

Australasian Legal History Libraries – A Large Step Forward

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Recently Professor John Williams, who is researching the history of the High Court, sent me an extract from an entry in Sir Owen Dixon's diaries for 22 September 1937. The entry was made during the Court's visit to Perth on circuit. The occasion was a visit to the Law School at the University of Western Australia where Chief Justice Latham, accompanied by Justices Dixon and McTiernan, made a speech to the student law society, the Blackstone Society. Justice Dixon's entry described his Chief Justice's speech as 'absurd and incoherent'. As George Santayana wrote 'those who cannot remember the past are condemned to repeat it.' So with Sir Owen Dixon's words in mind and surrounded by attentive judicial colleagues, I will offer only a few words of hopefully coherent praise for the remarkable project which we celebrate this evening — the Australasian Legal History Libraries.

Legal history seems to be alive and well in Australia. On three occasions last year I had the privilege of participating in events evidencing that vitality. One was the launch in Sydney of a two volume book of essays published by Federation Press entitled *Historical Foundations of Australian Law*. Another was the publication by the Queensland Supreme Court Library of a collection of essays on legal history in honour of Michael White QC to which I was able to contribute a chapter. Another over in Perth, was the acquisition by the State Library of Western Australia Foundation of the papers of a 19th Century Western Australian Magistrate, Robert Fairbairn.

There is a large and growing literature of Australian legal history. That literature takes different forms. There are histories of political and social movements and events behind the law. There are histories of the law's intersection with those movements. There are accounts of the development of areas of substantive law in their historical context. Indeed, there are today few textbooks dealing with any area of substantive law that do not involve an account of its history and historical context. In the application of law in the courts, be it the common law or statute law or, as is usually the case, a combination of both, new problems of interpretation, application and development are considered in part by reference to relevant aspects of legal history. Sometimes I think of the use of legal history as

a kind of comparative law across time rather than space. Like comparative law, its use requires care and discrimination and a respect for context.

The exploration of legal history in all its applications is significantly enhanced by convenient and low cost or cost free access to primary sources. The establishment of the Australasian Legal History Libraries marks a major step forward in the enhancement of that exploration.

The digitised libraries presently under construction are the result of a collaboration between the Australian Legal Information Institute, which is a joint facility of the law faculties of the University of Technology Sydney and the University of New South Wales, and ten other universities and investigators including prominent legal historians. It has been supported by an Australian Research Council Linkage Infrastructure Equipment and Facilities Grant which commenced in 2012. The construction has been completed to Stage 1. Stage 1 includes the Colonial Legal History Library which covers the period 1788 to 1900 and the Federation Law Library which covers the period 1901 to 1950. The libraries contain annual Acts from the commencement of each Australian jurisdiction and colonial collections of reported cases and case law databases which have been recovered from newspaper reports. The libraries include reports of nearly 30,000 decisions and approximately 42,000 Acts. The Victorian Gazette from 1851 to 1899 and its precursors are also included. The object of the project has been described as 'digitising and making available for free online access the complete key resources of Australasia's legal history'. There is added value through the use of the citator facility 'Law Cite' which allows for searches of the extent to which cases, decided since 1788, have been cited by courts in Australia and internationally.

The awareness, by the legal community, of the development of the libraries has been promoted through separate launches in New South Wales, South Australia, Western Australia and Tasmania as each phase of the Libraries' development relating to each of those States was completed. It is a recognition of the importance of the project that the Chief Justice of each of those States has participated in those launches.

Tonight's event marks a major achievement in the undertaking and a very real advance in the accessibility of historical materials, which assist not only a greater understanding of Australian legal history generally, but a better contemporary understanding of laws in force today informed by an appreciation of their history through statutory

developments and the decisions of colonial and state courts. I congratulate those who have been directly and indirectly involved in this work and in particular Andrew Mowbray, Graham Greenleaf and Philip Chung, the co-directors of AustLII. I would also like to congratulate and to thank the investigators, the academic lawyers and historians, who have been involved in the work. They can count it with great pride as an enduring legacy of inestimable value.