A catalogue of Murray Gleson’s legal brilliance

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THE official portrait of Chief Justice Murray Gleson hangs in Court 3 of the High Court. Dressed simply in a suit, he dispensed with the ermine raiment of high office. It was made unnecessary anyway by the authority projected in the rather icy stare. Gleson, who retired in 2008, dubbed the painting “The Laughing Cavalier”, a reference as ironic as “The Smiler”, his soubriquet at the Sydney Bar and the title of this excellent biography by Michael Pelly.

Any biographical depiction of the man must necessarily survey the institutions that he led, and when those include the High Court and the Supreme Court of NSW a profile becomes a political and legal snapshot of a nation. Pelly succeeds in making the background of the portrait as compelling as the object.

Such was the prominence of Gleson’s career that, in effect, it charts the turbulence and travails of 40 years of public affairs. His direct involvement as judge or advocate ranged the breadth of Australian life: advising the Liberal Party on the powers of the governor-general a month before the Dismissal in 1975, litigating the bottom of the harbour tax schemes, horse racing in the Fine Cotton affair, the environment in the Tasmanian Dams case and the Ivan Milat murders. All of which came before his elevation to the High Court and the array of judgments that followed, from Work Choices to asylum-seekers.

Despite appearances, this is not a book for lawyers about a lawyer. That virtue stems from Pelly’s ability to distil accurately the facts and principles of complex litigation with brevity so that they serve, not dominate, his account. It is also the characters at play that frequently provide the colour: a cast of lawyers, politicians, rogues and celebrities, such as actress Kate Fitzpatrick,
who memorably described Gleeson as “the sexiest man I ever met”. Gleeson thought her taste “discerning”.

What also leavens the legal record are the vignettes of home life folded into the narrative. There are delightfully incongruous anecdotes throughout the book, with Gleeson enjoying a victory in the High Court as a junior counsel only for his wife to reveal on the following page how nerves meant “a couple of times he threw up” on the way to work. In another part it is evident his oft-quoted and enduring dedication to the rule of law did not extend to the home. His daughter humorously quotes him as explaining that his children were not in a democracy and he was their “benevolent despot”.

The previous High Court chief justice to be without robes in his official portrait was Gleeson’s forebear, Owen Dixon. Their shared ideology was one of legal method, not values. The role of the judge was to interpret and apply the values inherent in the law, not to import their own. This was a sharp distinction to the trend of the court in the decades that intervened between their stewardship.

In this respect, Gleeson was diametrically opposed to a fellow judge with whom he shared much in terms of the span and trajectory of their careers. Gleeson met future High Court justice Michael Kirby at the University of Sydney in 1956, and they would share the best part of a decade on the High Court. An absorbing aspect of the biography is the contrast between Gleeson’s legalism and Kirby’s overt judicial activism. Pelly rightly refrains from casting it as a purely Manichean conflict of intellects that occasionally spilled into the public arena. He is neither champion nor apologist for either philosophy but his nuanced consideration of the rationale in Gleeson’s thinking is illuminating.

A striking example is Gleeson’s devout Catholicism. Religion is a blatant instance of a subjective or personal value that, according to strict legalism, must be excluded from interfering with the objective rationality of judicial decision-making if the law is not to be held ransom to individual whim. As Gleeson himself noted, the fact he was the first Catholic Chief Justice of NSW aroused little comment or interest at the time of his appointment. That irrelevance is the triumph of his rationalism.

The feature that recurs throughout the book is Gleeson’s brilliance. The biography is the catalogue of a penetrating intellect, and Pelly’s engaging and accessible account delivers an insight into the man.

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Murray Gleeson: The Smiler

By Michael Pelly

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