



BOOK REVIEWS

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THE OXFORD COMPANION TO THE HIGH COURT OF AUSTRALIA

**Edited by Tony Blackshield, Michael Coper, George Williams
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Companion volumes have a long history, going back at least to the nineteenth century. Mostly, they have been regarded as 'mates' as one Dictionary definition of the word describes it; plain speaking, most often simplified guides to a variety of subjects, giving the uninitiated an introduction to the more complex material to which they refer. With this volume, however, it is largely simply not so. The vast majority of the 435 entries are effectively beyond the reach of those who lack a reasonable knowledge of the working of Australian law and sometimes, moving beyond this, require more than a passing acquaintance with the more specialised field of Australian public law.

Overwhelmingly, the 225 authors have such legal audiences in mind in varying degrees. Led by the present Chief Justice of the Court, Murray Gleeson, his three living predecessors, Sir Harry Gibbs, Sir Anthony Mason and Sir Gerard Brennan, and present day High Court justices Ian Callinan, Kenneth Hayne and Michael Kirby, there are also contributions by two former Governor-Generals with distinguished legal credentials, Sir Zelman Cowen and Sir Ninian Stephen. To this are added a bevy of other notable contributors including former Prime Minister

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Gough Whitlam and the Chief Justices of South Australia and Western Australia, John Doyle and David Malcolm.

Importantly, the contributions by these luminaries provide a solid foundation for this volume, with insights not only about their own thinking but with respect to the working of the High Court more generally. Sir Gerard Brennan's entry on *Common Law* is just one that is especially illuminating; Justice Kenneth Haynes' biographical sketch of *Owen Dixon* is highly rewarding; Justices Ian Callinan and Michael Kirby both show a well-honed penchant for producing biographical examinations of former members of the High Court that will stand the test of time.

Chief Justice Doyle's contribution on the *Mason Court*, done in collaboration with Michelle Dillon, helps to underline that South Australia has long produced lawyers of more than sufficient calibre to be appointed to the High Court although no such appointments have so far been made. David Malcolm's contributions dealing with the *Legal Profession* and *State Supreme Courts* provide an important balance in relation to the state-oriented legal activities that can never be ignored in working for an understanding of the working of the judicial system in Australia.

With such a large range of contributors, however, it is not surprising that the quality and authority of the entries can vary considerably. There are some that naturally stand out, like Professor Jeffrey Goldsworthy's highly persuasive entry on *Positivism* and Professor Geoffrey Lindell's on *Political Questions*. Others are little more than traditional style Law Review style 'case-notes', mixed with gems along the way, like the entry on *Foreign Precedents* by Bruce Topperwein that is accompanied by a valuable table on the percentages of High Court cases in which foreign precedents have been cited.

But why there should be a longish historical style exegesis on the *Cold War* and none on the First and Second World Wars remains something of a mystery, given the great impact each of these events on the decision making of the High Court. As might be expected, the *Whitlam Era*, by the Prime Minister of the period, is zestful and at times significantly revelatory with special reference to court appointees and other matters. It is something of an oversight, however, that there is no similar examination of the Menzies era, given that the role of the longest-serving Prime Minister of the twentieth century had a monumentally significant impact on the character of the High Court through the agency of a political leader with a highly tuned, abiding interest in its working.

At the same time, the volume does follow the tradition of 'Companions' in not aspiring to be an 'encyclopaedia', a feature that must be noted carefully in approaching it. Despite references to hundreds of cases, for example, many of these are only passing notations and even in more extended forms sometimes provide no

substitute for the use of digests and texts for beginning meaningful research on High Court and other decisions.

Nor is the volume anything like complete in the way it covers the literature dealing with the High Court, although the entries by Dr James Thomson, the most assiduous, perceptive bibliographer of the High Court and its surrounds, go part way toward this, within the prescribed limits of his significant contributions on *Biographies, Commentators and Extra Judicial Writings*.

But this leaves gaps that can tantalisingly leave untouched writings that can still bear heavily in comprehending matters relating to the history of the High Court and its working, down to the present day. One prime example of this, but far from the only one, is the absence of any mention of a seminal article by Andrew Inglis Clark in the *Harvard Law Review*. There is no mention of this in the entry on him, nor in the contribution on *Judicial Review*. In this, the widely acknowledged chief architect of the constitutional provisions on judicial power examined the foundations of the authority of the High Court in reviewing the constitutionality of legislation, as he comprehended it.

In contrast, one of the notable strengths of this volume centres on the biographical information it provides on the justices who have served on the High Court. As Dr Thomson points out in his entry on *Biographies*, ‘much remains to be done’ on this in Australia. As he notes, one defect with this has been the tendency of ‘extolling the ‘greats’’, too often neglecting the pivotal roles of less publicised members of the High Court in relation to its activities. Fortunately, significant entries on all of the court’s justices in this volume, well set in place by Professor Cheryl Saunders’ entry on former justice Daryl Dawson, point to a fruitful beginning of a movement in this direction.

A special entry on the *Dixon Diaries*, added to accompanying separate entries on Owen Dixon and the *Dixon Court*, also sets a lead for opening up new vistas in examining the working of the High Court to begin meeting the criticism of Dr Thomson and others that, too often in the past, biography in this country has failed to probe sufficiently the lives and thinking of those holding judicial office. While it may be fortuitous that some of these Diaries have survived and have now become the subject of public discussion, they obviously provide invaluable insights on the working of the High Court when Owen Dixon was a member of it.

But as Dr Thomson also concludes, much work on Australian judicial biography ‘remains to be done’, and this is also evidenced in this volume. While there are various mentions of Felix Frankfurter, of the Supreme Court of the United States, he receives no separate entry, despite the role he played in helping to influence members of the High Court over a period of many years, as evidenced by his long-

term correspondence with three of its members, Henry Bournes Higgins, Herbert Evatt and Owen Dixon.

Similarly, it is surprising that the influences of legal education on members of the High Court, particularly the differences between New South Wales and Victoria, finds no place in this volume. Owen Dixon was not alone in recalling the significance of his legal education on his professional life, in the same way that the thinking of his immediate successor Garfield Barwick persistently shows traits and understandings which can be rooted in his legal education in New South Wales. As Barwick acknowledged in his autobiography, for example, at the time he advised Governor-General Kerr on the dismissal of the Whitlam government in 1975, he was unaware of the case law dealing with a similar situation in Victoria in the nineteenth century, an oversight that would almost certainly not have occurred if he had received his legal education south of the Murray River.

There are also aspects of this volume that unfortunately also make it less ‘companionable’ than it might have been. There is no Bibliography, which could at least have been a worthwhile beginning for the much-needed guide to the literature relating to the High Court which Dr Thomson also touches on in his entry on *Extra-judicial writings of the Justices*. Given the alphabetic form in which the contributions appear it would also have been helpful if it was less a matter of chance in finding them, together with the inter-relationships between various entries. While this is essayed by the inclusion of bold type, this is too often no substitute for the style of cross-referencing in other publications like this one; the recent *Wakefield Companion to South Australian History* provides a case in point. One simple example of this is to be seen in the way the entry on *Judicial Review* is not expressly cross-referenced to those on *Justiciability* and *Political Questions* and vice-versa, contributions that cannot be put into perspective without interrelating them.

With all of the time, effort, expertise and money spent in bringing this project to fruition, despite many admirable traits it is a great pity that the absence of such ‘nuts and bolts’ seriously detract from its overall value for those who seek to use it.