Book Reviews


In this book journalist Michael Pelly narrates the life of a giant of the Australian legal world: Justice Murray Gleeson was a successful barrister and President of the New South Wales Bar Association before being appointed Chief Justice of the Supreme Court of New South Wales, and ended his career with a ten-year stint as Chief Justice of the High Court.

The book takes its title from a sarcastic nickname conferred on the apparently formidable Gleeson and underlined by the late Roddy Meagher, who once wrote of “The Smiler” that “[h]e has been compared to many things: a block of ice, a fire, a stone, a lump of steel, a weapon of mass destruction” (p.130).

As well as providing details of the lives of individual judges, biographies offer the opportunity to peek behind the curtains at the exercise of judicial power. It’s therefore slightly disappointing to learn that Gleeson participated on the basis that he “would not talk about any cases which involved parties who might still be alive or any judgment he delivered” (p.vii). Nevertheless, Pelly surveys over half a century of Australian legal history through the lens of his subject, and there is much here to interest anyone curious about our system’s inner workings.

This book depicts a lawyer’s lawyer and a judge’s judge, a man who said of his “favourite case” that there “was not even an ounce of human interest, which made it good” (p.76). Refreshingly, Gleeson is also shown in some depth as a husband and father, albeit one who, when adjudicating a dispute between his young children, announced: “Well, provocation’s an adequate defence” (p.64).

Gleeson defies easy characterisation. A Howard government appointee to the High Court, he is readily identified as a conservative judge whose “legal role model was Sir Owen Dixon […] the hero of black-letter lawyers” (p.30). However, he famously dissented in the 2004 case of Al-Kateb v Godwin, in which a majority of the High Court held that the government could hold a stateless, unsuccessful asylum seeker indefinitely. Pelly notes that upon his retirement, Gleeson elected not to appraise his own work, stating that life “has nothing more incongruous to offer than a judge marking his own report card” (p.261). For his part, the biographer’s verdict is a positive one, and perhaps reflects the “culture wars” of the 1990s and 2000s. Pelly indirectly counters the narrative that has grown around Justice Michael Kirby as a defender of human rights, suggesting that although Gleeson “didn’t wear his heart on his sleeve […] he still had a subtle humanity that made him the most effective voice for human rights on the court” (p.203).

The Smiler is marred by instances of over-simplification where the author asserts instead of persuading. For instance, Pelly seems to accept uncritically the notion that there is such a thing as “strict and complete legalism” (p.205), capable of easily being distinguished from political decision-making. It’s generally inappropriate to cavil over minor factual errors, but Pelly’s statement that “under Commonwealth law anyone who has Aboriginal blood can choose to be so identified” (p.115, n.11) is unfortunate, being both misleading and couched in language more suited to the 1930s.

The book takes Gleeson’s drive to succeed as something of a theme and duly ends by quoting the subject saying, simply, “I like to win” (p.267). Given the legendary competitiveness of the legal profession this is less than a remarkable insight into Gleeson’s character, and the subject remains somewhat mysterious. One gets the impression, though, that he’d like it that way.

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