

Battles Overseas and At Home: The New South Wales Legal Profession in 1917.

On 27 June 1916 Mr Justice Ferguson was interrupted while presiding in court by the New South Wales Commandant Lieutenant Colonel Gustave Ramaciotti who had previously been the managing clerk of the conveyancing department of the Sydney solicitors, Minter, Simpson & Co. had come to tell Justice Ferguson that his son, Arthur Garere Ferguson had been killed in action.¹ The war could intrude on anyone's life at any time.

Introduction:

This paper presents an overview of a momentous and often overlooked year in Australian history. In 1917 the New South Wales legal profession displayed a remarkable degree of unanimity of attitude and action in response to the war and the way it should be conducted by the Australian population. Judges and magistrates gave harsh sentences to those people who dissented from official policy, lawyer politicians enacted bills and used their official powers to suppress dissent and lawyers on the battlefields continued to launch themselves into the violence. In a profession marked by independent action there was marked unanimity of purpose and thought despite sectarian, political and social differences. Such an overlap of enterprise is unusual in a profession characterized by 'fierce independence and, at times, vigorous expression of dissent' compounded by the need for 'privacy and confidentiality'. The genius of the individual may not say much about any corporate character possessed by the respective profession.²

The world of Australia today and that of 1917 are as if comparing different countries, yet many issues which came to a head in that time resonated throughout successive decades. By 1917, the New South Wales legal profession was dominated by the war:

professionally; personally; socially; politically and spiritually. It's hard to see beyond the contemporary social and physical landscape to a more restrained and grief stricken environment. The legal profession lived in a sandstone world – both physically and mentally. Form was everything. Wigs, gowns, chambers, titles and procedures existed as a derivative of the English Inns of Court. People wrote with pens dipped in ink and left their mark by the distinctive smudges on the ends of looping letters. Trams rattled by. Horses still made the air rich with their farmyard odours. Chambers were crowded, Dickensian places – stuffy and hot in summer, chilly in winter. A judge without a wig was unthinkable. Yet intruding on the steady world were the beginnings of modern legal forms. There was already an attempt to have women allowed to be lawyers. The Chief Justice, Sir William Cullen, was the first such holder of that office to be born in Australia. The industrial landscape was taking shape. 1917 would see the country split to such an extent that civil war could be glimpsed on the horizon. The legal profession was as involved as any could be. In some ways the real war was in Australia, more than on the battlefields of France and Belgium. The death notices just kept coming.

Need for the Research

Lawyers are persistently categorized in simplistic or judgmental terms in historical discourse. They can be the persecutors of the working class, defenders of an out of date legal system, opportunistic, elitist or simply mentioned in passing. Iconic figures such as CEW Bean or Banjo Paterson were lawyers before their more prominent roles, but these early professional experiences are often merely footnotes to their later

activities, as if their legal experience and education did not assist them in their endeavours or did not supply them with lifelong social connections. World War One challenged these stereotypes to reveal a vibrant, human profession steeped in values of service and cooperation far removed from the often touted combative image. The legal profession during the period of the First World War extended its involvement into a great range of activities including politics, charities, recruitment campaigns, direct enlistment or the active support of the men at the front. Lawyers ran internment camps, officiated in courts martial, ran public enlistment campaigns, battled or defended strikers, managed campaigns to provide ‘comforts’ to soldiers and worked to resettle wounded in Australia. Lawyers’ families were active and energetic participants in the huge charitable enterprises, which support the war effort, namely the Red Cross and the Comforts Funds. The profession, whose members ‘depend for their professional accomplishments upon fierce independence, and at times vigorous expression of dissent,’³ revealed its values as loyalty to the British Empire while supporting the idea of Australia as an emerging quasi independent, distinctive entity within that family of nations. Participation in the war was according to Adrian Consett Stephen a ‘spiritual’⁴ opportunity to define the nation. Lawyers demonstrated a passion for public life, a desire to establish the new nation and set an example to other Australians. In addition their active participation in the battlefield meant that they – both physically and mentally.

The profession was becoming increasingly proud of its self-sufficiency in Australia.⁵ Sydney University was producing Australian lawyers and the profession was producing Australian Judges. The year 1917 would see that process accelerated by the

Act, which determined that all judges should retire at 70 years of age. While these men (they were all men at that time) were avowedly pro-British their Australian nationalism seeped into their daily discourse almost unconsciously. Australia may well have been a derivative of England, but it was also seen as an evolving independent entity, proud of itself and determined to show that it could stand in full partnership with the 'mother country' as a functioning part of the British Empire. While Australia was tied to the English Court system there was every indication that this was seen as temporary. In 1914 Karl Cramp, an Examiner in the Department of Public Instruction, wrote that 'appeals to the Privy Council from the High Court of Australia as allowed in exceptional cases, though this right of appeal is little more than nominal and may conceivably fall into disuse.'⁶

Yet intruding on the steady world were the beginnings of modern legal forms. There was already an attempt to have women allowed to be lawyers. The Chief Justice, Sir William Cullen, was the first such holder of that office to be born in Australia. The industrial landscape was taking shape. 1917 would see the country split to such an extent that civil war was hinted in the public discourse. The legal profession was as involved in all these issues. In some ways the real war was in Australia, more than on the battlefields of France and Belgium.

Styles

Lawyers' styles varied as much as their personalities. Reginald Long Innes was reported to be 'dogmatic to the point of arrogance' in court.⁷ He was one of the steadily declining number of lawyers who had been educated in England. The legal community in 1917 was a mixture of somewhat contradictory behaviours. It was

professionally combative in the nature of case work. But lawyers were collegial and supportive of each other. The profession could be profiled as a Meritocracy, hierarchical, dependent on academic and professional success. Success bred success. The most influential practitioners exhibited a number of styles – there were the glacial looks from the stony faced judges such as Mr Justice Pring, or the more ebullient, remonstrations from judges such as Heydon in the industrial Court. Others were noted for quick-witted repartee or scalpel-like forensic skills. It was unselfconsciously nepotistic. The professional bonds extended overseas. Lawyers' letters from the Front constantly mention contact with anyone they know from the law, school or other social groups.

Some lawyers led lives which cut across a range of social institutions. A number were in politics. Other managed their high profiles through engagement in charitable activities. Adrian KNOX KC

Knox KC managed a very high workload with a his work with the Red cross and in sport. He had already visited Australian forces in the Middle East and helped the Red Cross and other charities, generally known as 'Comforts Funds', establish a system for the delivery of the tons of supplies doated by the Australian population.

Professionally he was instructed by Norton, Smith & Co to appear in such dicers cases as for Sydney Ferries Ltd in a Royal Commission into the affairs of that company in mid June 1917.⁸ In the same week he was part of an advisory committee which was appointed by a conference of sporting organisations held at Sydney's Victoria barracks to respond the suggestion that government could cause a complete cessation of boxing, racing and football. Knox KC represented teh AJC came up with the practical suggestion that there was 'a gross amount of racing in and about the neighbourhood of Sydney' anyway so it was a good opportunity to get this reduced,

and besides if the committee did nothing, the government may do so anyway. While there was some squabbling over how many days could be lost from which activity generally speaking, as so often happened, Knox KC's idea won the day.⁹

Charitable Funds.

The legal community continued their enthusiastic support of the plethora of charitable funds which proliferated.

CULLEN

The Chief Justice, Sir William Cullen and his wife gave practical help to the cause allowed their home, 'Tregoyd' in Mosman for a Fete in aid of the "War Chest". When World War One broke out the Chief Justice was the Honorable Sir William Portus Cullen KCMG. His wife, Lady (Eliza) Cullen, had an important public life. She was a foundation vice-president of the New South Wales division of the British Red Cross Society and remained a keen supporter of the society throughout the war years. Sir William and lady Cullen made regular appearances at Red Cross fundraising evenings. In 1916-1917 Lady Cullen was president of the Australian Red Cross Society. She was also active in the Comforts Funds. Lady Cullen's adopted a strong leadership role. In 1917 she inspected and addressed the quasi-military parade of 1,200 Voluntary Aid Nurses (VADs) assembled in the Sydney Domain. It was an important role for anyone. Her speech contained the simple exhortation to "Carry on"¹. This comment became the motto for the Red Cross in the last years of the war – a time when any glamour in dealing with the torn and shattered soldiers had well and truly evaporated. Her appearance at the parade in front of so many ladies, crisp and

¹ *The Red Cross Record*. 8 January 1918. This wartime record is the primary source of information concerning the Red Cross in World War I

neat in their starched white uniforms, marching with military precision reflected her important position in the Red Cross, which had become one of the most high profile non-government organisations in the country. Women were on the march, literally and figuratively speaking. One feminist writer at the time, Elsie Horder, mentioned the belief that the work of women in the Red Cross “had entirely demolished the anti-feminist arguments against our usefulness.”² Many women hoped that their war related activities would be a platform to greater community involvement after the conflict. While the Red Cross expanded, their sons went off to war.

Both the Cullen sons, William Hartford Cullen and Howard Clifford Cullen, left the comfort of their landmark family home, *Tregoyd*, in Mosman early in 1915 to enlist in the army.³ William served on Gallipoli from August 1915 with the 19th Battalion. He then served in a variety of front line and training units in France and England for the remainder of the war. Howard suffered severe illness on Gallipoli then was transferred to very eventful frontline duty in Europe. He survived being gassed in 1917 and later in that year was awarded the Military Medal⁴. The Cullen family experience was not unusual among the other Supreme Court Justices.

CULLENS ROLES IN 1917.

Sir William Cullen had a very high profile during the war. He is a very significant character who deserves much greater research than he appears to have received so far.

² Elsie Horder. “Women and the War” in *The NSW Red Cross Record* I, 11 Feb 1915. 47.

³ Unless otherwise stated, details regarding the careers of the sons of Judges comes from the individual Service Records held in the National Archives of Australia, series number B2455, and the Australian War Memorial Databases and Collections.

⁴ The details of the recommendation for this award are not recorded on the website of the Australian War Memorial, although it is gazetted.

As Chief Justice he had a dominant legal role. But his position also required that he be the Lieutenant Governor when the Governor was absent – and during 1917 there was a hiatus between the departure of XXXX and the arrival of his replacement XXXXX. Sir Iliam Cullen therefore assumed the Vice-regal duties of opening conferences on recruiting and other activities. He tried to avoid making political statements but his attitude towards promulgating the war vigorously was absolute. He was also one who saw that the activities of women in the war, as nurses or in the Red Cross had given the lead to men who were reluctant to enlist. He was heartily cheered by the crowds when he made such speeches stating at one : ‘I wish to heaven that some of our men showed the same spirit of devotion here in our midst as the women working for the Red Cross through out the length and breadth of this fair land.’¹⁰

Other prominent lawyers’ families were also active in helping specific units. The aim of these comforts funds were to direct specific assistance to a particular unit – usually one in which the supporters had relatives serving, or in the past. Mrs Herbert Allen, wife of a partner in Allen, Allen and Hemsley was president of the 12 Light Horse Comforts Funds. Her husband’s firm had a number relatives and associates in the armed services, including Arthur Denis Wigram Allen who received the DSC for his skill and courage as a pilot in the Royal Naval Air Service.

RECRUITING Recruiting

In response to the shortage of recruits, the Chairman of the State Recruiting Committee, Professor MacIntyre urged the creation in January 1917 of ‘Win-the-war’ leagues. Men and women were urged to seek ‘definite promises of enlistment from eligible men’ in response to the ‘urgent need for reinforcements.’¹¹ These leagues

could easily get out of hand and individual members could become overly zealous in their approaches of individuals to enlist for overseas service. Lawyers and their families were prominent advocates in the gimmicky nature of enlistment campaigns. Their sometimes-hectoring enthusiasm for encouraging others to do what they thought was best suggests a tendency towards centralised power. Lawyers consistently supported proposals such as Conscription or Universal Service. They opposed devolution of power to alternative means such as unions. However, they also had the sense of leadership by example. Throughout 1917 older lawyers enlisted, as many had done before, as an example to others.

Heney's comment echoes criticism made by the Sydney barrister and member of the Legislative Council, John Fitzgerald, of some women for the 'objectionable practices (of) taunting and gibing at young men in the audience for not enlisting (and) references to the "white feather" and other taunts' during the later years of the war.¹² Not everyone agreed with him and he opened himself to some lively contradiction.

One passionate supporter of enlistment and a range of war related cause was the daughter of Langer Owen KC, Gladys Owen. She was a regular speaker in Martin Place but also toured surrounding Sydney districts.

Another lawyer to be involved in recruiting was E J Loxton KC. He spoke to the crowds in Martin Place repeatedly. His public appearances coincided in the first part of 1917 with his campaign to be elected to New South Wales parliament. Martin Place, was the centre of recruiting activities in the city. Loxton's speeches referred to the time of national peril and need to follow those who had been 'in the Gallipoli campaign and on the soil of France which was consecrated with the blood of

thousands of noble-hearted men who had given their lives in the cause of justice, freedom and Christianity.’¹³ The other aspect of Loxton’s public utterance was references to industrial relations. Like many other lawyers he referred to the need for industrial courts to ‘insist upon the application of all just penalties with an impartial hand.’¹⁴

One family which would have an extraordinary time of it in 1917 was the Langer Owens.

‘
Langer Owen was already deluged with work in the Missing and Wounded Bureau of the Red Cross and his wife was indefatigable in helping the Randwick Hospital/ But their daughter Gladys became a prominent speaker in all manner of rallies.

Lawyers on the Battlefields.

The beginning of 1917 saw at least 200 solicitors, barrister, law clerks or students serving or having served overseas. In the two and a half years since the war had commenced 26 of these men had fallen in action. During 1917 20 more members of the legal profession would fall in action – far more than any of the previous two years. Nineteen seventeen was to be particularly ugly – the worst year of the war in terms of deaths. Of course these figures do no account for the many friends and relatives which the legal profession lost in action as well as their own number. It is impossible to account for all their actions but there is sufficient evidence to describe the experiences

of men such as Adrian Consett Stephen, Keith Ferguson, John McLaughlin, Cecil Lucas as well as those who fell in action.

Their letters home early in 1917 concerned their distress over the failure of the Conscription Referendum and the endless discomfort of the horrors of winter. Adrian Consett Stephen graphically described how “One’s shaving brush is like wood in the morning; icicles clog one’s razor; one’s boots are as stiff as tin, and the food on one’s plate hardens as you eat.”¹⁵ He was serving in the Royal Field Artillery and while he was able to form friendships with the men in the unit he was not able to be a part of the close community of lawyers that fought and socialised together. The motives of those who went into English units are not clear. For some it must have been a purer form of helping the Empire.

Keith Ferguson’s letters home tell his family of his travels to the UK with XXXXX. While the lawyer soldiers were patriotic they were not immune from the sadness of their world. Consett Stephen wrote home in January 1917, commenting on General Haig’s Despatch on the war. He wrote:

“how strange though to catch a glimpse of a mind which views the whole battle like a game of chess, thinking not of men but of flanks. ‘I then ordered Sir Henry Rawlinson to advance his right flank.’ It was advanced. A thousand homes wept, but a line on the map has been straightened.”¹⁶

Like so many soldiers his letters detail the appalling cold. The River Seine froze over so supplies were difficult to move. There was a shortage of wood and coal for heating. In this environment some Australians were tempted to take what they wanted from the

local area. Fence posts, trees and other wooden object disappeared into the fires. The French complained and so the claims had to be examined, evaluated, tested. And who better to sift through the evidence but the lawyers in the ranks of officers. Two Sydney lawyers barrister, Edwin Mayhew Brissenden and solicitor Arthur Wellesley Hyman would become particularly successful in this obscure but important field of activity.

March

On 31 March a 40-year-old solicitor from Parkes, Francis Commins, who had attended St Stanislaus at Bathurst was killed at Lagnicourt near Bapaume with the 53rd Battalion. He was killed by artillery fire and was buried nearby. A rough cross, made of two pick handles, was erected over the grave but this was soon destroyed by the battle and the site was lost. Less than six weeks later his brother James was also killed in action.

On the same day as Francis Commins was killed, Keith Ferguson was in action nearby with the 20th Battalion. He could have been kept out of the front line because of the death of his brother, Arthur, the previous year, but both he and his father had insisted on him going into action. He was taken onto the personal staff of Brigadier General William Holmes, who was a regular correspondent with Justice Ferguson. Holmes had a policy of personally reconnoitring each part of his line and visited one of them north of Lagnicourt accompanied by his aide-de-camp Lieutenant Keith Ferguson. Holmes wore his usual staff cap with red band and walked to the front line during the day. He was sniped at and while he escaped injury Keith Ferguson was hit and had to be left at the post until nightfall. Shortly afterwards the post was shelled,

possibly due to the activity caused by Holmes' visit and Ferguson was injured again, more seriously.¹⁷

ACS31 March 1917 He walked over to the old German Lines covering the area in which so many men had died trying to capture.

“Some of the billets . . . were good,, some were stone floors only, with rats scampering over our faces; some were odd little rooms where all the winds did blow, but some . . . were good with mountainous French beds , that one could only enter by taking a running jump, and trusting to providence and strong springs, but after the first plunge, when one had fought one's way to the top again, there was a feeling of pomp, almost 'lying in state' about it. A lot depends on the peasant; some are genial and hospitable, making omelette and coffees as soon as we arrived, and giving cream for our porridge in the morning – others were sour and slammed the door and would not open it without payment on the spot. How is it from such soil, from these wretched farms and squalid villages, sunk in the mire of winter, has risen the Army of France?”

April

In Australia, enlistments were falling and the campaigns to attract new recruits became increasingly gimmicky. In April there were a number of campaigns which attracted some lawyers, but numbers were very thin, and tended to be older and from country districts. Leslie Seaborn was not the only solicitor keen to join up in April

1917. In that month the enlistment campaigns attracted a few lawyers, but numbers were very thin, and tended to be older recruits from country districts.

Stacy would appear to have been caught up in the great spectacle of enlistment meetings surrounding the Royal Easter Show, which was on at that time and was the focus of all manner of Light horse pageants. At some recruiting rallies, fully uniformed members of the Light Horse clattered along the pavement at Macquarie Street and Martin Place. Each Light Horseman would be leading a horse with an empty saddle and urging young men to mount up and literally ride away to the medical tent in Hyde Park or the Showground thence to war. Occasionally wounded Light Horse veterans would take off their army greatcoats and wrap them around new recruits as a welcoming ritual into the corps. On more exotic occasions enthusiastic young men could get a ride in one of the new fangled motor cars to the tent next to Queens Square before the real battles began. The recruiting personnel had learnt not to allow men to lose their patriotic ardour by going home to talk things over with their families. At one rally at the time, Miss Gladys Owen, the energetic daughter of Langer Owen KC, snatched up a .303 Lee Enfield rifle and flourished it above her head challenging young men to take it up themselves while exclaiming her regret that she could not go herself. This wildly passionate atmosphere obviously influenced Leslie Seaborn to follow suit as an example to others.

‘The Sportsmen’s Battalion’ was launched at a large meeting at Sydney Town Hall on 3 April 1917 chaired by a prominent leader of the Comforts Fund, Henry Yule Braddon of Turramurra – whose sons, including the Sydney barrister, Henry Russell Braddon, were already in the army. Another speaker at the meeting was the Sydney Lord Mayor, Richard Meagher who had been struck off as a solicitor as a result of his conduct in the celebrated Dean case in the 1890s.¹⁸ Meagher’s colourful political

career went on despite that and subsequent scandals. His long-running efforts to be readmitted as a solicitor of the Supreme Court saw him appear before a variety of courts and involved a much-publicised battle with the Chief Justice, Sir William Cullen. The Meagher matter provided much compelling copy for the Sydney press, some of which occurred at the same time as Seaborn's campaign.¹⁹

Also on the Sportsmen's' committee was the Sydney solicitor Rupert McCoy²⁰ of the firm McCoy and McCoy of Castlereagh Street. The aim of the committee was to recruit 150 men initially for the unit with Seaborn and Diamond leading them overseas thence into battle. These two men were constantly featured as being the ones who would lead the men into battle. The distinctive character of the unit was emphasised by the fact that each man had his Attestation Papers marked 'Sportsmen's Unit' to set him apart from others. The unit had its own letterhead on notepads. For the most part the men in the unit had consecutive serial numbers. A range of people assisted the recruiting process.²¹

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Leslie Seaborn appeared repeatedly at public meetings in Martin Place and around Sydney's outskirts throughout April 1917. He often shared the platform with other lawyers. Ralston KC spoke eloquently about his sons in action. Norman McGhie another barrister also spoke of his service. McGhie had been wounded and lost a leg in action in France. It's a moot point as to whether or not a limbless soldier would inspire others to enlist or be counterproductive to the process.²³ Seaborn threw

himself into organising as many different activities to encourage recruits as he could. By the end of April the *Sydney Morning Herald* reported that the city was ‘absolutely plastered’ with appeals to “‘Be a sport and enlist.’”

On 13 April 40-year-old Fitzroy Stacy, a solicitor from Gulgong enlisted at Showground Camp in Sydney then went into the 7th Light Horse at Menangle Camp. As an indication of just how close knit the legal community could be, Stacy’s enlistment papers show that his certifying officer for the reinforcement unit was the Sydney barrister Selwyn Frederick Betts, who was then an honorary captain with the Light Horse.²⁴ Solicitors were in the news in April 1917. Ronald Osborne, who had been a solicitor with the firm Windeyer and Williams at the time of his enlistment, provided a leading example to others. He was originally from Orange and was awarded the Military Cross for volunteering to operate an artillery observation post within 50 metres of the enemy. He survived the operation by pretending to be dead during the day, then crawling back through the frozen mud. His exploits were well reported in April 1917.

On 10 April, Lieutenant Guy Davenport, a 26-year-old solicitor from XXXX was killed while serving with the 5th Australian Field Artillery near XXXX. He was the brother-in-law to Guy Manning killed in New Guinea in 1915. Davenport had been awarded the Military Cross for his ‘gallantry and devotion to duty’ while operating under the fierce shellfire at Pozieres in July/August of 1916.

Frank Wadhurst Fry, a solicitor from West Maitland was killed in action near Hermies, France on 15 April aged 25 years. He was another victim of the battles near

the Somme River. He had been in charge of a Lewis Gun crew and a sergeant had gone out reconnoitring. Fry tried to save him and was shot about 10 yards out from the post.²⁵

Lawyers in politics

The Holman Ministry as reconstructed 16 November 1916 and which took office in 1917 was understandably labeled a government of lawyers²⁶. In 1917 they had to face a State election on 24 March. The nationalist party combined those who had been expelled from the Labor party and their Liberal Party opponents. This coalition received the enthusiastic support of the *Sydney Morning Herald*. The Nationalist Cabinet was dominated by Sydney lawyers. Holman and his Attorney General David Robert Hall were both listed as barristers in Sydney. The other barristers in cabinet were: John Daniel Fitzgerald, MLC, who was Vice-President of the Executive Council, and Minister for Public Health and Local Government; Augustus George James, the Member for Goulburn and Minister for Public Instruction; John Garland KC, MLC who was Minister of Justice and Solicitor-General; George Stephenson Beeby, who was Minister for Labour and Industry. In all six out of a ministry of twelve were listed as Sydney Barristers. In the parliament as a whole, apart including those already mentioned there were seven barristers in the Legislative Council and six solicitors – thirteen lawyers out of a 71 Members. In the Legislative Assembly, of 90 members there were five solicitors and six barristers. Pilcher KC had been a member but had died only recently. So too had Bernard Ringrose Wise who had been a Member of the Legislative Assembly, Minister for Justice, Attorney General and Acting Premier. He had died in 1916. His replacement had been a long standing friend and another barrister: Thomas Rainsford Bavin. In the middle of 1917, Professor John

Peden of the Sydney University Law School was appointed a lifetime member of the Legislative Council. Peden's and the Sydney University Law School's influence was on the rise. He brought a knowledgeable understanding of legal precedent to parliamentary debate. Despite the number of lawyers in parliament there was a successful effort to introduce legislation in 1917 to fix the retirement age of judges at 70 years.

The Composition of the judiciary was the subject of a deputation of magistrates in July 1917 when members of the New South Wales Justices Association waited upon the Minister for Justice, Mr Galrand KC to suggest the inclusion of selected JPs to sit on metropolitan courts.²⁷

There was ill will between the Labour party under the parliamentary leadership of XXX Storey and the judiciary which continued when they were in government in ???²⁸ Peden's appointment indicates both his own ability and the ascendancy of the Sydney University Law School. The war was one of the factors which gave the school its impetus. The students had volunteered enthusiastically and a number wrote to Peden from overseas. In their letters they enthusiastically mentioned the news of any others from the Law School. They also wrote of their keenness to return to their law studies. But there was little cause for romantic illusion Summers wrote 'All the chaps I came out with . . . are either killed, gassed, wounded, or in Blighty for Home Service.' While HV Evatt wrote: 'of the death of Morven Kelynack Nolan that he was his 'in many ways, fearless, upright, noble, true (and his) best friend' He continued: 'I often think that the Law School must do much more to honour the precious memory of these great and generous souls. . . The whole future of our

University Law School should rest upon the priceless devotion and sacrifice of these men.²⁹

One of the colourful figures to lose his seat was the ex-solicitor meagher. Which he blamed on a ‘hurricane of hate from the worst elements in society.’ He had a very colourful turn of phrase.³⁰

Court Cases early in the Year

Among the various proceedings involving divorces, damages, wills, assaults, robberies and occasional murders some cases stand out. One case which occupied much space was that of David Clayton Howell-Price who as a adjutant of the Ninth Regiment of the Light Horse was tried for embezzling money amounting to 60,000 pounds from the Commonwealth and spending it on racehorses, motor cars and expensive living. Howell-Price was the son of the Reverend John Howell-Price, the vicar of St Silas’ Anglican Church at Waterloo. Five other Howell-Price sons were serving overseas in the armed forces. One had been killed in action in 1916. David Clayton Howell-Price was prosecuted by ME Manning before Judge Scholes who gave a particularly strong address when sentencing the embezzler to two four year terms in jail. He stated that ‘our country is at war with an all-powerful enemy’ which was threatening the Empire. Defence counsel, Mr Abigail had mentioned that Howell-Price should avoid jail because he was ‘highly born’ but Judge Scholes considered this made his actions all the more reprehensible.³¹ The case received extensive coverage and indicated both the degree to which the judiciary took the war into account in their cases as well as the open acknowledgment of a class based society in which those of the upper classes had a responsibility to use the example to others.

A number of cases involved Industrial matters. One concerned a Mrs Frances Egan who claimed One thousand pounds damages against Barrier branch of the Amalgamated Miners' Association. She alleged that she was dismissed from her job as a cook in Broken Hill because her employer had been threatened with a boycott for employing her. She had been identified as a 'scab' worker at a previous place. Mr Justice Pring was most sympathetic towards her plight stating that he 'was surprised that such a thing should be tolerated year after year in a civilised community.' The case revealed Broken Hill to be more like the images of the Wild West. Mrs Evans was not entirely without resources, She admitted carrying revolver and approaching certain union officials with it at various times, had one of them tarred, feathered and whipped.³² This event did not seem relevant to the proceedings. Mr Justice Pring had already gained some notoriety amongst the union movement for his sentencing of the Industrial Workers of the World (IWW) defendants in 1916.³³ He became quite critical of the problems tribunals faced in getting parties to agree to a decision. He said that such a difficulty showed 'the utter worthlessness of wages boards and industrial courts. I do not know what would happen if a judge here had to have a conference with the parties to get them to obey an order of the court . . .It is a grotesque travesty.'³⁴ Unions were particularly keen that their members should not work with those they declared 'scabs'. Actions to prevent such contact led to some unions be put before Mr Justice Heydon either in court or in chambers. In April there was an application by the Minister for labour and Industry for the Operative Baker's Association to show cause why its registration as an industrial union should not be cancelled.' The issue was again working with someone declared a 'scab'. The

Minister declared that the Association was guilty of an industrial offence.³⁵ Justice Heydon was sympathetic and his increasingly hard line against unions would be one of the factors which led to 'The Great Strike' of August 1917.

The emerging industrial landscape was made hazy by the sometimes overlapping Federal and ASte prerogatives. The situation was exacerbated by the fact that the Federal Arbitration Court under Justice Higgins often sat in Sydney. One example involved a group of wharf labourers who went on strike for above award wages for unloading some cases of oil from a steamer to a lighter. Their union representative claimed that the men had acted as they had 'consequent to some remarks by Mr Justice Higgins in a case in the federal Arbitration Court. These remarks were to the effect that if the men could obtain a higher rate than the legal minimum then they were at liberty to do so.' Mr Justice Heydon was not impressed by this defence and fined the men for the strike and said that in respect to Mr Justice Higgins' remarks that 'he could hardly understand that his Honor had meant his words to convey the meaning which the respondents had read into them.'³⁶ The case is a clear illustration of the confusion the overlapping jurisdictions could cause.

Other cases involved the transgression of the 'War precautions Act' administered by the Solicitor General Garran. The Act gave virtually unlimited powers especially in relation to the control of aliens. Across the years it is hard to concede the justice in cases such as that of 60-year-old Carl Bergman (aka Berguean) being charged that being an alien enemy within the meaning of the war regulations that he did not within seven days of having changed his address notify the authorities of his change of abode.³⁷ He

pleaded guilty in the Water Police court and explained that he was a Swede and had been in the country since 1885. Aliens were subject to close scrutiny, but even more attention was paid to the members of the International Workers of the World – the IWW.

Vimy Ridge was “a rampart as evil and sinister as ever lay between an army and its goal. . . The weather lately has been too appalling for words, blizzards and winds in which horses froze to death, and in April too. . . . Why is it that anyone can live in this God forsaken country, when there are warm, sunny places in the world?”

“The Czar has gone, and Russia now has her chance. I only hope that the extremists will not cause bickering, before the Republic is firmly established. An autocrat like the Czar, blown about by foreign influence, was worse than the Kaiser, who, even if wrong is at least strong.”

“Dear little Leslie has written to me. . . . He seems to have a sense of humour. . . . Have you started him on Stevenson, Scott and Rider Haggard?”

Vimy Ridge (168) : “a more venomous, ‘unnatural’ looking barrier it is hard to imagine. No grass, no shrubs, or stumps of trees – just a piebald lump of mud and chalk, eaten into by dug-outs and tunnels. It is the sort of evil mess a child would build in a gutter, or perhaps it is more like a vast decaying carcass sprawled between us and the busy towns and pleasant fields beyond . . . our objective.”

April 9 The Canadians attack. CS fires guns.

“The barrage was magnificent – in one moment the sleepy outline of the ridge sprang into life,, blazing with the scarlet of shrapnel and sparkling with a hundred different coloured rockets. The smoke drifted down the flank of the ridge or rose upwards so that the ridge itself seems like a great funeral pyre.”

“We were called upon to silence a MG, which we did – and that was our only excitement at the Battery. I’m afraid the popular notion of a Battery, stripped to the waist, firing hell for leather amidst shot and shell, and proving heroes, is a romantic fiction of the past. As a rule our main excitement is waiting for new, and very seldom are the gunners so hurried that they can’t smoke cigarettes all the time, and discuss the great problems of beer and food between shots.”

CS could see the Germans preparing for their counterattack “sweeping forward in open order, massed columns emerging from villages, black lines of wagons and galloping limbers crossing plains. . . .Of course the gorgeous targets were out of range.”

(172) “. . . the offensive had resulted in the capture in one day of more ground than . . . we had achieved after months on the Somme. We were learning.”

173 13 April 1917 On going into a captured dug out near Givenchy

“We went into one deep dug-out, groping our way with the aid of a match. It was an uncanny business. Of course no Boche was there, but one was brought face to face with all the outward trappings of a life suddenly cut off – the man’s clothes, food, cooking utensils; even his tobacco was there on its appointed shelf. . . .An air of utter

desertion brooded over it. There was a “Pompeii” sensation about the whole expedition.” They wandered on, not knowing where the enemy were “until the ‘ping’ of a bullet reminded us this was open warfare – too open.” Then jumped into a shell hole and “Bolted, under fire from friend and foe” towards their own lines.

The reality of war was now far removed from any grand illusions of cavalry charges and splendid parades. As usual Adrian Consett Stephen was most perceptive and eloquent when he wrote on (175) April 16 of action on Vimy Ridge:

“pouring and bitterly cold – miserable beyond words. The great advance seemed a poor thing.

Roads there were none; only tracks of mud along which the transport seethed like a serpent in slime. Vast ammunition dumps covered the country; trains puffed up and down among the lines of mud-covered tents; transport of every description, from big guns and caterpillars to cook carts and travelling kitchens, ebbed to and fro; here was no ordered sweeping forward of a great army, no thrill of hot pursuit, only movement this way, that way, any way apparently without definite reason: drivers muffled to the ears sitting on their horses with loose reins, looking neither to right or left, taking no interest, occasionally cursing or wiping the splash of mud from their faces. At one point we passed a pile of 27 dead horses. Where was the ring of hoofs and the flash of sabres of this great advance? A muddy dull-eyed mob!

It was a cynical jest.

And yet the aimless transport bent out a definite rhythm: ‘Moving forward, moving forward.’ You heard it or perhaps rather you felt it in the jolting of the

creeping Batteries, the grating of lorries and trains, and in the clatter of horses: ‘Moving forward,’ and you felt it as a warmth within you, vague, indefinable, but there it was. ‘Moving forward, moving forward.’”

We “walked onto the ridge and down into the plain beyond, where we chose a position not far from the village of Vimy. The approach was appalling, the road consisting of shell holes and mud only half dried and treacherous in the extreme. It was lined with horses sunk in the mud, some dead, some shot by their owners, and worse still, many still alive and struggling piteously. . . . It snowed all night”

176

Adrian Consett Stephen was one of many lawyers who received decorations His exploits were well reported in the New South Wales Press.

20 April Lieutenant William Keating Brennan on 12 Light Horse killed in action in attack on Gaza. Red Cross searches done in October by solicitor HS Osborne.SEE RIVERVIEW MATERIAL

May in Australia

In May member so the legal profession had plenty to talk about. The urge for social reform became intense. The wife of Langer Owen became embroiled in a number of issues in May Anti-shouting and the rehab of disabled soldiers. REF SMH 17 May.

To EXPAND on these.

‘Painful Scene in Court’

The first public mention of the proposal to set a compulsory age of retirement for judges in New South Wales occurred on Tuesday on 1 May 1917 when the *Sydney Morning Herald* reported a ‘painful scene’³⁸ in Sydney’s Banco Court. The defendant was one Hugh Beresford Conroy. He was a candidate in the then current Federal parliamentary election, and a man with complicated domestic and business arrangements. His wife was the plaintiff. Conroy’s application for an adjournment to prepare his case was not allowed by the Chief Judge in Equity, 74-year-old, English-born Mr Justice Archibald Simpson³⁹. Counsel for the defense withdrew. Conroy said he would appear in person and applied immediately for Justice Simpson not to hear the case. When asked his reason Conroy told Justice Simpson:

‘because you have reached a stage of life when it is impossible in the afternoon to remember what took place in the morning. It has gone past your mind. You are not fit to sit and conduct such cases as the present.’

That comment was just the beginning of the extraordinary tactics Conroy employed in his own defence. He also claimed that he had been to visit the Attorney General, David Robert Hall who ‘was of the opinion that (Justice Simpson) had reached a stage when (he) should no longer sit on the bench.’ Furthermore, Conroy claimed that Hall said that: ‘A bill was being prepared fixing a Judge’s retirement at the age of 70 years.’ Conroy also claimed that Justice Simpson was ‘unable to recognize matters of public interest’ and that the New South Wales Bar agreed with this assessment. Conroy’s manner was described as ‘dramatic in style and almost threatening’ by the *Sydney Morning Herald*.

Joseph Browne, a member of the New South Wales Legislative Council, was counsel for the applicant. He objected to the attack and said ‘it was very painful to listen to such insulting remarks’. But this had little effect. Browne would get an opportunity make some interesting comments on the Judges’ Retirement Bill when it was later discussed in parliament.. For the time being, he kept his comments to a minimum. The exchanges between Conroy and Mr Justice Simpson continued with Conroy becoming increasingly agitated and eventually the *Sydney Morning Herald* reported that he ‘made a remark’ which caused

‘considerable excitement . . . throughout the court. The tipstaff approached Mr Conroy and shouted “Silence!” Mr Conroy’s excited condition indicated a possibility of something more forcible than his language. The constable attached to the court came into the room.’

The Judge and his associate left the court and as they did so Conroy shouted at the top of his voice ‘I address you so that you can hear me. I know that you are deaf.’ Conroy was still passionately fired up after two brief adjournments. When Justice Simpson refused again to grant the application Conroy shouted: ‘You’ve got a maggot in the brain’ amongst other things, and made particular reference to Mr Justice Simpson’s supposed deafness and mental acuity.

After the account of the court room scene the *Sydney Morning Herald* included a short disclaimer from the Attorney General Hall and the Acting Premier Fuller admitting contact with Conroy but stating that they did not support his attempt to

remove Justice Simpson from the case.⁴⁰ There was no denial about the proposed legislation. Legislation

A number of laws affecting the new South Wales legal profession were introduced, or at least contemplated, during the tense months of 1917. At the end of 1916 Attorney General Hall had attempted to introduce a bill to allow women to become lawyers as well as enter State parliament. The bill had been thwarted on a procedural issue then lost in the boiling bitterness of the state election and subsequent controversies. But lobbying for the rights of women continued throughout the period and the law would eventually be brought in in 1918, although the admission of women to the Upper House of State Parliament would be another eight years into the future beyond that.

The Meagher Case and ‘Septic Prejudice’.

May 1917 saw another controversial intersection of judicial power and politics when Richard Meagher made his fifth application to be restored as a solicitor of the New South Wales Supreme Court. Richard Meagher provides an interesting case of how a man with some dispute with the judiciary was involved in the passing of laws that would affect the composition of the bench. Meager had been involved in a protracted series of attempts to be reinstated as a solicitor. He had been struck off because of his involvement in the celebrated Dean case⁴¹. On 28 May, 1917, not long after Conroy had been so inflammatory in his conduct in front Justice Simpson in Banco Court, Meagher’s application reinstatement as a solicitor was heard by the Full Court,

consisting of the Chief Justice, Sir William Cullen, Mr Justice Pring and Justice Gordon. The high profile of the case meant that ‘large numbers of the legal profession’ crowded the gallery. The Honourable John Jacob Gannon KC MLC and another well-known barrister, HE Manning, represented Meagher.

The application was made on the grounds of Meagher’s conduct in recent years. *The Sydney Morning Herald* had a two full columns devoted to the case, which was understandable as Meagher was the Lord Mayor of Sydney and had previously been speaker in the Legislative Assembly – although he had lost his seat in the recent election and subsequently been appointed him to the Legislative Council. Meagher’s appointment can be seen as a rewards for his loyalty to Premier Holman during in the Labor Party split over conscription in 1916. Supporting Meagher’s application for readmission were affidavits from barrister and Speaker of the Legislative Assembly John Jacob Cohen KC as well as Frederick Flowers, President of the Legislative Council and William Brooks, Member of the Legislative Council. Much emphasis was laid upon Meagher’s political career as a reason for his readmission.

The Chief Justice Sir William Cullen responded to the reference to political success in particular. He asked if ‘success in politics’ was ‘solid and substantial’ evidence of a changed character. Counsel said it was. Sir William Cullen replied: ‘Then it is easier for a successful politician to obtain reinstatement than for an obscure and friendless solicitor?’ Counsel said that it gave the person a chance to prove his rehabilitation then Sir William Cullen asked ‘Is the Court to take the opinion of politicians as evidence guiding its own opinions?’ Counsel stated that he was only submitting it as evidence.

The defendant in the case was the Incorporated Law Institute. Its counsel argued that a man 'must be judged on his whole life' and submitted that the affidavits should not be able to sway the judgment. Meagher's political success should not, according to counsel, sway the Court. Sir William Cullen agreed. The application was refused and within a few months he found himself speaking to support a motion to limit set the retirement age of the same judges who had so recently sat in judgment over him. The debate provided him with a good opportunity to air any grievances he may have harboured. In fact Meagher could best be described as incandescent with rage against the Chief Justice. 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 produced, in 1920, a vitriolic account of his life in which he accused Chief Justice Cullen of all manner of transgressions, including 'gross bias' and 'despicable' and 'septic' prejudice' regarding the case for his readmission as solicitor.⁴²

The Nationalist Government was also involved in a tense exchange with the New South Wales Bar Council in May 1917. The Council opposed the Speaker of the Legislative Assembly, John Jacob Cohen KC as an Appointee to the bench immediately after the April elections. The Attorney General Hall did not take this well and is reported by HTE Holt to have condemned the Council as an 'irresponsible body.'⁴³ Interesting enough and perhaps in the best tradition of politics there were firm denials in the media in May 1917 that Cohen was even being considered as a judge.⁴⁴

The year, 1917, was often stressful but relations between judges and politicians were not always strained. They appeared together in many patriotic forums. In April 1917 there had been a farewell for Premier Holman before his departure overseas. Judge Backhouse spoke saying how much his respect for Holman as a lawyer was ‘real and earnest’ and that he had done good work in a variety of social fields.⁴⁵ This comment was only one of many in which judges’ views on a variety of matters, judicial and social, were mentioned. Judges were in the news throughout the year as they supported war-related causes or had their judgments extensively reported in the press. The *Sydney Morning Herald* regularly devoted a full closely typeset page reporting legal proceedings with long verbatim accounts of statements, cross examinations and judges’ comments.

31 May Ernest Bentley a law clerk from Tenterfield died of illness at Randwick Military Hospital. He had already lost a brother in August 1916 on Hill 60 on Gallipoli. and his other brother WH Bentley 2576 was ??????????

‘A Government of Lawyers’

The Nationalist Government, which was voted into office in New South Wales in April 1917 and which proposed the bill for the Judges’ Retirement Act, was understandably labeled ‘a government of lawyers’⁴⁶. The Premier, William Arthur Holman, and his Attorney General, David Robert Hall, were both Sydney barristers as were: George Warburton Fuller, the Colonial Secretary and Acting Premier from

April to October, 1917; Augustus Frederick James, the Minister for Public Instruction; John Garland KC, MLC, the Minister of Justice and Solicitor-General; George Stephenson Beeby, the Minister for Labour and Industry and John Daniel Fitzgerald, MLC, the Vice-President of the Executive Council as well as Minister for Public Health and Local Government. In all seven out of a ministry of twelve were listed as Sydney barristers. Broughton Barnabas O'Connor, also a Sydney barrister was Chairman of Committees. There were in total of seven barristers in the Legislative Council and six solicitors⁴⁷ – 13 lawyers out of 71 Members. In the Legislative Assembly, of 90 members there were five solicitors and six barristers.⁴⁸ The influence of the Sydney legal profession extended well beyond State politics and was cemented by personal alliances and friendships which originated in shared chambers, tutelage and the increasing influence of Sydney University Law School. A brief outline of connections will suffice in this instance but indicates the rich opportunities for social research into the lives of the legal profession in the future. USE THE HAY MATERIL TO DO THE LINKSBETWEEN HUGHES GARRAN ETC

Thomas Bavin and John Peden were close friends through their association as undergraduates with the Sydney University Law School. Bavin was also close to the Commonwealth Solicitor General Robert Rainsford Garran. Prime Minister William Morris Hughes had been coached for his Barristers Admission Board Examination by Peden and the main advisor to the Commonwealth on International law was the Sydney University Law Professor Pitt Cobbett. Bavin collaborated with Deakin in writing articles for the London 'Morning Post.' Bavin had also been an associate and friendly friendly correspondent with Sir Edmund Barton.. Combine these appointments and connections with Legge, Bean and the close connections of

correspondence to people such as Justice Ferguson and the influence of the Sydney Bar becomes remarkably extensive.

Despite his connections Bavin's path to politics was not easy, unlike Peden who was appointed by Premier Holman. Bavin wanted to be in the Legislative Assembly and tried to gain selection for the safe conservative stronghold of Gordon on Sydney's North Shore. Bavin had already been Alderman for nearby Willoughby Municipal Council. With the sitting member, another barrister, GG Wade gone to London to be Agent –General (in the hope of a judgeship on his return⁴⁹) Bavin tried in 1917 to take his place. There was no Labor candidate but the competition for preselection was 'a struggle of unparalleled ferocity in that dignified suburb'.⁵⁰ Bavin was opposed by, among others, the Independent candidate, EJ Loxton KC. Even after the ballot in March there was no clear winner. Loxton and Bavin went to a second ballot. The solicitor and Willoughby Alderman, FC Petrie and another solicitor WC Clegg led the supporters group for Loxton. Bavin made it through. While all this battle went on, there was a report of the Sydney barrister, Lieutenant-Colonel Alexander Windeyer Ralston, the son of AG Ralston KC, being awarded the DSO. Sydney lawyers were prominent in the news in one way or another in March 1917.

11 June 1917

“On June 1st the colonel asked me if my name was Adrian Consett Stephen. I said ‘Yes, more or less.’ ‘ Well , you’ve got the Croix de Geurre.’

I said, ‘Thank you, sir. That’s very nice.’

And that’s that!”

. . . I am now open to be embraced by all the hairy poilus I meet – kissed on both cheeks in fact be the entire French Republic.. . But in the same letter he wrote: “One of pour servants has been killed and my best sergeant has died of wounds. I have just written to his wife. At such times one feels sick and weary of this world silliness, this mud and death called War. There are times when the greatest victory seems small compared to the grief in one little home.

Well, well – we must on, on!”

August

The Great Strike

3 August Captain Roy Hector Blashki, an articled clerk was killed in action. He was the son of a prosperous Sydney Merchant, Aaron Blashki⁵¹ and like so many of those lost in action his death was part of the fearful lottery of artillery fire. Blashki had been on duty in their gun position with the 53rd Field battery near Roulers Railway station about 3 kilometres from Ypres. The Germans started shelling the Australian ammunition dump and Blashki went towards it, but a shell landed about 10 metres away killing him instantly. His father made extensive enquires as to his fate and the fate of his effects, which were as usual slow to return to Australia. The family’s pain reaches out from the copperplate writing as Aaron Blashki as that the return of his effects be effected, pleading in one letter: ‘If you could only realize that this delay is keeping open our wound.’⁵²

In the lead up to the elections, Premier William Holman had pledged to ‘amend the arbitration laws so as to minimise strikes.’ His reason was that ‘the National party

place(s) the needs of Empire and the good of Australia above all personal and party considerations.⁵³ With this in mind strikes could be seen as treasonous activities.

September

On 20 September Lieutenant Frederick Edgington, a law clerk from Woolwich was serving in the 20th Battalion. He was leading his men forward at Ypres when he was close to an exploding shell in Bellewaarde/Polygon Wood. The concussion rendered him unconscious. He died in the dressing station, a captured German pill-box at Zonnebeke.

On 26 September Captain Hubert Gordon Thompson, a 30-year-old solicitor from Bathurst was killed in an attack at Polygon Wood near Ypres. He was advancing with the 56th Battalion in battle. His cousin Raymond Single was killed on the same day in the same battle in the same unit. Some eyewitness accounts stated that the two cousins were next to each other in the battle and were killed by the same artillery shell. Whatever the circumstances, the two cousins were buried near to each other on the battlefield. Thompson was the son of Bathurst solicitor Alfred Gordon Thompson. Within a few hours another cousin, Wilfred Single was killed in the same area of Polygon Wood. This battle took a number of officers well connected with the legal profession. These incidents show the extent to which the profession could be suddenly affected by the trauma of war. Polygon Wood took many lives.

Frederick Knight, a British born law clerk was killed with the 53rd Battalion on the same day and his body was never recovered.

IWW In September 1917 34 men in one day hauled before a magistrate and charged under Unlawful Associations Act with being members of an unlawful association, to wit the IWW they were sent to gaol for 6 months. Scott 694 - 695

There was hardening of attitudes amongst lawyers who left comments towards those who did not support the war, considering the death notices that streamed in it is not surprising..

October 1917

On 2 October Captain John Rowland Tillett, the son of the Crown Solicitor for New South Wales, John V Tillett was killed in action. Young Tillett was only 23 years old and had been in the army for barely a year. He had joined within a few months of graduating from Sydney University with Honours. He served as a Captain in the Army Medical Corps with the XXXth Field Artillery. He was killed by a gas shell.

On 12 October Charles Robert Windeyer, the son of Richard Windeyer KC the leader of the Sydney Junior Bar was killed in action. Robert Windeyer, who came from the landmark estate, *Tomago*, near Hexam just outside of Newcastle was killed instantly when he was sitting talking to one of his men. Windeyer was hit in the head by shell fragments in the front line. His mother, Mabel, was in England at the time working with the Red Cross. She was able to talk to members of her son's unit to discover the details of his loss. His body was buried on the battlefield, but was subsequently lost. He is commemorated in Ypres on the Menin Gate. Eventually she recovered his possessions and returned home to Australia with them.

On 24 October 1917 Major Geoffrey McLaughlin went back into the line near Westhoek in Belgium with his unit. On 2 November he was in his dugout when the Germans continued their tactic of drenching the rear areas, which included the

artillery positions with a mixture of high explosive and mustard gas. Eye witness accounts had him carried pitifully wounded from the battlefield. The bare reference to him being 'gassed' does not do justice to his condition. It would have been an evil death. CEW Bean wrote that 'the condition of the worst cases was pitiful, eyes swollen and streaming, voices gone, and bodies blistered.' McLaughlin lingered for 48 hours before he died. Among the many distraught people who sort information was the family of Long Innes. Miss Mary Long Innes of The Cottage, Marlow, the sister of Reginald Long Innes was most concerned to find out what had happened to her friend who used to visit them in the beautiful countryside.

Against the background of war and intense industrial dispute the bill to set the retirement age of judges at 70 was introduced by the Nationalist Government into New South Wales Parliament on 23 October 1917. It was the first time such a law was passed in the British Empire.⁵⁴

Two days after the bill was introduced Henry William Bowd, articled to Anderson & Halloran in Inverell who had joined the Australian Flying Corps in Egypt and fell to his death on 25 October when the plane he was piloting fell apart in mid air as he attempted to put it into a tight manoeuvre.

As these battles took place, the traumatized Lieutenant Colonel Macnaghten nevertheless reenlisted under another name and ended up on the Western Front. His well-known face, his CMG ribbon and accent marked him out among the close knit front line communities. Eventually he met up with his old associate, Hector Clayton who told him "Don't be such a bloody goat, Charles!"⁵⁵. Macnaghten had a great deal of trouble adjusting to life after the battle at Lone Pine. His condition deteriorated

over the year until he suffered a complete nervous breakdown characterized by loss of memory and sleeplessness. Lone Pine had pursued him mentally and physically.

Award of MC

By this stage of the war a number of lawyers had received decorations for bravery.

Adrian Consett Stephen wrote to his family describing, with his usual panache what the experience of the presentation was like: London 14/11/17

(189) Investiture at the Palace Letter

“The Colonel called for me in his taxi and we set off – both trembling. Once inside the palace we ceased to exist, except as puppets in the hands of magnificent personages. We were separated at once. M.C.’s one way, D.S.O.’s the other, and I found myself in a large room with about 100 other officers. We waited about 45 minutes, and were then lined up in alphabetical order. Hats and sticks were in the cloak room, left glove worn, right glove carried. Then instructions were given to us by a magnificent Colonel of Guards. We then filed into the room where the King was, our names were read out, we marched in, bowed to the King, and tried to look pleasant. The king placed the Cross which he picked up from the tray, held by an aged general, and hooked it on to a little pin which had been previously stuck in our tunics. The King looked needless to say – exactly like his photographs; his voice was very low. In most cases he said nothing at all. ‘You have the Croix de Guerre?’ He said to me. ‘Did you get it at the same time?’ ‘No sir. I got it before.’ ‘When was that?’ ‘On the Somme sir.’ ‘Ah yes. I am very pleased to give you the Military Cross.’ He shook hands. I stepped back, bowed and was taken into custody by numerous Major-Generals (

or Major Damos), I don't know which. Somebody seized the medal. Somebody else put it in a case. Somebody else shut the case. Somebody else gave me a push, and I found myself in the cloakroom again. I spent an agonized five minutes trying to decide whether I should tip the magnificent man in charge of the hat and stick department. But he was so big, and had so many ancient medals he seemed so aloof that I am sure money had no value to him. Perhaps in his spare time he commands a battleship. I was thrust against a large policeman, who cannoned me on to another, and so on till I found myself darting for the street. A taxi shoved me and I woke up. I felt myself all over. Physically I was safe and sound. I still had my watch, and neither of my spurs had fallen off. I had done well. But should I have tipped the rear-admiral in charge of the hats and sticks? I sought cover and consolation in the nearest Estaminet. The medal? Great Scott! I had left it behind. But no! Here it was in a pocket where some kind general or 'Broken reed in waiting' had placed it. I had it. The general impression left by the ceremony was the pleasant smile of the King and the intense almost funeral quietness of it all. Too quiet I thought. After all it was the glory of war, not its horrors, we were there to commemorate. The French ceremony with the Guard of honour, the blare of the Marseillaise, and the rows of glittering generals was more in keeping, more of the pride and pomp of war about it. But that is the difference between the nations, isn't it?"

The war at this time was "depressing" for him. On one occasion they "were shelled for 36 hours without cessation, the intensity of the shell-fire reaching 30 rounds a minute (a veritable tornado).

How anyone lived through it is a marvel."

In December he was out of the front line again. and busy organising Christmas “revels” in the battery.

Courts’ martial and other legal duties.

It was only natural that lawyers should find themselves involved in legal duties when they were overseas. On 1 February Adrian Consett Stephen was ‘prisoner’s friend ‘ at a court martial and got his man off. Thus, he commented that he had his “first case.”

⁵⁶ Obviously lawyers were in demand as law officers but for the most part they were reluctant to do so, in fact many actively sort release from such duties and subsequently lost their lives in action. One lawyer, Arthur Wellesley Hyman was transferred to be Divisional Claims Officer (DCO) in mid 1916 after having survived Gallipoli. As a DCO for the 4th Division in France and Belgium he had to inspect and adjudicate on the worth of claims from local civilians as to damage to property. He had to account for money paid in compensation to civilians for broken windows, burnt oak posts or losses of items such as wood, vegetables, chickens and damage to grazing land, crops or tress by cold, hungry or rampart soldiers. He kept neat records for amounts paid and the number of claims in areas surrounding towns such a Bapaume, Albert and Hazebrouck, usually visiting around 35 locations per month. In September 1917 he investigated 170 claims and paid out on 70 of them. At other times he acted on Boards of Enquiry into the sort of daily occurrences that armies have to account. In December 1917 there were a number of enquires in to fires around Peronne. His personal papers in the Mitchell Library suggest a man who collected everything because he saw its value as as an artefact to a great adventure. There is his

hand-scrawled diary from May to December on Gallipoli, operational orders, and descriptions of events including one of insolence by an officer or an armistice in April. There is an open invitation to visit the Countess of Harrowby in Grosvenor Place SW1 and another offer to stay with friends in the English countryside. He had also collected captured German documents from a raid on German trenches, including a certificate for an Iron Cross. Amongst the collection of tags and military tags, orders and paperwork was tongue-in-cheek plan for a raid to liberate certain Turkeys and whiskeys ‘lurking in prepared positions’ at Christmas time and letters which had been enclosed in comforts packages addressed to ‘the wearer of these socks’ and one that said;

‘Dear Soldier, I wish you a Merry Xmas and I hope you will be home soon so I will ay good bye and God bless you and keep you safe XXXX Mollie XX in Geraldton WA. PS I hope you like the chewing gum.’⁵⁷

This tendency amongst lawyers to enter politics can be seen as an indication of their sense of social obligation. This sense is reinforced by their willingness to be energetic contributors to charitable causes, their investment of personal energy in supporting the war and their great sense of duty in trying to shape the new country. Occasionally their passion for public spirit led them into strident opposition to left wing political groups.

The Second Conscription Referendum

The campaign for the Second Conscription Referendum took place in the second half of 1917. Once again the New South Wales legal profession supported the cause of Conscription to fight overseas. If anything they were more involved. One of the key opponents of conscription was the feisty Catholic Archbishop of Melbourne, Daniel Mannix. His views were not shared by the Sydney Catholic Establishment, of which two leading lights were Judge George Heydon and solicitor and Member of the Legislative Council, Sir Thomas Hughes. When a new Papal representative, Archbishop Cattaneo, arrived in Australia in early -November 1917 Hughes and Heydon went for a visit at 'Rockleigh Grange' in North Sydney to have, in Hughes' words, 'a solid hour of hard talk' to ask Cattaneo to 'suggest to Mannix to moderate his ardor' in the anti-conscription cause⁵⁸. Heydon and Hughes had already approached the previous delegate, Archbishop Cerretti in 1916 regarding the previous referendum. Cattaneo did not intervene. Mannix persisted in promulgating his position regarding conscription so Heydon, with Hughes' approval wrote a letter to all the daily papers in Sydney. *The Telegraph* passed it on to *The Age* in Melbourne. Heydon did not hold back in accusing Mannix of 'faithless disloyalty and enormous folly'. In part, Heydon wrote:

'In proclaiming his sympathy with Sinn Fein, in urging us to put Australia first and the Empire second, the Catholic Archbishop of Melbourne has shown himself to be not only disloyal as a man, but – I say it emphatically, archbishop though he may be, and simply layman though I be – untrue to the teachings of the churchFor a Catholic archbishop to lead his flock along the paths of sedition is to disobey the clearest teachings of the Catholic Church.' There was more in this vein, about the 'tyrannical invaders' of Belgium and the abuse of freedom which allowed such ideas to be promulgated, but then there were even darker hints about 'the time chosen to

inflict this stab in the back of the Empire – this time of strain and difficulty, with the heavy clouds of disaster lowering around. . .⁵⁹ Apart from Sir Thomas Hughes, Heydon was also supported by another leading Catholic jurist, Mr Justice Gavan Duffy of the High Court, whose sons had attended St Ignatius, Riverview along with those of the Hughes family. Heydon’s letter was controversial, but Mannix’s response sent the argument into overdrive. Mannix was reported in *The Argus* of 21 November as saying that Heydon was a ‘second or third class judge of some kind or another’ and the Catholics whom Hughes and Heydon ‘led’ would comfortably ‘fit into a lolly shop.’⁶⁰ Despite the colourful hyperbole of the comment, Mannix may well have had a point. The Sydney legal profession were not closely connected to mass of ordinary citizens, and their paranoia regarding Fenians and IWW, while shared with their fellow lawyer, the Prime Minister William Morris Hughes was not necessarily as well supported by the broader population. The legal profession could be certainly be open to accusations of elitism, but in other ways Mannix was unfair. His slur about the way these prominent Catholics were denying their origins to prove themselves loyal members of a new class only intensified the ‘deep anguish’ of the Hughes’ family when they learnt of the deaths in action of Roger Hughes and his cousin Bryan.⁶¹ Lawyers in no way tried to shield their families from the ugly reality of enlistment, battle and the risk of death. But their whole hearted support and for Conscription and their assumption that the remainder of the country shared their views, apart from the IWW and Fenians, was simply wrong. Despite all their efforts the Australian electorate again voted *NO* to Conscription on 20 December 1917.

In December Lieutenant Colonel Geoffrey McLaughlin the barrister son of solicitor. John McLaughlin was reported killed in action. His obituary in the Sydney Mail reported that he had been one of the first four men in New South Wales to enlist at the start of the war. He had already been twice wounded and been awarded the Military Cross.⁶²

The actions by Hughes and Heydon were indicative of an intensification of support for the war amongst some groups of lawyers. The legal profession appears to have become more intense in its support for the war as well as more concerned about the political direction of Australia. The PM Hughes was becoming concerned about Sinn Fein. The IWW had been disbanded and associates deported. In 1918 Premier Holman introduced an anti-sedition Bill to the new South Wales parliament which was too extreme even for the conservative members. Also in 1918 Judge Heydon actively supported a group who called themselves 'The King's Men' who advocated an enthusiastic continuation of the war. By late 1917 the judiciary was involved in all manner of political, social and judicial issues. Justice Heydon was a most significant figure. As head of the Industrial Court he had the discretionary power to determine which cases he heard as well as their outcomes. He wielded these powers in accordance with his particular world view of service, loyalty and the need for patriotic restraint. In the war years. Strikes were treasonous and the responsibility of the appropriate union, whether or not the Executive had sanctioned the stoppage or not. By November 26 unions had been deregistered. By the end of 1917 the New South Wales legal profession were acting in a manner which showed their rock hard loyalty to the cause of service, war and Empire. The Sydney Barristers, William Morris

Hughes Holman and Hall along with other leading lawyers, Garran, Heydon Thomas Hughes were advocating suppression of unions, treason charges against anti-conscriptionist and a repudiation of any pre-war improvement in industrial conditions despite the fact that they had once been so reform minded. Heydon had introduced the first notion of a minimum wage.

The New South Wales lawyers were not supported by all their colleagues in the strident pro conscripting ideas. The Labour Premier of Queensland,. Thomas Joseph (Tom) Ryan was an Irish Catholic barrister. At the expense of his friendship with William Morris Hughes. Ryan combined politics with a successful legal career, including winning before the High Court and successfully taking on such powerful interests as the Colonial Sugar Refinery. Another lawyer, in Melbourne also stood against conscription. XXXIN EVATT. There were some subdued reluctance amongst the New South Wales lawyers as well. HV Evatt remained loyal to Labour despite the furore as did who was later a judge in the Industrial Court.. IN Victoria the young lawyer (later Judge) AW Foster wrote ‘Few public men on the anti-conscription side escaped prosecution or conviction. . . I myself was prosecuted and subjected to a long trial for a speech I made in a city hall, in which I had the audacity to criticise the Prime Minister, the Rt Hon WM Hughes. Fortunately I escaped conviction.’⁶³ All under the aegis of the War Precautions Act as interpreted by Solicitor General and Sydney lawyer Garran police recorded speeches, military officers monitored and approved anti-conscription literature all without redress.

Once again the ‘No’ vote in conscription stunned the New South Wales legal community. Perhaps they were too removed from the daily life of many people. The

constant reference to class differences in politics suggests that there were certain sections of the community who simply did not communicate or have any significant contact with each other. HV Evatt wrote of the result that: ‘It was Holman’s misfortune that, at the crucial time, neither he nor his advisers seemed capable of recognizing the fact that opposing to conscription of Australians was perfectly consistent with loyalty and patriotism’,⁶⁴

Conclusion

We should not let the passage of time diminish our perception of the tragedy involved in the deaths of so many young men with so much promise.

¹ *Sydney Morning Herald*. 28 June 1916. p9

² JM Bennett Some Reflections on *A History of the New South Wales Bar* 62 – 63

³ JM Bennett Some Reflections on *A History of the New South Wales Bar (1969)* in Lindsay No Mere Mouthpiece: Servants of All, Yet of None. 62

⁴ Adrian Consett Stephen XXX

⁵ JM Bennett *A History of the Supreme Court of New South Wales*, 56.

⁶ Karl R. Cramp *The State and Federal Constitutions of Australia*. Angus & Robertson, Sydney, 1914, 187.

⁷ Hohnen Peter, Reginald Long Innes *Australian Dictionary of Biography*

⁸ ‘Sydney Ferries – Royal Commission’ Curtailment of SPort’, *The Sydney Morning Herald* 21 July 1917, p 14

⁹ ‘Curtailment of SPort’, *The Sydney Morning Herald* 21 July 1917, p 16

¹⁰ ‘Getting the men – Recruiting problems’ *The Sydney Morning Herald* 24 July 1917 p16.

¹¹ ‘Win the War league: Women’s Sphere of Help’ *Sydney Morning Herald*. 4 January 1917. p 7

¹² John D Fitzgerald ‘The new Recruiting Campaign’ in *Sydney Morning Herald*. 24 January 1917. p 12

¹³ ‘Recruiting – Martin Place Meeting, reported in *The Sydney Morning Herald* 30 March 1917. p 12

¹⁴ E J Loxton ‘Mr Loxton on Arbitration’ in *The Sydney Morning Herald* 27 March 1917 p9.

¹⁵ Adrian Consett Stephen 156.

¹⁶ Adrian Consett Stephen 154.

¹⁷ CEW Bean *Official History 1917*, 358n

¹⁸ Details of this case can be found on the Website for the Forbes Society for Legal History Website. Background papers by Geoff Lindsay SC.

¹⁹ See the *Sydney Morning Herald* 29 May 1917 for a detailed account of his appearance before the full bench of the New South Wales Supreme Court as an example.

²⁰ Rupert McCoy did not join the AIF but appears to have had some involvement in the military as he is listed in National Archives and The State Library as having been co-author of *The Anzac Drill Movement and Demonstrator* – which was an instruction kit for simulating the movement of military units on a board for the purpose of training officers.

²¹ One of the key concerns preventing men from enlisting was their insurance. A public subscription by wealthy individuals ensured that any men killed in action were properly covered. The families of those men in the unit who were killed could at least be compensated in some way for their loss.

- ²² One of the key concerns preventing men from enlisting was their insurance. A public subscription by wealthy individuals ensured that any men killed in action were properly covered. The families of those men in the unit who were killed could at least be compensated in some way for their loss.
- ²³ McGhie went onto become a District Court Judge.
- ²⁴ Selwyn Betts later became a District Court Judge and served overseas briefly at the end of the war. He had lost one eye in childhood accident and this precluded him from active service earlier in the war. See HTE Holt for further details on his life.
- ²⁵ Red Cross Missing and Wounded Files Frank Wadhurst Fry.
- ²⁶ Parliamentary debates.
- ²⁷ 'Metropolitan Jsutcices' *The Sydney Morning Herald* 23 July 1917, p 14.
- ²⁸ JM Bennett 54 – 55.
- ²⁹ HV Evatt Letter to JB Peden 9 April 1918. Peden papers
- ³⁰ Interview with Mr Meagher *The Sydney Morning Herald* 26 March 1917. p 14.
- ³¹ 'Howell-Price Case – Four Years' Imprisonment' *The Sydney Morning Herald* 27 March 1917. p 12.
- ³² 'Law Report: A Cooks' Complaint' *The Sydney Morning Herald* 24 March 1917 p 12.
- ³³ The IWW case is well documented and his sentencing in particular put Mr Justice Pring firmly at odds with the Union movement.
- ³⁴ 'Union methods – Judge's Strong Comments' *The Sydney Morning Herald* 27 March 1917. p 14
- ³⁵ 'Application before Mr Justice Heydon', *The Sydney Morning Herald*, 3 April 1917, p 14.
- ³⁶ 'Wharf-Labourers' Strike.' In *Sydney Morning Herald* 12 April 1917 p 15.
- ³⁷ 'Alien Fined' *The Sydney Morning Herald* 23 July 1917 p18
- ³⁸ *The Sydney Morning Herald*, 2 May 1917, 11.
- ³⁹ Justice Simpson had been on the Supreme Court bench since 1896 and had been Vice-Chancellor of the University of Sydney 1902-1904. He lived in Hunters Hill and had already lost one son in the war, killed in the fighting at Lone Pine on Gallipoli.
- ⁴⁰ The incident was widely reported around he country including *The Argus* in Melbourne, *the Adelaide Advertiser* and the *Hobart Mercury*. Conroy did not appear in court the following day and Justice Simpson found for the plaintiff, Conroy's wife.
- ⁴¹ The Dean Case involved an instance where lawyers, including Meagher, defended a man they knew to be guilty. It described in a number of places, including Cyril Pearl *Wild Men of Sydney* 1958 WH Allen London , 84-109 and the Website for the Francis Forbes Society for Legal History: <http://www.forbessociety.org.au/>
- ⁴² Richard Denis Meagher Speech in Banco Court 7 November 1919. in The Hon. RD Meagher *A Twenty Five Years Battle* William Brooks & Co. Sydney . 43 See also the front piece of this publication.
- ⁴³ HTE Holt 166.
- ⁴⁴ *Sydney Morning Herald* 19 May 1917 'Mr Cohen not resigning'. 13
- ⁴⁵ 'Proposed lucheon to mr Holman' in *Sydney Morning Herald* 11 April 1917, p14
- ⁴⁶ Parliamentary debates.
- ⁴⁷ Although one, Richard Dennis Meagher was disbarred at the time.
- ⁴⁸ There had been a number of high profile lawyers in previous parliaments. Pilcher KC had been a member but had died only recently. So too had Bernard Ringrose Wise who had been a Member of the Legislative Assembly and Minister for Justice, Attorney General and Acting Premier. He had died in 1916. His replacement had been a long standing friend and another barrister: Thomas Rainsford Bavin. In the middle of 1917, Professor John Peden of the Sydney University Law School was appointment a lifetime member of the Legislative Council.
- ⁴⁹ HV Evatt
- ⁵⁰ M. Dalrymple Hay *Reminiscences of the Law School and Barristers Practising*. Unpublished and undated manuscript. New South Wales Bar Association . 9. The events mentioned by the author of the Reminiscences are well described in the *Sydney Morning Herald* of the period.
- ⁵¹ The firm is still in operation today
- ⁵² Aaron Blashki Letter to Base Records AIF 4 March 1918. Roy Hector Blashki Service Records www.naa.gov.au, 39
- ⁵³ 'Mr Holman's Last Word.' In *Sydney Morning Herald* 24 March 1917. p13
- ⁵⁴ New Zealand had passed a law limiting the age of judges but it did not apply to those already on the bench.
- ⁵⁵ Chapman I (1975) *Iven G Mackay Citizen and Soldier*. Melbourne: Melway Publishing Pty Ltd. 93

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- ⁵⁶ Adrian Consett Stephen 157
- ⁵⁷ Arthur Wellesley Hyman Collected papers Mitchell Library Sydney
- ⁵⁸ B A Santamaria Daniel Mannix: A biography.84 - 85
- ⁵⁹ B A Santamaria Daniel Mannix: A biography. 85
- ⁶⁰ Ernest Scott , 422
- ⁶¹ B A Santamaria Daniel Mannix: A biography. 86
- ⁶² Daily Mail
- ⁶³ AW Foster quoted in HV Evatt, 413.
- ⁶⁴ HV Evatt Australian Labour Leader, 416.