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# Gaining public confidence in the judiciary: Sir William Portus Cullen, Chief Justice of New South Wales, 1910-1925

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*Sir William Portus Cullen was Chief Justice of New South Wales between 1910 and 1925. He was the first Australian born Chief Justice wholly educated in Australia. His career covered academic, political and legal realms. He was involved in the establishment of the Sydney University Law School. He campaigned for the Federation of Australia. He supported the admission of women as lawyers. His extended term as Acting Governor of New South Wales coincided with one of the worst periods experienced by Australians in the First World War. The sense of public duty he inherited from his family was fostered by his educational experiences, producing a lawyer of the highest calibre, with a powerful social conscience, actively involved in shaping the character of the modern Australian legal profession.*

## INTRODUCTION

There is steady interest in judicial biography in general,<sup>1</sup> and judicial activism in particular.<sup>2</sup> However, there is less attention given to the interplay between the legal profession and the wider community. The career of Sir William Portus Cullen gives a fascinating insight into how a Chief Justice with a powerful social conscience and sense of public duty could put his mark on both the legal community and the wider body politic of his generation. He epitomised the way in which a talented young man in New South Wales colonial society could benefit from the developing forms of patronage and educational opportunities to attain high office then in his turn contribute to that society through a protracted involvement in public life.<sup>3</sup>

Professor Bruce Kercher has suggested five phases in the development of Australia's legal system.<sup>4</sup> One recent critical step was taken with the Australia Acts in 1986 which saw the emergence of the national system of Law independent of its English roots. That development focuses attention on the earlier phases of the evolution of Australia's national system. Federation is one well known phase in Australian constitutional development. Less consideration has been given to the development of a locally born and educated legal profession in the years immediately before and after Federation.

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<sup>1</sup> Thompson JA, "Judicial Biography: Some Tentative Observations of the Australian Enterprise" (1985) 8 UNSWLJ 400; Girard P, "Judging Lives: Judicial Biography from Hale to Holmes" (2003) *Australian Journal of Legal History* 9; Burnside S, "Australian Judicial Biography: Past, Present and Future" (2011) 57(2) *Australian Journal of Politics and History* 221. See also Mason K, "The Human Sides of the Law" (Speech at the University of New South Wales Justice Talks series, 7 May 2013).

<sup>2</sup> Sackville R, "Courts and Social Change" (2005) 33 Fed L Rev 373. See also Brown AJ, "The Wig and the Sword? The Separation of Powers and the Plight of the Australia Judge" (1992) 21 Fed L Rev 48..

<sup>3</sup> See Appendix 1 for an extensive outline of Cullen's career.

<sup>4</sup> Kercher B, *An Unruly Child: A History of Law in Australia*. (Allen & Unwin, Sydney, 1995).



The establishment of the Sydney University Law School in 1890 marked an important step in that development of the profession. The appointment of William Portus Cullen as Chief Justice of New South Wales on 28 January 1910 marked another point: he was the first Australian born Chief Justice who had been wholly educated in Australia. His professional success validated the belief that Australia could produce first rate lawyers capable of serving at the highest levels.

Cullen was an early recipient of an LLD and an early lecturer at the University of Sydney Law School. As a barrister, he appeared in a number of influential cases before the newly established High Court of Australia after 1903. His period as Chief Justice saw a great reduction in the backlog of cases before the Supreme Court, the introduction of a compulsory retirement age for judges and the admission of the first women to practise law in New South Wales.

Also, during his time as Chief Justice the first phase of the development of the High Court ended with the retirement/death of the first High Court judges who had participated in the constitutional conventions. He was Chief Justice when there was the marked sea change in the High Court's jurisprudence with *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129.



Chief Justice Sir William Portus Cullen

“He did his duty.”<sup>5</sup>

Cullen's public life extended well beyond the professional boundaries of his work as a lawyer. He maintained a particularly high profile during the trauma of the First World War. He remained influential in New South Wales after his retirement from the Bench in 1925 until his death in 1935: he made continued public appearances for a wide variety of causes and occasions; remained Chancellor of the University of Sydney and counseled State Governor Sir Phillip Game regarding the dismissal of Jack Lang in 1932.

Cullen maintained a public style marked by elaborate courtesy, grace, enduring self-possession and a deferential, even humble manner. This style, combined with his education and professional ability, was constantly exhibited in his many public appearances as politician, barrister, Chief Justice or Lieutenant Governor. He contributed to the public's perceptions of the legitimacy of the emerging

<sup>5</sup> (Sir) William Cullen commenting on what was expected of a man in office, speaking at the opening of the first law term, Banco Court on his appointment as Chief Justice of New South Wales, 14 February 1910, SR Memoranda (1909). The comment was also quoted widely in the press: see, eg “The Chief Justice: Congratulations from Legal Profession” *Sydney Morning Herald*, 15 February 1910, p 6.



post-colonial legal system.<sup>6</sup> As former Chief Justice, Murray Gleeson wrote: “The most important measure of the performance of courts is the extent of public confidence in their independence, integrity and impartiality.”<sup>7</sup> In this way Cullen helped to shape the character and reputation of the New South Wales legal profession, always adhering to his belief that “the successful working of a system depended on the standard of honour prevailing ... among its public men”.<sup>8</sup> His sense of honour led him to engage in a broad range of activities beyond the law which he believed would be beneficial for social improvement.

## EARLY LIFE AND EDUCATION IN KIAMA

“As the twig is bent, the tree’s inclined.”<sup>9</sup>

William Portus Cullen was born on 28 May 1855, as the seventh son of John and Rebecca Cullen. John Cullen was an Irish Protestant and had migrated to Australia in the 1840s to escape the opprobrium of his parents’ apparently somewhat scandalous marriage which cut across the strict social boundaries of the time.<sup>10</sup>

John Cullen received a grant of some 300 acres in what is now Jamberoo Valley in the Illawarra district on the South Coast of New South Wales. He bred Illawarra short horn cattle for the local dairy industry.<sup>11</sup> He took a lively interest in civil and religious affairs and was a minister in the local branch of the the Free Gospel Church, which was a form of Methodism. He constructed the building himself and preached without taking up a collection or asking for financial help.<sup>12</sup> A number of his sons, including William, were similarly active in church and civil affairs. William’s steadfast sense of public duty and morality can be traced back to these early religious influences. His father was clearly a free spirited, independent thinker who passed on some of his sense of purpose to his sons.

Jamberoo in Cullen’s time was on the main route to the South Coast from Sydney and there were a number of local self-improvement clubs and societies.<sup>13</sup> The area maintained a distinct ethic of emphasising upright character, study, personal enterprise and hard work,<sup>14</sup> and contained many significant citizens. District Court Judge Robert Owen<sup>15</sup> was at one stage a neighbour of the Cullens. Perhaps this proximity suggested law as a future pathway.

The local values passed on to William Cullen were a combination of religious and social influences emphasising commitment to social responsibility along with a general sense of public duty,

<sup>6</sup> Legitimacy entails a sense of trust in the overall reliability in political institutions to offer protection to a population in the long term. The concept goes beyond simple loyalty but is an innate cornerstone of the long term survival of a political entity. The Weimar Government in Germany in the 1920s is often cited as an example of a political entity which lacked legitimacy in the minds of the population, with the failure of the judiciary to function correctly cited as a key contributing factor to that lack.

<sup>7</sup> Gleeson AM, *The Rule of Law and the Constitution* (ABC Books, Sydney 2000)

<sup>8</sup> Cullen W, speech in Paddington quoted in “The Good Man Politician”, *Kiama Reporter and Illawarra Journal*, 6 June 1903, p 2.

<sup>9</sup> Originally from Alexander Pope, but quoted in McCaffrey F, “Sir William Porteus [sic] Cullen: An Appreciation”, *The Land* 10 December 1926. McCaffrey attended school with Cullen in Jamberoo and Kiama.

<sup>10</sup> There are differing accounts of the exact details of the scandal, however, one simply describes it as “imprudent”: Bennett JM, “Sir William Portus Cullen – Scholar and Judge” (1977) (Sep) *Canberra Historical Journal* 78 at 78. The best explanation is that it cut across class boundaries.

<sup>11</sup> Bennett, n 10, includes extensive private material from the descendants of Sir William Cullen in England. Attempts to contact this line of the family by the author are ongoing but at this stage unsuccessful.

<sup>12</sup> Cousins A, “Sir William Portus Cullen KCMG, MA, LLD”, *Kiama Independent and Shoalhaven Advertiser*, 9 October 1943, p 6, see also p 7: “this great man”. Cullen was regularly mentioned proudly in the South Coast local press as an outstanding graduate and representative of the area.

<sup>13</sup> The Kiama region produced a number of well known politicians who were contemporaries of Sir William Cullen including Broughton Barnabas O’Conor, Sir Joseph Carruthers and Sir George Fuller.

<sup>14</sup> Grimshaw P, McConville C and McEwen E (eds) *Families in Colonial Australia* (Allen & Unwin, 1985) pp 108-109.

<sup>15</sup> Cousins, n 12, p 7.

the need for self-improvement and a commitment to good order. Such a range of influences explains why Cullen defies simple political categorisation because he combined both conservative and socially progressive ideas.

Cullen began his education at Jamberoo Public School.<sup>16</sup> It was a humble establishment founded in 1858, comprising one general purpose room and one classroom for the 100 pupils.<sup>17</sup> This modest environment was far removed from such high profile private schools as The King's School at Parramatta or Sydney Grammar School, which educated many sons of leading citizens of the day. However, the Kiama district surrounding Jamberoo was enthusiastic in its support of education.<sup>18</sup> Cullen's life coincided with the general urge to promote education amongst young men across the colony of New South Wales.<sup>19</sup>

"Little Willy",<sup>20</sup> as Cullen was known as a child, displayed his sense of purpose when he challenged his father's wishes and insisted in progressing beyond Jamberoo Public School and gaining further education at the nearby newly established Kiama Superior Public School. This more substantial establishment was located at a vibrant local port and was one of those educational institutions specifically intended to educate young men for higher education.<sup>21</sup> He walked or rode the 8 km to and from the new school overlooking the harbour in Kiama.<sup>22</sup>

Childhood friends later recalled his ambition to achieve high academic success well beyond the local area.<sup>23</sup> At Kiama, he was fortunate to come under the influence of an inspirational teacher with an international background – one J G Stewart who held a Science Degree from the University of Glasgow.<sup>24</sup> During Cullen's time, Kiama Superior Public School was the "most successful of the rural public schools at the public exams".<sup>25</sup> Despite this success, young Cullen did not go directly from Kiama Superior Public School into Sydney University.

The Cullen family history records that William persisted in his private reading after school.<sup>26</sup> It would also appear that he partook of the opportunity for an early form of distance education instituted by Professor Charles Badham<sup>27</sup> of the University of Sydney.<sup>28</sup> Badham was passionate about extending social access to education at both the school and university level.<sup>29</sup> Badham delivered a small number of public lectures in Kiama during the early 1870s and it is intriguing to speculate whether or not the bright young Willy Cullen went along to hear the professor talk on Shakespeare.

<sup>16</sup> Referred to as "Jerrara Public School" in departmental records 1858-1876: Cousins A, *The Garden of New South Wales A History of the Illawarra and Shoalhaven Districts 1770-1900* (Illawarra Historical Society, Wollongong, 1994) p 58.

<sup>17</sup> Kiama Library, "Our Schools", <http://www.library.kiama.nsw.gov.au/newlibrary/index.php/2012-06-19-05-10-26/for-students/local-history-articles/1/258-our-schools>.

<sup>18</sup> Cousins, n 16, p 324.

<sup>19</sup> Women had an extremely limited access to public life at the time, thus the many references to men in this text will reflect the mind-set of the time.

<sup>20</sup> The affectionate descriptor is used by local biographer: Cousins, n 12, p 6.

<sup>21</sup> Bennett n 10 at 78.

<sup>22</sup> The original building is now part of the Sebel Townhouse Hotel.

<sup>23</sup> McCaffrey, n 9, p 2.

<sup>24</sup> J G Stewart, the schoolmaster, is not to be confused with the parliamentarian and Scotsman, John Stewart who was the local member at the same time.

<sup>25</sup> Sherington G and Horne J, "Modes of Engagement: Universities and Schools in Australia 1850-1914" in Cunningham P, Oosthuizen S and Taylor R (eds), *Beyond the Lecture Hall: Universities and Community Engagement from the Middle Ages to the Present Day* (University of Cambridge, Faculty of Education & Institute of Continuing Education, 2009) p 139.

<sup>26</sup> Bennett, n 10 at 78.

<sup>27</sup> Radford W, "Badham, Charles", *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/badham-charles-2915>: Badham was Professor of Classics at the University of Sydney 1867-1884.

<sup>28</sup> See *Empire*, 12 December 1870, p 3 (reference to local students from Kiama taking advantage of the system).

<sup>29</sup> Sherington and Horne, n 25, p 140.



Cullen always acknowledged the debt he owed to Badham, who was a great influence on him.<sup>30</sup> Badham believed that people who benefited from society had a “moral obligation to put something back into it”.<sup>31</sup> Badham’s sense of social obligation echoed throughout Cullen’s public pronouncements in later years.

In 1875, at age 20, Cullen “decided to leave home and worked his passage to Sydney in a small paddle steamer from Kiama”.<sup>32</sup> He stayed with his older brother, Rev Joseph Francis Cullen,<sup>33</sup> who had moved to Sydney some years earlier. Joseph had followed their father’s religious commitment to the Protestant faith but in the Congregational form. He established the first Congregational Church in Mosman and preached the first services in *Buena Vista* Boarding House at what is now 76 Middle Head Road in September 1880.<sup>34</sup> William stayed at *Buena Vista* and roamed the hills and beaches of the then undeveloped area around Balmoral and Mosman, continuing his love of the outdoor life as established in his early years at Jamberoo.

### A “GLITTERING CAREER” AT SYDNEY UNIVERSITY

Cullen continued his studies privately in Sydney’s Free Public Library,<sup>35</sup> no doubt also assisted by Professor Badham (who coincidentally lived near Mosman when Cullen was there). Cullen enrolled at the University of Sydney in 1877, aged 22.<sup>36</sup> He was a brilliant student, awarded the University Scholarship for 1877, the Lithgow Scholarship for 1878, the Professor Smith’s Prize in Chemistry and Experimental Physics in 1878, the Barker Scholarship in 1879 for Mathematics, and the Renwick Scholarship for 1879 in Natural Science.

He graduated in 1880 with First Class Honours in Classics and Second Class Honours in Mathematics. After completing his degree, he was a lecturer/coach in mathematics at St Andrew’s College and at St Paul’s College. He was awarded a Master of Arts in 1882 and was also an examiner for the Faculty of Arts from 1882/1883 to 1883/1884 and again in 1889/1890. He was awarded the degrees of Bachelor of Laws in 1885 and Doctor of Laws in 1887.

Cullen forged links with the university in many ways, reflecting a belief that any professional engagement should be a holistic experience of personal growth and institutional development. He willingly supported a range of emerging university groups such as the University Union in 1885 and the Rowing Club in 1886. Such clubs connected him to a variety of leading citizens some of whom would later be members of both Bench and Bar. In the process he was becoming very highly regarded both for his character and his intellectual ability.<sup>37</sup>

Cullen travelled to the United Kingdom in 1888 where he had an introduction to the Agent-General, Sir Saul Samuel, who was suitably impressed by his visitor, for whom he predicted a “brilliant career”.<sup>38</sup> Cullen also indulged his passion for long walks, roaming the countryside of Wales in particular. On his return to Australia he began to establish himself personally and in the many strands of his career.

<sup>30</sup> Piddington AB, *Worshipful Masters* (Angus & Robertson, Sydney, 1929), p 119.

<sup>31</sup> Campbell R, “‘The modest hospitality of a scholar’: Badham and the first bursaries”, *Record* (University of Sydney Archives, 2005) pp 13-22.

<sup>32</sup> Bennett n 10 at 78.

<sup>33</sup> He was six years older than William.

<sup>34</sup> Souter G, *Mosman*, p 100.

<sup>35</sup> Later the State Library of New South Wales.

<sup>36</sup> NSW Government State Records, “Hon Sir William Portus Cullen”, <http://search.records.nsw.gov.au/persons/98>.

<sup>37</sup> Bennett, n 10 at 79.

<sup>38</sup> Samuel to Cullen, Cullen Family Papers, quoted in Bennett, n 10 at 79.



In 1890 he was appointed one of four Challis lecturers<sup>39</sup> for the new law school (then located in Phillip Street, Sydney) under the leadership of Professor Pitt Cobbett. All these lecturers were “practising and promising barristers and graduates of the University”.<sup>40</sup> He was known as a steady, caring lecturer (who for some reason acquired the nickname “Lucy” from his students). He resigned from teaching in 1894 when his career in equity expanded.<sup>41</sup> Thus, he helped shape the new Australian legal profession through the very practical manner of teaching aspiring lawyers and nurturing them in their careers.

## A STABLE BASE AND A HAPPY HOME

Among Mosman’s “Chief People”.<sup>42</sup>

Cullen developed a deep affinity with the suburb of Mosman. He was described as possessing a degree of “material, social and cultural ambition, respectability and a defensive sense of communal responsibility”<sup>43</sup> in his relations with the local area and was active in many local initiatives. In 1885 he was Joint Secretary with Chatswood Magistrate Frank B Treatt in organising an exhibition to display the industrial products of the district; in 1886 he was secretary of the initiating committee for the Industrial Cottage Hospital for St Leonard’s (forerunner of the Royal North Shore Hospital and the nearest large hospital to Mosman).<sup>44</sup> Later, he was the main speaker in the presentation to make Mosman a separate municipality (using Kiama as a precedent).<sup>45</sup>

Mosman became a stable and much loved base for him and his family. It was while boarding at *Buena Vista*,<sup>46</sup> that he had met his wife, Eliza (Lily) White, the daughter of Robert Hoddle Driberg White, a prosperous banker, politician and landowner.<sup>47</sup> Cullen had relatively modest origins and the marriage to Lily at the White’s grand family home of *Tahlee*, near Port Stephens, on 17 December 1891, marked a step into the elite realms of colonial society.

Cullen built his first house in 1892 – an elegant Queen Anne bungalow, which he named *Tregoyd*, on a six-acre property in Raglan Street, Mosman.<sup>48</sup> Its location half way down the hill from Mosman town centre to Balmoral Beach gave it sweeping views north over the Middle Harbour to Balgowlah Heights above Clontarf Beach.<sup>49</sup>

<sup>39</sup> The others were George Edward Rich (later a Justice of the High Court for 37 years), Francis (Frank) Leverrier (a brilliant KC who often appeared before the High Court), and Dr Charles Coghlan (another fine barrister): Bennett JM, “Out of Nothing ...” in Mackinolty J and Mackinolty J (eds), *A Century Downtown: Sydney University Law School’s First Hundred Years* (Sydney University Law School, 1991) pp 43-44.

<sup>40</sup> Turney C, Bygott U and Chippendale P, *Australia’s First: A history of the University of Sydney*, p 240.

<sup>41</sup> Bennett, n 10 at 79.

<sup>42</sup> Curlewis E (nee Turner), Diary Entry, quoted in Yarwood AT, *From a Chair in the Sun: The Life of Ethel Turner* (Viking, Sydney, 1994) p 122. The comment is a metaphoric representation of the social prestige and influence which the Cullens held in the local community at the time.

<sup>43</sup> Souter, n 34, pp 145-146.

<sup>44</sup> Sherington G, *A Century of Caring: The Royal North Shore Hospital 1888-1988* (Horwitz Grahame, Sydney, 1988) pp 4-5.

<sup>45</sup> Souter, n 34, p 109.

<sup>46</sup> *Buena Vista* later became a boarding house. A hotel is now on the site.

<sup>47</sup> Atchison J “White, Robert Hoddle Driberg”, *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/white-robert-hoddle-driberg-4839>.

<sup>48</sup> The house takes its name from an area in Wales which Cullen enjoyed roaming during his time in the UK.

<sup>49</sup> The author gratefully acknowledges the generous hospitality of the current residents of *Tregoyd* who allowed him the opportunity to explore the house and grounds (now sadly truncated from its original six acres) in April 2013.





*Tregoyd*

It is still an impressive, but not ostentatious residence. Its position in what was originally a somewhat remote location from the centre of Sydney shows his independent style, living away from the hustle of the city, and the established lawyers' enclaves in the eastern suburbs and Hunter's Hill. He revelled in the opportunity to indulge in the outdoor pursuits that living in Mosman allowed while maintaining his family links with the Kiama district.

Cullen had a passionate interest in the Australian flora and became well known as a propagator of native plants at *Tregoyd*. This commitment to Australian native plants went some way towards validating their worth as viable alternatives to European gardens and landscapes. There was constant favourable mention in the press of his enthusiasm for local flora, and it became a defining aspect of his public persona. Gardens were seen by many as an essential part of cultivating the Australian identity, separate from Britain. British gardens were fenced in and featured their own flora. Cullen's sprawling six-acre native garden with its own palm grove, rainforest, waterfall and elaborate pathways was an assertion of national spirit.<sup>50</sup> Gardening also allowed him to indulge in his love of physical exertion. This energetic approach kept him physically vigorous and able to withstand the exertions of a busy life.

## MAKING HIS MARK: CULLEN'S EARLY LEGAL AND POLITICAL CAREER

Cullen had been admitted to the Bar on 30 April 1883<sup>51</sup> while studying at the university, but worked especially hard to establish himself in the 1890s. He practised primarily in equity, out of Victoria and Lyndhurst Chambers in Phillip Street, Sydney. He developed a steady practice but in his own words it was a "weary, weary wait" for any newcomer to the Bar.<sup>52</sup> Such a struggle explains why he had to supplement his income in his early years at the Bar with teaching at the law school and some journalism.<sup>53</sup> However his subsequent career was later presented as "a triumphant vindication of the policy of the educational ladder in a democratic state".<sup>54</sup>

<sup>50</sup> Martin SK, "... Hurry up them pines': Gardens in Nineteenth-Century Australian Fiction" (2006) 2 *Studies in Australian Garden History* 97.

<sup>51</sup> He was just one of four men admitted that year.

<sup>52</sup> See Sheppard W, "The Influence of the Bar in the Twentieth Century" in Bennett JM (ed), *A History of the New South Wales Bar* (Law Book Co, Sydney, 1969) p 133 (quoting Cullen).

<sup>53</sup> Bennett, n 10 at 79.

<sup>54</sup> Garnsey's eulogy quoted in "Late Sir William Cullen: State Funeral", *Sydney Morning Herald*, 10 April 1935, p 10.



Cullen became a popular member of the legal community, often organising readings of Shakespeare amongst lawyers during their lunchtime.<sup>55</sup> He had some advantage in establishing his practice as “the prejudice against men born and trained in Australia was declining”.<sup>56</sup> This declining prejudice coincided with a general decrease in the number of English barristers coming to Australia. The legal profession as a whole was aware of the change in its identity from a colonial to a more independent local entity. There were a number of reforms concerning the profession put before the New South Wales Parliament during the 1880s and into the 1890s.<sup>57</sup> Cullen took an active role in these debates when he embarked on a political career, in which he again displayed his ability to impress people.

Cullen entered the New South Wales Legislative Assembly in 1891,<sup>58</sup> at the same time as the first Labor Party candidates. He was elected on a “Free Trade” ticket as one of three members for Camden.<sup>59</sup> He was passionately in favour of the proposed Federation of colonies into Australia. Perhaps the fact that Henry Parkes, known as the “Father of Federation”, had been the local member for Kiama in Cullen’s childhood had laid the foundation for that position.<sup>60</sup> “Free Trade” was a controversial policy and certainly not supported by all the legal profession.<sup>61</sup> His first speech in Parliament articulated the values which would remain his creed throughout public life: duty, active involvement in local issues, the need for fit and proper persons in public life, a clear sense of morality, and loyalty to community.<sup>62</sup>

Cullen was generally characterised by others as “conservative” in that he supported free enterprise and opposed the Labor Party’s espousal of socialism and unionism. He disagreed with class-based politics because he saw the emphasis on class as promoting the cause of one group of people at the expense of the whole. He also believed that class allegiances or denotations should not be permanent. A person of working class origins, or modest middle class, such as himself, should be provided the means by which they could improve their position and it was the state’s duty as well as individuals’<sup>63</sup> to provide sufficient patronage and opportunities for that to occur. This belief was evident in 1914 when, as Chief Justice, he joined the State branch of the Workers’ Educational Association, which was then affiliated with 31 trade unions. He believed that education would foster the development of duty and character which would then assist in developing the country. He often helped young men in their own careers. Well known lawyers such as H V Evatt<sup>64</sup> and J J Cohen<sup>65</sup> benefited from his patronage and encouragement.

Cullen represented Camden efficiently in the Legislative Assembly. He attended a wide variety of engagements. It must have been difficult for him to manage his commitments, as he had a developing

<sup>55</sup> “Death of Sir William Cullen: Brilliant Career” *The Sydney Morning Herald* 8 April 1935, p 10.

<sup>56</sup> Bennett JM, “The Bar Attains Maturity” in Bennett, n 52, p 103.

<sup>57</sup> Woodman SJ, *Lawyers in New South Wales, 1856-1914 – the Evolution of a Colonial Profession* (Ph D Thesis, Australian National University, May 1979).

<sup>58</sup> He was following his brother, Joseph Cullen, who was elected to the NSW Legislative Assembly as member for St Leonards (which included the Mosman District) on 2 February 1889.

<sup>59</sup> John Kidd, Protectionist with 1,983 votes, William McCourt, Free Trade with 2,316 then William Cullen also Free Trade with 1,321 votes: <http://atlas.nsw.gov.au/public/nsw/home/map/elections.html> At that time the Camden electorate extended from the Southern Highlands, east to the coast and as far north as Helensburgh.

<sup>60</sup> Martin AW, “Parkes, Sir Henry” *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/parkes-sir-henry-4366>.

<sup>61</sup> The topic was subject to a lively debate in a variety of contexts, including letters to the editor, and gave rise to some occasionally scathing and sarcastic assertions and rebuttals, often from barristers such as Dr EM Brissenden: see, eg Brissenden EM, “Tanning in New South Wales”, *Sydney Morning Herald*, 16 January 1889, p 8.

<sup>62</sup> NSW, Legislative Assembly, *Debates*, 15 July 1891, pp 50-53.

<sup>63</sup> *Debates*, n 62, p, 52.

<sup>64</sup> Evatt was much younger than Cullen and had a varied career, which included being a politician, Justice of the High Court and Chief Justice of NSW. He was Cullen’s Associate from 1915 to 1918 despite their opposing political opinions.

<sup>65</sup> Cohen had a long career as a politician and judge and holidayed with Cullen at *Tahlee*, the home of his wife’s family, near Port Stephens. See also, n 89 below.





legal practice in the city and was establishing a home in Mosman and the Camden electorate was at least two hours by train from Central Station in Sydney. His support for the formation of a mounted infantry company, and that the Southern Rifle Association should be located at Moss Vale, indicates his early interest in locally based military activity, which would become much stronger during the First World War.<sup>66</sup> He was always keen on local development and lobbied for the improvement of the Market Square at Berrima.<sup>67</sup>

He could still be “dogged” in debate<sup>68</sup> and was well able to withstand the interjections and accusations of fiery parliamentary discourse in the Legislative Assembly. He was particularly passionate if he believed that individual rights were under threat, as he was when speaking for the necessity of compensation for landowners if mining was to take place on their land. He maintained his stance while other members interjected constantly, accusing him of not having read the Bill.<sup>69</sup> He argued that:

There was not a country in the world which possesses [a law] enabling any man to go upon property and hack it about at his own sweet will, without any responsibility or any provision being made for compensation, or any safeguard to ensure the man is able to pay compensation.<sup>70</sup>

In 1894, Cullen addressed a large number of electors at the Camden School of Arts and again emphasised the importance of character in men in public office. He expressed frustration at the “garrulousness” of the members who persisted in speaking at length in the Legislative Assembly, the value of local farmers, and the ever increasing government debt.<sup>71</sup> His frustration with garrulous members was an indication of his desire that men in office should be as practical and efficient as possible.

Cullen ran for re-election for Camden in 1894 again on a Free Trade ticket and though he was defeated it was not the end of his political career.<sup>72</sup> In April 1895, he was one of 10 men appointed to the New South Wales Legislative Council by the new Premier, George Reid. This appointment was a mark of the increasing public esteem held for Cullen. Reid believed that the Council had been previously filled with men who were selfish corrupt “fossils” and respectable new members such as Cullen would go some way to offsetting this negative influence.<sup>73</sup> Cullen was becoming increasingly well known as a man of “high attainments” and a debater who was effective if “somewhat academic” in style.<sup>74</sup>

Cullen maintained his support for individual rights against large scale entities. He was a constant commentator on the drafting of legislation when he was in the Legislative Council and there were many occasions in which he was involved in intense, but not acrimonious, debate over the technical details of legislation.<sup>75</sup> He believed that the “cultivator” of the land must be considered over “mining operations” which should “give way” to the cultivator in any conflicts of interest.<sup>76</sup> He extended this concern for individual farmers to disagreement with Crown control of flowing water, preferring that

<sup>66</sup> “Camden Requirements”, *Australian Town and Country Journal*, 22 August 1891, p 35.

<sup>67</sup> “Camden Requirements”, n 66, p 35.

<sup>68</sup> Bennett, n 10.

<sup>69</sup> NSW, Legislative Assembly, *Debates*, 14 November 1893, pp 992-996.

<sup>70</sup> *Debates*, n 69, p 994.

<sup>71</sup> “Country news: Dr William Cullen MLA at Camden”, *Sydney Morning Herald*, 10 September 1892, p 10.

<sup>72</sup> Cullen was defeated by John Kidd, a Protectionist who polled 869 votes as against Cullen’s 644. The electorate was reduced to a third of its number of voters: <http://atlas.nsw.gov.au/public/nsw/home/map/elections.html>.

<sup>73</sup> Clune D and Griffith G, *Decisions and Deliberations: The Parliament of New South Wales, 1856-2003* (Federation Press, Sydney, 2006) p 139.

<sup>74</sup> “The New Members of the Legislative Council”, *Sydney Morning Herald* 9 August 1895, 6.

<sup>75</sup> See, eg the Parliamentary Debates of 1896 (protracted debates on the importation of livestock); Clune and Griffith, n 73, pp 150-152 (Cullen’s drafting of proposals for reforms to the powers of the Legislative Council in 1895).

<sup>76</sup> NSW, Legislative Assembly, *Debates*, 13 August 1896, p 227.



water rights for farmers should be guaranteed.<sup>77</sup> While he opposed socialism he was also opposed to rampant capital exploitation, claiming “it was ridiculous for a man to haul the gold from the Mount Morgan gold-mine ... for the payment of 10 shillings for a miner’s right”.<sup>78</sup>

Cullen’s style in Parliament tended towards presenting a technical response to proposed legislation. He took a particular interest in legislation concerned with the legal profession and the University of Sydney.<sup>79</sup> His legalistic approach was more suited to the Upper House of the New South Wales Colonial Parliament rather than the more locally oriented and volatile Legislative Assembly where he had first started his career. It is also apparent that his experience in the more abrasive lower chamber gave him the experience to maintain a steady approach to debate when others were wilting under the pressure of parliamentary disputation. Within the ebb and flow of pre-Federation politics his values of persistent public service were increasingly apparent. His parliamentary comments from this period indicated that he was especially intolerant of dishonesty, stressing that any action should be measured against this value.<sup>80</sup>

Many people commented on Cullen’s polite, gracious manner even in times of great stress. This manner marked his dealings with a broad range of people and provided a constant sense of balance and restraint which suited the tempestuous nature of the times. There was a lawless edge to daily life at the time which could erupt into public violence in the lead up to Federation and which created great controversy. The 1890s also saw depression and drought. The expansion of Australian society from a loose connection of isolated rural hamlets into a modern State connected by railways and struggling to come to terms with issues, from water rights to mining leases, saw the need for active, civic-minded people who could define the new social, political and legal landscape.

Cullen was passionate for Federation, probably to a greater extent than the wider community. He travelled throughout New South Wales addressing sometimes boisterous public meetings on the topic but was never mentioned as losing his self-possession.<sup>81</sup> Many towns developed a close affinity with their regular visitor, whether in his role as a politician or a lawyer. People liked his genuine interest in all things Australian.

There were many heated disputes both within and between the Legislative Assembly and the Legislative Council in the 1890s as the details of Federation and associated legislation were under discussion. Cullen maintained his commitment to the democratic process even if he disagreed with the actions of the Legislative Assembly, or in the face of constant interjections from fellow members of the House. This emphasis on the importance of the form as well as the content of a debate indicated his sense of proportion and evenhandedness during public controversy. He was a firm believer in people acting responsibly in both houses of Parliament and repeatedly used the example of British parliamentary procedure as a model to be followed. Such decorous behaviour was important to him as it displayed respect for the electors and gave confidence in the democratic processes.<sup>82</sup>

In Parliament, Cullen formed a good working relationship with fellow barrister, Edmund Barton,<sup>83</sup> who was another in a line of older people who obviously recognised the ability of the rising man. Such friendships with older well-established men such as Barton, George Reid,<sup>84</sup> and Sir Samuel

<sup>77</sup> NSW, Legislative Assembly, *Debates*, 3 September 1896, p 2801.

<sup>78</sup> NSW, Legislative Assembly, *Debates*, 8 June 1896, p 1367.

<sup>79</sup> Bennett JM, “Cullen, Sir William Portus”, *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/cullen-sir-william-portus-5838>.

<sup>80</sup> NSW, Legislative Assembly, *Debates*, 29 October 1896, p 4485.

<sup>81</sup> Newspaper reports of the time, particularly in the late 1890s, mention him visiting Kiama, Goulburn, Albury, Wagga Wagga, the Southern Highlands, many Sydney suburbs, Newcastle, and the Hunter valley.

<sup>82</sup> See, eg NSW, Legislative Assembly, *Debates*, 14 August 1895, p 10-14.

<sup>83</sup> A federationist, Sydney barrister, and later Australia’s first Prime Minister.

<sup>84</sup> A federationist, Premier of NSW, and later Prime Minister.



Griffith,<sup>85</sup> would be a feature of Cullen's life. He was known as a "genial companion of his intimates as well as their steadfast and faithful friend".<sup>86</sup> Exchanges between Cullen and Barton in Parliament on topics such as arbitration and conciliation display a willingness to try to enact legislation that was both workable and equitable according to the values of the time. Cullen always had a sense of duty towards his homeland.

Cullen was not one of those termed the "Fathers of Federation", but he was well associated with the promotion of a national government and made substantial contributions to the cause. The lead up to Federation saw some passionate exchanges over the nature of the new Constitution. In 1897, a parliamentary debate on the topic became so acrimonious that its proponents, Barton and O'Connor stormed out of the Legislative Council and Cullen was left to attempt to steer the Bill through.<sup>87</sup> As the debate on the Bill developed Cullen had to resist repeated interjections by Sir Julian Salomons KC, a leading opponent of the proposal. J M Bennett saw this as a significant turning point in the blossoming of Cullen's career.<sup>88</sup>

Cullen's support for Federation led him to endure some difficult public meetings, but also to engage in the only real propaganda exercise of his life. He was part of a small group including fellow lawyers, John Jacob Cohen<sup>89</sup> and Robert Raymond (later Sir Robert) Garran<sup>90</sup> who met to write press releases in favour of Federation which could then be distributed to country newspapers.<sup>91</sup> Cohen described how "Garran and [Cohen] and often Cullen, spent Sunday afternoons and evenings at Barton's house at Kirribilli, discussing details and formulating plans of campaign".<sup>92</sup> No doubt Cullen enjoyed the hour or so walk home to Mosman afterwards.

It was typical of Cullen's career that he should combine a number of areas of activity. Thus, while he was a member of the Upper House and establishing his legal practice in the 1890s he continued his links with both the law school and university by his election as Fellow of the Senate of the University of Sydney in 1896. He was later appointed Acting Dean of Law, in the absence of Professor Pitt Cobbett in Lent and Trinity Terms 1898. During this period Cullen accepted Ada Evans as the first woman law student because he was "readily convinced that women should take their place in the learned professions".<sup>93</sup> Cullen's action in admitting Ada Evans received widespread approval, but not from Professor Pitt Cobbett who reacted entirely negatively to the presence of Ada in the law school.

While Cullen was generally an advocate of the cause of women (he was a Councillor of the University of Sydney's Women's College (1897-1909)) he proceeded at a pace which frustrated more progressively minded people such as the high profile feminist advocate and social leader, Rose Scott.<sup>94</sup> While in Parliament he voted for the *Women's Franchise Bill of 1901* but did not speak to it, and thereby did not lend his "considerable weight" to its passage.<sup>95</sup> Later he became more proactive in the cause when, under his Chancellorship, the Women's College at the university was opened to his

<sup>85</sup> First Chief Justice of the High Court of Australia.

<sup>86</sup> McCallum M (Sir), quoted in Cousins, n 12, p 6.

<sup>87</sup> La Nauze JA, *The Making of the Australian Constitution* (Melbourne University Press, 1972) p 163.

<sup>88</sup> Bennett, n 10 at 83, notes that "from about this time [Cullen's] career blossomed to full extent".

<sup>89</sup> A lifelong friend of William Cullen, also a NSW Member of Parliament, and later District Court Judge 1919-1929.

<sup>90</sup> Garran, when a senior public servant, was the first Commonwealth Solicitor-General and with John Quick wrote the classic Quick and Garran, *Annotated Constitution of the Australian Commonwealth* (1901).

<sup>91</sup> Quick and Garran, n 90, p 146.

<sup>92</sup> Cohen JJ (Judge), *Memoirs* (undated private publication supplied to the author courtesy of former Justice Brian Cohen).

<sup>93</sup> Bennett, n 39, p 42.

<sup>94</sup> Allen J, "Scott, Rose", *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/scott-rose-8370>.

<sup>95</sup> Clune and Griffith, n 73, pp 186-187.



enthusiastic support. Also, in 1917 he was one of the University Senate which urged the passage of the *Women's Legal Status Act 1918* (NSW) which gave women the right to become lawyers.<sup>96</sup>

The period immediately preceding Federation was a personally difficult time for Cullen. He declined an invitation to join the Ministry of Premier George Reid via appointment to the office of Vice-President of the Legislative Council in June 1899, citing personal reasons.<sup>97</sup> This was one of the rare times he declined to take up a public office and may be explained by the death a few weeks before of his infant daughter, Cicely Roberta Lily, on 18 April 1899 at *Tregoyd*.

Cullen was passionate in his belief in the need for public faith in Australian institutions. As part of the process by which confidence could be maintained in such local institutions, he did not want to maintain the Privy Council appeals "one day longer than was absolutely necessary".<sup>98</sup> He may be termed a conservative in that he ascribed to traditional values such as church, service, family and education, but he also displayed a sense of tolerance to a wide range of society. Such tolerance did not extend to members of the legal profession who failed to act with propriety.

Despite their parliamentary disputations, Julian Salomons KC remained respectful of his opponent and would be the catalyst for one of Cullen's long-running imbroglios – the case of the rogue solicitor, Richard Meagher.<sup>99</sup> The scandal regarding the case and subsequent riotous behaviour of those involved was just the sort of indecorous behaviour Cullen abhorred because it undermined faith in public institutions.

## CULLEN AND THE HIGH COURT OF AUSTRALIA

A lawyer of the "highest order."<sup>100</sup>

Cullen displayed his talent as an advocate throughout the first decade of the 20th century. His appearances before the newly established High Court set him apart as an advocate of the highest calibre.<sup>101</sup> He personified the new post-colonial lawyer: combining both an educated awareness of international statutes and precedents with an enthusiastic articulation of Australian judicial world as an entity in its own right.<sup>102</sup>

High Court cases at the time often attracted significant public attention and occasionally direct action. These early cases had significance beyond their purely legal character in that the new institution of the Australian High Court had to be established as a legitimate part of the appeal process, which then led to the Privy Council. Such a sense of legitimacy was essential if the idea of the new Commonwealth was not to be rejected outright by people whose allegiances tended towards their local State and not the country as a whole.

There were many concepts and details concerning the new federal legal and political system which had to be established. It was important that in the process of working through these details that public faith in the Federation enterprise not be undermined. There were many surprises for all concerned. Issues to be resolved included the jurisdiction of the High Court, the means and right of appeal to the Privy Council, the legal rights of State governments, liability for stamp duty and the

<sup>96</sup> The passage and background to this Act is described in Cunneen T, "One of the 'Laws Women Need'" (Summer 2010-2011) *Bar News* 102.

<sup>97</sup> "Dr Cullen's Position", *Sydney Morning Herald*, 29 June 1899, p 4. See also "The Cabinet Changes", *Kiama Independent and Shoalhaven Advertiser*, 1 July 1899, p 4. Newspapers from the Kiama area surrounding Cullen's birthplace kept a close interest in his career, often reprinting long stories of his life from the Sydney press.

<sup>98</sup> See Castles A, *An Australian Legal History* (Law Book Co, Sydney, 1982) p 329, quoting Cullen.

<sup>99</sup> The *Meagher Case* involved an extensive scandal in the second half of 1895 in which Richard Meagher defended a client he knew to be guilty and which Meagher subsequently revealed to his own counsel in a libel case, Sir Julian Salomons KC: see *R v Dean* (1896) 17 LR (NSW) 35; *R v Dean and Meagher* (1896) 17 LR (NSW) 132; *Re Meagher* (1896) 17 LR (NSW) 157; *R v Dean [No 2]* (1896) 17 LR (NSW) 224; *Dean v Dean* (1896) 17 LR (NSW) D 1. See also, eg Pearl C, *Wild Men of Sydney* (WH Allen, London, 1958), Ch 6.

<sup>100</sup> Bennett n 10 at 85.

<sup>101</sup> Bennett n 10 at 85.

<sup>102</sup> This idea is highlighted in Bennett, n 79.



power of the Commonwealth to set customs duties that would be binding on the States. Other issues such as the rights of a State government to sue on behalf of the public and the limits of the High Court's jurisdiction over the States which had previously been sovereign powers, as well as the reality of interpretation of the *Constitution*, became manifest.<sup>103</sup>

Cullen became highly respected for the manner in which he conducted himself and his cases. In the process he became good friends with the first Chief Justice, Sir Samuel Griffith. Cullen was one of those whose legal advocacy helped to determine the operating forms of the new country. He had a series of "spectacular victories" in the High Court which crowned "his success as a barrister".<sup>104</sup>

Cullen appeared in a succession of leading constitutional cases including: *Quan Yick v Hinds* (1905) 2 CLR 345; *Municipal Council of Sydney v Royal Agricultural Society (NSW)* (1905) 3 CLR 298; *Commonwealth v New South Wales* (1906) 3 CLR 807; *Baxter v Commissioners for Taxation (NSW)* (1907) 4 CLR 1087; *R v Governor of South Australia* (1907) 4 CLR 1497; *Attorney-General (NSW) v Collector of Customs (NSW)* (1908) 5 CLR 818; *New South Wales v Commonwealth* (1908) 6 CLR 214; *Attorney-General (NSW) v Brewery Employees Union* (1908) 6 CLR 469; *New South Wales v Commonwealth* (1908) 7 CLR 179; *Huddart, Parker & Co Pty Ltd v Moorhead* (1909) 8 CLR 330; *R v Commonwealth Court of Conciliation & Arbitration* (1909) 8 CLR 419.<sup>105</sup>

These early cases before the High Court often attracted a great deal of public attention and could on occasion become quite tense as occurred with the famous "Wire Netting Case".<sup>106</sup> This case involved some 1,313 rolls of wire netting which were removed from the steamer *Kent* in Sydney harbour. The issue arose concerning tariffs, and thus focused on one of the key aspects of raising revenue in the new Federation. The incident regarding the wire netting was widely reported in the press from 1907 to 1911. The episode in which State officials symbolically laid hands on Commonwealth officials next to the disputed rolls of wire netting, while an excited crowd of wharf labourers and various associated parties watched on, had an absurdist element which the normally restrained Geoffrey Sawer appears to appreciate. According to Sawer, "a posse from the state government" attempted to seize the wire, while "a posse led by Mr Robert Garran (the Solicitor General) organised a counter posse to defend it".<sup>107</sup>

The farcical incident was one of a series which had the potential to undermine public confidence in the whole federal enterprise, and thereby challenge its very legitimacy. *The Sydney Morning Herald* suggested that the raid was either an "Act of war or act of smuggling" and suggested that the State Premier, Carruthers could be arrested.<sup>108</sup> The participants in the High Court action were doing more than simply determining the fate of wire netting; they were both defining complex governmental relations but also establishing trust in the rule of law that such matters could be determined in a sophisticated, nuanced manner by Australians in Australia. Cullen was a great supporter of the High Court, stating on the appointment of Justice Isaacs that "a right step was taken in enlarging the Court in view of the volume and immense importance of the business".<sup>109</sup>

Hearings such as these raised William Cullen's status amongst the legal community. In addition to High Court appearances in Sydney and Melbourne, he was active in a wide range of areas. He maintained his contribution to the Legislative Council and by 1905 was regarded as one of its most "influential" and respected members.<sup>110</sup> The intricacies of the new society required some careful

<sup>103</sup> Cowan Z and Zines L, *Federal Jurisdiction in Australia* (OUP, Melbourne, 1978). See also Zines Z, *The High Court and the Constitution* (Butterworths, Sydney 1987).

<sup>104</sup> Bennett, n 10 at 85.

<sup>105</sup> Bennett, n 10 at 85 and Notes.

<sup>106</sup> *R v Sutton* (1908 5 CLR 798. There are at least another 10 significant cases up to 1909 listed in Bennett, n 10 at 85.

<sup>107</sup> Sawer G, *Australian Federal Politics and Law 1901-1929* (Melbourne University Press, 1956) p 143n.

<sup>108</sup> "Premier Defies Duties", *Sydney Morning Herald*, 22 August 1907, p 7.

<sup>109</sup> "The High Court: Bench and Bar", *Sydney Morning Herald*, 22 November 1906, p 6.

<sup>110</sup> Clune and Griffith, n 73, p 176.



examination as the permutations of all manner of regulations were debated in exacting detail.<sup>111</sup> It was a time when judges could be called upon to preside over statutes which they had in fact discussed as members of Parliament.

### CULLEN'S SOCIAL LIFE AND ATTITUDES

Cullen developed an extensive social network after Federation in particular. He and Lily became social leaders in Mosman.<sup>112</sup> They formed a close friendship with the Curlewis family who moved into the area in 1900. Herbert Curlewis was a barrister (who became a judge of the Industrial Court in 1917) and his wife (who wrote under the name Ethel Turner)<sup>113</sup> was a famous author of the day. The Cullen and Curlewis lifestyles were described as ones which valued “good taste, education and cultivated attitudes, regarding a middle state of genteel comfort as the ideal environment”,<sup>114</sup> however, with comfort came social obligation. Cullen was first President of the Mosman Bowling Club in 1902;<sup>115</sup> he was the first patron of the Mosman Rowing Club founded in 1910, which also contained a number of barristers such as Dr E M Brissenden;<sup>116</sup> and such was his prolonged support of the Mosman Boy Scout unit that eventually it was known as “Cullen’s Own”. It seemed inevitable that whenever he attended a meeting he was the one chosen as figure head.

While Mosman provided Cullen with a solid basis for his social life, he was also active in a number of other social arenas. He was a loyal friend to other members of Bench and Bar. He maintained links to middle class social networks through such activities as being a regular attendee at the early feminist Rose Scott’s *salon* evenings in the eastern suburbs.<sup>117</sup> Such evenings which involved leading citizens sharing their ideas were reminiscent of 18th century France. The attendees were socially ambitious but also socially conservative. Scott considered selfishness the worst of personal failings which expressed itself in excessive drinking, gambling and the “aggression and self interest of party government”.<sup>118</sup> Cullen was typical of the 19th century middle class in that he saw progress “a product of moral continence and secular ambition, an amalgam of a sense of destiny and a belief in individual effort”.<sup>119</sup>

Cullen also remained close to people from the Kiama district such as the passionate advocate of Australian natural history, J H Cambage, and lent his name and prestige to Cambage’s efforts to promote the cause of Australian flora. In return, Cambage named a new species of tree after Cullen: *Eucalyptus Cullenii* or “Cullen’s Ironbark”.<sup>120</sup> Cullen also formed close relations with people such as Professor Edgeworth David of Sydney University. Cullen was one of a group of leading professionals who were advancing their careers separate from the established legal and pastoral families.

In 1908, Cullen was elected the second President of the newly formed University Club, superseding a number of prominent professionals who had been foundation members. The club

<sup>111</sup> For example on shop closing times: NSW, Legislative Assembly, *Debates*, 31 October 1900, pp 4570-4572.

<sup>112</sup> Souter, n 34, p 146.

<sup>113</sup> For example, the iconic novel, Turner E, *Seven Little Australians* (Ward Lock & Bowden, London, 1894) as well as many other works. The Curlewis family lived within a brisk 40-minute walk of *Tregoyd*.

<sup>114</sup> Unnamed commentator, Souter, n 34, p 145.

<sup>115</sup> Souter, n 34, p 149.

<sup>116</sup> “New Mosman Club”, *Sydney Morning Herald*, 5 Sept 1910, p 13.

<sup>117</sup> Allen, n 94.

<sup>118</sup> Brett J, *Australian Liberals and the Moral Middle Class: From Alfred Deakin to John Howard* (CUP, 2003) p 61.

<sup>119</sup> Eksteins M, *Rites of Spring: The Great War and the Birth of the Modern Age* (Bantam Press, Sydney, 1989) p 176.

<sup>120</sup> Cambage RH, “A New Species of Queensland Ironbark” (1920) 54 *Journal of the Proceedings of the Royal Society of New South Wales* 48. See also Australian National Botanic Gardens, Australian Plant Name Index.



attracted upwardly mobile “young bloods of the professions”.<sup>121</sup> Cullen remained President until his death in 1935, and was known as “the grand old man” of the club.<sup>122</sup> He was also a long term member and supporter of the Australia Club.

## DOING HIS DUTY: APPOINTMENT AS CHIEF JUSTICE

Cullen was appointed the successor to Sir Frederick Darley as Chief Justice of New South Wales on 14 February 1910 after considerable public speculation, which had included at least six other KCs and politicians as possible candidates.<sup>123</sup> His appointment was widely supported in the legal community and the general public, possibly because he did not actively seek it.<sup>124</sup> The usual Honours flowed to Cullen: he was created a Knight Bachelor in January 1911 and a Knight Commander of St Michael and St George in 1912.

It is rare for any judge from the early decades of the 20th century (other than those on the High Court of Australia) to be cited in modern times.<sup>125</sup> This failure to cite Cullen is not a reflection on the worth of his judgments. Rather, there is a tendency in each generation of lawyers to cite recent, or relatively recent, authorities. Also, the trial and appellate procedures of the Supreme Court of New South Wales in Cullen’s day, which was distinguished by widespread trial by jury, were markedly different from modern day practice and procedure which, with the practical abolition of civil jury trials, has been shaped by New South Wales embracing a Judicature Act system of judicial administration in 1972. In addition, since Cullen’s day the High Court has emerged as the focal point of authoritative Australian law. The Privy Council is no longer an ultimate court of appeal for Australians.

Cullen’s legacy lay in his public behaviour, which was underpinned by his clear sense of values of probity, self-restraint, public responsibility and a steady sense of propriety which contributed to the establishment of those cornerstones of the modern legal profession: trust and character. He was a figure of national significance.<sup>126</sup> He had an innate understanding of the power within the office of Chief Justice to give a sense of gravitas and legitimacy to emerging local institutions. He saw it as an obligation of his position in that office to support those local organisations which promoted self-development, character, education, patriotic activity and charitable work. He encouraged self-improvement in all forms and all levels of society.

Efficiency, duty and trust in the legal process marked Cullen’s time as Chief Justice. He followed his own dictum that men in office should perform their duties quickly as he cleared a backlog of cases,<sup>127</sup> delivering his own judgments concisely and often *ex tempore*. His emphasis on trust in the profession may be illustrated by his steadfast refusal to re-admit the struck-off solicitor, Richard Meagher, who made repeated unsuccessful attempts to be reinstated as a solicitor of the New South Wales Supreme Court. Meagher fully expected to be reinstated in 1917, and arrived in court with a retinue of supporters.<sup>128</sup> *The Sydney Morning Herald* had two full columns devoted to the case, which was understandable as Meagher was the Lord Mayor of Sydney at the time and had previously been speaker in the Legislative Assembly.

<sup>121</sup> Derriman P, *A World Within a World: A centenary history of the University and Schools Club* (Playright Publishing, Sydney, 2005) p 14.

<sup>122</sup> Derriman, n 121, p 15. Cullen was succeeded in the position by Justice Halse Rogers.

<sup>123</sup> The others were Premier and AG Wade KC and Justice O’Connor of the High Court; then in order of seniority from the Bar were CE Pilcher KC, MLC Alexander Gordon KC, Cullen; Adrian Knox KC and Alexander Shand KC: “Chief Justiceship: Sir Frederick Darley’s Successor”, *Sydney Morning Herald*, 2 November 1908, p 6.

<sup>124</sup> Bennett, n 79.

<sup>125</sup> There is a passing mention to him in *Eastman v The Queen* [2000] HCATrans 5 (1 February 2000) (Gummow J, Gaudron J) and *RPS v The Queen* (2000) 199 CLR 620.

<sup>126</sup> Bennett, n 10.

<sup>127</sup> Bennett, n 79.

<sup>128</sup> “Mr RD Meagher’s Application”, *Sydney Morning Herald*, 28 May 1917, p 12.



Cullen did not find the reference to Meagher's political prowess a convincing argument for reinstatement. The application was refused and Meagher could best be described as incandescent with rage against Cullen. He made repeated inflammatory speeches on the topic in subsequent years, attained the support (by his own account) of a number of prominent citizens, and in 1920 produced a vitriolic account of his life in which he accused Cullen of all manner of transgressions, including "gross bias" as well as "despicable" and "septic" prejudice regarding the case for his re-admission as a solicitor.<sup>129</sup> Journalist Frank Morton was even more virulent when he attacked Cullen as "a bigoted old gentlemen, saturated with prejudice, racial and religious, and who is unfitted for judicial dignity".<sup>130</sup> Cullen remained sanguine during these various tirades and took no action. Perhaps the old fighter, Jack Lang, was right when he wrote that "Judges in those days were accustomed to public criticism".<sup>131</sup> Cullen attracted much praise for his usual dignified aplomb in the face of Meagher's various rants.<sup>132</sup>

Cullen displayed a strong response to any perceived challenge to the rule of law, especially the jury system, as in the case of the Labor member of the Legislative Assembly, Percy Brookfield,<sup>133</sup> who made some intemperate comments at a public meeting regarding a trial of some people to whom he was politically sympathetic. He was charged with contempt of court. Sir William Cullen mentioned the need for public "confidence" in the jury system no less than five times in his judgment when Brookfield was found guilty (*Re Brookfield* (1918) 18 SR (NSW) 479). Brookfield was suitably chastened and the fine went some way to restoring the public's faith in the system.<sup>134</sup> Cullen was remaining true to his emphasis on trust and character in public life that he had first mentioned in public in his early days in Parliament. He was not, however, a prude in moral matters. Another high profile cases involved the eccentric sex reformer William Chidley over the suppression of his book, *The Answer*, in March and April 1914, which detailed contraceptive practices amongst other items. Cullen dissented from the majority view that the book was obscene.<sup>135</sup>

Cullen certainly went his own way in social issues. While he could be tolerant of Chidley he was condemning of anything politically radical, as demonstrated by him blocking the appointment of the socialist academic, V Gordon Childe,<sup>136</sup> to the position of a tutor in ancient history in the Department of Tutorial Classes at the University of Sydney, against the wishes of many others.<sup>137</sup> Cullen was never comfortable with the left wing of politics and the temporary exclusion kept a very distinguished academic sidelined.

One of the most onerous tasks for judges in Cullen's time was the need to pass sentence of death. On the rare occasion that he had to pass such sentences he could often rely in part on the Executive Council overturning the decision – as Lieutenant-Governor he sat on this council so quite probably knew what the outcome would be. On occasion, however, the decisions were not rescinded by council. Threats to public order could ignite a sense of grave injustice in Cullen which he saw as justification for the death sentence. When two men with links to the radical group, the International Workers of the World, were found guilty of murdering a police officer in the town of Tottenham in 1916, Sir William

<sup>129</sup> Meagher RD, Speech in Banco Court, 7 November 1919: see Meagher RD, *A Twenty Five Years Battle* (William Brooks & Co, Sydney) p 43.

<sup>130</sup> Morton F, "Preface" in Meagher, n 129, p 3.

<sup>131</sup> Lang JT, *I Remember* (Invincible Press, Sydney, 1956) p 147.

<sup>132</sup> WRS, "Sir Wiliam Cullen: A Journalist's Respect", *Sydney Morning Herald*, 13 April 1935, p 21.

<sup>133</sup> Gollan R and Scollay M, "Brookfield, Percival Stanley", *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/brookfield-percival-stanley-5374>.

<sup>134</sup> Bennett, n 10 at 88.

<sup>135</sup> Finnane M, "Sexuality and Social Order: The State versus Chidley" in Sydney Labor History Group (ed), *What Rough Beast: The State and Social Order in Australian History* (Allen & Unwin, Sydney, 1982) pp 207-208.

<sup>136</sup> Childe gained an international reputation as an archeologist and political theorist and authored the book, *How Labor Governs*: see Allen J, "Childe, Vere Gordon", *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/childe-vere-gordon-5580>.

<sup>137</sup> Gree S, *Prehistorian: A Biography of V Gordon Childe* (Moonraker Press, Wiltshire, 1918) pp 122-123.





sentenced the men to death with the comment that their crime was “gross, foul, callous and cold-blooded”,<sup>138</sup> which comments were both widely reported and supported.

He was not always so ready to pass such sentences. One of his most high profile criminal cases involved the transgender Eugenia Falleni case in 1920. After the usual short summing up (by today’s standards), Falleni was found guilty of murder. Cullen had to impose the death penalty, something which hung heavy upon him and was done in the strained tones of someone performing a most unpleasant duty.<sup>139</sup>

Cullen had a quiet authority in court. In one incident during the First World War, an interned German was called, and he made his way to the witness box closely followed by a stalwart military gentleman. When it was suggested that the guard should leave, the officer roared: “My orders are to remain!” Cullen replied quietly: “And my orders are that you are not to remain”.<sup>140</sup> The officer beat a masterly retreat to the waiting room.

While the incident may well have been reported for its humorous nature, the scene reveals a number of aspects regarding Cullen: his belief in the sanctity of the courtroom, for Germans or anyone else; his willingness to assert that sanctity, and lastly the effectiveness of his low key approach. While not being of an ebullient nature he had a quiet authority which proved effective in a variety of situations. He certainly controlled his court at a time when other judges, such as Justice Simpson had to endure occasional tirades of abuse.<sup>141</sup>

## CULLEN AS LIEUTENANT GOVERNOR



“His wonted cordiality.”<sup>142</sup>

Cullen was Acting Governor and provided much-needed steady leadership in times of considerable tension. Labor Party supporters expected that the new country would increasingly act in their benefit

<sup>138</sup> “Tottenham Murder”, *Sydney Morning Herald*, 21 December 1916, p 8.

<sup>139</sup> Tedeschi M, *Eugenia* (Simon & Schuster, Australia, 2012).

<sup>140</sup> “A Court Incident”, *Sydney Morning Herald*, 16 December 1916, p 12.

<sup>141</sup> “Painful Scene in Court: Mr Conroy and the Judge”, *Sydney Morning Herald*, 2 May 1917, p 11. Conroy shouted out that Simpson had “a maggot in the brain” amongst other epithets.

<sup>142</sup> Holman WA, *My Political Life*, quoted in Hogan M (ed), *The First New South Wales Labor Government 1910-1916: Two Memoirs: William Holman and John Osborne* (UNSW Press, 2005) p 78.



while others feared that such agitation was destabilising. Cullen kept a steady hand through a variety of incidents and maintained his support for many organisations which advocated social improvement such as the Prisoners' Aid Association. There were ample opportunities for him to exercise his judicial wisdom in both the legal and political contexts.

Soon after Cullen's appointment as Chief Justice his resolve was tested by repeated crises involving the Labor Government of William Holman. Cullen's emphasis on politeness was not simply some antiquated Victorian ritual: it was an exemplar of the style of restrained consideration of a tense situation in which rationality, commonsense, prudence and justice should determine the outcome. Sir Thomas Bavin noted how, during times of "heavy responsibilities", Cullen always acted "with dignity, impartiality and scrupulous care".<sup>143</sup> There were strong feelings and personalities on all areas of politics and the calm insistence on proper personal forms and styles kept a lid on exploding emotions.

Labor politician, John Osborne, was in Parliament during one incident, and when the Opposition realised they had missed the opportunity of a vote of no-confidence they were "like a lot of tigers who had been robbed of their prey".<sup>144</sup> Such displays were anathema to Cullen. All politicians noted and appreciated Cullen's trademark "cordiality [and] kindness in dealing with those around him".<sup>145</sup> Cullen believed that people had a responsibility to be rational and restrained in public debate, rather than giving way to their emotions. He would have difficulty following his own advice during the First World War when his pro-war partisan view point led him into articulating passionately bellicose public statements.

In 1911, the slim Labor majority in the New South Wales Parliament led to a tense and complex series of political manoeuvres by the wily Acting Premier Holman, who was going through one of his tests of political brinkmanship. He sought to manipulate Cullen into proroguing Parliament in the hope that he could go into an election as Premier. In an eerie foreshadowing of later national crises in 1975, the State government was also in danger of not being able to pass supply bills, and then there was the possibility of appointing a caretaker Premier, Wade, on the understanding that he would call an election. Cullen withstood the pressures, blandishments and chicanery, even insisting on Holman sitting quietly at the tea table at the then Government House, *Cranbrook*, to discuss the situation while the Labor members filibustered in the Parliament. The situation deteriorated and on 19 September 1911, police were called into the House by the controversial Speaker, Henry Willis,<sup>146</sup> "to remove a disorderly member who refused to obey the Sergeant-at-Arms".<sup>147</sup> Willis eventually resigned in July 1913, but in the process tabled a virulent attack on Cullen, accusing him of committing "culpable offence against the *Constitution* and the free people of"<sup>148</sup> New South Wales.

There was widespread enthusiastic support for Cullen from both the government and the Opposition. Newspapers rushed to Cullen's defence with one mentioning "disgust and indignation" at the content and manner of delivery of Willis' document.<sup>149</sup> Cullen clearly retained the respect of the majority of both sides of Parliament. The document was expunged from the records by unanimous vote on 24 July 1913.<sup>150</sup> Opposition Leader Wade's somewhat hyperbolic cry to a cheering crowd in

<sup>143</sup> Sir Thomas Bavin, lawyer and Premier, quoted in "Death of Sir William Cullen", *Sydney Morning Herald*, 8 April 1935, p 10.

<sup>144</sup> Osborne JP, *Nine Crowded Years* (1921) quoted in Hogan, n 142.

<sup>145</sup> Holman, n 142, pp 78-79.

<sup>146</sup> Spearritt P and Stewart E, "Willis, Henry", *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/willis-henry-9124>

<sup>147</sup> Lang, n 131, p 49.

<sup>148</sup> There were at least six pages devoted to the incident in the *Sydney Morning Herald* on 23-24 July 1913, eg, "The Statement: A Remarkable Document"; "The Debate: Mr Wade Defends Lieutenant-Governor"; "Mr Willis' Missile".

<sup>149</sup> "Sir William Cullen, the Government and Mr Willis", *Singleton Argus*, 26 July 1913, p 4.

<sup>150</sup> "Mr Willis' Minute: Expunged from the record", *Sydney Morning Herald*, 25 July 1913, p 9.



Sydney Town Hall that Cullen was “as high above Willis as the sun above the earth”<sup>151</sup> indicated the degree to which the public had warmed to their new Chief Justice. He was seen as a figure of stability, above the party politics which he had so long criticised.<sup>152</sup>

Cullen was soon involved in another controversy. In 1912 Albert Bathurst Piddington<sup>153</sup> was appointed to the High Court after a telegram from W M Hughes asking his opinion on Commonwealth and States rights. Piddington’s reply led him into a storm of protest and he asked Cullen and Sir Edmund Barton for advice. Both men said he should stand firm for the appointment but he demurred.<sup>154</sup> Cullen was probably correct in his assessment of the situation.<sup>155</sup> The incident reveals something of Sir William’s attitude, that the indiscreet approach by one should not be seen to compromise a man of integrity. A man should stand unswayed by such pressure. Both Piddington and Hughes retained their respect for Sir William Cullen, despite their own public disputation in the 1920s. Hughes especially was a great hater and virulent in his public denunciations of real or imagined slights and betrayals yet he too referred to Cullen as well respected throughout his career.

### “A SACRED DUTY”: FIRST WORLD WAR

The first visit to Sydney by the newly appointed Governor-General of Australia, Sir Ronald Munro-Ferguson, in July 1914, coincided with the dramatic lead up to the outbreak of the First World War. Cullen often accompanied the Governor-General as he made a succession of increasingly pugnacious speeches about the need for loyalty to the Empire. Cullen by way of response abandoned any sense of impartiality which may be considered appropriate in modern times and was determined to show that Australia was just such a loyal member of the imperial family, but that this membership was becoming that of an equal partner, but he was not unaware of the tragedy of war. In a time of heady militarism he gave a more sober reflection on the “hardships of the wives and children of soldiers when he first spoke about the war”.<sup>156</sup> The family commitment to the war was shown from the very earliest days, when *Tregoyd* was given over to the conduct of first aid classes for local women under the guidance of Lady Cullen.<sup>157</sup>

The early enthusiasm for the war evaporated with the death lists and anxiety which accompanied the landings on Gallipoli in 1915. Cullen entered into period of intense public activity along with the other Justices of the Supreme Court. They were among the leading people who campaigned for a Red Cross Appeal to help the wounded from Gallipoli. The campaign culminated in an occasion to be called “Australia Day”<sup>158</sup> on 31 July 1915. By that date, both Cullen’s sons had left for war: Howard Clifford Cullen had sailed on 19 February 1915, aged 22. His younger brother, William Hartland Cullen, left on 25 June 1915, aged 19. By August, both of them were on Gallipoli.<sup>159</sup> Lady Cullen was also becoming increasingly involved in the Red Cross and other activities. The aim of Australia Day was to raise £200,000 – eventually it raised £900,000 and involved masses of citizens crowding the length and breadth of the city as well as other centres across the State. The presence of Cullen added to the legitimacy of the movement.<sup>160</sup> His public appearances continued through the year. He

<sup>151</sup> “Final Rally: Mr Wade’s Appeal”, *Sydney Morning Herald*, 4 December 1913, p10.

<sup>152</sup> “The Good Man Politician”, *Kiama Reporter and Illawarra Journal*, 6 June 1903, p 3.

<sup>153</sup> Roe M, “Albert Bathurst Piddington”, *Australian Dictionary of Biography*, <http://adb.anu.edu.au/biography/piddington-albert-bathurst-8043>.

<sup>154</sup> See Bolton G, *Edmund Barton: The One Man for the Job* (Allen & Unwin, Sydney, 2000) p 313; Sawyer, n 107, pp 105-106.

<sup>155</sup> Sawyer, n 107, pp 105-106.

<sup>156</sup> “Enforced Quietude”, *Sydney Morning Herald*, 12 August 1914, p 9.

<sup>157</sup> Turner E, *Diaries 1889-1923* (Library of New South Wales) MLMSS4523.

<sup>158</sup> There had been a number of such “Days” including Allies Day, France Day and Belgium Day. This day was to be set aside for Australian wounded, thus the name was set as such.

<sup>159</sup> Both sons served as frontline soldiers throughout the war, both were wounded and suffered illness. Both survived.

<sup>160</sup> There were many references to his presence in the press, see eg “Our Wounded: Red Cross Appeal”, *Sydney Morning Herald*, 27 May 1915, p 6, and over the following weeks.



constantly urged support for a just war. He would soon allow the use of the grounds of *Tregoyd* for fundraising fetes and as a rest venue for wounded soldiers.

The culmination of the process of reaffirming commitment to the war was the Anniversary Meeting of the outbreak of the conflict which was held in a packed Sydney Town Hall on 5 August 1915. Sir William Cullen's speech was a powerful display of sincere support for the war and he was "cheered to the echo"; he provided a legal legitimacy to the war through his reference to the way in which Germany had shown no "scruple in trampling underfoot international law" and that this was a "righteous war".<sup>161</sup>

Cullen was a credible advocate for the war as not only had both sons enlisted as private soldiers, the youngest one had refused his father's attempts to assist him with a commission in the King Edward Horse. It was reported that "the reply [Sir William] got was, 'No, I'm an Australian. What is good enough for Australia is good enough for me.' (Great cheering.) At this stage Sir William Cullen was almost overcome with emotion."<sup>162</sup> "The crowd called on him to 'cheer up'."<sup>163</sup> It was evidence of a great bond between speaker and audience, between a Chief Justice with an established public reputation and an admiring crowd similar in nature to a loyal political constituency. Furthermore, he condemned what he saw as attempts to pit "class against class" but held out the ideal that they had to be "gravely in earnest" with no "frivolity" so that the experience of self denial would have a profound effect on national morale' after the conflict was done.<sup>164</sup>

Cullen's public appearance on that emotional night shows a number of aspects of his relationship to the Australian people, the honesty in his approach, as he had his own sons in battle, his vision for the future, his profound belief in the war as a just war, and the belief that it would lead on to a more unified country. Furthermore, support for the war was seen as a test of credibility of any organisation. On 18 September 1915, he spoke at a farewell for men of the University of Sydney Law School going to the front. He mentioned with pride that 56 from the law school had already enlisted. He certainly set the tone for the legal community's support for the war when he spoke of what he termed as the influence of the "puling pacifist" and the dangers of an "inglorious and fallacious peace".<sup>165</sup> He wanted Germany crushed.

The war and its accompanying fears strengthened the sense of community amongst lawyers, particularly judges, who did not appear to have had any reservations about the need for the conflict. Judges often acted in unison with each other in support of a variety of causes and Cullen clearly displayed his willingness to fulfill a leading public role, in a manner which would not be acceptable today. Judges often combined with him in support for war-related activities.<sup>166</sup> The sense of community extended onto the battlefield though the close connections of their sons.<sup>167</sup> The legal profession, particularly the judiciary, united to form an especially tight community.<sup>168</sup>

Despite his high position, Cullen was not one to expect any special treatment. In the 1916 ceremonial farewell for Governor Strickland, Cullen forgot his tickets and so was refused entry to

<sup>161</sup> "Anniversary of the War", *Sydney Morning Herald*, 5 August 1915, p 7.

<sup>162</sup> "Anniversary of the War", n 161, p 7.

<sup>163</sup> "Anniversary of the War", n 161, p 7. A "Cheer up" campaign was underway at the time to offset the universal sense of gloom amongst the community in response to the casualty lists from Gallipoli.

<sup>164</sup> "Anniversary of the War", n 161, p 7.

<sup>165</sup> "The Menace: An Inglorious Peace", *Sydney Morning Herald*, 18 September 1915, p 17.

<sup>166</sup> "France's Day: Lieutenant-Governor's Letter", *Sydney Morning Herald*, 10 July 1917, p 7.

<sup>167</sup> William Hartland Cullen wrote to Mrs Ferguson on 14 June 1916 stating his grief over the death of her son, Arthur: Sir David Gilbert Ferguson Papers, State Library of NSW, MLMSS 2858.

<sup>168</sup> Higgins to Ferguson letter, 28 June 1916, on the death of Arthur Ferguson in action: Sir David Gilbert Ferguson Papers, State Library of NSW, MLMSS 2858. The author has been granted permission to use these letters by the Ferguson family. Higgins' letter displays how closely the judges followed the fate of each other's families in the war.



Government House. Cullen's chauffeur went back for the missing tickets while Cullen waited at the gate. Perhaps it was a mark of the man that Cullen did so without demur.<sup>169</sup>

Cullen was appointed Acting Governor in place of Strickland during one of the worst times of the war – on and off the battlefields. There was an escalating sense of threat within the wider community. The International Workers of the World maintained a virulent campaign against the war, replete with savage rhetoric about burning down the system. There were bitter debates over conscription that degenerated into fist fights and riotous public meetings: the industrial situation was spiraling towards the Great Strike of August 1917. Lily Cullen also adopted a more public role and was appointed President of the New South Wales Red Cross. She suggested the exhortation, "Carry on" as the slogan. It captured the mood of the time and became synonymous with her legacy.<sup>170</sup>

The Great Strike that commenced in August of 1917 fractured the community in many ways: unions were being deregistered and strikers were blacklisted, while non-strikers who returned to work were bitterly condemned as "scabs" by their former workmates. There were massed meetings of strikers replete with lurid rhetoric about the injustice of the situation. Justice Heydon in the Industrial Court deregistered any striking union in a powerful display of the legal authority. Eventually rabid crowds of strike breakers, made up of men from country areas as well as older students from established private schools, camped in areas such as Taronga Zoo or in the Brewongle Stand at Sydney Showground.

There were murders associated with political propaganda committed in a variety of areas and arson attacks in the centre of Sydney in the midst of divisive public discourse regarding conscription with the volatile mix of sectarianism personified by the figure of Archbishop Mannix. It was easy to see that the rule of law, the acceptance of democratic institutions, could well erode. In the most bitter of public occasions Cullen showed the restraint that was a mark of him, despite his personal antipathy towards the strikers: he had supported an unsuccessful Bill for compulsory arbitration while in the Legislative Council. Its defeat, he said, was caused by "the enthusiasm of the few" having been confronted by "the indifference of the many".<sup>171</sup> He managed to retain his self-possession, even in the heated public disputations which the strike generated. Commemorative events could draw bitter political opponents together. Cullen refrained from passing comment to such an extent that he was held as an example of proper behaviour, even by Labor Party members and other strike supporters with whom he was in profound disagreement.<sup>172</sup>

Cullen maintained his energetic support for the war through to armistice. In 1918 he was President of the "Jacks' Day" Committee to support seamen.<sup>173</sup> Also in 1918 he supported the Soldiers and Citizens' Party in its attempt to raise funds from public subscription to establish hostels near "high or superior" public schools, where the children of men killed or incapacitated could be educated,<sup>174</sup> no doubt trying to give the same opportunity to others that he had received himself.

On 21 October 1918 he delivered a speech titled "The Defeat of German Militarism – The Only Hope of a Just Peace", commenting on the American peace proposals of President Woodrow Wilson.<sup>175</sup> It was widely reported in the press and distributed as a pamphlet by the War Literature Society complete with lurid images on the cover of Germans bombing hospitals, which matched the content of his speech – that justice demanded that Germany had to be punished.

<sup>169</sup> "Governor's Farewell", *Sydney Morning Herald*, 30 April 1916, p 6.

<sup>170</sup> Turner (Curlewis) E, "Lady Cullen: Some Memories", *Sydney Morning Herald*, 17 June 1931, p 10. Lily Cullen's career also deserves far greater recognition than it has so far received.

<sup>171</sup> See Rickard J, *Class and Politics: New South Wales, Victoria and the Early Commonwealth 1890-1910* (ANU Press, Canberra, 1976) p 154, quoting Cullen.

<sup>172</sup> "Town Hall Meeting: A Discordant Note", *Sydney Morning Herald*, 6 August 1917.

<sup>173</sup> A "Jack" was a nickname for a seaman and the committee included many leading lawyers and citizens including Lady Cullen, Judge Backhouse William Brooks MLC, Sir James Fairfax and Adrian Knox KC.

<sup>174</sup> Lloyd C and Rees J, *The Last Shilling: A history of repatriation in Australia* (Melbourne University Press, 1994) p 238.

<sup>175</sup> See <http://www.nla.gov.au/apps/cdview/?pi=nla.aus-vn941897-s1-v>.



When the end of the war was officially announced business was suspended in all jurisdictions of the New South Wales Supreme Court and Cullen presided over a packed meeting of judges, barristers, solicitors and politicians in the Banco Court to celebrate. He spoke of men “cheerfully” laying down their lives and their “immortal” fame defending “justice”.<sup>176</sup> He attended the usual parades and welcomes for soldiers, and quietly collected his own sons when they returned from active service, waiting his turn in line at Victoria Barracks with other members of the public. He then turned his attention back to the law and the university. The strain of those war years had, however, taken its toll on his and Lily’s health. His failing strength was exacerbated by his constant workload on the Bench.

There is a sense of weariness in the tone of Cullen’s later public pronouncements. Controversy was never far from him, partly because there were generally unfriendly relations between the government and the judiciary. Cullen was involved in various disputes with the Labor Premier, John Storey, regarding the appointment of judges to the Bench and the use of judges in Commissions. Cullen refused to allocate a judge to inquire into the adequacy of parliamentary salaries in 1920, much to the chagrin of the Premier.<sup>177</sup>

## UNIVERSITY OF SYDNEY

Cullen maintained his connection to the University of Sydney after the war. He had been involved in a number of tense issues since he had been appointed Chancellor in 1914. In 1916, in the midst of the sectarian tensions surrounding conscription, he had publicly opposed altering the Act of Incorporation of the university to allow for the granting of degrees in divinity. He saw it as a retrograde step, out of keeping with the intentions of the original Act. There was some confrontation in the Senate regarding this position which was eventually resolved against his stance.<sup>178</sup> At least he had the satisfaction of seeing his long held aim of life terms for Fellows of the Senate being replaced by quinquennial terms come into effect in 1922.<sup>179</sup>

During the 1920s Cullen worked to expand the university, taking the case to the wider public through speeches and a pamphlet.<sup>180</sup> The mid-1920s were known as “troubled years” at the university and the establishment itself was in a rundown state.<sup>181</sup> Regardless, there was still great interest in new sciences and the university. The university actively conducted appeals for funds.<sup>182</sup> One successful appeal was for the Memorial Carrillon to commemorate the war dead. Cancer research, using the new radioactive materials, also generated donations and gave the university the opportunity to raise funds through quasi-business means.

This process gave rise to a bitter condemnation of the aging Cullen, from Dr Herbert (Paddy) Moran, who portrayed Cullen as holding the attitudes of “an aging spinster of the Victorian” period.<sup>183</sup> Perhaps there was a sectarian element to Moran’s bile as he was Catholic and the Protestant Cullen

<sup>176</sup> See “Supreme Court: Speeches by Bench and Bar”, *Sydney Morning Herald*, 13 November, 1918, p 10.

<sup>177</sup> Bennett JM, *A History of the Supreme Court of New South Wales* (Law Book Co, Sydney, 1974), pp 54-56.

<sup>178</sup> Turney et al, n 40, pp 219-220.

<sup>179</sup> Bennett n 10 at 84.

<sup>180</sup> Cullen WP, *The Need for Increased Buildings at the University: An Address to the Public of New South Wales* (WE Smith, Sydney, 1919).

<sup>181</sup> Turney et al, n 40, pp 453-503. During this stage, Cullen adopts a more combative role in the press.

<sup>182</sup> There are a number of references to appeals throughout the 1920s in the various newspapers of the time: the *Sydney Morning Herald* reported on them regularly. See also, eg *University of Sydney Appeal on the Occasion of the 75th Anniversary, 1927: List of Subscribers* (Publicity Press, Sydney, 1928).

<sup>183</sup> Moran HW, *Viewless Winds* (Windmill Press, London, 1939) pp 272-275. Moran was furious over the possibility of the university going “into the hire business” as he saw fund raising, and resigned in protest.



had supported the establishment of a Masonic Lodge in 1928 at the university.<sup>184</sup> Or perhaps the modern university was well beyond the traditions that Cullen held dear and he had simply stayed on too long.<sup>185</sup>

## LATER YEARS

An exhausted Cullen retired from the Bench in 1925. He sold *Tregoyd* at Mosman and moved to his house, *Cliffland*, in Leura in the Blue Mountains. He remained as Lieutenant Governor and continued as Acting Governor on a number of occasions until 1930. He also remained as Chancellor of the University of Sydney. The haste with which he left Sydney and the position of Chief Justice suggested that he had had enough of the role and wanted to be closer to the bush. Perhaps the completion of the tramway to Balmoral Beach in 1923 passing *Tregoyd* contributed to the decision to sell.

Cullen and his ailing wife, Lily, travelled overseas before settling in the mountains. He inevitably became involved in local issues in the district despite Lily's ill health. He appears to have been rejuvenated by the trip to Europe. He had strong connections in the mountains, having been a much appreciated caller on those in Leura district who were suffering grief and distress during the First World War. He was also a constant speaker and guest at local events. In some ways, he was never off duty.<sup>186</sup>

Cullen continued his public appearances in Sydney and was an opponent of anything which he saw as disrupting public order. In 1930 he displayed his political cunning when he resigned as Lieutenant Governor at a time when the new appointment would be made by the then Premier, and barrister, Sir Thomas Bavin. His government duly appointed Sir Philip Street, much to the chagrin of Jack Lang and the Australian Labor Party who were hoping to be able to put in their own candidate after the looming election, which they correctly expected to win.<sup>187</sup> Cullen would have been ideologically opposed to Jack Lang because of Lang's class-based politics which Cullen saw as divisive. Cullen apparently stayed late into the night with Governor Game "up until 12.30 am on 8 May 1932 imploring and explaining why he should dismiss Lang".<sup>188</sup> The close relationship between Cullen and Game gave some credence to Jack Lang's belief that his dismissal was the result of "back-room intrigues at Government House"<sup>189</sup> involving people who were the natural enemies of his government. Cullen maintained a close association with Governor Game and publicly supported his decision to dismiss the Premier.<sup>190</sup> The two men often appeared together, linked particularly by their enthusiasm for the scouting movement and love of outdoor pursuits.

Cullen remained an active president of a large number of organisations such as the Boys Brigade and the Scouts. His allegiance to such traditional social organisations, with their uniforms, somewhat militarist style and emphasis on Empire was at odds with the "fads and madcap behaviour of the younger generation of the twenties".<sup>191</sup> He would travel down from the Blue Mountains to address their meetings. The themes of his address were constant: that such organisations produced the "raw

<sup>184</sup> There was long standing, but often disguised antipathy between Catholics and Masons: see, eg Franklin J, "Catholics Versus Masons" (1999) 20 *Journal of the Australian Catholic Historical Society* 1. Moran's comment that Cullen put his arm around his shoulder may well have been seen as being embraced by the enemy.

<sup>185</sup> Bennett, n 79.

<sup>186</sup> The Blue Mountains contained yet another group of newspapers which ran many stories of Cullen's support for local activities and his general popularity.

<sup>187</sup> "Mr. Lang and the Governor 'No Dispute'", *Sydney Morning Herald*, 25 December 1930, p 7.

<sup>188</sup> Moore A, *The Secret Army and the Premier: Conservative Paramilitary Organisations on New South Wales, 1930-32* (UNSW Press, 1989) p 227; in addition seven KCs issued a "memorandum" stating that the Governor was "entitled to end the Lang tyranny" (p 227).

<sup>189</sup> Lang JT, *The Turbulent Years* (Alpha Books, Sydney, 1970) p 115. See also Lang JT, *Why I Fight* (Labor Publications, Sydney, 1934) p 116, which mentions Lang's belief that "Australia was ruled by a secret power".

<sup>190</sup> See, eg "Governor's Courage: Tribute by University Chancellor", *West Australian*, 16 May 1932, p 14

<sup>191</sup> Eksteins, n 119, p 258.



materials of the men who are to fill our city”,<sup>192</sup> men who could live up to their “duties and responsibilities” in society and in their family life.<sup>193</sup> They were perhaps plaintive cries in a world marred by the Great Depression and the ugliness of the rising tide of Stalinism and fascism as he regretted the loss of faith in traditional institutions such as the British Empire and simple local movements such as the Scouts.<sup>194</sup>

Cullen died in his 80th year, on 6 April 1935. His passing was reported across Australia and internationally, with the obituaries invariably referring to his wartime leadership, his courteous nature, his love of the Australian bush, his great academic success, his leadership as Chief Justice and his knowledge of constitutional law.<sup>195</sup> His body lay in state in St Andrew’s Cathedral while a long line of mourners filed by the open casket to pay their respects. Thousands of people lined the route from St Andrew’s to Central Railway. The Carillon at the University of Sydney played Chopin’s Funeral March and the great bell tolled 80 times. A trainload of mourners accompanied the body to its interment next to Lily in Wentworth Falls.<sup>196</sup>

Sir William Portus Cullen’s life and career deserves far more attention than it has so far received. He personified the stereotypical character formed in the Australian bush: laconic, physically vigorous, hard-working, loyal to his friends and his country, somewhat conservative in outlook, and committed to the belief in a classless society. But in addition he represented a new style of professional in that he combined these rather traditional values with the great advantages of a higher education. He maintained a sense of loyalty to the Empire combined with a desire for independent action within it. He also fostered a sense of community in the New South Wales legal profession which formed the basis of its current Australian identity.

He was the transitional figure who, when he retired, “no longer was it thought necessary, nor even desirable, to import judges to import judges from England or Ireland”.<sup>197</sup> This change occurred during Cullen’s period as Chief Justice and was a reflection of his legal ability as well as the public persona he maintained with its emphasis on traditional values and his understanding of what was entailed in public duty and responsibility. Even as his dogged allegiance to the British Empire became increasingly anachronistic, his political opponents remained consistent in their admiration of his personal qualities. He validated the worth of public education and became a link with the colonial past, and his death was seen as the passing of a man who had become a household name and epitomised the time in which had lived.

## Appendix

Cullen’s list of appointments is remarkable in both its diversity and the length of time in which he stayed in office.<sup>198</sup> In addition to his position as Chief Justice, he was also Challis Lecturer, Law of Real Property and Equity, University of Sydney (1890-1894), Fellow of the Senate, University of Sydney (1896-1934), Vice-Chancellor, University of Sydney (1908-1911), Chancellor, University of Sydney (1914-1934), Member of the New South Wales Legislative Assembly (1891-1894), Member of the New South Wales Legislative Council (1895-1910), Judge Commissary, Vice-Admiralty Court (1910-1911), Judge in Admiralty, New South Wales Supreme Court (1911-1925), and Lieutenant-

<sup>192</sup> “Boys’ Brigade”, *Sydney Morning Herald*, 29 September 1933, p 10.

<sup>193</sup> “Boy Scouts”, *Sydney Morning Herald*, 1 October 1932, p 14.

<sup>194</sup> “Boy Scouts”, n 193, p 14

<sup>195</sup> Fuller BC, “Obituary: Sir William Cullen” (1935) 9 ALJ 24.

<sup>196</sup> “Death of Sir William Cullen: Brilliant Career”, *Sydney Morning Herald*, 8 April 1935, p 10; “Late Sir William Cullen: State Funeral”, *Sydney Morning Herald*, 10 April 1935, p 10.

<sup>197</sup> Bennett, n 177, p 56.

<sup>198</sup> See NSW State Records, n 36.





Governor of New South Wales (1910-1930).<sup>199</sup> In addition he was trustee, patron and president of an encyclopedic number of local causes and institutions, including the Public Library of NSW (1914-1935), the Australian Forest League, the Boy Scouts Association of NSW and Captain Cook's Landing Place.

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<sup>199</sup> Sir William Cullen was Acting Governor on six occasions: 26 April to 12 November 1911, 11-14 March 1913, 30 April 1917 to 18 February 1918, 14 September 1923 to 27 February 1924, 24 August 1928 to 1 February 1929, and 9 April 1930 to 28 May 1930: *Law Almanac* (Alfred James Ket, Government Printer, Sydney 1932) p 44

