

Of ‘Fragile Bastions’, ‘Political Judges’ and ‘Robust Debates’: Judges and Their Critics

*John M Williams**

I Introduction

Criticism of judicial officers and their work is a regular feature of the daily news. The scene is a familiar one. The aggrieved family or friends of the victim will be pressed for comment outside the court at the end of a trial by the waiting media pack. To the leading question, ‘Are you happy with the verdict?’ a response will be offered usually encased in the emotion of the moment. Yet such criticism is not the only species of commentary that accompanies the work of the judiciary. All institutions in a functioning democracy will be the subject of criticism and review. The judiciary is no different. Yet there is a general unease about the strength of the community consensus surrounding the value of the rule of law when the courts or judicial officers are the subject of relentless critique or ridicule.

In this chapter I explore the various typologies of criticism that attend the courts. In particular, I consider the distinction between governmental criticism and that which emerges from the public. This discussion is placed within its larger constitutional context and take account of the role and function of the judiciary in Australian society.

II Early Criticisms of the Judiciary

The robust reflection on the courts or individual judges is by no means a new phenomenon. However, in an internet age when everyone has the potential to be a publisher, the capacity for exponential commentary and criticism is the new reality of life. Remarkably it is now possible to go online, at least in the United States, and ‘rate my judge’. On the *Robing Room* website, judges are able to be critiqued against a myriad of criteria. A cursory view reveals that judges, like hotels or restaurants, can now be given a star rating. Judge X, for instance, was said to be ‘a very, very lazy judge’ and ‘remains ignorant and lazy when he does show up’.¹

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1 North Law Publishers, Inc, *The Robing Room* (1 September 2014) The Robing Room, <<http://www.therobingroom.com/Judge.aspx?id=51#21420>>.

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