

THE SUPREME COURT OF NEW SOUTH WALES
REMEMBRANCE DAY, 2016 : THE LEGAL PROFESSION AND WORLD WAR ONE

Banco Court, 10 November 2016

THE FORGOTTEN CEW BEAN

by

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A THESIS FOR REFLECTION : A FULL APPRECIATION OF CEW BEAN MUST ACCOMMODATE THE “SOCIAL MISSIONARY” AS WELL AS THE WAR CORRESPONDENT

- 1 It is nearly impossible to tell the story of Australians in war – a large part of our national narrative – without drawing upon the work, and mentioning the name, of CEW Bean.

- 2 He is known to the current generation of Australians (if at all) as Australia’s Official War Correspondent in World War I, as editor of Australia’s *Official History* of that war and as one of the founders of the Australian War Memorial. The extensive archive he left to the War Memorial – official and personal papers – is regularly consulted by military historians.

- 3 Whether social historians have consulted the archive in a sustained way is, however, open to doubt. They do not appear to have embraced Charles Bean, or his papers, but, rather, to have allowed him to be quarantined in specialist military history. More’s the pity. He is open to be viewed through more than one prism. His life story offers an opportunity to trace the development of “Australia” in its formative decades. His constancy of character, his personal growth in the opinions he held, and his role in shaping national opinion provide a means of calibrating national change.

- 4 We imagine we know this man, so connected with our military tradition: unassuming, physically brave, morally courageous, an Australian nationalist, a founder of our foundation myth, “mateship”.
- 5 We think we know him – and he has invited us to know him – but, blinded by the light of his service to Australian military history, the current generation does not know the half of him. We know “the military man”. We have lost sight of the civilian. Bean was an idealist, not so easily compartmentalised. His was a very independent mind.
- 6 The only book of his currently in print is a Penguin Books edition of *ANZAC to Amiens*, a single volume, condensed version of the 12 volumes of the *Official History* published between 1921-1942. It was first published by the Australian War Memorial in 1946.
- 7 Occasionally, Bean’s most famous non-military book, *On the Wool Track*, is republished. The first edition was published in 1910. The last, revised edition published in the author’s lifetime was published in 1963.
- 8 We can only begin truly to know CEW Bean if we ask, as we sometimes do, and as he did at the end of both World War I and World War II: What was the point of this war? What way forward? Is there a peace dividend?
- 9 Ever the optimist, his answers generally led him to emphasise the importance of thorough planning of programmes for social improvement through education, town planning and healthy lifestyles for all.
- 10 When we pause to remember those who lost their lives, or otherwise suffered, in war (as Bean bids us do), we should pause also, as he did, to reflect on the hope of a better world, not just for some, but for all. Understanding that this was an essential part of Bean’s whole being is essential to any appreciation of his life story.

- 11 If we take Bean seriously – as we should – he should be studied, not merely as a war correspondent, war historian, archivist and public administrator. He should be studied, also, as a deeply philosophical (and I would say, despite his protestations, a profoundly religious) man who, although given to utopian dreams and a constant search for Truth, was preoccupied with practical outcomes and an insistence that every action taken be grounded upon empirical observation.
- 12 His most recent biographer, Peter Rees, describes him as a “social missionary”. That is a side of him that has been overlooked by contemporary Australians, but cannot forever remain so. An engagement with the whole man, a willingness to engage him in sympathetic conversation, is likely to test any attempt to confine his legacy to military affairs or, conversely, to marginalise his experience of war.
- 13 A full appreciation of his contribution to Australian history requires that both sides of the man – military and civil – be weighed in the balance.
- 14 Tonight’s Remembrance Day event provides an opportunity to re-orient our understanding of Charles Bean, with a particular focus on his connection with the law, and the Supreme Court of NSW. Although he was not a lawyer for very long (his first love always remained a passion for writing on large themes, principally as a journalist and historian), he had a lawyer’s preoccupation with “facts”.
- 15 One might well suspect that he never really wanted to be a lawyer – it was only ever Plan B of a man who longed for the career destiny ultimately bestowed upon him – his legal training reinforced him in a predisposition (inculcated, from his earliest days, by his schoolmaster father) towards analysis of facts as a cornerstone of Truth, his guiding star.
- 16 Through Bean’s voluminous writings we can chart the personal growth of a thoughtful man, and the growth of Australia as a nation, from the insularity of the White Australia Policy at the time of Federation in 1901 to acceptance of

full membership of the world community in the 1960s. The fires of war burnt away prejudices that predated them.

- 17 In the heat of the Second World War Bean publicly criticised the Australian government for demonising the Japanese enemy. In the wake of that war, he repudiated “race” as a foundation for discrimination between peoples and he embraced immigration as a necessity for an Australia open to the world.
- 18 His growth, and that of the nation, was, and is, the product of the two world wars and deep reflection on the interconnectedness of people everywhere.
- 19 In the wake of “The War to End all War” Bean, while never a pacifist, desperately hoped that the experience of 1914-1918 would not be repeated in the 1930s.
- 20 On 21 March 1939 the *Sydney Morning Herald* published an article by Bean that explained his support for Neville Chamberlain’s policy of appeasement. It was entitled: “Recantation”. Germany’s Bad Faith. End of Appeasement.”
- 21 Bean had stood with Chamberlain in the spirit of Winston Churchill. His “Recantation” demonstrates that:

“The policy of Mr Chamberlain, as some of us from the first understood and supported it, was as follows: -

If Hitler means to act in good faith – or if the opinion of the German people, appreciating that we intend to deal with them in fairness, induces him to do so – then an attempt to settle international difficulties by reason and goodwill may succeed and the ghastly spectre of world-war be exorcised.

If, on the other hand, Hitler proves to act in bad faith, and the good that we believe exists in a great part of the German people does not prevent him, then we shall be driven to reply to force by force. But we shall do so united by the knowledge that we have done everything humanly possible to offer the other solution; and, if it comes to the worst, our opponents will be divided by the consciousness that their leaders have lunged them into needless war.

FAITH SHATTERED

To the bottom of our hearts many of us believe this policy to have been wise and right, though many others, who loved peace and justice as well as we did, have strongly criticised it. We do not regret one word of it. But we do recognise that the events of last week [in Czecho-Slovakia] have united us with our critics. If recantation means singing a different song, then we recant in this sense: What has happened has ended the first half of our theme – the only tune we can sing is that of the second half.”

22 An impediment to our ability to get to know Bean in full measure, and to chart his growth (and our own), is the absence of republished versions of a monograph he published at the end of World War I, and another as he anticipated the end of World War II. Each bore the character of a personal letter to all Australians, urging the nation to embrace social improvement.

23 *In Your Hands, Australians* was published in 1918 and republished in 1919. *War Aims of a Plain Australian* was published in 1943 and republished in 1945.

24 In his Introduction to *In Your Hands, Australians* (dated November 1918) Bean wrote:

“We have done with the Great War. We are facing peace. This small book has been written to help the men of the A.I.F. and the young people of Australia, in the trying period after the war, to fill their spare time with a thought or two of what we can all do for Australia in the long peace which many who will not return have helped to win.

One does not need to enlarge upon Australia – that word alone means too much to us now to call for a single sentence of mine to expand it. But what we can do for her may at least be the theme for thousands of debating societies here [on the battlefields of Europe] and in Australia. If these few pages assist young Australians to think how they can help Australia themselves in any capacity, the purpose for which they were penned is more than served.

Any author’s profit from this book is devoted to funds of the A.I.F.”

25 The 16 chapters of the book were entitled, respectively: (1) The Legacy; (2) Under Which Flag?; (3) The League of Nations; (4) The Towns; (5) On starting a Progress Association; (6) The Use of Brain; (7) Foreign Policy; (8)

New Zealand, Britain, America and Canada; (9) Defence; (10) Population; (11) The Country District; (12) The Country Town; (13) The Great Cities; (14) Who can best make our city laws?; (15) The Laboratories that we need; and (16) Education.

26 It is no accident that the culmination of the book is a chapter on education.

27 The introductory paragraphs of that chapter are in the following terms:

“A country is not as happy nor as prosperous as it ought to be unless it is making full use of all the brains, character, and bodily strength of every new citizen that is born into its nation. If, for example, a country possesses children who might grow up into brilliant artists, singers, and musicians, but for want of a scheme of education it leaves them to learn only the three R’s, or even unable to read or write, then it is not going to enjoy the music, or pictures, or songs which it might enjoy. If it has, amongst its poorer children, some who have the sort of intellect to be able to invent, after years of experiment, a method of carrying peaches and apricots fresh to the English or North American market at their mid winter; if it possesses such a boy or girl and yet leaves him or her with only sufficient education to sit upon the tailboard of a delivery van or run messages in an office, then it is going to be much poorer than it ought to be. For a system of delivering fresh peaches in Europe would probably make every Australian a little wealthier.

The nation likely to be most prosperous and happy is the one in which every boy and girl is enabled to use his or her brain and character in exactly the work for which they are best fitted, so that this country gets the whole value out of every citizen in it. To see that every young citizen fills, as far as possible, exactly the job he is most capable for – that is the object of the States system of education. It should not only enable each youngster to reach the employment he is best fitted for; it should, with all its power, encourage him to do so.

How can the State best do that: ensure that the son of a dustman, if he has the capacity for it, becomes a judge of the High Court, while the only person who becomes a dustman is the man who is fitted for it, whatever his birth? And á propos of that, some people have said: ‘If you improve the brains of every boy to their best capacity, you will not have anyone fit for a dustman. Nor for a ploughman. Nor for a labourer.’ Well, what if we do not, is it going to be any worse for our country if, in the end, the dustman becomes an engineer driving a machine which automatically does the work of twenty dustmen, or if the old farmhand with a hoe becomes a skilled farm mechanic driving a motor plough, or the only wharf labourer, some day, a brakeman superintending some elaborate hydraulic machinery for discharging ships? That is the way these old manual industries of the older centuries are already developing in the new world with advanced education and brilliant invention. Is not that an ideal to work for, if education can bring it about?

But that is straying from the point. How can the State ensure that each young Australian who comes into the world drops as nearly as possible into the work in life which his brain and character fit him for?

Only by a system of education which gives to every child born an equal chance (and positive active encouragement) to develop every ounce of brain power, physical strength, and manly or womanly character that is in them; which takes them from the Primary School, if they have capacity, either to the High School or the Trade School, and from there to the University or the Agricultural College or the Technical School, or Commonwealth Military or Naval College, or to a School for the Merchant Sea Service of Australia, or the Conservatorium of Music or Painting or Sculpture in any of our great towns, or possibly even in some of the big country centres – which lies open; in short, to every Australian child the whole, well thought out, carefully planned educational system which we will some day have in the new Australia. You have to make that system, young Australians. It is one of the greatest works, perhaps the greatest, that you can do for your country. You can help in it either by thinking out and supporting the creation of such a system, or, ten times better still, by taking part in it as teachers *for the sake of the work you will be doing for Australia*”

28 Bean held fast to this vision in *War Aims of the Plain Australian*. That is most evident in chapter 12, entitled “Educate!”

29 It is not necessary, in the present paper, to do more than to recognise Charles Bean’s commitment to social improvement by recording the following extract from the Preface to the 1943 edition of *War Aims of the Plain Australian*, repeated in substance in the 1945 edition:

“Twenty-four years ago, when the A.I.F. and its British and American coppers had just fought their way through the Hindenburg Line and news came that the Germans were asking President Woodrow Wilson to arrange an armistice, the present writer, then Official War Correspondent for the Australian Government, seized the respite for a fortnight’s leave in the south of France, and spent this holiday in writing, for Australian soldiers and school children, a little book about the problems of Australia’s future. In this, *In Your Hands, Australians*, he urged that we should apply to that problem one lesson that seemed to stand out from four years’ war experience – the need for planning and the possibilities that it offered.

Here was Australia, an almost uncommitted country, with her future largely to mould. Given the intelligence, the youthful enthusiasm, and the patriotism that had marked Australians in the war, what a country they could make of it!

We failed, failed wretchedly, through natural causes which now, fortunately, are generally recognised and which will presently be discussed. The failure has one bright side. We do not have two such chances in a lifetime; but the same devotion of the co-operative peoples that brought us that chance in 1918 will bring it to us a second time in the near future. Within a year or two the ball will again be at our feet; but this time we have the experience of 1919-39 to guide us.

It is often contended that the only issue that should be discussed in war is, 'How are we to win?' and that all thought as to what is to follow the war should be postponed until we have won. Those contentions are self-contradictory. If the course of this war has proved anything it is that Oliver Cromwell was right when in 1643 he wrote that the citizen soldier of his New Model Army should 'know what he fights for and love what he knows'. ...

...The ball will be at our feet within a year or two. Surely it is high time that we give serious thought as to what we should do with it. The object of this little book is to help that thought; to direct some readers, perhaps, to points that must be considered, and, together with essays of the same kind by other pens, to give impetus to further thought and discussion. May we all play the game with larger wisdom than in 1918 and with our whole strength, so as to win not only the war but the peace – *This time.*"

- 30 It is not presently necessary to enter upon an assessment of the success or otherwise of the Commonwealth's post-war reconstruction programme, or any other social programme. It is sufficient to observe a strong predisposition in Australia's proto-type of a War Correspondent and Official War Historian towards integration of thinking about war, peace and the betterment of society.
- 31 More than we sometimes acknowledge (especially in a world given to deployment of Defence Service personnel in peace-keeping duties) such integration of thought is deeply embedded in Australian Society. If that be so, CEW Bean played his part in moving us in that direction.
- 32 We cannot fully appreciate Charles Bean, or nuances in his writing, absent a scholarly review of *In Your Hands, Australians and War Aims of a Plain Australian* and, more broadly, the full range of Bean's writing, military and civil, as a whole. There lies a challenge for the Australian academy.
- 33 A large step has been taken towards a better understanding of Bean with the publication of Ross Coulthart's *Charles Bean* (Harper Collins, 2014) and, more recently, Peter Rees' *Bearing Witness* (Allen & Unwin, 2015). Both biographies are worthy of notice. Both examine the whole man, but Coulthart's primary focus is on Bean as a war correspondent, and Rees takes greater notice of Bean as a "social missionary".

THE ARNOLD TRADITION, WESTERN PHILOSOPHY AND CEW BEAN

- 34 Each biography notices, as any sustained review of Bean's life as a whole must, the deep influence on Bean of his study of the Western classical tradition (based on ancient Greece and Rome) and what Bean himself described (in his history of independent schools in Australia, *Here, My Son*, published in 1950) as "The Arnold Tradition".
- 35 Bean absorbed the importance of Western philosophy, and the Arnold Tradition, from his family. Under their influence, he married ancient philosophy and Christianity in talk of "Christian ethics", a marriage of ideas accommodated by the liberal wing of 19th century Anglicanism. In that respect, with the full support of his mother, Lucy, he emulated his father, Edwin. While headmaster of Brentwood School (1891-1913), Edwin took Holy Orders in the Church of England as an aid to his service as headmaster of an English Public School. He was ordained Deacon in 1897, and as a Priest in 1898.
- 36 The two strands of Charles' belief system – ancient philosophy and Christianity – are evident in a talk he presented on ABC Radio in 1948 (reprinted in *The ABC Weekly*, Sydney, 3 April 1948) as part of a series entitled "I Believe...", that called upon prominent Australians, including Kim Beazley's father (Kim Beazley senior), to bare themselves to the country.
- 37 Bean's account of himself included the following observations:

"My philosophy of life is – like, I suppose, other people's – the outcome of a journey in thought and experience.

It began, I suppose, at birth; but I think it is true, as I recently argued, that a child's outlook on life is 'caught' rather than 'taught' – that is to say that until about the age of 15 it is learnt from the example and dogma of parents or other leaders who are the child's heroes, and not from any reasoned explanation of how right doing leads in the end to happiness, and wrong doing to misery.

I think that was true in my own case....

Part of [the philosophy of ancient Greece and Rome encountered by Bean at the age of 17 years] concerned the question, 'Why are some actions called good and others bad? And what is man's aim in what we call good conduct?'

All my life since I have wondered whether that aim was, or was not, what the great Greek philosophers conceived it to be – happiness.

Some great thinkers have disagreed with this, but after 40 years of experience I still find no definition of the aim of life so satisfactory.

By 'happiness' these thinkers meant quite a different thing from pleasure. Aristotle describes it as the condition which arises when we use our capacities perfectly; and, as men are social beings surrounded by other beings, this happens only if each plays his part perfectly in their common relations....

... [To] an increasing number of people, the tragic events of the past 30 years have shown more plainly than ever that the way to happiness – national, international, and individual – lies in the aims and virtues which Plato and Aristotle explained and which were raised in a different and much more powerful way by the founders of the great religions – and certainly most purely, most widely, and most effectively by the founder of Christianity.

The conclusions of this philosophy and religion thus seemed to me to be in reality identical, and philosophy gave one a reasoned system as to what was right and wrong, and why.

Nevertheless, if we, and the whole universe, were merely the accidental result of the rush of atoms through space, depending upon chance in chaos, there seemed little incentive to living....

And the feeling came to one with immense force: 'If God is not there to order the world for good, surely it is man's job to put Him there'. And with man's enormously increasing powers, and almost an eternity before him, who could foretell how far he might not go even in such a task.

By that time one had reached this position, that the question whether God existed or not could make no difference to conduct. Man's task was to help forward his own and other life in this universe; and he could do this only by discovering and using its laws.

And that led one step farther. We are only beginning to explore the nature of mind and life; yet we seem to be approaching a point at which life and mind and matter may be found scientifically to be results of a single cause, possibly qualities of the whole universe.

To what conclusions this might lead I do not know; but I have come far enough to have no doubt whatever that our job here is, in whatever way our faculties make possible, to help all life on its slow progress from the amoeba to the archangel or whatever is the highest form to which life can progress.

For civilised men this involves our having, in every sphere, freedom to seek and learn and teach the truth as to the laws of our being – or of nature, or of God, by whichever name you choose to call them."

- 38 Drawing on *Here, My Son*, we can fairly take “The Arnold Tradition” to which Charles Bean subscribed to have been a form of Christian humanism of a democratic (albeit patrician) kind, emphasising individual self worth and qualities associated with “good character”: trust and reliability, honesty, openness, self-discipline, self-reliance, independent thought and action, friendship, and concern for the common good over selfish or sectional interests.
- 39 Bean associated that Tradition with Dr Thomas Arnold (1795-1842), the famous headmaster of Rugby School in mid-19th century England. He imbibed it through both branches of his family. As he tells us, it was an education model admired in each of the schools with which his father, Edwin Bean (1851-1922) was (and, in time, he personally became) associated: principally, Sydney Grammar School; All Saints College, Bathurst; Brentwood Grammar School, Essex; and Clifton College, Bristol. The Tasmanian family of Charles’ mother, Lucy Butler (1852-1942), was actively involved with The Hutchins School in Hobart, a school that identified with The Arnold Tradition, in a State with an Arnold connection. The second son of Thomas Arnold, also Thomas Arnold (1823-1900), was Tasmania’s first Inspector of Schools between 1850-1856.
- 40 Much of Bean’s life, many of the things he did and many of the people he associated with, can be viewed, constructively, through the prism of his school connections or, more broadly, common connections with the Arnold family. Everywhere he turned in his youth were people he respected who were devotees of a system of education, and moral values, personified in Dr Arnold of Rugby School.
- 41 Much of what he was able to achieve, in moving at all levels of society, was achieved because, as a former student of Clifton College, he had a common connection with senior British Commanders (Generals Haig and Birdwood, also former students of the College) and the “Arnold” name gave him a connection with WM (Billy) Hughes (1862-1952).

42 Hughes was publicly recognised by Bean as the up-and-coming politician in the Australian Parliament as early as the first edition of *On the Wool Track* in 1910. As we know, Hughes served as Australia's Prime Minister for most of the war. His mentor as a student teacher, before he emigrated to Australia many years earlier, was Matthew Arnold, the famous poet, a son of Thomas Arnold, an Inspector of Schools.

CEW BEAN AS AN ANGLO-AUSTRALIAN IDENTITY

43 A measure of Bean's status as an Anglo-Australian, at a time when Australian nationalism was still growing in the womb of the British Empire, is that Bean has a personal entry in each of the *Australian Dictionary of Biography* and its British counterpart, the *Oxford Dictionary of Biography*. Both countries claim him as a significant contributor to their history. Despite his pride in a British connection, he was a strident Australian nationalist.

THE COURSE OF A LONG LIFE

44 Charles Edwin Woodrow Bean was tied, by his very name, to family tradition. He was named "Charles" after his maternal grandfather (Charles Butler, 1820-1909), a prominent Tasmanian solicitor. He was named "Edwin" after his father, in whose footsteps he followed to Clifton College, a school with a strong historical connection with the British armed services. He was named "Woodrow" after a great uncle by marriage (Uncle Henry Woodrow, 1823-1876) whose claim to fame, within the family, was that an episode in the 19th century novel, *Tom Brown's School Days*, was based on a real incident taken from his life: As told in Part II, chapter 1 of the novel, Woodrow (personified in the hero of the novel, Tom Brown) had stood up for a little boy (George Arthur) bullied for saying bedtime prayers at Rugby School.

45 The author of *Tom Brown's School Days* (first published in 1857), Tom Hughes (1822-1896), was a contemporary of Henry Woodrow at Rugby School; a Christian Socialist, he was called to the English Bar in 1847, he took silk in 1869, and he became a County Court Judge in 1882. In real life, Woodrow was one of six boys who took supper with the headmaster, Thomas

Arnold, on the evening before Arnold's death. He became an education administrator in colonial India, an honourable career worthy of notice within the Bean family.

46 Charles was born at home, in the grounds of All Saints College, Bathurst (where his father was headmaster), on 18 November 1879. He died at Concord Repatriation Hospital, at home with ex-servicemen with whom he felt a life-defining affinity, on 30 August 1968.

47 In the intervening years, nearly 89, he moved to England as a schoolboy with his parents; he travelled with them on summer holidays exploring historical battlefields of Europe; he studied under his father's close attention at Brentwood School (at which *pater* was headmaster) and at the older man's old *alma mater*, Clifton College; like his father before him, he studied classics at Oxford University and failed, in a competitive exam, to obtain entry into the English Civil Service, which would have led to service in India; he qualified for the English Bar, returned to Sydney, on his own, and began a career in the law (supplemented, briefly, with work as a tutor at Sydney Grammar School); he abandoned the law for journalism; he took on the role of an Official War Correspondent; he lived with Australian troops, up close and personal, throughout World War I; he was wounded by enemy fire; he served as editor of Australia's *Official War History* for over two decades; he helped to establish the Australian War Memorial *and* the National Archives; he received Honorary Doctorates from Melbourne University and the Australian National University; he, more than once, refused a knighthood; and he lived the life of a modest, public man.

AUSTRALIA'S FOUNDATION MYTH : MATESHIP

48 To Bean, as a literary man, we owe a tradition of writing about large issues through the personal stories of ordinary men and women struggling with such issues in real life. That was his style, whether writing about the wool industry in outback Australia (*On the Wool Track*) or about Australians engaged in war

(*The Official History of Australia in the War of 1914-1918*). It has profoundly influenced Australia's perceptions of war, society and history.

- 49 To Bean, as an organiser, we owe the Australian War Memorial, born in the imagination of a war correspondent's transition to war historian. The War Memorial was opened on 11 November 1941, much influenced by Bean's admiration of Classical Greek tradition and an egalitarian spirit.
- 50 Properly understood, as Bean properly understood it, it was, and remains, a memorial to those who sacrificed their lives in war. At Bean's insistence, the Roll of Honour does not acknowledge those who won a Victoria Cross because, in death, all who gave their lives are "heroes".
- 51 To Bean and others, as builders of a nation, we owe our foundation myth – one might hope a reality, but always, at least, an aspiration – of "mateship": a new-world synonym for friendship, loyalty and altruism.
- 52 Charles Bean helped to popularise the concept through talk of "The Anzac Spirit", associated in the public mind, still, with the ill-fated Gallipoli campaign of 1915. However, in newspaper articles penned, in his last days as a judge's Associate, for publication in the *Sydney Morning Herald* after his nominal return to the Bar, he wrote in similar terms about "The Australian character". Under the banner "Australia", he published seven articles on successive Saturdays between 1 June 1907 and 20 July 1907 inclusive.
- 53 An indication of the extent to which we need to know CEW Bean better, in order to know ourselves better, is the possibility that our foundation myth of "mateship" owes much, through Bean, to the ethos of an English Public School (Rugby), a startling proposition on first encounter.
- 54 The Arnold Tradition was an idea well-formed in Bean's mind before his return to Australia in 1905. It was written up by him first as "The Australian Character" in 1907 and subsequently, in 1914, without hesitation, as "The ANZAC Spirit".

55 Charles Bean was meticulous in writing only what he *saw*; but what he saw was, in large part, a function of what he *believed*. As we all do, he saw life through a prism of personal experience, a product of his education. He was an ardent admirer of the schools with which he and, in his perception, the educational legacy of Thomas Arnold were associated. Clifton College, in particular, held a special place in his thinking. Years after the War he named his residence, “Clifton”.

CEW BEAN’S LEGAL CAREER

56 Bean was called to the English Bar, at the Inner Temple, on 15 June 1904. He read with Alexander Adair Roche (1871-1956) and Frank Douglas MacKinnon (1871-1946).

57 Roche progressed, in time, to the King’s Bench Division of the English High Court, the Court of Appeal and the House of Lords. Mackinnon, in time, made his way to the Court of Appeal *via* the King’s Bench Division.

58 Of current importance is not their success, but how Bean saw their practice orientations. How he saw them tells us something of how he saw himself. He characterised Roche as an Admiralty advocate, and the MacKinnon as a specialist in marine insurance law. So he told his young wife in a short biographical note (“Account for Effie”) he wrote for her in about 1924.

59 From the earliest days of his youth, Charles had a fascination with all things naval, and with the Imperial Navy as a foundation for the British Empire. He gravitated in that direction even in his selection of tutors as a fledgling barrister.

60 His move to the Sydney Bar could not have been a good move if he really hoped (as he wrote to Effie, many years later, that he had hoped) to pursue a personal interest in “sea-law”. The Admiralty jurisdiction is not now, and it has never been, a major bread-and-butter fee earner for junior members of the NSW Bar.

- 61 Bean returned to Sydney from England *via* the Tasmanian home of his maternal grandparents (a legal family) on or about 24 January 1905.
- 62 He was admitted to the NSW Bar, by an order of the Full Court of the Supreme Court of NSW (constituted by the Chief Justice, Sir Frederick Darley, the Senior Puisne judge Mr Justice William Owen and the Court's most junior judge, Mr Justice Robert Darlow Pring) on 13 February 1905.
- 63 A brief report in the *Sydney Morning Herald* the following day captured the scene. It was not an august occasion. Dr RM Sly KC (the leader of Wigram Chambers) announced his appointment as a Kings Counsel. Bean was admitted on the motion of Mr CE Pilcher KC, MLC, the third ranking barrister in the State. The Court made orders confirming several orders made during the Court vacation, and dealt with several jurors' fines, before getting to the main business of the day. Having settled, the case listed for hearing was struck out. Without any fanfare, Bean was described by the *Herald* as "an English barrister".
- 64 In accordance with local practice at the time, the *NSW Law Almanac* dated Charles' seniority at the Bar from the time of his call to the Bar in England.
- 65 This was at a time of transition – from a time when NSW barristers generally came to their profession *via* the English Bar - to a time when Sydney Law School (established in 1890) became the usual route to practice as a barrister in the State. The first Chief Justice of NSW to have been born and wholly educated in Australia (Dr WP Cullen QC) was appointed only in 1910.
- 66 Bean nominally commenced practice as a barrister, in Wigram Chambers (167 Phillip Street, Sydney) immediately upon his admission, but he did not stay long or much trouble those with whom he was nominally in competition at the Bar.
- 67 He joined Wigram Chambers at the suggestion, if not invitation, of William Horace Friend (1875-1938), a Sydney born, English barrister (called, Inner

Temple, 1901), a former student at Sydney Grammar School, who Bean met on board the ship from Hobart to Sydney. Horace Friend was a relative of the Australian artist, Donald Friend (1915-1989).

- 68 Wigram Chambers was home to several barristers who were former students of All Saints College, Bathurst. One of those, in service as the Attorney General for NSW throughout Bean's time at the NSW Bar and as a Judge's Associate, was Charles Gregory Wade (1863-1922). Wade signed off on Bean's appointment as an Associate. He served as Premier of NSW between 2 October 1907 and the 1910 State election.
- 69 Charles appears to have survived at the Bar, financially, with assistance from his father, tutorial work that came to him *via* his father's friendship with the headmaster of Sydney Grammar School, AB Weigall, and possibly through journalistic odd jobs.
- 70 On 13 April 1905 he secured publication, in Sydney's *Daily Telegraph*, of an article about the Russo-Japanese War. It was entitled, "The approaching sea fight. Its place in naval history. Why it will be worth watching."
- 71 There was not much business occupying the attention of the courts, or the junior Bar, at that time. In September 1904, George Reid KC (then the Australian Prime Minister) said as much in a published Opinion piece, noting that many barristers wrote for newspapers, coached students and otherwise struggled to survive professionally. Bean himself, from the comfort of a salaried position as Owen J's Associate wrote a letter home on 13 June 1905 complaining that there was nothing to do in the civil courts.
- 72 Precisely how Bean secured his job as an Associate remains obscure. He appears to have owed his appointment to the intervention of Mrs Annie Selwyn (1855-1931), the second wife and widow of Bishop John Richardson Selwyn (1844-1898), through their common Anglican connection.

- 73 Annie knew Edwin and Lucy Bean through Selwyn College, Cambridge, named for her husband's father (Bishop GA Selwyn), the first Anglican Bishop of New Zealand, 1841-1869. Annie's husband, after service as a bishop downunder, was Master of Selwyn College between 1893-1898. Charles' brother Jack (born 1881) studied there.
- 74 Mrs Selwyn was a daughter of Thomas Sutcliffe Mort (1816-1878), a prominent Sydney Anglican and a fellow parishioner, business associate and friend of Sir William Montague Manning (1811-1895), whose career as a judge of the Supreme Court of NSW (1876-1887) gave way to that of William Owen (1834-1912).
- 75 It is possible that the Manning family may have served as a conduit between Annie Selwyn and Owen J in 1905. Charles' immediate predecessor as Owen J's Associate was Charles Edye Manning (1879-1916), a young law graduate soon to be admitted to the NSW Bar, only to have his career, and his life, cut short by World War I.
- 76 According to official records, Bean served as Owen J's Associate between 1 May 1905 and 30 April 1907, inclusive.
- 77 The work he undertook in that office does not equate exactly with the work these days undertaken by a Supreme Court Judge's Associate. An old-style Associate was, in many respects, more like a modern Tipstaff, a graduate lawyer. An old-style Tipstaff was more like an odd-job assistant, and a messenger in a pre-electronic age.
- 78 For those unfamiliar with the organisational structure of the Supreme Court, note that, in Bean's day (as now), a Supreme Court Judge had (and has) a personal staff of two to assist him (or her) in his (or her) chambers: an Associate and a Tipstaff. In Bean's day, Associates generally served their judge for only a year, two, or three; much like Tipstaves do today, generally serving for a year. In Bean's day, a Tipstaff tended to serve for a much longer period – generally measured in years – as Associates now do.

- 79 Throughout the time of Bean's service as Owen J's Associate, the judge's Tipstaff was Henry William ("Harry") Bernard (1864-1955). He served the judge from 1890 until the judge's retirement in February 1908.
- 80 Indicative of the then prevailing hierarchy, the annual salary of a Puisne judge of the Supreme Court was £2,600. An Associate was paid £354. A Tipstaff, £150.
- 81 There was, however, some small redress in the realm of court attire. A judge and his Associate wore robes in court. A Tipstaff's salary (but not that of an Associate) was supplemented by a specific "uniform allowance" of £4, marking a Tipstaff out, in formal terms, as something close to a modern sheriff's officer but on the personal staff of a judge.
- 82 The very day of Bean's formal commencement of service as an Associate, his judge received a commission to conduct a Royal Commission into allegations of corruption in the administration of the NSW Lands Department. That was a big job, with political implications spelt out Cyril Perl's classic, *Wild Men of Sydney*, published in 1958.
- 83 Bean appears not to have been directly engaged in any of the work of the Royal Commission, which occupied much (although not all) of his judge's time between May 1905 and the publication of a primary report dated 23 May 1906. A formal, supplementary report was published dated 17 May 1907. The substantive work of the Commission appears to have occupied only the first year of Bean's Associateship.
- 84 In those days, when a Supreme Court judge went on circuit to rural NSW, he (as they all were) went as a judge of a separately constituted "Circuit Court". Although Owen J was generally regarded as pre-eminent in Equity he was also well regarded as an all-round lawyer, not relieved by his seniority from service as a Circuit Court judge.

- 85 In September/October 1905 Owen J's service as a Royal Commissioner kept him from Circuit Court duties he was rostered to perform. He was replaced by two senior judges of the District Court of NSW, appointed *pro tem* as Acting Supreme Court judges.
- 86 Francis Edward Rogers QC (1841-1925) took on the Wagga sittings, which commenced on 27 September 1905. Grantley Hyde Fitzhardinge (1845-1939) took on the Deniliquin sittings, which commenced on 11 October 1905. Bean served as Associate, and as Clerk of Arraignment, for both of them.
- 87 In September-October 1906, having completed the bulk of his work as a Royal Commissioner, Owen J took Bean on circuit, first to Newcastle and, then, to Tamworth.
- 88 From a legal history perspective, an advantage of Bean's service as an Associate on circuit is that, from country newspapers, we can confirm that he was exposed to a full range of cases, criminal and civil. He didn't miss much. He saw criminal trials (theft, attempted rape, false pretences, assaults, arson, pleas of guilty, juries empanelled and discharged), divorce petitions and other civil claims (master and servant, negligence, trespass, contract, and restitution law).
- 89 We have less assurance about the precise nature of the work undertaken by Bean when not on circuit because, short of a detailed review of archived sources (if any are available), our best guide is probably reports of cases involving the judge reported in the *State Reports (NSW)* and the *Weekly Notes (NSW)*.
- 90 Despite his service as a Royal Commissioner, Owen J appears to have had a full schedule of cases, many of which saw him sitting on the Full Court with Darley CJ or, in the absence of the Chief Justice, as the presiding judge.
- 91 If Bean was present on those occasions when his judge is reported to have sat, he would, again, have been exposed to a substantial range of litigation.

- 92 He may not, however, have been in court with his judge, or fully occupied as Owen J's Associate. The judge was edging towards retirement. He was knighted in June 1906. Bean was his last Associate. The young man's experience was that his judge's work fell away dramatically in February 1907. Owen was replaced by Richard Sly KC (the leader of Wigram Chambers), whose silk announcement coincided with Bean's admission to the NSW Bar in 1905.
- 93 Throughout the time Bean served as Owen J's Associate he appears to have spent much of his time preparing himself for a career in journalism. On 5 March 1907 he wrote to his brother, Montague, of success in securing an arrangement for publication of the "Australia" series of articles in the *Herald*, to be published after expiry of his employment as an Associate.
- 94 Bean returned to Australia, in 1905, with a personal image of the country of his birth as a vibrant young nation, peopled by a robust, rural population. Over ensuing years, he reinforced that image in his own mind and packaged it for public consumption. He idealised men and women of rural Australia, the Outback. At the time of publication of the "Australia" articles, his service as a Judge's Associate on circuit could well have been his most direct, sustained personal engagement with the nation he praised.
- 95 His service with Owen J gave him a connection with a prominent legal family in Sydney as well as country NSW. Had he been intent on a legal career, there's many a young barrister who would think he had been given a dream start.
- 96 Sir William's son, (Sir) Langer Meade Loftus Owen (1862-1935) was a founder of the NSW Bar Association in 1896. He took silk in February 1906, during Bean's service as an associate. He and his wife were active in their support of Australia's war effort in World War I, largely through support for the Red Cross. After the war he became a judge of the Supreme Court himself.

- 97 In the next generation, *his* son, (Sir) William Francis Langer Owen (1898-1972), became a judge of the Supreme Court and, in time, a judge of the High Court of Australia.
- 98 Had Bean been intent upon a career as a barrister, he would have had ample opportunity to capitalise upon connections made as Owen J's Associate and in the wider legal community. As it happens, however, his primary focus appears always to have been on opportunities in journalism, opportunities to promote his vision of Australia.

JOURNALISM : ON THE ROAD TO DESTINY

- 99 After finishing up with Owen J, he nominally returned to Wigram Chambers; but, on his own admission, he spent most of his time learning shorthand in the hope of securing permanent employment with the *Sydney Morning Herald*, with the assistance of an introduction to the Fairfax family by AB (Banjo) Paterson, a Sydney Grammar old boy, for a time a solicitor, then a journalist, editor, poet.
- 100 Precisely when Bean gave up the Bar for journalism is not clear. However, he appears to have been placed on the *Sydney Morning Herald's* permanent staff by 7 January 1908. His name appears in the *NSW Law Almanac* as a barrister only in 1908 and 1909. There is no suggestion that he, in fact, practised, or aspired to practice, as a barrister after January 1908. It took a while for the Almanac to notice his presence at the Bar. By the time it did so, he was gone. His departure, like his arrival, found the *Almanac* not quite synchronised with events.
- 101 As soon as he could do so, Bean pressed towards a career as an investigative journalist with the *Herald*. In May-June 1908 he published a series of articles under the title "Barrier Railway". In August 1908 he published a series of articles about the visit of the American Navy to Australasia, the foundation for his first (self-published) book, *With the Flagship in the South*. In September-December 1909 he published a series of articles entitled "The Wool Land": reworked as his second book, *On the Wool Track*

in 1910. Between July and September 1910, another series was published (in *The Sydney Mail*) as “The Dreadnought of the Darling”; this series, with earlier ones, supplied the material for a third book, *The Dreadnought of the Darling*, first published in 1911. By this time, Bean was well on his way. He secured a posting as the *Herald’s* Correspondence in London, 1911-1913. A fourth book, *Flagships Three*, was published in 1913, as an update of *With the Flagship in the South*.

- 102 One of Bean’s first encounters as a journalist was with Billy Hughes (then a trade unionist and Labour MP) when, in 1908, he covered a waterfront strike organised by Hughes. That encounter led Bean to describe Hughes in *On the Wool Track* as “the ablest man” in the Australian Parliament.
- 103 In 1914, in an election conducted by the Australian Journalists Association, Bean, with the active support of the Fairfax organisation, pipped Keith Murdoch (Rupert’s father) at the post for the office of Australia’s Official War Correspondent.
- 104 The two men subsequently pursued careers suited to their particular talents. Bean, more the team player, prepared to play within rules, was a better choice as an Official War Correspondent. Only Murdoch, with a greater appreciation of power politics, could have written “The Gallipoli Letter” that exposed failure on the Gallipoli Peninsula and led to a reassessment of the campaign there.
- 105 Although Bean gave up any semblance of a career at the Bar when he was accepted into the Fairfax fold in or about January 1908, his name continued to be published as a barrister in the English *Law List* (the equivalent of the *NSW Law Almanac*) until the early 1950s. That was a reflection, not of practice as a barrister, but of the utility of appearance as a barrister in an English stud book.
- 106 For all that, an indicator of how Bean and his family valued his early training in the law, might be observed in the fact that on his 70th birthday guests were summoned to a celebration with an invitation in the form of legal process.

- 107 And Charles' style of writing, with a heavy emphasis on factual evidence and logical analysis, was never far away from techniques that would have served him well had he (against his natural inclination) continued in the life of a barrister.
- 108 Charles Bean was a comparatively shy, quiet man. Self-realisation of this weighed heavily with him against a sustained career at the Bar. He doubted his ability to thrive in the cut and thrust of adversarial contests. He recognised in himself, instead, a determination to pursue truth in empirical observations, and careful analysis, of facts. His self-perception led him away from legal practice and towards the career which, in retrospect, was that for which he, and his family, had long prepared him. A family tradition of involvement with schools modelled on the methodology of Thomas Arnold, publication of school journals as an integral part of that involvement, preoccupation with military and naval affairs, a strong regard for Western tradition, and hopes of adventure all came to the fore.

BEAN'S PERSONAL CONNECTIONS

- 109 From his earliest days – constantly moving in school communities infused with Anglicanism at a time when the Church of England was more associated with government than it now is, Bean met, and mixed with, a wide circle of people, many of whom were part of a governing class.
- 110 Despite a strong personal predisposition towards egalitarianism, he appears always to have been drawn, not unnaturally, to those people with whom he shared a common connection. A connection with school or journalism was no impediment in establishment of a friendship with a man who was predisposed to friendship.
- 111 This is evident, for example, in his selection of authors for the *Official History* he edited, and in his promotion of Gavin Long (whose father, an Anglican Bishop, served as a headmaster of All Saints College, Bathurst) as General Editor of Australia's Official History of World War II.

- 112 Bean's capacity for friendship, and his evident desire to build on common bonds, is capable of casting light on dry historical facts. His admiration for Billy Hughes is one such connection.
- 113 To what extent connections Bean made at the Bar, and as an Associate, continued in later life remains to be fully explored as Tony Cunneen, and others with an interest in personal stories of Australian lawyers in war, uncover those stories.
- 114 Charles Bean's reach, in terms of his friendships and acquaintances, is always capable of producing a surprise. One of those, drawn from his school days at Clifton College, is his friendship with Julian Thoby Stephen (1880-1906).
- 115 Thoby Stephen was a brother of Virginia Woolf (1882-1941), a son of Sir Leslie Stephen (1832-1904) and a grandson of Sir James Stephen (1789-1859).
- 116 It was James Stephen (as he then was) who, with Francis Forbes, settled the form of the *New South Wales Act, 1823 (Imp)*, the foundation stone for the constitution of the Supreme Court of NSW as we now know it. The extended Stephen family played a prominent role in development of the Court and the NSW legal profession in the 19th Century.
- 117 Bean remembered Thoby as his best friend at Clifton College.
- 118 On the verge of commencing practice as a solicitor in England, after graduation from Cambridge University, Thoby tragically died on 20 November 1906 when he contracted typhoid on a holiday excursion with his siblings in Greece. His death was a factor (along with the death of Sir Leslie Stephen on 22 February 1904, and the death on 19 December 1906 of FW Maitland, a close family friend) thought to have unhinged Virginia Woolf. Charles did not learn of Thoby's death until, almost a year later, he received a personal letter dated 29 September 1907 from Thoby's brother.

- 119 The Bean papers preserved in the Australian War Memorial include a small bundle of letters in an envelope bearing Charles' handwriting: "Last letters from my old schoolmate JT Stephen. He died shortly after sending the last of these, of typhoid contracted in Greece. He was a son of Leslie Stephen, & had a distinguished Cambridge career".
- 120 Would Bean's career have taken a different path had his old schoolmate lived to thrive at the English Bar or in England's literary circles? Thoby's sisters (increasingly known, from 1910, as part of the "Bloomsbury Group") appear to have been polar opposites of Bean temperamentally. The Arnold Tradition, which Bean revered, was ridiculed by the Bloomsbury Group's Lytton Stracey in *Eminent Victorians* (1918). What, if any, influence would the friendship between Thoby and Charles have had on Bean's career had Thoby survived? Could it have made Charles even more reluctant than he was, in 1913, to return to Sydney from two years' service in London as the *Sydney Morning Herald's* Correspondent?

THE LONG-TERM LEGACY OF CEW BEAN

- 121 The future course of Bean's legacy is, as it must be, contingent on events. However, one constant factor to be borne in mind is the nature and scope of the "Bean Papers" held by the Australian War Memorial, together with an abundance of publications authored by Charles Bean.
- 122 This material is as important to an understanding of Australia in the 20th Century as, for example, are the diaries of Samuel Pepys and similar primary materials to an understanding of English history.

LEST WE FORGET

- 123 On the eve of Remembrance Day 2016, it is fitting to conclude with Charles Bean's hymn, *Non Nobis, Domine*. Originally written by him as a poem in December 1915 when leaving the graves of fallen soldiers on Gallipoli, the General Synod of the Church of England in Australia adopted it as a hymn (recommended for use on ANZAC Day and Remembrance Day) in September

1945. It was sung at the Memorial Service conducted for Bean, at St Andrew's Anglican Cathedral in Sydney, on 2 September 1968:

- “1. *Not unto us, O Lord, to tell
Thy purpose in the blast;
Why these, that towered beyond us, fell
And we were overpast.*
2. *We cannot guess how goodness springs
From the black tempest's breath,
Nor scan the birth of gentle things
In these red bursts of death.*
3. *We only know – from good and great
Nothing save good can flow;
That where the cedar crashed so straight
No crooked tree shall grow;*
4. *That from their ruin a taller pride -
Not for these eyes to see -
May clothe one day the valley side...
Non nobis, Domine”.*

Date: 10 November 2016

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