rather than Packer's *Telegraph*, which was taken by the 'working-class neighbours' or Murdoch's *Daily Mirror*, which was taken by 'those with no class at all', including 'the men in our street...who beat their wives'.

Good Leaving Certificate results, including coming second in the state in history, led to Sydney University, university

*These are the rollicking adventures of an exceptional talent with an unwavering commitment to human rights allied with, one suspects, a large dollop of good fortune.*

politics (including as SRC president) and friendship with people such as Michael Kirby, Richard Walsh (the editor of *Oz* magazine), Gareth Evans, John Bannon (former premier of South Australia), David Marr and Jim Spigelman. His position as editor of the Law School magazine *Blackacre* included a successful campaign for the setting up of a new Law and Social Justice course.

His law career began at Allen Allen & Hemsley in 1966 and included a telephone call from John Kerr (then a judge of the Commonwealth Industrial Court) seeking his assistance in the defence of his son, who had been arrested at an anti-Vietnam rally. Kerr then introduced him, at 'a small dinner party', to the then chief justice of Australia, Garfield Barwick. Talent and the contacts he had made at university propelled Robertson on.

After a bizarre CIA-funded Far-East Student Leader Scholarship in California (including catching up 'with an old friend, Nick Greiner'), a Rhodes scholarship led him to Oxford and then the Bar. He became involved in the successful defence in the *Oz* obscenity trial and by 1974 he was fulfilling his 'boyhood dream to appear, wiggled and gowned, addressing a jury beneath the Old Bailey dome on which stands the iconic golden statue of