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# “Judges’ Sons Make the Final Sacrifice”: The Story of the Australian Judicial Community in the First World War

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*This article focuses on the experiences of judges’ families, particularly their sons, in battle in the First World War. It is both a memorial to the sacrifice made by the Australian judicial community in the First World War as well as a contribution to the limited historiography concerning the social history of Australian judges. This article continues research into the activities of the wider Australian legal profession in the First World War.*

## INTRODUCTION

In proportion to numbers, no trade or profession in Australia has suffered more bereavement in the war than have the judges in the higher tribunals.<sup>1</sup>

There is great scope for the extension of judicial biography into the role of Australian judges in the First World War.<sup>2</sup> Well respected accounts of that conflict, such as Ernest Scott’s, *Australia During the War*,<sup>3</sup> Connor, Stanley and Yule’s, *The War at Home*,<sup>4</sup> or Michael McKernan’s, *The Australian People and The Great War*,<sup>5</sup> make minimal mention of judges, particularly at the State level. The many accounts of industrial relations during the war tend to focus on judges’ roles in exacerbating class based matters,<sup>6</sup> with minimal representation of judges’ social dynamics and their personal commitment to the conflict.

In reality, Australian judges during the war ceased whatever reticence they may have had to be involved in public life and adopted prominent roles which extended far beyond the usual range of judicial activity.<sup>7</sup> They became national figures whose speeches and activities were reported across the country. The actions of encouraging and supporting their sons as front line soldiers gave judges’ leadership a compelling legitimacy that has not been acknowledged previously let alone understood.

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<sup>1</sup> “Judges’ Sons Make the Final Sacrifice”, *Weekly Times*, 6 January 1917, 23.

<sup>2</sup> For an account of the need for judicial biographies see: Philip Girard, “Judging Lives: Judicial Biography from Hales to Holmes” (2003) 7 *Australian Journal of Legal History* 87.

<sup>3</sup> E Scott, *Australia During the War, Official History of Australia in the War of 1914-18 Series*, Vol XI (Angus & Robertson, 1941).

<sup>4</sup> J Connor, P Stanley and P Yule, *The War at Home* (OUP, South Melbourne, 2015).

<sup>5</sup> M McKernan, *The Australian People and the Great War* (Thomas Nelson, 1980).

<sup>6</sup> See, eg I Turner, *Sydney’s Burning* (Alpha Books, 1967); V Burgmann, “The Iron Heel: The Suppression of the IWW during World War I” in Sydney Labour History Group, *What Rough Beast?* (George Allen & Unwin Group, 1982); “A Nation Divided” in S Macintyre, *The Oxford History of Australia Vol 4 1901-1942* (OUP, Melbourne, 1986) 168-198.

<sup>7</sup> See “Tasmania On Guard. Volunteer Movement Launched”, *The Mercury*, 10 August 1914, 8: Chief Justice Nicholls of Tasmania said that “recent events had led him out of the retirement that was natural to his position and he had taken part in the calling of the patriotic meeting”. See also more recent examinations of extra-judicial activity such as F Wheeler, “Anomalous Occurrences in Unusual Circumstances? Towards a History of Extra-Judicial Activity by High Court Judges” (High Court of Australia Public Lecture, High Court of Australia, Canberra, 2011).

## PROFILE OF THE AUSTRALIA LEGAL COMMUNITY AT THE OUTBREAK OF WAR

There is little research into the concept of the Australian legal profession in general, and judges in particular, as a community of shared values.<sup>8</sup> The Australian legal community at the start of the First World War was evolving from what Wilfred Blackett in *May It Please Your Honour* described nostalgically as a golden age of colonial security and certainty, where judges were “sturdy men” who went on circuit on horseback and stage coach.<sup>9</sup> The newly established High Court of Australia and the Federal Industrial Court extended the process of defining a national legal landscape, and by extension, the national identity, begun as part of the campaign for Federation.<sup>10</sup> High Court cases such as the famous *Wire Netting Case*<sup>11</sup> could receive wide publicity<sup>12</sup> and developed a sense of trust in the local legal profession as contributing to the process of national self-definition.<sup>13</sup> Judges who had been constitutional lawyers had established national reputations at the start of the war. There was a clear link between judges’ involvement in shaping the Australian national character in the decades before the war and their response to what they saw as a test of the country’s commitment to the British Empire.

Judges and government were not remote from each other. It was common for judges at the time to have been Members of Parliament at one stage or another. The role and the relationship of the Chief Justice of Australia to the Federal Parliament was subject to some tension just before the war, as when the new Governor-General, Sir Ronald Munro-Ferguson, asked the opinion of Chief Justice of Australia Sir Samuel Griffith on the proposed double dissolution of Parliament in 1914.<sup>14</sup>

Other social developments led to an increasing role for lawyers. New technology, such as the motor car, manifested itself in new legal situations; there was much community anxiety over the new machines. New legislation had come into place to govern damages. Personal injury was a developing issue to be resolved in the courts. Industrial courts constantly set new parameters for worker/employer relations as judges and politicians grappled with the unfamiliar reality of an increasingly complex and assertive working class. The problematic control and use of public assets such as Government House in Sydney excited much disputation with one case going through to the Privy Council. In addition, women were agitating for a greater role in the legal profession. Victoria was the only State that had women barristers at the time.<sup>15</sup>

Developments of local university law schools (judges often had close associations with these developing institutions), the establishment of law reporting procedures, and the foundation of barristers’ and solicitors’ associations around the nation, all consolidated the professional features of the local legal community. Future developments included discussion about the possibility of an Australian federal judiciary.<sup>16</sup>

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<sup>8</sup> There is an emerging trend in social history focused on the “historiography of community” but generally it is applied to working class politics: see, eg L Taksa, “Workplace, community, mobilisation and labour politics at the Eveleigh railway workshops” in R Markey, *Labour & Community: Historical Essays* (University of Wollongong Press, 2001) 51.

<sup>9</sup> W Blackett, *May it Please Your Honour* (Cornstalk Publishing, 1927).

<sup>10</sup> Z Cowan and L Zines, *Federal Jurisdiction in Australia* (OUP, Melbourne, 1978). See also L Zines, *The High Court and the Constitution* (Butterworths, 1987).

<sup>11</sup> *R v Sutton* (1908) 5 CLR 789. There are at least another 10 significant cases up to 1909 listed in JM Bennett, “Sir William Portus Cullen – Scholar and Judge”, *Canberra Historical Journal*, September 1977, 78-96.

<sup>12</sup> “Premier Defies Duties”, *Sydney Morning Herald*, 22 August 1907, 7.

<sup>13</sup> “The High Court: Bench and Bar”, *Sydney Morning Herald*, 22 November 1906, 6.

<sup>14</sup> The incident has caused considerable controversy: see Scott, n 3, 18-19.

<sup>15</sup> See Linda J Kirk, “Portia’s Place: Australia’s First Women Lawyers” (1995) 1 *Australian Journal of Legal History* 75; Rosalind Atherton, “Early Women Barristers in NSW” in G Lindsay and C Webster (eds), *No Mere Mouthpiece – Servants of All, Yet of None* (LexisNexis Butterworths, 2002, Aust, 2002) 121.

<sup>16</sup> “The Australian Federal Judiciary: Federal and State Judges, Proposed Reform”, *West Australian*, 17 September 1913, 17.

Increasing numbers of local lawyers were also being appointed to the Bench.<sup>17</sup> New South Wales Chief Justice during the war, Sir William Cullen,<sup>18</sup> was the first holder of that position to be born and wholly educated in Australia. Justice Virgil Power, who served as the first Judge of the Central Supreme Court, was also the first Queensland-born Supreme Court Judge. Another Queenslander, Judge Real, had worked as a carpenter on the construction of the Ipswich Railway Station before studying for the Bar.<sup>19</sup> (Sir) George Murray, appointed Chief Justice of South Australia in 1916, was proud he had been born in that State when it was a colony.<sup>20</sup> Chief Justice Sir John Madden in Victoria, although born in England, was a product of Melbourne University. (Sir) Frederick Wollaston Mann, Chief Justice of Victoria (1935-1944) had been born in Australia, educated at the University of Melbourne and had also served (and been wounded) in the Boer War. Former Chief Justice of Western Australia, Sir Stephen Parker had been born in the colony.

Despite these local developments, many judges had strong family ties to Great Britain. Many judges had visited Great Britain and still had relatives there. Barrister, later Justice, Reginald Long Innes' sister lived in England during the war and was a welcome source of hospitality for Australian soldiers overseas. His brother, Captain P S Long Innes was wounded twice in the war. There was a well-established association with the English Inns of Court and a visitor to the Melbourne law courts commented that they were "astoundingly like England" in form.<sup>21</sup>

## RELATIONS TO THE BRITISH EMPIRE

The Australian legal community at the time was balancing the seemingly conflicting imperatives of becoming increasingly local and self-sufficient,<sup>22</sup> while continuing to maintain allegiance to Great Britain and the British Empire.<sup>23</sup> Patriotism was not just seen as a loyalty to Australia but, as was mentioned in the obituary for Judge Boucaut, the "full flow of pride and loyalty ... went out in unrestrained volume to the Empire as a whole".<sup>24</sup> The legal profession was represented as being part of an imperial community.<sup>25</sup> In addition, a variety of educational experiences contributed to a pervading sense of imperial connection in the judiciary. Monarchic values and a profound sense of public duty underpinned the pomp and circumstance of judicial activity.

Judges were seen to hold a "commanding status"<sup>26</sup> in society at the outbreak of the war. All were personally known to, or had at least met, the various Vice-Regal Imperial Representatives such as the Governor-General, Sir Ronald Munro Ferguson and his imposing wife, Lady Helen. The elaborate rituals of police escorts and ceremonial arrivals in country towns to sit on a circuit court gave an impression of imperial majesty to towns like Maryborough, Port Augusta or Cootamundra, and

<sup>17</sup> See JM Bennett, "Out of Nothing ..." in John Mackinolty and Judy Mackinolty (eds), *A Century Downtown: Sydney University Law School's First Hundred Years* (1991) 42; JM Bennett, *A History of the Supreme Court of New South Wales* (Law Book Co, 1974).

<sup>18</sup> See T Cunneen, "Gaining Public Confidence in the Judiciary: Sir William Portus Cullen, Chief Justice of New South Wales, 1910-1925" (2014) 88 ALJ 477.

<sup>19</sup> "Red Gum: Southern and Western Railway: More Interesting Facts", *Queensland Times*, 15 April 1910, 8.

<sup>20</sup> AC Castles, "Murray, Sir George John Robert", *Australian Dictionary of Biography* <<http://adb.anu.edu.au/biography/murray-sir-george-john-robert-7708>>.

<sup>21</sup> A Buchanon, *The Real Australia* (Fisher Unwin, London, 1907) 28, quoted in Macintyre, n 6, 127.

<sup>22</sup> Bennett, *A History*, n 17.

<sup>23</sup> See the speech by Chief Justice of Victoria, Sir John Madden, to the Colonial Institute in London on 25 May 1914 which was reported in a variety of Australian newspapers, eg "Empire and Defence", *Argus*, 27 May 1914, 15.

<sup>24</sup> "Death of Judge Boucaut", *Watchman*, 10 February 1916, 1.

<sup>25</sup> H Knight, "The Organisation of the Bar in the British Empire" (1915) 15(2) *Journal of the Society of Comparative Legislation* 161, was one contemporary reference to barristers across the Empire as having a mutual bond despite local differences.

<sup>26</sup> "The Judiciary", *Brisbane Courier*, 22 April 1925, 6.

contributed to the public perception of the importance of judges.<sup>27</sup> This sense of Empire connected men itching beneath their horse hair wigs and red gowns in hot dusty outback towns to the romanticised image of a soft green climate on the other side of the world.

Judges could be seen to be much more than judicial functionaries: Chief Justice, Sir Samuel Way, was lauded as the “Chief Citizen” of South Australia and represented in the press with great affection.<sup>28</sup> Such public respect and affection for Chief Justices as symbolising good citizenship was not uncommon. The Chief Justice of Australia, Sir Samuel Griffith, was described as being both “honoured and beloved” by Loxton KC when he addressed a formal sitting of the High Court.<sup>29</sup>

Judges, like all lawyers, had a sense of community reinforced by residential and professional proximity as well as the shared values of character and service.<sup>30</sup> Well-established legal families with still-familiar names such as Street, Windeyer, Stephen, a’Beckett, Manning, Simpson, Owen, Crisp and Macrossan,<sup>31</sup> promoted the unity of the profession: in 1912 Chief Justice Sir Stephen Parker of Western Australia sat in the Kalgoorlie Circuit Court with one son as Crown Prosecutor and the other as defending counsel.<sup>32</sup> Marriage connected judges’ families to other prominent citizens. Such connections naturally reinforced the commonality of purpose in response to the war. Judges often lived near one another and formed close knit, mutually supportive, relationships.<sup>33</sup> They patronised the same schools, many of which they visited during the war to encourage the students to enlist. Local residents of Hunter’s Hill in Sydney nicknamed one early morning ferry which departed from the Alexandra Street Wharf as the “Judges’ Ferry” to reflect the occupation of its passengers.

## JUDGES AT THE START OF THE WAR

The imperial vision which underpinned judicial support for the war and was made manifest at Sydney Town Hall on the evening of 5 August – only hours after war was declared. The occasion was the New South Wales Governor Strickland’s banquet for the judges of the High Court of Australia, the New South Wales Supreme Court, and other leading citizens. The normally restrained evening transformed into a bellicose affirmation of support for the conflict, punctuated by cheers and patriotic outbursts, displaying an ebullient energy not commonly seen on such occasions. The guests included the Chief Justice of Australia, Sir Samuel Griffiths, and his friend the Chief Justice of New South Wales, Sir William Cullen – both of whom would maintain their support for the conflict through to the end. 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 in the previous century – a suitable allusion to such an imperially and historically minded gathering.<sup>34</sup> Furthermore, he emphasised the idea that the war would see “a greater solidarity of the Empire” with a “supreme tribunal” that would have “a representative of the High Court of the great dominions permanently a member of it”.<sup>35</sup>

<sup>27</sup> JB Thomas, “Epistle from a Judge on Circuit” (1987) 10(1) UNSWLJ 173. These police escorts were widely reported as a part of the ritual of a judge’s arrival on circuit duty in the press at the time.

<sup>28</sup> “The Chief Justice”, *Southern Argus*, 27 May 1915, 3.

<sup>29</sup> See *Sydney Morning Herald*, 17 November, 1918, 8.

<sup>30</sup> Charles Jameson, “Bench and Bar of Long Ago”, *Brisbane Courier*, 2 January 1932, 16. A similar nostalgia is evident in AB Piddington, *Worshipful Masters* (Angus & Robertson, Sydney, 1929).

<sup>31</sup> Karen Fox, “Australian Legal Dynasties: The Stephens and the Streets”, *Obituaries Australia* (National Centre of Biography, Australian National University, 2015) <<http://adb.anu.edu.au/essay/10/text30750>>.

<sup>32</sup> “Chief Justice and Sons, at Kalgoorlie Court”, *Daily News*, 22 June 1912, 10.

<sup>33</sup> See the unpublished memoirs of Justice Manning’s daughter in the archives of the Hunters Hill Historical Society which describe the close relationship in the peninsula’s legal community.

<sup>34</sup> Empire history was a major topic of education at the time through such texts as WH Fitchett, *Deeds that Won the Empire* (1st ed, 1896) which ran to 36 editions and sold over 250,000 copies.

<sup>35</sup> “A Solid Empire”, *Sydney Morning Herald*, 6 August 1914, 8. Strickland’s reference to the idea of an Imperial Court of Final Appeal had been percolating through the public discourse in Great Britain and the dominions since the 1890s and had been the subject of an Imperial Conference in 1901.

It was clear that Australia would prove itself worthy of a seat on the tribunal through its actions on the battlefield. The evening began a process of public activity for judges that extended across Australia. A similar evening in Melbourne involving leading citizens and Justice Isaacs, Acting Chief Justice a'Beckett among others cheering a series of speeches recalling gallant cavalry charges, the "renown" of British troops and the unity of the British Empire.<sup>36</sup> Normally reticent Justices became public figures overnight. Tasmanian Chief Justice Nicholls addressed a packed Hobart Town Hall on 10 August, arriving on stage to an exalting crowd singing *Rule Britannia*, *God Save the King* and *La Marseillaise*. He then spoke enthusiastically about expanding the role and activities of volunteer Rifle Clubs as an example of "practical patriotism".<sup>37</sup> In Queensland the Chief Justice, Sir Pope Cooper, a committed anglophile, was on the saluting stand as one of the official party at Brisbane Town Hall on Saturday, 19 September 1914, for the first major military parade in the State while "the cheers ran down the solid phalanx of Queensland Britishers like a rolling wave".<sup>38</sup> The Chief Justice of Victoria, (Sir) John Madden, sent a telegram from London reporting the war fever in that city and wrote that the national support for the war made it clear that "to be an Australian (was) a proud position".<sup>39</sup>

The British legal profession had set an example of enthusiastic support for the war. Within the first few days of the declaration of hostilities the lawyers' militia unit, romantically called "The Devil's Own", conducted its initial training in "drill and musketry in Lincoln's Inn and Temple Gardens" as well as all the Halls "by leave of the Benchers".<sup>40</sup> Judicial support for the war permeated the Empire. By November 1914 the sons of seven out of eight judges on the Supreme Court Bench of New Zealand were engaged in military service.<sup>41</sup> A similar situation occurred in Great Britain with the son of the Lord Chief Justice Isaacs just one of many such men who went into service.

### JUDGES' SONS IN BATTLE

Judges' families enlisted for front line duty to such an extent that the *Weekly Times* in Victoria in January 1917 was led to exclaim: "In proportion to numbers, no trade or profession in Australia has suffered more bereavement in the war than have the judges in the higher tribunals." The article went on to note that "[w]ith few exceptions, their eligible sons have gone to the front and at least seven of these have made the supreme sacrifice".<sup>42</sup> Newspapers across the country made constant reference to the numbers of sons of judges "who had joined the colors".<sup>43</sup> In fact there is considerable pathos in the narrative of judges' sons in the war.

Judges' sons enlisted to fight for Empire, because they saw it as part of being an Australian and because it was seen as "the duty of those who occupied prominent positions ... to set an example", as was mentioned by Queensland Judge Hamilton in court in reference to his own son.<sup>44</sup> The publicity given to the enlistment of judges' sons was generally favourable in the national press, although one columnist labelled mention of them as "snobbish".<sup>45</sup> Left wing newspapers, such as *Labor Call*, did not mention them at all.

Judges' sons were connected by many things, not least of which was the community formed by their schools. Institutions such as Brisbane Grammar, Scotch College, Shore School, Sydney

<sup>36</sup> "The British Sentiment: Lord Mayor's Dinner", *The Age*, 10 November 1914.

<sup>37</sup> "Tasmania on Guard", n 7, 8.

<sup>38</sup> "Queensland Troops: City's Great Welcome", *The Telegraph*, 1 September 1914, 8.

<sup>39</sup> "An Australian in London", *Albury Banner and Wodonga Express*, 9 October 1914, 9.

<sup>40</sup> FHL Errington (ed), *The Inns of Court Officer Training Corps during the Great War* (Printing Craft, London, 1922; Scholar's Choice, reprint 2015).

<sup>41</sup> "Judges' Sons: At the Front", *Sydney Morning Herald*, 25 November 1914, 11.

<sup>42</sup> "Judges' Sons Make the Final Sacrifice", n 1, 23.

<sup>43</sup> See, eg "War Notes", *Singleton Argus*, 21 August 1915, 5.

<sup>44</sup> Judge Hamilton, on the occasion of congratulations for his son's award of a battle honour: "Judge Hamilton Congratulated", *Northern Star*, 22 November 1916, 2.

<sup>45</sup> "Here and There", *Maryborough and Dunolly Advertiser*, 21 April 1916, 4.

Grammar, Melbourne Grammar, St Ignatius, Riverview or St Peters all passionately supported the war as a holy crusade and urged their ex-students, including those who came from legal families, to enlist. Many young soldiers had received their first military experiences in these schools' cadet units, and the schools took great interest in the fate of their ex-students in battle.<sup>46</sup> Education had inculcated imperial values through learning about the exploits of heroic British men such as the Duke Wellington or Lord Nelson in books such as W H Fitchett's *Deeds that Won the Empire*<sup>47</sup> or the regular popular editions of boys' and girls' *Empire Annuals*.<sup>48</sup> Young men saw themselves as part of a global family with a common set of myths and a common destiny.

The outbreak of the war found some sons of Australian judges in England. Kenneth Whistler Street, son of Justice Street (later Chief Justice of New South Wales), enlisted in England at the outbreak of the war but an injury prevented him from seeing service – much to his disappointment. John Stanser Rich, son of Justice Rich of the High Court of Australia, also enlisted in England, joining the King's Liverpool Regiment on 3 August 1914 as did Roderick Alan O'Connor, the son of the recently deceased Justice O'Connor of the High Court of Australia.

Lawyers shared in the shock and grief of the wider community after April 1915 as news of casualties started to come through the cables. The first judge to lose a son was Justice George Stanser Rich of the High Court of Australia.<sup>49</sup> Justice Rich was sitting in court with Chief Justice Griffith and Justice Isaacs in Adelaide when proceedings were interrupted and he was handed the following rather terse telegram: "Regret inform you Lieutenant J G Rich, Liverpool Regiment, reported killed May 17. Lord Kitchener expresses sympathy."<sup>50</sup> The grief-stricken Judge withdrew from court and returned to his home in Sydney. Justice Gavan Duffy, who had two sons at war himself, travelled to Adelaide to take his place, little aware of the tragedy that lay ahead for him.

In early May, 21-year-old Laurence Whistler Street, son of New South Wales Justice Phillip Street, landed on Gallipoli and had a torrid time for the following two weeks.<sup>51</sup> He was recognised in divisional orders for "acts of conspicuous gallantry or valuable services". On 19 May he led his men in their defence against a powerful Turkish attack which began around 4.00 am. At one stage the Turks were standing over Street's trench and shooting directly into it. Bean describes the moment as one of "tense excitement" with the Australians under Street and his major "standing their ground".<sup>52</sup> As dawn came, the Australians fought the Turks off. Street was shot down at around 4.30 am. He was interred in Schrapnel Gully, with 33 men from his unit. The son of Justice Chapman of New Zealand was killed the same day as Laurence Street.

John Rich had died in remarkably similar circumstances to Laurence Street – leading his men from the front, as was expected by young men of their position. Both boys had been to Sydney Grammar School. Justice Street was the Chairman of the Trustees of the school during the war. As such he was a regular attendee at a variety of functions for Old Boys often exhorting them to enlist.<sup>53</sup> On occasion, the names of those Old Boys killed in the war, referred to as "Fallen Sydneians", were

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<sup>46</sup> Most of the prominent boys' schools had well-established ex-student organisations and were a clearing house for letters from the battle front, many of which were published in school magazines such as St Ignatius' *Our Alma Mater*, Sydney Grammar's *The Sydneian*, Kings School Magazine or the Shore School's *The Torchbearer*. The author acknowledges the generosity of these schools in allowing him access to these files.

<sup>47</sup> Fitchett, n 34.

<sup>48</sup> See, eg *Young Australia: An Illustrated Magazine for Boys Throughout The English Speaking World* London, Vol XXVI (Pilgrim Press, 1913). Such books were often presented as prizes in schools around the country.

<sup>49</sup> Justice Rich had been a judge on the New South Wales Supreme Court from 1911 to 1913.

<sup>50</sup> "Lieut JG Rich", *Sydney Morning Herald*, 25 May 1915, 9. Newspapers across Australia carried the news of Rich's death.

<sup>51</sup> Unless otherwise stated, details of the military service of the soldiers mentioned come from military records held at the National Archives of Australia or the Australian War Memorial.

<sup>52</sup> CEW Bean, *The Story of ANZAC Vol II* (Angus & Robertson, 1941) 156.

<sup>53</sup> Details of these occasions are taken from the archives of Sydney Grammar School, especially its magazine, *The Sydneian*, which has multiple references to the Street and other families. Information is reproduced here courtesy of Sydney Grammar School.

read out to the assembly. John Rich was the eighth name on the list. Laurence Street was the ninth. Justice Street led by the example of his own sons. All judges had similar credibility when they said that young men should enlist because of the deaths of men such as Brian George Cassan Simpson, who was killed in action near Hill 60 on 1 July 1915 serving in the King Edward's Horse. He was the grandson of former New South Wales Chief Justice, Sir Julian Salomons, and former judge of the New South Wales Supreme Court, Sir George Simpson.<sup>54</sup>

On 6 August 1915, law student Lance Corporal Humphry Osborne Moule, the son of Victorian Judge William Moule, was killed in action. On 27 August 1915 the Chief Judge in Equity in New South Wales, Justice Archibald Simpson, received the dreaded cablegram to say his son, George Barrie Goldie Simpson, had been killed at Lone Pine on 4 August. George Simpson had been among the first to enlist in the State, and had survived a gunshot wound early in the campaign. He had been a student at Sydney Grammar School, and his name too would be read out at the increasingly sombre assemblies. Also in August, Major Edward Ernest Williams DSO, son of Sir Hartley Williams, a former Judge of the Supreme Court of Victoria, was killed in action on Gallipoli serving with the Northumberland Fusiliers.<sup>55</sup>

The strain on other judges who had sons away at war occasionally became manifest in public. On 5 August 1915, Chief Justice of New South Wales, Sir William Cullen was overcome with emotion and unable to continue his address at the anniversary meeting to a packed Sydney Town Hall of the outbreak of the conflict one year earlier. "Cheer up!",<sup>56</sup> shouted the crowd and he was "cheered to the echo".<sup>57</sup> Both Cullen's sons – Howard Clifford, aged 22, and his younger brother William Hartland, aged 19 – were on Gallipoli at the time:<sup>58</sup> William had refused his father's attempts to assist him with a commission in the English unit, the King Edward Horse,<sup>59</sup> saying: "No, I'm an Australian! What is good enough for an Australian is good enough for me."<sup>60</sup> This comment received wide publicity as was a mark of the egalitarian values that the judicial community displayed with regard to their sons in action – they were front line soldiers.

The worry among the judicial community is suggested in a poem by 19-year-old Jean Curlewis, the daughter of Industrial Court Justice Herbert Curlewis, and the writer Ethel Turner. Jean was well connected to the wider legal profession. Her family were close friends with the family of Chief Justice Cullen. Jean Curlewis wrote during the war of the way parents

... are being tortured  
 Worse than ever God's son was tortured  
 on the Cross.  
 The mothers go about their daily business ...  
 You would not think when you see them at  
 Breakfast that they have been lying  
 Awake since the small hours, watching  
 The light creep in among the shadowy

<sup>54</sup> "Australians in London", *Sunday Times*, 24 January 1915; University of Sydney, "Beyond 1914: The University of Sydney and the Great War", <<http://beyond1914.sydney.edu.au/profile/4034/brian-george-cassan-simpson>>. The King Edwards Horse was a British unit containing many troops from the dominions.

<sup>55</sup> "Judge's Son Killed", *The Register*, 28 August 1915, 9. Typically, the sad event was reported nationwide.

<sup>56</sup> A "cheer up" campaign was underway at the time to offset the universal sense of gloom among the community in response to the casualty lists from Gallipoli.

<sup>57</sup> "Anniversary of the War", *Sydney Morning Herald*, 5 August 1915, 7.

<sup>58</sup> Both sons served as front line soldiers throughout the war; both were wounded and suffered illness. Both survived.

<sup>59</sup> The King Edward Horse was for dominion soldiers and entry was for a time based on recommendations from the relevant State premier or simply having been in the university militia unit, which contained some well-known names such as Harry Baillieu from Melbourne.

<sup>60</sup> "Anniversary of the War", n 57, 7.

Furniture,  
Wondering  
If he was killed while they were snatching a few hours sleep –  
If he suffered.  
The fathers go about their business –  
You would not think, perhaps, that they cared  
Very much until you meet them on the  
Tram and straightway they show you  
Their son's letters.  
The daughters go about their daily business –  
Only the sons do not go about their business:  
They are not there.<sup>61</sup>

Her poem presents the fear which gripped all people who had relatives at the war. Tragic news could intrude on daily life at any time. Mr Justice Ferguson was sitting in Darlinghurst Causes Court on 27 June 1916 when he was interrupted by the New South Wales State Commandant, General Ramaciotti (a former law clerk) to be told that young Arthur Gardere Ferguson had been killed in action in France.<sup>62</sup> In a particularly unpleasant twist of fate, a ship had delivered Arthur Ferguson's last letters to his family only that morning. Arthur's brother Keith<sup>63</sup> was sailing to war when news of his brother's death reached the family.

On the same ship as Keith Ferguson was another judge's son: Desmond Gavan Duffy, a 26-year-old barrister. Desmond Duffy was the brother of barrister, Charles Duffy, who had fought on Gallipoli. Their father was Justice Frank Gavan Duffy of the High Court. Desmond Duffy was sailing to his death, which came to him in the cold weather of November 1916.<sup>64</sup> He was suffering from the shock of battle and retired to his tent with his fellow officers to recuperate. A German long-range artillery shell blew "them all to pieces" according to an eyewitness account.<sup>65</sup>

No one was spared the worry of it all. Judges across Australia formed a community of grief. Justice Higgins of the Federal Industrial Court had been steeling himself for tragic news since his only son, Mervyn, had been lucky to escape death during the catastrophic attack by the Light Horse at the Nek on Gallipoli in August 1915.<sup>66</sup> In mid-1916, Justice Higgins had written to Justice Ferguson on the death of his son, Arthur:

Heronswood, Dromana  
28 June 1916  
Dear Justice  
May I express my deep sympathy? I shall relieve my own mind, if nothing else. Street's fine son, whom I met in Egypt, has gone; Simpson's has gone; Rich's has gone; and now yours has gone. I am so sorry. My own boy is still at the front. He was one of the few – the very few of the 8th Light Horse who escaped on that awful 7th of August [the date of the attack at The Nek]; but who can tell what is in store for us?

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<sup>61</sup> Jean Curlewis in P Poole, *Of Love and War: The Letters and Diary of Captain Adrian Curlewis and his Family 1939-1945* (Lansdowne Press, Sydney, 1982) 9. Jean Curlewis died of consumption in 1931. She had contracted the disease serving as a VAD in the sanatorium for consumptive patients in the Blue Mountains outside of Sydney: Author interview with Millicent Poole, grandniece of Jean.

<sup>62</sup> The incident was widely reported across Australia. Rammaciotti had previously been the managing clerk of the conveyancing department of the Sydney solicitors, Minter, Simpson & Co: *Sydney Morning Herald*, 28 June 1916, 9.

<sup>63</sup> Later a Justice of the Supreme Court of New South Wales.

<sup>64</sup> Gavan Duffy, Higgins and Rich were sitting on the High Court when their sons were killed. Justice Richard O'Connor died in 1912, before the war started.

<sup>65</sup> C Hodgson, "Statement to the Red Cross Missing and Wounded Enquiry Bureau", *The Searcher*, 4 March 1917 <<https://www.awm.gov.au/images/collection/pdf/RCDIG1045694--1-.pdf>>.

<sup>66</sup> John Rickard, *HB Higgins: The Rebel as Judge* (George Allen and Unwin, Sydney, 1984) 205.

I do hope that you will be enabled to keep a stout heart in the awful calamity.

Faithfully yours

Henry B Higgins<sup>67</sup>

Justice Higgins appears to have had a premonition of tragedy. He was on holidays at Dromana, on Victoria's Mornington Peninsula, on New Year's Eve 1916 when the local Reverend delivered news of the death of Mervyn Higgins, who was killed in action serving with the Light Horse in the attack on Maghdaba on the Sinai Peninsula in the Middle East.<sup>68</sup>

Richard Hensleigh O'Connor, son of the recently deceased Justice O'Connor of the High Court of Australia, had enlisted in a New Zealand unit in the hope of reaching the front faster than via Australia. Richard survived Gallipoli but was killed in action in France in July 1916. Justice O'Connor's other son, Lieutenant Roderick Alan O'Connor, was killed in action with the Royal Leinster Regiment in Flanders in September 1916.<sup>69</sup> Another son, Max, served with the Light Horse and survived the war. While it was common for such deaths in action to be reported in local press, the deaths of the sons of judges received national publicity.

Judge Jameson in Queensland was a strong advocate of recruitment and he was true to his word about sending those close to him. He signed the papers which sent his 19-year-old son, Charles, who had been the associate to Queensland's Justice Shand, to fight. Young Charles Jameson was shot in the head and killed instantly leading a night raid on German trenches at Ploegstreeet in Belgium on 4 April 1917. Judge Jameson returned to court within a few days of the receipt of the news of his son's death. Counsel offered their condolences on his loss. The judge continued his patriotic exhortations but now insisted that his appeal to enlist was only to "single, fit men over the age of 21".<sup>70</sup>

More tragedy was to come for the Queensland judiciary. On Friday, 26 April 1918, Judge Jameson was reported as speaking "with evident emotion" when he started the day's sitting in the Brisbane District Court. The cause of his distress was the news of the death of Thomas Real O'Sullivan, the son of Judge O'Sullivan. Thomas was also the nephew by marriage of Judge Real. Brisbane barrister, J L Woolcock, expressed the condolences of the legal profession and the court stood in silence for a minute. Judge O'Sullivan's oldest son, Francis Mellin, a solicitor, also served overseas as did other members of his extended family. His nephew Cyril, died of pneumonia in Paris, 15 February 1919 after three years' absence at war – much to the shock and sadness of his family who were eagerly awaiting his arrival home. There could be no doubt as to the genuine nature of the Queensland judges' commitment to the war.

Justice Gordon was in court in Adelaide in April 1918 when he received news that his son-in-law, Neill Campbell was missing in action on the French front. Justice Gordon commented that he was the only male member of his family not gone to war, and the message "made him anxious to go home".<sup>71</sup> Court was adjourned for the day. He had already cancelled court in 1915 when news arrived of the death in action of his other nephew. It was a tense time in South Australian courts, as a hearing was adjourned on 16 May 1918 as counsel, Mr A W Piper KC "was considerably upset by the news" that his son who had been reported missing was a prisoner of war in Germany.<sup>72</sup>

In May 1918, Major W Shenton Garnett, the grand-nephew of the late Sir William Stawell, former Chief Justice of Victoria, died of wounds. Edward Norman Hodges, was the son of Victorian Supreme Court Justice Hodges. He was a 27-year-old barrister when he enlisted in 1915 with the British Army. He received a Military Cross for an act or acts of exemplary gallantry, but he died of pneumonia in hospital in June of 1918. Victorian Chief Justice Irvine received the official notification of Edward

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<sup>67</sup> Letter from HB Higgins to D Ferguson, 28 June 1916 (Ferguson Letters, Mitchell Library NSW).

<sup>68</sup> Red Cross Missing and Wounded Enquiry Bureau File for Mervyn Bournes Higgins <<https://www.awm.gov.au/images/collection/pdf/RCDIG1046769--1-.pdf>>.

<sup>69</sup> "War Casualties; Killed", *Sydney Morning Herald*, 21 September 1916, 10.

<sup>70</sup> "Recruiting Rally", *Cairns Post*, 5 October 1917, 4.

<sup>71</sup> "Judge's Son-in-Law Missing", *Barrier Miner*, 30 April 1918, 2.

<sup>72</sup> "Personal News", *The Express and Telegraph*, 17 May 1918, 1.

Hodges' death at the Court, when was sitting in the Banco. Chief Justice Irvine summoned Justice Hodges to his chambers to inform him of his son's passing. Not long after this news, Malcolm Murray, the nephew of the Chief Justice of South Australia, Sir George Murray, died as a result of illness on 25 October 1918 in Damascus.

Many sons of judges from across Australia enlisted for service but survived the war. It is impossible to outline all their careers here but in addition to those mentioned above they included: Wilfred Barton, the son of High Court Justice Sir Edmund Barton. Guy Ross Madden, the son of the Chief Justice of Victoria, Sir John Madden, served, as did Madden's son-in-law, Jack Baillieu. Victorian Justice, Sir Leo Cussen's two sons enlisted. The son of Victorian Judge Cooper was an instructor at Farnborough Flying School. Lieutenant Roy Powers, the son of Justice Powers, Deputy President of the Victorian Court of Arbitration, served and was lucky to survive an explosion with the Royal Field Artillery in France. Judge Hamilton, in New South Wales, had two sons enlist, as did Justice Pring.

### JUDGES AND ENLISTMENTS CAMPAIGNS

Judges were national figures in recruiting campaigns during the war. The loss of their own sons gave them considerable credibility when they appeared in a variety of forums. Their appeal was basically that the war was legally justified and a moral obligation. Judge Jameson sat in the Northern Queensland District Court and was described as "the heart and soul" of the recruiting campaign in the area.<sup>73</sup> His passionate speeches sensationally claimed that what happened to Belgium was "child's play" in comparison as to what could happen to England if the "wild beast" of Germany was victorious. He urged that the young men in the audience that they should "follow the example of the leader of the Christendom, and sacrifice themselves for the good of others". He exclaimed in ringing tones that would say to anyone near to himself: "Go, and may God go with you!"<sup>74</sup> Such exhortations were common among judges at the time. The legal profession in particular felt the pressure to enlist. Chief Justices across Australia including New South Wales' Sir William Cullen, Victoria's Sir John Madden, Tasmania's Sir Herbert Nicholls, or South Australia's Sir Samuel Way, were fervent public advocates of enlistments, repeatedly appearing at Town Halls and other public rallies.

Chief Justice of South Australia, Sir Samuel Way, illustrated the kind of pressure brought to bear on lawyers to enlist when he exhorted the members of the Adelaide University Law and Debating Society to go to the war, claiming that "as a one armed man, [he] would take up any weapon and die, rather than that our country should be governed by Germany and our women and children subjected to their nameless atrocities".<sup>75</sup> It would have been hard for an able bodied lawyer to resist the message from the Chief Justice. It was generally reported that the characteristics which led to success in the law led to success as a soldier.<sup>76</sup> A number of high profile lawyers enlisted, such as W J Denny, a solicitor and member of the South Australian Parliament.

Judges supported any lawyers who wanted to serve and were favourably disposed to law clerks and students who sought exemption from rules for overseas service, or who asked that service overseas be counted towards articles. Often such applications were accompanied by warm personal wishes of good fortune from the Bench, as occurred with Justice Gordon and two applicants in June 1915.<sup>77</sup> Hyperbolic rhetoric from the Bench resonated throughout the conflict. Justice Gordon in South Australia farewelled one young lawyer by saying: "On behalf of the Judges of this Court I congratulate you upon having joined the ranks of those gallant Australians who have won deathless

<sup>73</sup> "Address by Judge Jameson", *Cairns Post*, 27 February 1917, 4.

<sup>74</sup> "Judge Jameson's Recruiting Speech", *Daily Mercury*, 29 November 1915, 5.

<sup>75</sup> "Off to the Front", *The Critic*, 7 July 1915, 7.

<sup>76</sup> "Australia and the War: Trenchant Speech by General Legge", *Sydney Morning Herald*, 1 June 1917, 6. Legge was a Sydney barrister. This belief in the congruence of the two professions has been supported more recently by both Justice Slattery and Justice Brereton of the New South Wales Supreme Court.

<sup>77</sup> "Off to the Front", *The Express and Telegraph*, 16 June 1915, 4: the article describes how the Full Bench of Justice Gordon, Justice Murray and Justice Buchanan granted exemption to two South Australian law students.

fame in defence of the Empire.”<sup>78</sup> Justice Gordon’s Associate, A B Webb, enlisted in 1916. While Justice Gordon did not have sons himself, at the time of the appearance he had one nephew, Kenneth, missing in action and another, James (a solicitor), serving in the Field Ambulance on Gallipoli. Justice Gordon was unaware that Kenneth Gordon was already killed on the first day of the Landing and that the other, James, would be killed in July 1915. A third brother, Allen, survived the war.

## CONCLUSION

Australian judges made a remarkable and unique excursion into public life during the First World War. They unveiled Honour Rolls; donated to a plethora of war-related causes; and spoke at Amateur Athletic Associations, Town Hall banquets, recruitment rallies, battle memorials, soldiers’ farewells, and soldiers’ welcome homes. In addition to enduring personal loss, they donated time and money to support the many war-related charities. Some judges served on Prize Courts. Others, such as Justice Harvey and Justice Ferguson, visited internment camps as “Prisoners’ Friends”. Overall, the actions of judges and their families in the conflict changed the nature legal profession and strengthened its Australian identity.

The successful public actions of women such as Lady Cullen, the wife of the Chief Justice, were cited as reasons for women to be admitted to the legal profession in New South Wales, having “proved their worth” and thus worthy of having the right to enter the ranks of lawyers.

But ultimately, the measure by which the judges judged themselves during the First World War was best articulated by New South Wales Chief Justice, Sir William Cullen. While the death notices of the Battles of Fromelles and Pozieres were still being delivered by grim faced clergymen, his fellow judges had lost six sons in action and his own sons were fighting in France, Sir William Cullen said to a crowd in Sydney, that the central question for everyone in Australia at the time was simply: “Are we doing our duty ...?”<sup>79</sup> It is hard to escape the conclusion that, considering the number of sons who enlisted for front line service, Australian judges certainly did just that. Virtually all their eligible sons enlisted,<sup>80</sup> and 12 were killed: John Rich, Laurence Street, Humphrey Moule, George Simpson, Edward Williams, Desmond Gavan Duffy, Mervyn Higgins, Richard O’Connor, Roderick O’Connor, Charles Jameson, Thomas O’Sullivan, and Edward Hodges.<sup>81</sup> Many other sons-in-law, nephews, friends and professional associates also lost their lives. The majority of the others were wounded.

They had very much fulfilled what they viewed as their “sacred duty”.

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<sup>78</sup> “Law Clerk’s Enlistment: Admission to the Bar”, *The Journal*, 13 July 1915. Justice Gordon was speaking on the admission of Thomas Reginald Mellor to the Bar. Mellor had already enlisted.

<sup>79</sup> Sir William Portus Cullen, Chief Justice (Speech as Lieutenant Governor at the unveiling of the Honour Board at Petersham); “Resplendent Days. Speech by Lieutenant Governor. Microbe of Disloyalty”, *Sydney Morning Herald*, 8 October 1916, 6.

<sup>80</sup> “Australian Judges Sons: Roll of the Dead”, *Bendigo Independent*, 3 January 1917, 8.

<sup>81</sup> Such Honour Lists are only as good as the people who compile them and this number is taken from an extensive search of memorials, news reports, biographical accounts and private sources. Research is ongoing and anyone with more names is invited to contact the author.