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LIEUTENANT-GOVERNOR OF NEW SOUTH WALES
UNVEILING OF THE LAW SOCIETY OF NSW ROLL OF HONOUR
THE IMPACT OF THE FIRST WORLD WAR ON THE NSW JUDICIARY*
TUESDAY 19 JULY 2016

1. It is a great pleasure to be invited to speak to you tonight at this unveiling of the Law Society Roll of Honour, recognising members of the legal profession who served in World War One. Today I will be speaking on the impact of the First World War on the New South Wales Judiciary. I am indebted to historians, in particular Mr Tony Cunneen, for dissecting early historical records and texts and conducting thorough research on this topic.
2. It must be acknowledged that popular stereotypes of judges do not include an association with the physical rigours of armed service. Indeed, it is hard to imagine us, with our preference for long bottomed horsehair wigs and fur lined regalia, faring well in the Pacific Jungle.
3. However, in actual fact, the historical contribution of the judiciary to the defence forces has been both rich and diverse. Indeed, three of my predecessors as Chief Justice traded their robes for military holsters in the World Wars. Further, many judges have been at the front line of wartime recruitment and advocacy campaigns.

* I express my thanks to my Research Director, Ms Sarah Schwartz, for her assistance in the preparation of this address.

4. Today I will speak on two ways that the First World War impacted the New South Wales Judiciary. First, through public campaigning, and second, through the effects of the war on judge's family members.

Judges in recruitment campaigns

5. The First World War came at a time of evolution in Australia's national landscape. In the early period of the Australian federation, judges played a crucial role in shaping our national character. Judges also retained strong ties to Great Britain, through both relatives and well-established associations, such as that with the English Inns of Court.¹
6. The allegiance of the Judiciary to the British Empire generally manifested itself in support for the war. Tony Cunneen describes the scene at the New South Wales Governor's banquet for Judges on the eve of the war being declared, stating,

The normally restrained evening transformed into a bellicose affirmation of support for the conflict, punctuated by cheers and patriotic outbursts ... Governor Strickland spoke to a constant chorus of cheers as he compared the scene in Sydney to the mood in Brussels shortly before the victory at Waterloo ... - a suitable allusion to such an imperially and historically minded gathering.²

¹ Tony Cunneen, "'Judges' Sons Make the Final Sacrifice": The story of the Australian Judicial Community in the First World War' (Draft Paper, as at 24 June 2016), p 9.

² Cunneen, above n1, p 14.

7. Not only were many judges fervent supporters of the war, but they played a role in recruitment and advocacy campaigns. Judges appealed to the public on the basis that the war was legally justified and enlisting was a moral obligation.
8. Notably amongst judicial supporters of the war, breaking the typical political impartiality expected of judges, was New South Wales's own Chief Justice, Sir William Cullen. Not only did he accompany the Governor-General, Sir Ronald Munro-Ferguson, as he made impassioned speeches about the need for loyalty to the British Empire, but he led recruitment and advocacy campaigns in his own right.
9. When the early public enthusiasm for the war started to evaporate, as death lists and news from Gallipoli started to be circulated, Cullen and other Justices of the Supreme Court "entered into a period of intense public activity".³ Amongst other things, this involved leading a successful campaign for the Red Cross, to assist wounded soldiers. The campaign "raised nine hundred thousand pounds and involved masses of citizens crowding the length and breadth of the city as well as other centres across the state."⁴

³ Tony Cunneen, 'Gaining Public Confidence in the Judiciary: Sir William Portus Cullen, Chief Justice of New South Wales, 1910-1925' (2014) 88(7) *Australian Law Journal* 477, p 495.

⁴ *Ibid.*

10. Another judge of the Supreme Court, Justice Ferguson, became intensely absorbed in the Gallipoli campaign, fostering a large network of soldiers and giving practical support through his leadership of the “20th Battalion’s Comforts Fund”. Justice Ferguson, and other judges such as Justice Harvey, who would later become the Chief Judge in Equity, also acted as ‘Official Visitors’ to internment camps for enemy aliens.⁵
11. Judicial support for the war added legal legitimacy to public campaigns and promoted the notion of the war as a “just war” and “righteous war”. Indeed, in his speeches, Chief Justice Cullen referred to the ways in which Germany and the Central Powers had shown no “scruple in trampling underfoot international law”.⁶
12. Cullen maintained his public support for the war right until the Armistice. When the end of the war was announced, the business of the Supreme Court was suspended and Cullen presided over a meeting of judges and other prominent members of the legal and political communities in the Banco Court. At the meeting, “[h]e spoke of men ‘cheerfully’ laying down their lives and their ‘immortal’ fame defending ‘justice’.”⁷

⁵ Tony Cunneen, ‘A Social History of the New South Wales Supreme Court Judges in the First World War’ [2009] (Winter) *Bar News: Journal of the NSW Bar Association* 73, p 76.

⁶ Cunneen, above n3, p 496.

⁷ ‘Supreme Court: Speeches by Bench and Bar’, *Sydney Morning Herald*, 13 November 1918, 10, cited in Cunneen, above n3, p 498.

The Involvement of Judge's Families in the War

13. Given judicial support for the war, it is unsurprising that the sons of judges were amongst the highest enlisters of the armed forces. So much so that in 1917, the *Weekly Times* reported that “[i]n proportion to numbers, no trade or profession in Australia has suffered more bereavement in the war than have the judges in the higher tribunals”.⁸

14. The fact that so many sons of judges enlisted in the war gave them increased credibility in recruitment and advocacy campaigns. For example, in an anniversary address at Sydney Town Hall in 1915, Chief Justice Cullen was overcome with emotion and unable to continue the address. Both of his sons were on Gallipoli at the time. One of his sons had refused his father's attempts to have him commissioned in an English unit, stating, “No, I'm an Australian! What is good enough for an Australian is good enough for me.”⁹

⁸ ‘Judges’ Sons, Make the Final Sacrifice’, *Weekly Times*, 6 January 1917, p 23, quoted in Cunneen, above n1, p 1.

⁹ ‘Anniversary of the War’, *The Sydney Morning Herald*, 5 August 1915, 7, quoted in Cunneen, above n1, p 23.

15. Judges across Australia also shared in the grief of the wider community when news of casualties started coming in. Famously, a High Court sitting in Adelaide was interrupted when Justice Rich was handed a telegram stating that his son had been killed in action. In New South Wales, Laurence Whistler Street, son of Justice Phillip Street, died fighting in Gallipoli in May 1915. He was recognised in divisional orders for “acts of conspicuous gallantry”.¹⁰ Later that year, the Chief Judge in Equity, Justice Archibald Simpson, received a cablegram that his son had been killed at Lone Pine. His son, George, was among the first to enlist in the state.

16. Not only were many judges’ sons involved in the war, but their wives and daughters also took on public positions. Chief Justice Cullen’s wife, Lady Cullen, was the President of the Red Cross during the war. It was she who suggested the slogan of “Carry on!”¹¹ Many other wives and daughters of Supreme Court judges, including the wives of Justice Simpson and Sly, and Justice Sly’s daughter, were foundation members of the Red Cross Society and were heavily involved in other charities.¹²

¹⁰ Ibid, p 20.

¹¹ Cunneen, above n3, p 497.

¹² Cunneen, above n5, pp 73, 76-77.

Conclusion

17. These stories demonstrate the high level of commitment and support displayed by the New South Wales judiciary and their family members to the First World War. Indeed, this commitment laid the foundations for the legal community's support for the war. I will leave it to Bill Windeyer, to discuss the role of solicitors in the war. However, I suggest that the fundamental values of the legal profession – a commitment to public service, through duty to the court, and to others, through faithful representation of one's client – share a lot with the ethics of duty and service at the heart of military service. It is therefore perhaps not surprising that so many legal professionals, and members of the judiciary, committed themselves to the armed forces, in one way or another, in the First World War.

18. Exploring the historical connections between the judiciary and the First World War reveals not only a fascinating history, but a history of which our profession can be proud. It is a pleasure to be here tonight in the presence of so many members of the legal profession who have contributed to the work of the Defence Forces. On that note, it remains for me to thank you once again for the opportunity to be a part of this ceremony.