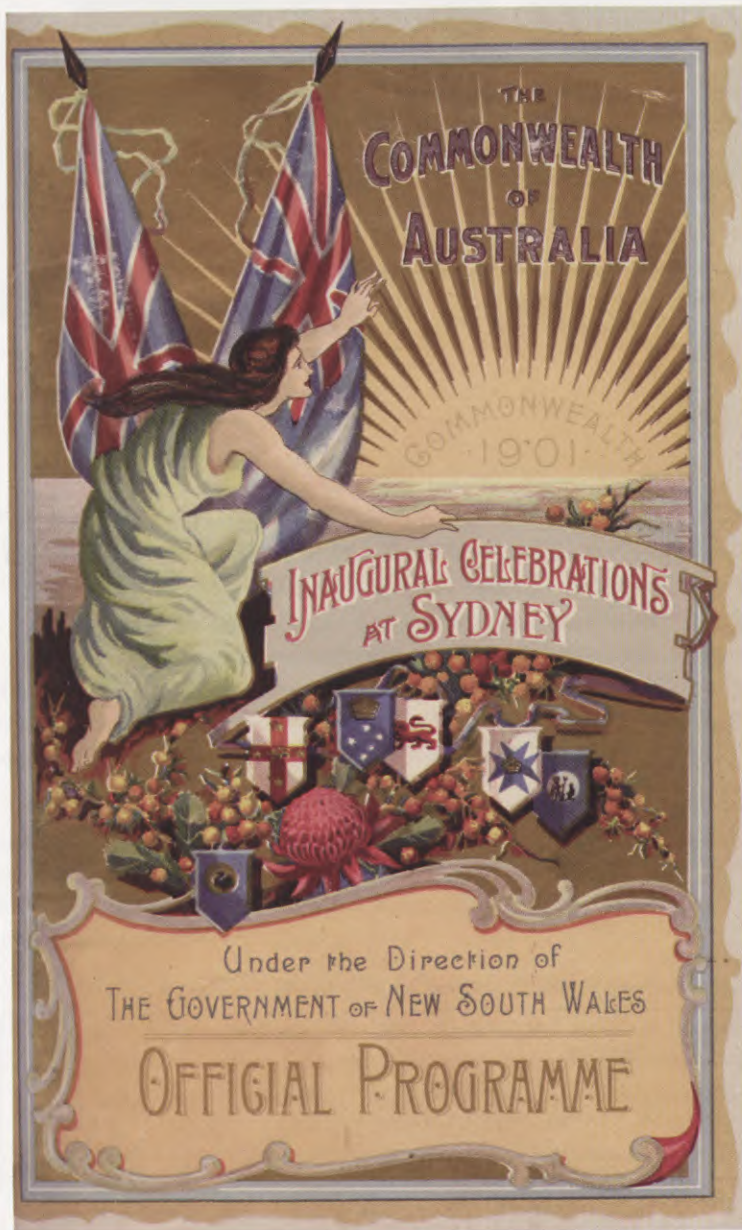


Legal History Online

by Caitlin Stone



Official program from the Federation celebrations in Sydney, 1901. It was included in a series of five volumes of material relating to Australian Federation and the early years of the Commonwealth, compiled by J.G. (John Garibaldi) Roberts from 1889. (Law Rare Book Collection)

Legal History Resources Online at www.law.unimelb.edu.au/lrc/pub/lhro/ is a new website aimed at facilitating access to legal history resources held in University of Melbourne collections, with particular emphasis on the University of Melbourne Archives and the Legal Resource Centre (Law Library).

The project was inspired by the realisation that while the interest in legal history — and particularly Australia's legal history — is real, knowledge of what sources are available could be improved. The Archives, for example, holds over 1200 metres of law-related records, while the Law Rare Book Collection comprises over 1000 rare and early legal texts. The Law School also houses a number of other important collections, including the George Paton Collection (the library of Sir George Whitecross Paton, Dean of Law from 1946 to 1950 and Vice-Chancellor of the University of Melbourne from 1951 to 1968) and the Australian Constitutional Convention Archives.

The queries that come to the Legal Resource Centre show clearly that an understanding of legal changes and processes is highly relevant to students. Researchers visiting the Legal Resource Centre have been interested in varied subjects, including the regulations surrounding Melbourne's milk supply in the late 19th and early 20th centuries; laws relating to

to request that, the holding of moots being considered by the Faculty to be of great advantage to students, the expenses of lighting and attendance, which would probably be very small, incurred on the occasion, may be defrayed by the University. The Council will, possibly, remember that, on the last occasion, these expenses were generously defrayed by the Library Committee of the Supreme Court, in whose building the moot was held.

I am, Gentlemen,

Your obedient servant,

Edward Jenks

Dean of the Faculty of Law



The University of Melbourne

11. April. 1891.

To the Council of the University.

Gentlemen,

I am directed, by the committee of the Faculty of Law appointed to make arrangements for a legal moot to be held in the present term, to request permission to make use of the University Library for the purpose of holding the moot, on some evening to be agreed upon with the Chancellor. I have further

Letter from Edward Jenks, who was Dean of Law at the University of Melbourne from 1889 to 1892, requesting permission to hold the law moot in the University Library. (University of Melbourne Archives)

clothing in Tudor England; Australia's first women lawyers; the activities of law students' societies in the early 20th century and censorship in 17th century England.

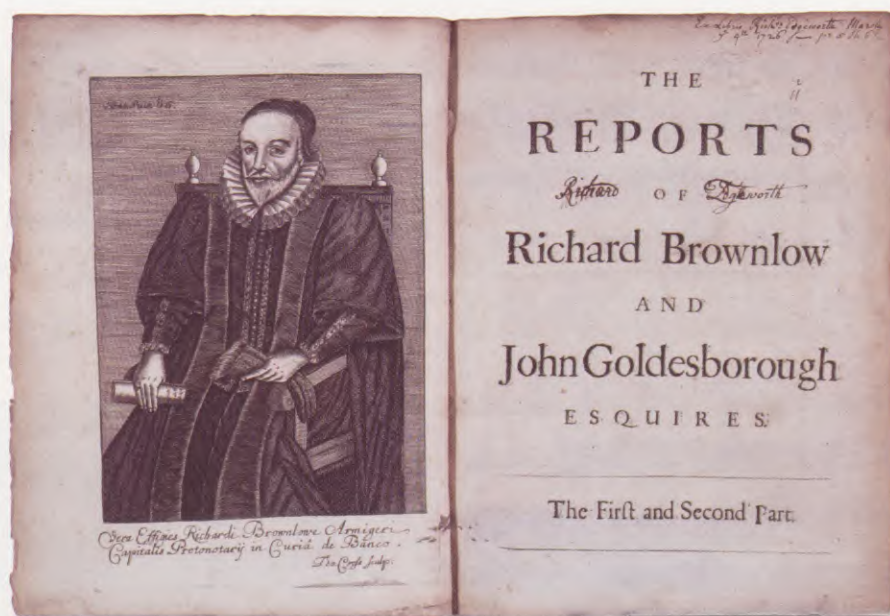
Despite this (admittedly anecdotal) evidence for the relevance of legal history, Australia falls behind both Europe and the USA when it comes to preserving and researching its legal heritage. There is a strong tradition of judicial biography in the United States, and societies such as the American Society for Legal History and the Supreme Court Historical Society actively aim to preserve the country's legal history. Yale Law School's Avalon Project (www.yale.edu/lawweb/avalon/avalon.htm)

provides the full text of hundreds of law-related documents, from a 122 BC law to much more recent counter-terrorism orders. When it comes to Australia's legal history, J.M. Bennett's *Lives of the Australian Chief Justices* series is a pleasing development, as is the recent biography of Owen Dixon.¹ There is, nonetheless, still much work to be done in this regard.

Legal history is important because it is closely allied to broader questions of social history. The history of law in Melbourne and Victoria, for example, is linked to the growth of the city and its institutions more broadly, and many of Melbourne's early lawyers had important roles in shaping the city

as it is today. Sir Redmond Barry, Justice of the Supreme Court of Victoria from 1852 to 1880, was also the Chancellor of the University of Melbourne and founder of the State Library of Victoria. Henry Bournes Higgins who studied law at the University of Melbourne (graduating in 1874), had an important role in shaping the Australian constitution and served as a justice of the High Court from 1906 to 1929. He is perhaps best known for his judgment in the *Harvester* case, which established the concept of a minimum wage and so influenced the lives of millions of Australians. Law is not just about cases and contracts; it touches our lives every day.

Title page of *The Reports of Richard Brownlow and John Goldesborough, Esquires; the first and second part*, London, 1675. (Law Rare Book Collection)



Legal history presents particular problems for information managers, whether archivists or librarians. Being neither purely history, nor purely law, it is often regarded as occupying the awkward middle ground between the two disciplines. History students often find themselves turning to legal sources, but are rarely given training in how to use basic legal research tools, such as case citators. Moreover, as legal history sources are often held in law libraries, they are often seen as out of the reach of non-law students.

Legal History Resources Online tries to bridge the gap between law and history, and to make more widely known some of the remarkable resources held in University of Melbourne collections. The Archives' law-related materials, for example, include collections from Victorian legal firms, individual lawyers and judges, legal academics, professional bodies and the University's Faculty of Law. Many of these records reinforce the broader relevance of legal history. To take just one example, in 1961 Robert Peter Tait was convicted of murder and sentenced to death. The

Melbourne firm of Heffey and Butler (the records of which are held at the Archives) represented Tait in his appeal for a stay of execution on the grounds of insanity. Documents presented at Tait's appeal showed that his mental health had been impaired at the time of the murder, and on 5 December 1962 the death sentence was commuted. Tait was sent to jail with his papers marked 'never to be released'. The Tait case is an important one in Australian legal history, but it also had a broader social effect in bringing debates about capital punishment to the fore.

The records in the University Archives are usefully complemented by the more than 1000 rare and early legal texts in the Law Rare Book Collection. The collection includes some significant Australian material, such as an early Melbourne printing of the five Imperial Acts establishing a colonial judiciary and representative government;² a rare imprint of William Edward Hearn's *Plutology or, the theory of the efforts to satisfy human wants* (Melbourne, G. Robertson, 1863) Australia's first economics text; and an early example of Australian judicial



Professor Ernest Scott (left) was a Professor of History at the University between 1914 and 1936, and Professor William Harrison Moore was the University's third Dean of Law (1892–1927). (University of Melbourne Archives)



Title page of *An exact collection of all remonstrances, declarations, votes, orders, ordinances, proclamations, petitions, messages, answers, and other remarkable passages between the Kings most excellent Majesty, and his High Court of Parliament*, London, 1643. (Law Rare Book Collection)

biography, Edward E. Morris' *A Memoir of George Higinbotham: an Australian politician and Chief Justice of Victoria* (London, Macmillan, 1895). It is also strong in early printed texts, including classic legal treatises such as the first printed edition of Henry de Bracton's *De Legibus et Consuetudinibus Angliae Libri Quinque* (London, Apud Richardum Tottellum, 1569) and Sir John Skene's dictionary of Scottish legal terms, *De Verborum Significatione* (Edinburgh, Printed by Robert Valde-graue, 1597).

The Legal History Resources Online website allows users to explore these collections via a number of 'themes': Law in Early Victoria, Law at the University of Melbourne, Federation, Judges, Lawyers and Professional Bodies, Law Firms and Law Reports and Trials. The site aims not to provide comprehensive, full-text coverage of legal sources, but rather to point to some of the more significant items in the collections, and suggest the correspondences and links between them. The site was launched by Professor Kathy Laster, the Executive Director of the Victoria

Law Foundation (which also provided funding for the site) at an event at Melbourne Law School on Empire Day, 24 May 2005. Following the launch, the legal historian Dr J.M. Bennett described the processes behind researching and writing his *Lives of the Australian Chief Justices* series, and vigorously argued for the importance of judicial biography and legal history more generally. It is to be hoped that Legal History Resources Online will go some way towards promoting both this undervalued aspect of our history and some of the University's prime cultural collections.

Dr Caitlin Stone is the Special Projects Officer at the University of Melbourne's Legal Resource Centre.

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References

- Juliet Flesch and Peter McPhee, *150 Years, 150 Stories: brief biographies of one hundred and fifty remarkable people associated with the University of Melbourne*, History Department, University of Melbourne, 2003.
- Legal History Resources Online www.law.unimelb.edu.au/lrc/pub/lhro/.
- University of Melbourne Archives website www.lib.unimelb.edu.au/collections/archives/.

Notes

- 1 Philip Ayres, *Owen Dixon*, Carlton, Miegunyah Press, 2003.
- 2 *Statutes for the Government of, and Administration of Justice in, NSW and Van Diemen's Land, 1823-42*, Melbourne, Goode, 1843.