

## ***Murray Gleeson – The Smiler***

by Michael Pelly. The Federation Press, 2014, 296pp, RRP Hardback \$59.95

### **Andrew Lynch**

Professor Andrew Lynch, Faculty of Law, University of New South Wales

---

Unlike the United States of America, Australia has a patchy tradition of judicial biography. Notwithstanding the recent explosion of titles celebrating the life and times of Justice Michael Kirby, the judicial life, even of the most senior figures, has tended to go unexamined. This has been especially so in respect of those individuals whose journey to the bench contained few diversions from the traditional path of the private bar. It is not hard to understand why we had books on Sir Garfield Barwick and Lionel Murphy, both appointed to the High Court after a substantial political career, before we had one on the much venerated Sir Owen Dixon, who sat on the Court for 35 years, 13 of them as its Chief Justice. Lawyers tend not to live lives of great variation or much action. As a consequence, they are a challenging prospect for biographers. Murray Gleeson, the nation's eleventh Chief Justice, typifies this difficulty more than most. A famously guarded man, bestowed with the ironic nickname of 'Smiler' while still a junior at the New South Wales bar, Gleeson's professional life may be summed up as roughly a quarter of a century in private practice, a decade as Chief Justice of New South Wales, and then another 10 years as Chief Justice of the High Court. In other words, for all those years he essentially was preparing for, appearing in or making decisions after being in a courtroom. Unlike Kirby, his contemporary from university days all the way to their time together on the nation's highest court, Gleeson harboured no political aspirations, did not occupy roles in either domestic law reform or international organisations, and rarely strayed into politically or socially contentious topics in public speeches. His dryness, discipline and discretion are the stuff of legend. In other words, Michael Pelly, the author of a new biography of Gleeson, could hardly have set himself a tougher task. How to tell the life story of a man whose contribution to the nation and his profession has been immense but who is so lacking in flamboyance? A man who is an enigma even to those who have known him for years and whose name, let alone face, the general public would almost certainly fail even to recognise?

Pelly had two things on his side in writing this book – and which have ensured its success. First, through his many years as a legal affairs reporter and columnist, he knows that while lawyers may not lead lives of action, they do lead lives full of stories – as many and varied as the clients they represent. And Gleeson, as one of the most

sought after barristers in the country, offers a wealth of material in this respect. He appeared for the state of Tasmania in its landmark 1983 constitutional stoush with the Commonwealth over plans to dam the Franklin River, was counsel assisting the Australian Jockey Club during the Fine Cotton ring in scandal of 1984, successfully represented both the actress Kate Fitzpatrick in a defamation suit with News Ltd (after which she memorably described Gleeson as ‘the sexiest man I ever met’, an assessment she affirmed for Pelly as still standing three decades later) and National Party minister, and later leader, Ian Sinclair who faced serious charges of tax fraud. These and other cases, less high profile and earlier in Gleeson’s career, are featured in the book and Pelly writes them up in an engaging style – highlighting both the importance of small factual details to legal victory and Gleeson’s mastery of strategy and technique. The second – and arguably greater of Pelly’s advantages – was Gleeson’s permission for him to interview family and friends. It is no exaggeration to suggest that without the participation of those who know Gleeson best, this book would simply not have been possible to write. As it is, Pelly was still working under significant constraints, with no access to any of his subject’s personal papers and Gleeson refusing to talk about any cases involving persons still living and any of his judgments whatsoever. The terms upon which Gleeson was prepared to co-operate with Pelly explain why the end result is so very different from Professor AJ Brown’s magisterial examination of the life and opinions of Michael Kirby. It also suggests that there is, perhaps, another book to be written about Gleeson – one which benefits from archival material in its discussion of his reasoning and deliberations with colleagues in the many cases of interest over his tenure.

But no such later offering will be able to match this book for the charmingly candid anecdotes and impressions of the Gleeson family. Pelly has realised the value of much of this material and very shrewdly he has ensured that it is not simply a gesture in the book. Indeed, at least for this reader, the stories of the Gleeson children and the picture painted of their home life were pivotal in the book’s portrayal of its subject. This is not because Gleeson is presented as an entirely different figure in his domestic setting, but rather because he is still so recognisable. Pelly acknowledges that the no-nonsense mythology of ‘the Smiler’ suited Gleeson’s professional ambitions, allowing him ‘to control his dealings with clients and solicitors, terrorise witnesses and influence judges’ (p.131). There is some discussion as to whether the nickname has not simply stemmed from Gleeson’s intensity and discipline, but also led to the further cultivation of those traits. While the latter seems likely to some extent, the essential truth of Gleeson’s temperament is unmistakable – and best evidenced by revealing quotes from those who have lived with him. The Gleeson household was a tight ship under his wife Robyn. The house definitely revolved around him – Gleeson’s work frequently leading to the abandonment of picnics and holidays, his immense fear of being exposed to sickness, and, in the early years, Robyn driving him (and close friend, and later Governor-General, Williams Deane) to and from chambers in Phillip Street, Sydney. Gleeson is not painted as a remote figure exactly, but one with whom the children dealt in a way that reflected his ingrained disposition for precision and order. Nevertheless, Gleeson appears not to have been too austere. The stories reveal a great

capacity for family jokes and deep affection on all sides. But a comment on Gleeson from Nicholas, his only son, stands out: 'I do not think about him and enjoyment in the same sentence. Enjoyment for him is about achievement and excellence.' (p.186)

Doubtless, Pelly is right to say that '[I]ike many men of his generation, Gleeson was not one to help around the house' (p.59). Gleeson's domestic arrangements were surely very similar to those of other highly successful members of the legal profession (though, following Deane's example, he was diligent about heading home after the working day and keeping professional socialising to a minimum). As a result, these parts of the book do more than simply convey the core attributes which define Gleeson the man. They also illuminate a profession in which women, without the enormous benefit of such proficient domestic management or insulation from day-to-day family worries, have had to work very hard to succeed. Those pondering the difficulties which face female legal practitioners and the obstacles to ensuring more women are appointed to the bench, can draw telling inferences from *The Smiler*. Pelly does not mention it, but interestingly Gleeson himself came to a similar appreciation of the challenges when his daughter Jacqueline quit the private bar for several years while bringing up her own family. He lamented that 'the Bar cannot find better ways of accommodating women with children' and even suggested the NSW Bar Association operate a crèche ('Creche for the Bar, urges Gleeson', *Weekend Australian*, 30-31 August 2003, p.8). In his time at the bar, Gleeson supported female colleagues, most notably Ruth McColl, now a judge of the New South Wales Court of Appeal, who joined Seven Wentworth chambers when he was head. McColl's taking up space on the floor met with some strong opposition but Gleeson ensured it came to pass. Pelly recounts that at the time she entered in practice at the bar in 1980, McColl was just one of 25 women on a roll with over 400 names. As a judge, Gleeson hired female associates just as often as males.

Gleeson's leadership of the High Court, and the working relationships between its members over this time, are detailed in the later chapters of the book. Much of this material describes tensions on the Court about which its observers were well aware, and which have since been further revealed by Brown's biography of Kirby, who tended to be side-lined in the Court's decisions. Pelly writes that Gleeson 'actively encouraged consensus and would stress the need for the court to have a joint majority judgment'. But interestingly, Gleeson not infrequently wrote alone, while Justice William Gummow tended to gather up others to co-author an opinion. They were almost always both in the majority, but it was Gleeson's clear and economical style which readers preferred.

Two chapters in *The Smiler* stand out for their dramatic element and both involve Gleeson's handling of scandalous allegations against a judge on his court. The first deals with the exposure of former Justice David Yeldham's double life before the Wood Royal Commission into police corruption in New South Wales, and his subsequent suicide. Gleeson, who had received no notice from his successor as New South Wales Chief Justice, Sir Laurence Street, as to rumours about Yeldham, was shocked. Looking back, he told Pelly the suicide was 'the most devastating thing that ever happened to

me on the court' (p.147). The second scandal, which Pelly places in his penultimate chapter despite the event occurring squarely in the middle of Gleeson's tenure as Chief Justice of the High Court, concerns Senator Bill Heffernan's allegations against Kirby. Heffernan disregarded the cautioning of Prime Minister John Howard and, under parliamentary privilege, made claims that Kirby had solicited young men for sex. Those allegations swiftly collapsed as the ComCar records upon which they were based were revealed to be forgeries – in large part due to the intervention of Justice Mary Gaudron, who contacted others named on the records and who were able to verify they had not even been in Sydney on the relevant dates. Gaudron and Gleeson clashed terribly and irrevocably over the Court's response to the allegations. The affair has, of course, been covered in great detail in the Brown biography, but here we have Gleeson's side of the story – defending his stance that the matter should be left to 'run its course.' (p.255)

Pelly arranges all this very disparate material – Gleeson's childhood and education, his life at the bar and at home, the years of judicial service and Gleeson's method and outlook as a judge in major areas – with great competence. It is, after all, an interesting story and well told. So, it is regrettable that the book contains more errors than it should. Several dates are incorrect – including on the photograph captions. The alignment of the members of the 1983 High Court with centralist vs states' rights values is completely the reverse of what Pelly asserts, and often the crucial point of a case is not expressed clearly. The most irritating glitch is the occasional failure to identify exactly which of Pelly's interviewees is to be attributed for a quoted observation. Individually, these are small things but cumulatively they slightly dim what is an impressive and welcome addition to the canon of Australian judicial biography.