HAIL TO THE CHIEF! THE ROLES AND LEADERSHIP OF AUSTRALIAN CHIEF JUSTICES AS EVIDENCED IN EXTRA-CURIAL ACTIVITY 1964–2017

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I INTRODUCTION

In this article we seek to address in combination two of the themes suggested for this thematic issue of the journal. The first is the theme of Chief Justices and judicial leadership. The second is the theme of extra-curial activity, including writing, speaking, broadcasting and interviews. In respect of the first theme, the text of the *Commonwealth Constitution* in section 71 clearly envisages a key leadership role for the person appointed as Chief Justice of the High Court, and thus it is an important subject for academic endeavour. As to the second, it is our contention that there has been a demonstrable change in both the quantity and variety of expressions of extra-curial activity by Chief Justices in the last fifty years. We would further argue that an analysis of this activity has the capacity to provide insight not only into individual conceptions of the role of a Chief Justice of the High Court, but also into what judicial leadership qualities might be evinced in carrying out such an extra-curial role. In methodological terms we would argue that our approach complements research on intellectual leadership in the context of the Court's developing jurisprudence.[1]

This article is divided into five further Parts as follows: we commence our study in Part II with a consideration of the theory and literature of judicial leadership in the common law world. The theoretical literature is grounded in judicial behavioural studies within the discipline of political science,[2] although

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1 See, eg, Jason L Pierce, *Inside the Mason Court Revolution: The High Court of Australia Transformed* (Carolina Academic Press, 2006); Mark Tushnet, 'Judicial Leadership' in John Kane, Haig Patapan and Paul 't Hart (eds), *Dispersed Democratic Leadership: Origins, Dynamics, and Implications* (Oxford, 2009) 141; Alan Paterson, *Final Judgment: The Last Law Lords and the Supreme Court* (Hart Publishing, 2013).

2 Nancy Maveety, 'The Study of Judicial Behavior and the Discipline of Political Science' in Nancy Maveety (ed), *The Pioneers of Judicial Behavior* (University of Michigan Press, 2003) 1.

these scholarly concerns have also engaged those in the legal academy to some extent.[3] We also consider insights from comparative common law treatments of judicial leadership as well as the more 'subjective' literature reflecting the leadership philosophies of Australian judges. The existing literature on judicial leadership, not surprisingly, has privileged the study of leadership in the context of deciding cases and the development of a court's jurisprudence. The categorisations and designations previously adopted in the course of undertaking studies of 'jurisprudential' leadership, we believe, have some corollaries in extra-curial leadership activities; however, they are not coextensive across the two leadership domains.

Part III elucidates our own typology arising from our analysis of the extra-curial activities of the six Chief Justices in our sample. Ours is a fourfold categorisation of leadership in extra-curial activities – intellectual, institutional, collaborative and individualist – and encompasses the two broader categories of 'intellectual' as well as 'social leadership' derived from David Danelski's seminal 1961 paper emanating from his doctoral work on the role of the Chief Justice of the US Supreme Court.[4] Part IV of the article identifies the general characteristics of the leadership exercised by our sample of Chief Justices in the period from 1964 to January 2017. This involves some initial exploration of that complex and oftentimes elusory relationship between the character, talents, proclivities and interests of those individuals who have led the Court over the last half century and the social, legal and political environment in which their leadership has been exercised. The extent to which an individual might 'stamp' an institution like the High Court with the force of his or her personality and/or intellect is a tantalising question. It also raises the question of the extent to which these qualities reflect and shape a Chief Justice's leadership philosophy. Our objective in this regard is nuance rather than dogma. We recognise that the zeitgeist of a particular historical, political, social and economic era will also play a role of varying weight in the capacity of individuals to make a mark upon an institution or role. It is this somewhat imponderable dimension, as well as an intellectual fascination with this interchange and relationship, which has inspired our investigation here. This is followed in Part V by our characterisation of the particular extra-curial leadership qualities of the Chief Justices in our chosen sample arising from their extra-curial practices.

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3 Ibid 30.

4 David J Danelski, 'The Influence of the Chief Justice in the Decisional Process' in Walter F Murphy and C Herman Pritchett (eds), *Courts, Judges and Politics: An Introduction to the Judicial Process* (Random House, 1961) 497.

II THE THEORY AND LITERATURE OF JUDICIAL LEADERSHIP

The recognised pioneer in the area of judicial leadership research is political scientist David Danelski,[5] and his contributions to the study of judicial behaviour in that discipline have been the starting point also for legal scholars such as Tushnet,[6] Paterson[7] and Cornes[8] in their own explorations of aspects of judicial leadership. Amongst the relatively slight existing legal literature on judicial leadership, both Tushnet in his contribution on judicial leadership as a species of 'dispersed democratic leadership' and Paterson in his research on the House of Lords and Supreme Court in the United Kingdom draw on Danelski's typology of leadership on multi-member appellate courts, namely task and social leadership.[9]

Danelski's own initiation into the mysteries of the study of judicial behaviour in the discipline of political science came at the hands of his mentor, C Herman Pritchett, himself a trailblazer in judicial behavioural studies with his groundbreaking 1948 publication, *The Roosevelt Court: A Study in Judicial Votes and Values 1937–1947*.[10] A practising lawyer in Washington State, Danelski left legal practice to pursue doctoral studies with Pritchett at the University of Chicago on the topic of *The Chief Justice and the [US] Supreme Court*.[11]

Pritchett's earlier work had posited the judge 'as a particular kind of political actor whose activity took place within the context of a legal, institutional framework.'[12] This approach required the conceptualisation of a court as a small decision-making group and drew on psychosociological theory about the formation of attitudes and the importance of social background in framing attitudes and informing observable behaviour.[13] These roots can be seen in Danelski's own, not uncontroversial,[14] doctoral work. Danelski's method drew on Pritchett's psychosociological approach[15] as well as the work of social and group psychologists Bales, Slater and Berkowitz.[16] Danelski's methodology distinguished him from his more quantitively-focussed contemporaries and

5 Thomas G Walker, 'David J Danelski: Social Psychology and Group Choice' in Maveety (ed), *The Pioneers of Judicial Behavior* (University of Michigan Press, 2003) 248.
6 Tushnet, above n 1.
7 Paterson, above n 1.
8 Richard Cornes, 'A Point of Stability in the Life of the Nation: The Office of Chief Justice of New Zealand – Supreme Court Judge, Judicial Branch Leader, and Constitutional Guardian and Statesperson' [2013] *New Zealand Law Review* 549.
9 Danelski, 'The Influence of the Chief Justice', above n 4.
10 Maveety, above n 2, 8, 10–11.
11 David J Danelski, *The Chief Justice and the Supreme Court* (PhD Thesis, University of Chicago, 1961). See Walker, above n 5, 250.
12 Maveety, above n 2, 8.
13 Ibid 11.
14 Walker, above n 5, 249.
15 Ibid 252.
16 See Danelski, 'The Influence of the Chief Justice', above n 4, 497 n 1; Walker, above n 5, 252. See, eg, Robert F Bales, 'Task Roles and Social Roles in Problem-Solving Groups' in Eleanor E Maccoby, Theodore M Newcomb and Eugene L Hartley (eds), *Readings in Social Psychology* (Methuen & Co Ltd, 3rd ed, 1958) 437.

resulted in a particular qualitative focus on the leadership potential inherent in the role of Chief Justice.[17]

Whilst he never published his doctorate as a monograph, Danelski's work is famous as a direct consequence of the repeated reprinting of two articles based on it in several collections of US materials on courts and judging.[18] The essence of his reasoning which has captured the attention of political scientists and legal scholars alike[19] is that a Chief Justice as a role within a multi-member court has a unique opportunity to exercise leadership.[20] Whilst such a role does not guarantee optimal leadership performance,[21] it invites in the scholar an investigation of a Chief Justice's 'esteem, ability, and personality and how he performs his various roles'.[22] Danelski posits that '[l]eadership in the [US] Supreme Court is best understood in terms of influence', which presupposes both activity and interaction, and involves consideration of personal and collective expectations, values and attitudes in respect of the judicial role.[23]

In terms of the influence of a Chief Justice on the work of the Supreme Court, Danelski identifies four important objects of such influence: (1) 'a majority vote for the Chief Justice's position', (2) 'written opinions satisfactory to him', (3) 'social cohesion in the Court', and (4) 'unanimous decisions'.[24] He identifies judicial leaders in the core jurisprudential work of an appellate court as of two basic types: 'task leaders' and 'social leaders', although in rare instances a single judge may perform both types of leadership.[25] A 'task leader' is the judge who emerges as a key point of influence in terms of a court's decision-making process.[26] In contrast, a 'social leader' is 'a judge who smoothes over personal conflicts within the court'[27] and attends to the members' emotional needs which may have been aroused through the exercise of focussed task leadership.[28] Danelski's own case studies in the application of this theory of judicial leadership encompass the Chief Justiceships of Taft, Hughes and Stone.[29] Half a century on, both Tushnet and Paterson still found Danelski's leadership categories of continuing relevance in analysing the work of apex courts in the US and UK. However, it is pertinent to note that Tushnet, in referring to Australian courts in

17 David Danelski, 'The Influence of the Chief Justice in the Decisional Process' in Joel B Grossman and Richard S Wells (eds), *Constitutional Law and Judicial Policy Making* (John Wiley & Sons, 2nd ed, 1980) 237 and (Longman, 3rd ed, 1988) 51 (NB all subsequent references to this work are to the 2nd edition).

18 See Danelski, 'The Influence of the Chief Justice', above n 4. See also ibid; David J Danelski, 'The Influence of the Chief Justice in the Decisional Process of the Supreme Court' in Sheldon Goldman and Austin Sarat (eds), *American Court Systems: Readings in Judicial Process and Behavior* (Longman, 2nd ed, 1989) 486.

19 See Maveety above n 2, 30.

20 Danelski, 'Chief Justice in the Decisional Process', above n 17, 237.

21 Danelski, 'Decisional Process of the Supreme Court', above n 18, 486.

22 Danelski, 'Chief Justice in the Decisional Process', above n 17, 237.

23 Danelski, 'Decisional Process of the Supreme Court', above n 18, 486–8.

24 Ibid, 487; Walker, above n 5, 252.

25 Danelski, 'Decisional Process of the Supreme Court', above n 18, 489–90.

26 Danelski, 'Chief Justice in the Decisional Process', above n 17, 237–8.

27 Tushnet, above n 1, 153–4. See also Danelski, 'The Influence of the Chief Justice', above n 4, 497–8. See also Paterson, above n 1, 146.

28 Walker, above n 5, 252.

29 Danelski, 'Decisional Process of the Supreme Court', above n 18, 491–4.

the course of his broader argument, indicated that task leadership 'might be more difficult in a court with a tradition of so-called seriatim opinions'.[30] The significance of this statement is inescapable in the Australian context where there has been no tradition of 'assigning opinions' in a context of consensus decision-making, but rather a greater freedom in the individual Justice to fashion his or her reasons for judgment alone or in company.

Cornes' work on leadership by Chief Justices in New Zealand is not broadly dissimilar in approach to the Northern Hemisphere material, although his leadership terminology differs from studies based on the Danelski typology. Cornes identifies three core 'sets of roles' for a New Zealand Chief Justice: as a 'judge of the Supreme Court', a 'leader of the judicial branch', and as a 'constitutional guardian and statesperson'. His primary purpose in exploring these roles eschews an analysis of what he terms 'in-court jurisprudential leadership'[31] – what in other contexts has been termed 'intellectual leadership'. In exploring the third, 'constitutional guardian and statesperson', role for the New Zealand Chief Justice, Cornes adjudges that this dimension has 'the most extensive and personal scope of operation' amongst the three roles.[32] Of his four dimensions within guardianship and statesmanship, Cornes posits an extra-curial jurisprudential leadership function. In this respect Cornes' categorisation of roles appears to align with our own research questions in this article. However, the enduring importance of Danelski's theoretical framework also deserves attention, particularly in investigating its utility in studies of leadership issues in the extra-curial realm.

The second category of judicial leadership literature requiring consideration is that which reveals the views of the judges themselves on leadership in courts. The more subjective contributions by the judges themselves in the form of reflection, commentary or discussion tend to concentrate on descriptions of practical leadership in the administration of courts[33] or the determination of cases.[34] They reflect by and large the personal philosophies of the judges concerned[35] and unsurprisingly contain little in the way of theoretical approaches to leadership in the judicial sphere.[36] Nevertheless, these contributions to the bifurcated literature are valuable in a number of ways. First, they demonstrate that judges do in fact consider that their judicial role has a leadership dimension. Secondly, in bringing to bear their thoughts on judicial leadership to audiences

30 Tushnet, above n 1, 155.

31 Cornes, above n 8, 561: '"Thought leadership", as one English appellate judge described it to me'. The judge was Lady Justice Arden of the Court of Appeal of England & Wales.

32 Cornes, above n 8, 571.

33 Dame Sian Elias, 'Reflections on Appellate Leadership' (2002) 33 *Victoria University of Wellington Law Review* 647; David K Malcolm, 'The Role of the Chief Justice' (2008) 12 *Southern Cross University Law Journal* 149.

34 Virginia Bell, 'Judicial Activists or Champions of Self-Restraint: What Counts for Leadership in the Judiciary' (Speech delivered at the General Sir John Monash Leadership Oration, Melbourne, 4 August 2016) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/bellj/bellj4aug16.pdf>; Elias, above n 33; Malcolm, above n 33.

35 See, eg, Bell, above n 34.

36 See Randall T Shepard, 'The Changing Nature of Judicial Leadership' (2009) 42 *Indiana Law Review* 767.

beyond the court, the judges' contributions serve to enhance our conception of individual judicial philosophies.

In the Australian context there is one paper which makes a distinctive contribution to this more 'subjective' category of literature on judicial leadership. Chief Justice Doyle's paper presented in 2009 at the International Organisation for Judicial Training 4th International Conference comes closest to a systematic and practical assessment of leadership issues for contemporary Chief Justices.[37] In that paper then Chief Justice Doyle reported on the results of the 2006 program for Australasian Chief Justices in which they identified eight key leadership qualities for a holder of that office. In order of importance to the participants were the following characteristics: 'developing a sense of the institution, a collective commitment to justice, and communicating this throughout the court and to the public; developing a sense of collegiality; carrying out a pastoral role in relation to the judges; jurisprudential capacity or skills; moral integrity; a commitment to all aspects of the work of the court; engendering mutual trust and respect within the court; and treating judges fairly, and in particular allocating work fairly.'[38] What is ultimately instructive about this effort by the Chief Justices themselves as reported by Doyle is the degree to which non-jurisprudential factors dominate the top half of the list. 'Jurisprudential capacity or skills' is a middle-ranking priority. The three most significant characteristics the judges identified at the top of their list of leadership qualities are related in various ways to the extra-curial realm: 'institutional commitment'; communication within the court and to the public; and collegiality and pastoral skill. What this list reinforces for us is the importance of studying the extra-curial realm in research about judges and judging.

III EXTRA-CURIAL LEADERSHIP

As previously discussed in Part II, virtually all of the existing literature on judicial leadership addresses the curial dimension. However, it can be argued that the activities of judges outside the courtroom also have an important role to play in our understanding of the leadership role of a Chief Justice, in particular in light of the marked increase in the volume of extra-curial writing and speech making in recent decades. The growth in extra-curial activity by Chief Justices in the last half-century includes qualitative change in the sense of recourse to more diverse media and opportunities for community engagement as well as quantitative change which is reflected in the sheer volume of contemporary extra-curial output.[39] This reopens the question of what it means to exercise leadership on an

37 John Doyle, 'Learning Leadership Qualities' (Paper presented at International Organisation for Judicial Training 4th International Conference, Sydney, 27 October 2009) <https://njca.com.au/wp-content/uploads/2013/11/Doyle-CJ.pdf>.

38 Ibid 6.

39 In respect of quantitative change it is instructive to compare in the Appendix the extra-curial output of Barwick CJ (left hand column, 14 entries) with that of French CJ (right hand column, 152 entries). Even accounting for the fact that our sample may be incomplete (due, in particular, to the fact that in the pre-

apex court. The previous model of evaluating judicial leadership essentially through judgment writing and/or bringing other judges together in that process is now only part of the picture of leadership by a Chief Justice, as the role of Chief Justice is more than simply one judge among many on a multi-member court.

There is little to cavil at in the notion that the core business of courts is deciding cases according to law. In the past this notion was rarely, if ever, questioned. Contemporary scholars are only too aware that judges are undertaking the task of deciding cases in particular social and political contexts. The question for contemporary scholars then is how to harness this understanding adequately within a framework of research on judicial leadership, particularly as a reference to context must also acknowledge the demonstrable growth in the mass media and its impact on public perceptions of the work of institutions as well as a more general social decline in trust for institutions of government. These factors pose challenges for contemporary legal scholars interested in researching judicial leadership in an era of extensive extra-curial activity. In the contemporary context, courts are consciously engaging with the public as well as deciding cases. This means that there are now at least two roles for contemporary Chief Justices on apex courts: deciding cases and engaging with the public. The question remains whether the same leadership paradigm applies to each.

In addressing the question of leadership by Chief Justices in the extra-curial realm, our methodology has consciously avoided typologies from the general literature of management and leadership. Fundamentally, these seemed to us an inapposite touchstone for the distinctive context of leadership of Chapter III courts as institutions of government. Similar caveats have been expressed by Cornes in the context of his work on the role of the Chief Justices of New Zealand. He has argued, we believe persuasively, that

> [t]he way leadership is conceived of, and operates, in the judicial sphere must have a distinct quality and entail 'leading' in a way somehow different from leadership generally. Speaking in broad terms, at the heart of the *general* conception of leadership is the notion of the leader being in charge, of being able to *command*, to say this is what we shall do and require it to be done. The notion of leadership as *command* sits ill in the judicial context, or at least must be significantly modified, running as it does into obvious conflict with the constitutional imperatives of judicial independence and impartiality, and the requirements of collegiality. … Judicial leadership might best be thought of as a matter not just of the individual (although it certainly starts there), but also a collective endeavour (hence the emphasis on top courts to the concept of collegiality); a delicate balance between collaboration and individual initiative (far more so than leadership in other contexts).[40]

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internet era it was much more likely for an extra-curial speech to go unrecorded than in an era where it is common for all or most of the judges' speeches to be published on the High Court's website), the conclusion of an exponential growth in extra-curial activity is inescapable. In respect of qualitative change in the range of media see, eg, the entry 'Interviews: Broadcast and Print Media and Documentary' in the Appendix at pages 755–6 of this article. And in respect of the qualitative change in respect of community engagement see, eg, the entries 'Anniversary Events' at pages 748–9, and 'Law Society / Bar Association Events' and 'Other Legal Practitioner Societies' at pages 757–8.

40 Cornes, above n 8, 554–5. Cf Doyle, above n 37, 8: '[T]he issue of leadership is a well tilled field in the corporate world, and we realised that we had much to learn about that field, and that we could learn a lot about leadership from the business world'.

Cornes is not alone in positing a different quality for judicial leadership. In the Canadian context, McCormick had previously argued that judicial 'leadership takes various forms which stretch traditional boundaries'.[41]

In seeking to assess the utility of Danelski's concepts of 'task leadership' and 'social leadership' in an analysis of High Court leadership in the extra-curial realm we would note first that Danelski's work and that of Tushnet and Paterson who rely on his conceptual framework are pursuing their analyses on leadership exclusively in the context of deciding cases in apex courts. When attempting to apply Danelski's framework to extra-curial activities, we would argue that there are points of clear convergence as well as incomplete or absent corollaries. This is in part because task and social leadership in the context of deciding cases and advancing jurisprudence in an apex court are predominantly collective activities involving all the justices of the court, and in which the Chief Justice, depending on personality, temperament, and intellectual philosophy, may embody the role as a task or social leader, or vacate this space for others. By contrast, leadership in the extra-curial realm, as Cornes has previously argued,[42] is far more consciously personal than 'in house jurisprudential leadership' and as a result may not always conform to Danelski's neat dichotomy.

Our study has considered half of the Chief Justices in the history of the High Court. In this period there have been significant social, political and economic changes, all of which have had an impact on the capacity of a Chief Justice to exercise independent leadership on the Court, either curially or extra-curially. In addition to this, each Chief Justice in that time has brought his own personal leadership qualities to the office. The way in which leadership might be exercised as Chief Justice could be classified in a number of different ways.[43] What is at the heart of our interest is the evidence which might be gleaned from extra-curial activity by Chief Justices of how they conceive their role and their individual contributions to both the moulding of the role and the work of the Court as an institution and what this ultimately might say about the character of their leadership as Chief Justices. We move beyond the more traditional analysis of reasons for judgment, as important as these are, to less commonly adduced sources which might allow a complementary perspective on judges, their perception of their role, and their intellectual and professional interests.

Our approach to the analysis of the empirical evidence of extra-curial practices in our sample of Chief Justices is consciously inductive. Our process of categorisation of extra-curial leadership styles has been based both on critical analysis of extra-curial activity alone, without reference to a Chief Justice's contribution to the development of the jurisprudence of the High Court, and the

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41 Peter McCormick, 'Judges, Journals and Exegesis: Judicial Leadership and Academic Scholarship' (1996) 45 *University of New Brunswick Law Journal* 139, 139.

42 Cornes, above n 8, 571.

43 It is interesting to note that even in research which is primarily focussed on other common law jurisdictions, such as that by Tushnet and McCormick, comparisons with Australia do regularly appear: Tushnet, above n 1, 154–6; McCormick, above n 41, 141–3 on Kirby. McCormick's early work on judicial leadership in the Canadian context raises issues of peculiar interest to our work. He traces the pattern of 'judicial participation in legal scholarship' during which he offers commentary on the pattern of publication of articles by Judges in Australia: at 140.

consideration of the range and content of each Chief Justice's extra-curial contributions during his time in office. This process is reflected directly in the Appendices to this article. As a result of this process, we have identified the following dimensions of leadership for Chief Justices of the High Court: intellectual, institutional, collaborative and individualist. It is also our contention that these dimensions are not mutually exclusive. The way in which this typology is exemplified in our sample is considered in detail in Part V below. In Part IV which follows, we seek to situate the leadership activity of Chief Justices in our sample within its institutional, legal, political and societal context.

IV LEADERSHIP OF CHIEF JUSTICES 1964–2017

In this fourth Part of our article we provide a critical assessment of the general character of the leadership of each Chief Justice appointed since 1964. In this sample an equal number achieved their position by means of direct appointment to the position of Chief Justice (the parachute model) – namely Barwick, Gleeson, and French CJJ – and by appointment by virtue of seniority on the Court (the senior puisne judge model) – Gibbs, Mason, and Brennan CJJ. There was certainly a range of reasons for the particular appointment practices of governments of the day in relation to the six most recent Chiefs,[44] but those solely political questions concerning appointment are not of any concern to our current analysis. The different appointment processes, as well as the particular personal characteristics of each appointee, are likely to have contributed to the style of leadership of each.

The limited range of existing scholarship on judicial leadership in Australia is one justification for the provision of a more general assessment of the leadership qualities of Chief Justices in our sample before highlighting the specific extra-curial leadership qualities of each of the six Chief Justices in Part V. In this way Parts IV and V of the article are designed to work symbiotically towards a deeper understanding of both judicial leadership practices and contexts. In terms of the availability of source material for our leadership analysis it is pertinent to note the relatively limited accessible intellectual biographical data on Chief Justices. The biographical method generally is not one which has been widely embraced in Australian legal scholarly circles, although there are limited signs that this is changing.[45] A number of the Chief Justices of the High Court do have full biographies,[46] but almost none of these have been written by members of the

44 See, eg, Michael Pelly, 'Susan Kiefel the Logical Choice to Succeed Robert French as High Court Chief Justice', *The Australian* (Sydney), 1 April 2016 <http://www.theaustralian.com.au/business/opinion/susan-kiefel-logical-choice-to-succeed-robert-french-as-high-court-chief/news-story/9b20a796612a74c4f94e8bb24d8aa922>.

45 See, eg, Fiona Wheeler, 'Sir John Latham's Extra-Judicial Advising' (2011) 35 *Melbourne University Law Review* 651; Kelvin Widows is currently undertaking a PhD thesis on Sir John Latham at UNSW Sydney.

46 Griffith, Isaacs, Dixon, Barwick, Gibbs, and Gleeson CJJ have biographies. See Zelman Cowen, *Isaac Isaacs* (Oxford University Press, 1967); David Marr, *Barwick* (Allen and Unwin, 1980); Roger B Joyce, *Samuel Walker Griffith* (University of Queensland Press, 1984); Joan Priest, *Sir Harry Gibbs: Without*

legal academy. Some of the biographies do analyse the judicial work and philosophy of the subject in some detail, most notably Phillip Ayres' biography of Sir Owen Dixon,[47] but many more might be more generally regarded as public figure biographies rather than legal or intellectual biographies properly so called.

Intellectual biographical data is an important source of evidence for a judge's leadership activity and incorporates, *inter alia*, a concern to assess the mind behind the judgments together with an assessment of those distinctive characteristics, both intellectual and otherwise, which mark out the contributions of an individual to the judicial office, in our case the Chief Justice of the High Court of Australia. We have previously employed an intellectual biographical approach with profit in seeking to mark out a role for intellectual independence as a dimension of individual judicial independence,[48] and do so again in this article in order to address the subject of judicial leadership in the extra-curial domain.

In the case of Barwick, Gibbs and Gleeson CJJ, our work of analysis has been significantly aided by the existence of full-length biographies as well as other written reflections and critiques.[49] In the case of Mason and Brennan CJJ, the presence of broadcast interviews[50] which focus on the Chief Justiceships of each, in addition to more traditional sources,[51] has been an important and productive source of evidence for the assessment. Both the public written record and personal observation of the extra-curial activity of the most recent Chief

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Fear or Favour (Scribblers Publishing, 1995); Phillip Ayres, *Owen Dixon* (Miegunyah Press, 2003); Michael Pelly, *Murray Gleeson: The Smiler* (Federation Press, 2014). Knox, Gavan Duffy, Latham, Mason, Brennan, and French CJJ do not yet have biographies.

47 See Ayres, above n 46. However, it should be noted that assistance from lawyers in the analysis of judgments is standard in the case of non-legally trained biographers, including Philip Ayres, and Joan Priest.

48 David Tomkins and Katherine Lindsay, 'The Judicial Scholar and the Scholarly Judge: Extra-Curial Writing and Intellectual Independence on the High Court' in Rebecca Ananian-Welsh and Jonathan Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016) 168, 170.

49 See above n 46; George Winterton, 'Barwick the Judge' (1998) 21 *University of New South Wales Law Journal* 109; Leslie Zines, 'Chief Justice Gleeson and the Constitution' in H P Lee and Peter Gerangelos (eds), *Constitutional Advancement in a Frozen Continent* (The Federation Press, 2009) 269. See also Australian Broadcasting Corporation, 'Sir Garfield Barwick – The Most Outstanding Lawyer of the Century', *Lateline*, 2009, <https://www.youtube.com/watch?v=T_dZRyV2yiM>; Australian Broadcasting Corporation, 'Sir Anthony Mason on Sir Garfield Barwick', *Lateline*, <https://www.youtube.com/watch?v=zbJ1AjEa6-w>.

50 Australian Broadcasting Corporation, 'The Chief Justice', *Four Corners*, 3 April 1995 (Liz Jackson); Australian Broadcasting Corporation, 'The Brennan Way*', Lateline*, 21 May 1998 (Maxine McKew); Keith Mason, Interview with Sir Anthony Mason (UNSW Law School 'Hail to the Chief' interview series, 27 May 2010), <https://www.youtube.com/watch?v=PnbJ1kgEoxU>; Keith Mason, Interview with Sir Gerard Brennan (UNSW Law School 'Hail to the Chief' interview series, 23 September 2010), <https://www.youtube.com/watch?v=6dlH9lPMOyU>; Juliette Brodsky, Interview with Sir Anthony Mason, (NSW Bar Oral History Project,) <https://www.youtube.com/watch?v=fJ6GV6MOhvQ>; *The Highest Court* (Directed by Daryl Dellora, Film Art Media, 1998).

51 See Cheryl Saunders (ed), *Courts of Final Jurisdiction: The Mason Court in Australia* (Federation Press, 1996); Leslie Zines, 'Sir Anthony Mason' (2000) 28 *Federal Law Review* 171; Pierce, above n 1; Geoffrey Lindell (ed), *The Mason Papers* (Federation Press, 2007); Robin Creyke and Patrick Keyzer (eds), *The Brennan Legacy* (Federation Press, 2002).

Justice in our study, Robert French, have informed our observations.[52] One of the particularly significant elements in our analysis throughout is the use of non-textual broadcast sources in the form of television and radio interviews and documentary films. This is largely a feature of the period after the 1990s, when the curiosity of the public and journalists appears to have coincided with the interest of the High Court itself in informing the public more transparently about its work.

A Sir Garfield Barwick (1964–81)

'*[V]ery clever, but not deep*'.[53]

'*Work with Courage to Achieve*'.[54]

By the time of his appointment as Chief Justice of the High Court in 1964, Sir Garfield Barwick had served in the legislature as a Member of Parliament for the NSW seat of Parramatta and in senior portfolios in the executive government as Attorney-General and Minister for External Affairs. It was his realisation that he was not to rise to the position of Prime Minister that is said to have turned Barwick's thoughts to the position of Chief Justice as a replacement for Sir Owen Dixon on his retirement.[55] Dixon had served on the Court from 1929, becoming Chief Justice in 1952 on the retirement of Sir John Latham. Barwick provided a strong contrast to Dixon in terms of both personality and experience. Dixon's *intellectual* dominance of the Court was well-recognised, especially during his period as Chief Justice,[56] whereas Barwick's reputation for legal excellence had been forged through his consummate advocacy. In his day, and before his election to Parliament in 1958, he was known as 'a giant at the Bar'.[57] His success as an appellate advocate underlines aspects of his character which were also on display as Chief Justice: determination, drive, clear-headedness and authority.

Barwick's appointment from outside the Court has led to longstanding discussion about whether the appointment was 'political' and the result has been a range of diverging assessments.[58] Perhaps the most recent reflection on Barwick

52 Robert French (Speech delivered at Emory Law School, Atlanta Georgia, 20 January 2011) <https://www.youtube.com/watch?v=a_9Qwz5Hv2s>.

53 Winterton, above n 49, 116 n 66.

54 Barwick's personal motto: Marr, above n 46, 299.

55 Ibid 204–5; Ayres, above n 46, 286.

56 Ayres, above n 46, ch 12.

57 Marr, above n 46, 132. This is underlined in Sir Anthony Mason's assessment of Barwick in a television interview on the occasion of Sir Garfield's death. He identified Barwick's core strength as being in the spoken word, in advocacy, and not in the written word: see Australian Broadcasting Corporation, 'The Most Outstanding Lawyer of the Century', above n 49.

58 Winterton has characterised Barwick's appointment as Chief Justice as 'not a true "political" appointment (like those of Lionel Murphy in 1975 or Edward McTiernan in 1930) in the sense of being attributable to political considerations rather than legal talent': see Winterton, above n 49, 110. However, other treatments have suggested that the Prime Minister of the day took into account some political considerations at least in relation to Barwick's interest in being appointed as Chief Justice: see Ayres, above n 46, 285–7. Dixon's own response to the appointment is recorded in his diary. Dixon regarded Barwick's appointment and that of McTiernan J as being 'on the same plane. All my concern was how the PM was implicated': at 286. What emerges from Ayres' biography which draws heavily on the

as Chief Justice, including the state of the Court upon his appointment and the period immediately following, is particularly telling. Sir Anthony Mason, a later successor to the Chief Justiceship and a colleague at the Bar with a close working relationship with Barwick[59] has written recently that

> he had not been an influential Chief Justice in the old Court (the Court in which he first presided). He was unfortunate in that the long shadow of Sir Owen Dixon hovered over the old Court whose members regarded themselves as the custodians of his legacy.[60]

There is also a sense in which Barwick's transition from the executive government to the judicial branch might be seen to have been 'uneasy', as he was a personality whose purpose in leadership was to dominate.[61] His career was largely one of ego-driven, personal success which did not translate naturally to the Court's quite distinctive institutional environment.

This having been said, Barwick did prove himself an effective leader of the High Court in a more modern guise than that adopted by his predecessors in the role. Barwick served an exceptionally long term as Chief Justice, from 1964 to 1981, during which time the social, economic and political landscape of the country was transformed in many ways. During the Barwick era of the High Court the legal and constitutional landscape also changed considerably; but three particular changes deserve special mention. In the period from 1968 to 1975, appeals from the High Court to the Privy Council were gradually curtailed and then abolished, the intense and overburdened workload of High Court Justices was eased with the establishment of the Federal Court in 1976, and after almost eight decades as an itinerant court, the High Court of Australia finally found a permanent home in its own building on the shores of Lake Burley Griffin in Canberra, the heart of Commonwealth governance. The hand and energy of Sir Garfield Barwick was in all of these developments to varying degrees, but it was his genius for administration and dogged persistence in a cause which saw the realisation of the vision of the Court's permanent home,[62] together with

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evidence of Dixon's personal diaries is that Dixon found little natural sympathy with Barwick's professional approach: at 189. Dixon's diary also records a less than glowing assessment of Barwick's advocacy in the *Communist Party Case*: 'On the 14th Dixon generously (but in vain) offered Barwick a stronger line of reasoning – "He made no fist of it." The way was open for an effective counter-reply, and in Dixon's view Evatt "made hay of Barwick's case[.] I felt it necessary to say that there was another case than that B had argued & the unexpected course he had taken placed us in a position of peculiar responsibility" – a devastating indictment of the Commonwealth's leading counsel': at 221.

59 Sir Anthony Mason 'The High Court of Australia – Reflections on Judges and Judgments' (2013) 16 *Southern Cross University Law Review* 3, 6. The early professional relationship between Mason and Barwick was undoubtedly cordial. For example, David Marr's biography of Barwick records that Anthony Mason, along with other junior barristers in Barwick's chambers, assisted with the distribution of election posters in the Parramatta electorate at the time of his candidature for Parliament: Marr, above n 46, 136. Furthermore, Marr states that Barwick whilst a leading silk at the Bar referred to Mason as 'my favourite junior': at 239.

60 Mason, above n 59, 6. Mason also highlights the key role played by Justice Douglas Menzies, of whom Barwick was very fond, in acting as a go-between in Barwick's relations with other Justices on the Court.

61 Mason refers to Barwick's 'dominating personality': Mason, above n 59, 11.

62 However, it needs to be highlighted that Barwick's great desire that the seven High Court Justices might live cheek by jowl in a residential enclave of sorts was roundly rejected by his colleagues on the Court: Marr, above n 46, 240 ff, 295–9.

arrangements for its budget and organisation. These qualities in Barwick had been demonstrated earlier in his time at the Bar in his skill for organisation.[63]

There can be little doubt that the assessment of Barwick's Chief Justiceship as a whole has been overshadowed in Australia not by the greater range of his achievements in leadership of the High Court, nor by his constitutional or other jurisprudence, but by his involvement in the process by which the Whitlam Government was dismissed by the Governor-General in 1975.[64] Barwick himself has undoubtedly contributed to this particular emphasis in public perceptions through his efforts in retirement to defend his role in providing legal advice to the Governor-General concerning the exercise of the reserve powers.[65] Dogged to the last, he never lost his adversarial edge.[66]

The overwhelming character of Barwick's leadership as Chief Justice was institutional. This left little scope for extensive forays into extra-curial speechmaking and indeed the social and legal metier of that more restrained time was unlikely to encourage excessive public pronouncements even by the most able advocates. Further, there is little evidence that Barwick's own temperament inclined him to pursue a more 'academic' role in speaking and/or writing. However, one core innovation by Barwick in the extra-curial realm has stood the test of time. In 1977 Barwick delivered the first 'State of the Judicature' address to the Australasian Legal Convention. This address was the perfect vehicle for a leader of Barwick's stamp. He could reflect, systematise and summarise before an informed audience. The State of the Judicature address continues as a biennial tradition to this day, even after the demise of the Australasian Legal Convention itself.[67]

In his other extra-curial speeches and publications it is not uncharitable to say that Barwick does not reveal himself as a lawyer with a natural intellectual bent. This is perhaps in contrast to his predecessor, a selection of whose papers on substantive law topics were collected for publication in 1965.[68] Barwick's papers and speeches, not unsurprisingly, address issues associated with the operation of courts and do not tend to provide any systematised commentary on matters of substantive law. However, at this juncture, it is appropriate to acknowledge that his relatively spare extra-curial production does need to be balanced with his prodigious activity in other dimensions of the role of Chief Justice, as he

63 Ibid.

64 For contrasting approaches see, most recently, Jenny Hocking, *The Dismissal Dossier* (Melbourne University Press, 2015); Troy Bramston and Paul Kelly, *The Dismissal: In the Queen's Name* (Viking Press, 2015).

65 This can be seen quite clearly in his book: *Sir John Did His Duty* (Serendip Publications, 1983) and in his memoir: A *Radical Tory* (Federation Press, 1995).

66 See Australian Broadcasting Corporation, 'Sir Garfield Barwick – The Most Outstanding Lawyer of the Century', above n 49.

67 See Robert French, 'The State of the Australian Judicature' (Speech delivered at Law Council of Australia and Australian Bar Association, Hobart, Tasmania, 26 April 2016). <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj29Apr2016.pdf.>.

68 Severin Woinarski (ed), *Jesting Pilate and Other Papers and Addresses, by the Right Honourable Sir Owen Dixon* (Law Book Company, 1965); Ayres above n 46, 287.

conceived it, in an era in which Chief Justices were not regularly called upon by media or public institutions for public commentary.

B Sir Harry Gibbs (1981–87; Justice 1970–81; Supreme Court of Queensland 1961–67, Federal Court of Bankruptcy and ACT Supreme Court 1967–70)

'*Sir Harry the Healer*'.[69]

'*My endeavour has been to maintain the high standards which were set by my eminent predecessors and which have, I think, earned respect for the Court not only in Australia but also elsewhere*'.[70]

Sir Harry Gibbs hailed from Ipswich in Queensland[71] and in that jurisdiction was and is feted as a favourite son.[72] He was appointed to the High Court in 1970 replacing Sir Frank Kitto on his retirement. In the years immediately after Sir Harry's appointment in 1970 the personnel of the High Court changed to such an extent by reason of retirements and deaths that within six years of appointment, Sir Harry had become the Court's most senior member after the Chief Justice.[73] He weathered the Barwick years with his equanimity intact and rose to the position of Chief Justice by reason of seniority, appointed by the Fraser Government in 1981 on Barwick's retirement. In some respects Gibbs' leadership of the Court during a period of a high volume of constitutional litigation has been overlooked. This may in part be on account of his presence in the minority in key constitutional cases in the early 1980s, such as *Koowarta*[74] and *Tasmanian Dam*.[75] Another powerful reason for the more subdued interest in his Chief Justiceship may lie in the unsolicited public prominence Gibbs gained over the 'Murphy affair' in the later years of his tenure. Finally, the subsequent influence of his successor, Sir Anthony Mason, and the Court during his Chief Justiceship, is likely to have overshadowed Gibbs' achievements somewhat. However, Sir Harry, too, led a court during changing times. From 1984, with the institution of the special leave process for all appeals, the High Court gained greater capacity to winnow out cases of especial legal merit.[76] Moreover, after the passage of the *Australia Acts* in 1986 which, inter alia, terminated all remaining appeals to the Privy Council from Australian courts, the High Court's role as the apex appellate court for the nation was confirmed.

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69 Sydney Morning Herald headline on his appointment as Chief Justice, cited in Priest, above n 46, 86. See also Michael White and Aladin Rahemtula (eds), *Queensland Judges on the High Court* (Supreme Court of Queensland Library, 2003).

70 Sir Harry Gibbs, 'Retirement of Chief Justice Sir Harry Gibbs' (1987) 162 CLR v, viii.

71 See David Jackson, '2016 Selden Society Lecture on Sir Harry Gibbs' (Speech delivered at the 2016 Selden Society Lecture Series, Sir Harry Gibbs Heritage Centre, Supreme Court of Queensland, 17 March 2016) <https://www.youtube.com/watch?v=3BW1Qlwf5_o>.

72 Gibbs' biographer provides abundant grist to this mill: Priest, above n 46.

73 Jackson, '2016 Selden Society Lecture', above n 71.

74 *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.

75 *Commonwealth v Tasmania* (1983) 158 CLR 1.

76 Sir Gerard Brennan, appointed to the Court in 1981 nominated the introduction of special leave as the most notable change in the High Court during his tenure in office: Keith Mason, Interview with Sir Gerard Brennan, above n 50.

There are important characteristics of Gibbs as Chief Justice that require acknowledgement as pertinent to his leadership and conception of his role. First, unlike many justices of the High Court at that time and since, Gibbs did not look to Sir Owen Dixon, a product of the Melbourne Law School and Bar, as his role model. His allegiance and patterning, unsurprisingly perhaps, lay firmly in the example of the High Court's founding Chief Justice, Sir Samuel Griffith,[77] who had played such a large part in the development and administration of the colonial Queensland legal and political system. As a consequence, it is critical to understand that Gibbs brought a philosophy of the *Constitution* to the High Court, a federalist philosophy.[78] In this respect he might be seen to be intellectually more like Sir Owen Dixon than might be imagined superficially,[79] and less like Barwick whose approach appears always ultimately to have been pragmatic. The application of this philosophy can be seen in action all too clearly in Gibbs' powerfully reasoned dissents in cases involving disputes over the scope of Commonwealth legislative powers under the *Constitution*.

A second important characteristic of his leadership of the Court during the 1980s was his qualities of human concern and keen attention to maintaining the Court's institutional integrity. Sir Harry's appointment as Chief Justice was marked in the *Sydney Morning Herald* newspaper with the headline, 'Sir Harry the Healer'.[80] This is at once a direct reflection on the more combative dynamics of the Barwick years as well as an acknowledgement of Gibbs' more irenic and equable nature. This nature was tested during the difficult period from 1983 to 1986 when, as a result of the publication in national newspapers of purported conversations between judicial officers including a Justice of the High Court, criminal proceedings were instituted against them, including Justice Lionel Murphy of the High Court.

Gibbs' handling of the 'Murphy affair' as it became known has been the subject of extensive commentary both at the time and since. Lionel Murphy's own appointment to the High Court from the executive branch of government in 1975 was not uncontroversial.[81] Indeed it has been held up as a classic example

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77 Priest, above n 46, 68.

78 D F Jackson, 'The Sir Harry Gibbs Oration: Sir Harry Gibbs and the Constitution' (2006) 25 *University of Queensland Law Journal* 65, 66 ff.

79 Harry Gibbs and his fellow student Tom Matthews were the first ever students of the University of Queensland Law School to graduate with first class honours in law: Priest, above n 46, 13. During the Second World War, Gibbs served in New Guinea, the constitutional law of which country formed the basis of his LLM thesis at the University of Queensland: at 18–20. It was rare in the 1940s that the Master of Laws degree should be completed by research, perhaps an early indicator of Gibbs' intellectual interest in the law of the *Constitution*.

80 Ibid 86.

81 Mason has noted that Murphy's appointment brought about a significant change in the personal dynamics of the High Court:

> The replacement of Menzies by Justice Lionel Murphy created a tension that did not previously exist, particularly between Sir Garfield and Lionel Murphy. At the same time it affected the relationship between Sir Garfield and other members of the Court because Menzies, who had been a valuable link, was no longer there:

Mason, above n 59, 16.

of a 'political' appointment.[82] However, the spotlight did not fall on Gibbs directly or the Gibbs-Murphy relationship specifically until the interchange of written correspondence between the Chief and Justice Murphy over the plans of the latter to return to sitting on the High Court whilst a parliamentary commission of inquiry into Murphy's behaviour was still sitting emerged.[83] In the correspondence between the Chief Justice and Justice Murphy at this time and which was subsequently published, each party expressed himself clearly and candidly. Two key matters emerge from Gibbs' letter to Murphy. First, that Gibbs was genuinely concerned about Murphy's precarious state of health, the latter having recently been diagnosed with advanced and inoperable cancer. Secondly, Gibbs, in his role as Chief Justice, is deeply attentive to the integrity of the Court as an institution in the question of whether Murphy should return to sit. In contrast, Murphy's correspondence is both legalistic and egocentric. It cannot be doubted that it takes a particular kind of even temperament to weather the unique impact of this sort of unprecedented crisis in the Court's history.[84] That Sir Harry had such a temperament is evidenced in his remarks during his speech at the ceremonial sitting of the High Court marking his retirement in February 1987:

> I think it will always be true to say that the work of a Chief Justice of this Court is somewhat burdensome and during recent years the Court has faced unprecedented difficulties. Nevertheless I have derived much satisfaction from serving as Chief Justice of the Court. I have enjoyed the friendship of my fellow justices and have had the loyal support of the staff of the Court.
>
> My endeavour has been to maintain the high standards which were set by my eminent predecessors and which have, I think, earned respect for the Court not only in Australia but also elsewhere.[85]

The range of Sir Harry Gibbs' extra-curial speeches and writing throughout his professional career reflects both genuine intellectual interests and his professional ethic. Commencing in the 1950s with case notes in the *University of Queensland Law Journal*, the journal of his alma mater and the school at which he lectured in the early years of his professional life, to speeches in honour of the

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82 Winterton, above n 49, 110. Cf above n 58 and accompanying text.

83 Justice Roslyn Atkinson, 'The Chief Justice and Mr Justice Murphy: Leadership in a Time of Crisis' (2008) 27 *University of Queensland Law Journal* 221, 232 ff. It might be noted that Her Honour Justice Atkinson served as Associate to Sir Gerard Brennan of the High Court in 1986.

84 Sir Gerard Brennan commented directly on some of the challenges for the Chief Justice and the court more generally at this time in his 2010 UNSW interview: 'After his acquittal but while there were still some political issues to be resolved, [Justice Murphy] announced … that he was coming back to sit on the Court … This led to a public controversy between himself and Sir Harry Gibbs, then Chief Justice, as to whether he should return, which I think was unfortunate. … We were all affected by the concern that we had that one of our members was being prosecuted criminally. And that concern … was most acute when one the issues that had been reserved for the Court of Criminal Appeal in New South Wales was referred to the High Court, and we had to sit and make a determination on it … [O]ur main concern at that time was in relation to a rumour … attributed to the then Attorney-General, that he understood that we would not sit with Lionel if he came back to sit on the Court. That was utterly untrue. There was never the slightest suggestion that the members of the Court would not sit … It was his constitutional right and authority to sit on the court, and it was certainly not something that the members of the Court ever contemplated diminishing or denying': Mason, Interview with Sir Gerard Brennan, above n 50.

85 Gibbs, 'Retirement of Chief Justice', above n 70.

75th Anniversary of the Queensland Bar Association, these publications reflect his deep commitment to the law and the profession. As Chief Justice, Gibbs delivered three State of the Judicature addresses in 1981, 1983, and 1985, in the last of which he did not flinch from reflecting on the critical challenges for the legal system associated with attacks on Family Court judges as well as ongoing issues for the High Court over the Murphy affair.[86] In 1982 he delivered the Wilfred Fullagar Memorial Lecture at Monash University and in 1985 returned as a valued alumnus to deliver the speech in honour of the 50th anniversary of the University of Queensland law school. Like other High Court judges of subsequent eras[87] he contributed to the ongoing professional development of members of the Bar in speaking on both appellate advocacy and appellate procedures in the High Court, once again reflecting an ethos of professional service. Only a few months after his retirement in 1987 he delivered the third series of Menzies lectures in the US, subsequently published in the *Federal Law Review*, a leading public law journal.[88]

It has been noted more than once that Sir Harry's commentary on constitutional issues increased considerably after his retirement, to the surprise of some longstanding friends.[89] His leadership of the Samuel Griffith Society and membership of Australians for a Constitutional Monarchy branded him as a deep conservative in some eyes. However, these positions were not in the least inconsistent with his legal philosophy on the Court, and his contributions to conferences of the Samuel Griffith Society allowed Gibbs an outlet for his federalist viewpoint beyond the confines of academic journals.[90]

86 Atkinson, above n 83, 227.

87 For example, Justice Hayne contributed to ongoing professional education of members of the Bar in Victoria: see High Court of Australia, *Speeches/Articles by the Hon Kenneth Hayne AC* (2010) <http://www.hcourt.gov.au/publications/speeches/current/speeches-by-justice-hayne-ac>.

88 Sir Harry Gibbs, 'The Appointment and Removal of Judges' (1987) 17 *Federal Law Review* 141; Sir Harry Gibbs, 'The Separation of Powers – A Comparison' (1987) 17 *Federal Law Review* 151.

89 Jackson, 'The Sir Harry Gibbs Oration', above n 78. This was repeated in the '2016 Selden Society Lecture', above n 71.

90 Mason, Interview with Sir Anthony Mason, above n 50: 'Not all judges are interested in the law … [or] have an abiding interest in the law. Some [do] … Sir Harry Gibbs was one … [He] very much regretted that he had to retire'.

C Sir Anthony Mason (1987–95; Justice 1972–87; NSW Court of Appeal 1969–72; Commonwealth Solicitor-General 1964–69)

'*A quiet, penetrating man with a sharp tongue*'.[91]

'*It is inevitable, with the passage of time, that the views of an individual are likely to change*'.[92]

'*There are always leeways of choice*'.[93]

Sir Anthony Mason, like a majority of the High Court's justices since 1903, came from the stable of the successful NSW Bar and Bench. He was appointed to the High Court in 1972 on the death of Sir William Owen, having previously served on the NSW Court of Appeal from 1969. His position as Commonwealth Solicitor-General from 1964, after its refashioning by Sir Garfield Barwick when Attorney-General, is a distinctive characteristic of his professional career and one which will have provided unique insights into constitutional litigation in particular.[94] Mason was both successful and well-connected in the law, for example, having served as Barwick's 'favourite junior'.[95] In an interview for publication in the *Singapore Law Review*, Mason identified some key influences on his professional life and approach to the law. These he identified as his mother in terms of his professional direction,[96] and Sir Owen Dixon[97] and Lord Wilberforce in terms of his admiration for their intellectual approach to the law.[98] In fact, Mason actually declines to identify any lawyer who has particularly 'influenced' him beyond respect and admiration.[99] He has commented on the patterns of disagreement with senior members of the bench in his early period as

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91 Marr, above n 46, 239.

92 Kristen Walker, 'Mason, Anthony Frank' in Tony Blackshield, Michael Coper and George Williams (eds), *The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001) 459, 460 quoting an interview with ABC Radio National in 1994:

> I think that the extent of the change on my part has been somewhat exaggerated. … It is inevitable, with the passage of time, that the views of an individual are likely to change. In my case, I have been a judge for 25 years. It would be strange indeed, if all my views remained static over that period of time. If they did, I would regard that as a worthy subject of criticism.

See also Australian Broadcasting Corporation, 'The Chief Justice', above n 50.

93 Mason, Interview with Sir Anthony Mason, above n 50.

94 See Zines, above n 51; Gabrielle Appleby, *The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest* (Hart Publishing, 2016).

95 Marr, above n 46, 239.

96 Sir Anthony Mason's mother was determined that he should become a barrister. Mason, Interview with Sir Anthony Mason, above n 50.

97 Mason, Interview with Sir Anthony Mason, above n 50:

> [Regarding Sir Owen Dixon] when you look at legal problems that he considered and he answered, I think you emerged from considering the problem … with the view that in many instances no one could have done better than he did … [H]e had a turn of mind you don't often see in Judges – he had a very conceptual mind and he had an ability to make distinctions … to a greater degree than I think any other Judge of his generation … his judgments have stood the test of time and if you compare him with leading English Judges of his time … from a technical perspective, he was undoubtedly superior to Lord Atkin … perhaps … not Lord Radcliffe … Lord Radcliffe I think was one of those judges who wasn't particularly interested in the law.

98 'In Conversation: An Interview with Sir Anthony Mason' (1996) 17 *Singapore Law Review* 1, 9.

99 Ibid.

a Justice, which suggests an independence of mind which can be traced throughout his judicial career.[100]

By the time of his retirement in 1995 Mason had served almost a quarter of a century on Australia's highest court. In view of the length and quality of his contributions to the Court it is perhaps surprising that no full biographical treatment of his professional career has yet been produced.[101] Thus in an important sense, the active, nonagenarian Mason currently serves as both the custodian of and ongoing contributor to his own judicial legacy.[102] Since his retirement Mason has been in demand as a keynote speaker at university and professional conferences, a contributor to academic journals and other published collections, and as a media interviewee and constitutional commentator. This is a demand to which he has acceded with great regularity and there is little current sign of its cessation. Despite this regular public exposure there is much in Mason's jurisprudential philosophy[103] and more general character which remains enigmatic to the external observer.[104]

Even in the absence of a judicial biography, Mason's pivotal role in the High Court's developing jurisprudence in the 1980s and 1990s and his contribution as Chief Justice has elicited regular media and academic commentary and critique.[105] Mason himself has recently reflected on the High Court under his leadership and identified a number of factors contributing to its particular jurisprudential and collegial dynamics. These include the controversial nature of the issues to be determined by the Court, the 'lack of consensus as to the role of

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100 'Sir Garfield had a dominating personality but in discussion with him when he was Chief Justice, he recognised that I might take a different view, however misguided it might be. He never left you in doubt about what his view was and that it was clearly correct': Mason, 'The High Court', above n 59.

101 See Zines, above n 51.

102 Mason's post-retirement interviews are clearly characterised by a measured and cerebral quality. Such character is also arguably present in his first television interview:

> Liz Jackson: There is always a tension for every judge, though, in deciding whether or not to make new law…
>
> Sir Anthony Mason: It is. It is one of the most difficult decisions that faces a Judge … It is not a decision you can make by reference to any principle that will give precise guidance in a particular case. It is a matter of balancing out the factors and determining in your own minds which way you should go…Judges are always looking for justice … My own values do not play a large part [in judicial decisions]. Judges, traditionally, do not give effect to their own personal set of values. What they endeavour to do when they formulate a principle of law, to the extent that it is relevant, is to have regard to enduring values … [G]enerally speaking, a Judge endeavours to avoid giving effect to his own personal values.

Australian Broadcasting Corporation, 'The Chief Justice', above n 50.

103 Unlike other Judges who can be seen to have brought a mature and fully-developed constitutional philosophy to the Court, Mason's approach, in his own admission, is more 'evolutionary' in character: See ibid. In the 1995 interview with Liz Jackson, Mason accepted the notion put to him that his views on rights have 'evolved over time'.

104 This comment concerning the external observer is critical. Much that has been written about Sir Anthony Mason, and to a lesser extent other Chief Justices, has been penned by those who knew him well. Professor Leslie Zines, Professor Geoffrey Lindell and Kristen Walker, his associate and author of his entry in *The Oxford Companion to the High Court of Australia*, above n 92, were all members of a much closer professional circle than the most contemporary legal biographical scholars. A person with much closer connection and access to a Judge may through propinquity make assessments about the Judge's actions and motivations which would prove mere speculation in the hands of the scholarly observer.

105 This includes interest from scholars outside Australia. See Pierce, above n 1.

the Court, as for example, in departing from precedent … another was the existence of deep-seated divisions within the Court' over core approaches to key legal and constitutional issues.[106] Mason also notes that the personality dynamics 'vary considerably and can change dramatically in an enclosed community like the High Court'.[107] However, in the same context he also maintains that 'every Justice has a responsibility to endeavour to establish a working relationship with colleagues'.[108]

When investigating Mason's leadership as Chief Justice, and in the absence of a full biographical treatment of his career, it is currently challenging to separate his jurisprudential[109] and extra-curial leadership, so entwined do these ultimately appear. Indeed, the content of Mason's extra-curial interviews during his Chief Justiceship and since has regularly traversed the method[110] and outcomes[111] in high profile cases. Another feature which complicates the process of assessing the dimensions of leadership during this period is the undoubted depth and breadth of societal change[112] to which the Court was drawn to respond.[113] In this heady environment, the High Court acknowledged the need for

106 Mason, 'The High Court', above n 59, 10.

107 Ibid 16.

108 Ibid.

109 Whilst Pierce has plotted the 'transformation' of the High Court under Sir Anthony Mason, arguing that the 'Mason Court revolution' was a result of the 'sheer force of Chief Justice Mason's intellect and leadership': Pierce, above n 1, 208, Tushnet insightfully reflects that in terms of Mason's leadership, Pierce 'provides no details on how Mason actually led the court': Tushnet, above n 1, 154.

110 In the media and in other fora the apparent 'creativity' which was characteristic of a majority of justices of the Mason Court was regularly labelled 'activism'. For example, Liz Jackson stated in the introduction to the 1995 landmark television interview, 'Under Mason the [High] Court is the most radical, the most activist this country has seen': Australian Broadcasting Corporation, 'The Chief Justice', above n 50. Sir Gerard Brennan has commented that:

> Activism is a very easy term to use [and often focusses on] the result of a case rather than with the intellectual exercise that led to the result. The judicial method has to do with the way in which a result is reached. It has nothing to do in a sense with what the result is … I don't find [activism] a very helpful term.

Mason, Interview with Sir Gerard Brennan, above n 50.

111 In his 1995 interview with Liz Jackson, Mason categorically rejected the proposition that the implied freedom decisions of the High Court were 'radical':

> Sir Anthony Mason: I would not call it radical. I would describe it as a new development in terms of constitutional interpretation, but it was a development that had taken place in very similar conditions in Canada … [I]t was not radical, it was a decision that had a predecessor … [W]hat … happened was … in conformity with accepted principles of legal interpretation

Australian Broadcasting Corporation, 'The Chief Justice', above n 50.

112 Mason, Interview with Sir Anthony Mason, above n 50:

> Professor Keith Mason: Are appellate judges affected by their perception of shifts in social and political forces in society?
>
> Sir Anthony Mason: I think so … [I]t is a very difficult question … The law is based on values and generally speaking on some assessment of values … When I was young, by and large the community was … held together by a series of common assumptions

113 This was certainly commented upon by leading legal scholars at the time:

> Leslie Zines: … [T]he present Court, I think, would be inclined to say, 'Well, something needs to be done; the legislature is not doing anything, so we will do it'. …
>
> Tony Blackshield: [P]eople in the community are disillusioned with politicians, no longer have the faith or the trust in the Parliament that they used to have, and I think it's pretty clear that some of the judges

a more concerted effort by the institution in explaining its role and its work. A product of this realisation was Mason's innovative and unprecedented strategy in explaining the work of the High Court to the public in the print and televised media.[114] The need for the Court to engage with the education of the public about its role was acknowledged frankly and unequivocally by Mason in his inaugural interview on ABC's *Four Corners* in 1995, a mere three weeks before his retirement.[115] Arguably, this acknowledgement and subsequent action under Mason radically changed the extra-curial sphere for the Chief Justice and perhaps for Australian courts more broadly. However, in the decision to be interviewed as its leader on the work of the Court, the line between the jurisprudential and the extra-curial once again becomes blurred.

This novel extra-curial work by Mason in engaging with the media has been complemented by a quite different extra-curial commitment in the form of hundreds of speeches, addresses and papers in diverse legal and non-legal contexts. These include speeches at law schools, universities, legal professional bodies, judicial organisations, as well as community groups, notably the Corowa District Historical Society at its annual federation dinner. As Chief Justice, Mason travelled far and wide throughout Australia and overseas, addressing issues of significance associated with the processes by which law develops, the administration of justice and the role and function of the judiciary in a democratic state. A distinctive characteristic of his extra-curial output is not just its quantity and variety, but the fact that so much of it appears in legal periodicals of various types, including university law reviews. Lindell in his survey of Mason's extra-curial writing identifies 36 contributions to books and 160 published in periodicals.[116] Superficially, these figures might more readily be

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> share that disillusionment. So that whereas 50 years ago judges would confidently say 'We leave those things to Parliament, Parliament is the protector of our liberties', I'm not sure that anybody really believes that any more.

Australian Broadcasting Corporation, 'The Chief Justice', above n 50. Mason himself responded to Liz Jackson is similar vein:

> Liz Jackson: Why do you think there's been so much general controversy about his High Court in the time that you've been Chief Justice?
>
> Sir Anthony Mason: There are various reasons for that. One of them is that governments, from time to time, leave an important issue for determination by the courts rather than attempt to resolve the problem, the political problem, by legislative action … [I]t avoids the risk of alienating significant interest or pressure groups … *Mabo* is an illustration [of this point].

114 Zines, above n 51, 175; Geoffrey Lindell, 'Introduction' in Lindell (ed), *The Mason Papers* (Federation Press, 2007) 3–4.

115 Australian Broadcasting Corporation, 'The Chief Justice', above n 50.

> Liz Jackson: How well do you think the Australian public does understand the role of the High Court?
>
> Sir Anthony Mason: Not as well as it should.
>
> Liz Jackson: Do you think judges have to take any responsibility for the fact that their role isn't more widely understood?
>
> Sir Anthony Mason: That's true to some extent. I'm inclined to think that the judiciary has been apprehensive of the media … in future, there will be a greater effort to communicate with the community, through the media and through other sources as well. Active steps are being taken.
>
> Liz Jackson: And that's presumably why you're doing this interview?
>
> Sir Anthony Mason: Yes.

116 Lindell (ed), above n 51, 1.

associated with a distinguished legal scholar in the academy rather than a Chief Justice of a nation's highest court. In his extensive more scholarly extra-curial output, Sir Anthony Mason is unique amongst Chief Justices in our sample. There is much work to be done in this current generation of scholars to identify how this extensive corpus of publications has contributed to a changing understanding of the dynamics of a Chief Justice's leadership role. Ironically, although Mason has undoubtedly made a very significant contribution to the work of the High Court, presiding over an intellectually ebullient court, his own conception of the role of Chief Justice is still arguably incompletely understood.

D Sir Gerard Brennan (1995–98; Justice 1981–95; Federal Court 1977–81; Australian Industrial Court and additional Judge ACT Supreme Court 1976–81)

'*He was a great judge and an inspirational leader*'.[117]

'*[T]he mutual respect that … all of us had, one for the other … was … one of the remarkable features of a Court which was … constituted by a wonderful group of people*'.[118]

Sir Gerard Brennan, the third Chief Justice of the High Court from Queensland, had the distinction of being the first appointment to the High Court from the Federal Court, which had been established in 1976 to relieve an overburdened High Court. Like Sir Anthony Mason before him, Sir Gerard was appointed as Chief Justice from the position of Senior Puisne Judge, in his case in 1995 by the Keating Government. At the time of his appointment as Chief Justice he was 67 years old and was required by section 72 of the *Constitution* to retire on his 70th birthday. It might be thought that such a short tenure as Chief Justice might preclude meaningful analysis of his leadership. However, there can be little doubt that Brennan brought a powerful and unique presence to the Court in these years,[119] building on his history of collegiality amongst judicial colleagues.[120] Brennan's professional persona, more than that of any other Chief Justice considered in this article, is characterised by three interlocking

117 Daryl Davies, 'A Tribute to Sir Gerard Brennan' in Robin Creyke and Patrick Keyzer (eds), *The Brennan Legacy: Blowing the Winds of Legal Orthodoxy* (Federation Press, 2002) 1, 8.

118 Mason, Interview with Sir Gerard Brennan, above n 49.

119 This is illustrated in his characterisation of the role of the third branch of government:

> Expediency, pragmatism and power have no influence in the administration of justice. The third branch of government marches to the beat of a different drum from the political branches. In a sense, the judicial branch has a role which is the very antithesis of the role of the political branches. The political branches seek to legitimise authority by majoritarian support – the greater the support, the more absolute is the authority that is claimed.

Sir Gerard Brennan, 'The Rule of Law – Every Day: Insights into the Application of Justice' (2013) 33(2) *Proctor* 22, 23.

120 There are suggestions that such qualities might have been particularly valuable at a time during which personnel on the Court changed significantly. See David F Jackson, 'The Brennan Court' in Tony Blackshield, Michael Coper and George Williams (eds), *The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001) 68.

commitments: relationship;[121] vocation;[122] and values.[123] He is motivated both personally and professionally by considerations which are both broad and deep, by a concern for both persons and institutional integrity. There is also evidence of the high personal esteem in which he was held by his colleagues in various courts as is reflected in an extract from Daryl Davies' tribute, quoted at the commencement of this section.

Sir Gerard's extra-curial writing, which is strongly marked by the themes of vocation, relationship and values, is often disarming in its modesty and self-deprecation. For example, he has often shared stories of his earliest, inept experiences in the law as his father's associate,[124] Justice Brennan senior having served a lengthy term as the Central Judge of the Queensland Supreme Court based in Rockhampton.[125] He has judged his own university career as modest,[126] and this rather severe personal assessment does not hint at his fundamental intellectual interest in the law as an institution,[127] nor does it allude to his belief that independence of mind is an essential professional quality in the law.[128] His extra-curial contributions during his time as Chief Justice are far from groundbreaking in their intellectual content or themes. However, they clearly evince his deeply-held belief in the centrality of the rule of law to the health of civil society and the critical role of the judicial arm of government as its guardian. His contribution to the Mason Court and Beyond Conference in 1995 honoured his predecessor in Brennan's core spirit of collegiality and relationship.[129] His speech at the 20th Anniversary of the Administrative Appeals Tribunal in 1996 acknowledged his role in establishing an important legal

121 This is reflected in one of Sir Gerard's favourite and often-repeated quotations from a speech by Judge Benjamin Cardozo to the lawyers of New York County: 'The tradition, the ennobling tradition, though it may be a myth as well as verity, that surrounds as with an aura the profession of the law, is the bond between its members and one of the greatest concerns of man, the cause of justice upon earth': Brennan, 'The Rule of Law', above n 119, 23. See also Sir Gerard Brennan, 'Why Be a Judge?' (2011) 23 *Judicial Officers' Bulletin* 37.

122 For example, Sir Gerard Brennan, 'Lessons from a Life in the Law' (2013) 11 *The Judicial Review* 245, 246: '[I]t was a lesson about the relationship that is built among members of the legal profession who share a deep respect for their vocation – a respect which fosters warm personal relationships even when they are engaged as adversaries'. See also Brennan, 'Why Be a Judge?', above n 121, 38.

123 For an encapsulation of this commitment and the values which Sir Gerard cherishes, see 'Australian Values – Some Reflections' (2007) July–August *Australian Quarterly* 7. See also, Mason, Interview with Sir Gerard Brennan, above n 50; Brennan, 'Lessons from a Life in the Law', above n 122, 247–54.

124 For example, Brennan, 'Lessons from a Life in the Law', above n 122; Mason, Interview with Sir Gerard Brennan, above n 50.

125 Sir Gerard Brennan, 'Dinner to Celebrate the Centenary of the First Central Judge' (Speech delivered at the Central Queensland Law Association dinner, Rockhampton, 1 December 1995) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_cq.htm>.

126 Cf Creyke and Keyzer (eds), above n 51, 1.

127 'The law is an intellectual construct and there is an attraction in discovering unexplored areas of the law and in following its development. Indeed, that kind of curiosity can be satisfied even after retirement!': Brennan, 'Lessons from a Life in the Law', above n 122, 262.

128 'Independence of mind ensures that the advice that is given is sound, the advocacy is honourable, negotiations are fair and drafting is accurate': Brennan, 'The Rule of Law', above n 119, 23.

129 Sir Gerard Brennan, 'A Tribute to the Hon Sir Anthony Mason, AC KBE' (Speech delivered at the Mason Court and Beyond Conference, Melbourne, 8 September 1995) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_mason3.htm>.

institution and the work of its members, his colleagues. His speeches in the 1990s at two of the new generation of law schools – Deakin and Newcastle – allowed him to speak on broad values-driven themes – judicial independence[130] and the role of the judicial branch of government.[131] On these occasions it was not only his well-chosen words which impressed, but the warmth of his human presence, and his interest in the life and work of the staff and students whom he met.[132]

Like Chief Justices before him, controversy surfaced during Brennan's period as Chief Justice. Unlike Gibbs, it did not primarily concern the internal dynamics of the Court, but a vexed question of the traditional role of the Commonwealth Attorney-General as a defender of the Court against ill-founded criticism of its work. Brennan subscribed to this established position[133] whilst the Attorney-General of the day, Daryl Williams QC, did not. This created a frosty tension between the two which was exacerbated by (incorrect) public comments by the then Deputy Prime Minister that the High Court had deliberately delayed handing down its judgment in the *Wik* decision.[134] In the absence of public support from the executive branch of government, Brennan participated in a lengthy interview for the ABC current affairs program *Lateline*. The interview was aired on 22 May 1998, shortly before Brennan's retirement.[135] The interview in which Brennan reprises some perennial themes with clarity, equanimity and calm, is interspersed with footage of public interactions between the Chief Justice and Attorney-General in which their chilly relationship is not in doubt. Brennan confirms the challenge for judges of deciding matters 'in the lonely room of his or her own conscience'. He is implacable in his assessment that '[t]he Court will not be moved by criticism no matter how intemperate it may be nor how strong it may be'. He argues for 'the respect that each branch of government must have for the other' lest 'public confidence in the institutions of government and the constitutional institutions is diminished'. He also identifies 'informed … criticism' as 'the very soul of continuing justice'.

In his *Lateline* interview in 1998, and also in the documentary film *The Highest Court*[136] released in the same year, Brennan emerges as a leader of strong ethical stature.[137] In *The Highest Court*, a documentary which explains the

130 Sir Gerard Brennan, 'Principle and Independence: The Guardians of Freedom' (2000) 4(2) *Newcastle Law Review* 1.

131 Sir Gerard Brennan, 'Courts for the People, not People's Courts' (Speech delivered at the Inaugural Deakin Law School Oration, 26 July 1995) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_deakin.htm>.

132 This almost certainly extended to his speeches at the established law schools. See '25th Anniversary of the University of New South Wales Law School' (1997) 20 *University of New South Wales Law Journal* 210.

133 This was outlined in the 1998 television interview as follows: '[T]he defence of the judicial branch of government [by the Attorney-General] is not to justify the [C]ourt's judgments, … [b]ut it is to explain the way in which the law operates … The whole reality is that the High Court is astute to ensure that it is apolitical': Australian Broadcasting Corporation, 'The Brennan Way', above n 50.

134 *Wik Peoples v Queensland* (1996) 187 CLR 1.

135 Australian Broadcasting Corporation, 'The Brennan Way', above n 50.

136 Above n 50.

137 Brennan, 'Why Be a Judge?', above n 121, 39:

> In those quieter moments that we allow ourselves for reflection, we know that the security, the dignity and the freedom of our citizens depend on the faithful performance of judicial duty. The satisfactions of

history, role, and procedure of the High Court, the director managed to negotiate access not just to the Chief Justice but to four other justices for the purpose of explaining and commenting upon the day to day work of justices in the 'rarefied atmosphere' of the Court.[138] Justices Toohey, Gaudron, Gummow and Hayne all contribute to the discussion of the lives and work of the one of Australia's most powerful but least known or understood institutions. Brennan's leadership in this round table discussion is unobtrusive, collegial and cordial. The friendly banter amongst the Justices suggests that the Brennan Court operated in a cohesive professional environment. This picture is complemented by Brennan's often repeated description of the collegial lunchtime peregrinations of four Justices around the Parliamentary Triangle.[139] In one of these retellings he names the four Justices: Dawson, Toohey, Gaudron and himself.[140] Nothing could be more emblematic of the Court over which Brennan sought to preside than this collegial picture.

E Murray Gleeson (1998–2008; Chief Justice NSW Supreme Court 1988–98)

'*The Smiler*'.[141]

'*The fact that you have a nickname doesn't mean you've earned it. That just happened*'.[142]

Murray Gleeson, having previously served ten years as Chief Justice of the NSW Supreme Court, was appointed as Chief Justice of the High Court in 1998 by the Howard Government upon the retirement of Sir Gerard Brennan. According to Gleeson's biographer, '[f]rom day one the focus was on Gleeson.'[143] In conservative political circles, he was seen as 'the new Barwick',[144]

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judicial life flow from an inner conviction of the service of society in a pivotal role, from the satisfaction of the aspirations of litigants, of the profession, of the public and most importantly, of oneself, and from the mutual esteem of judicial colleagues. That is what makes the work worthwhile.

138 Justice Gummow likens the Court to the eye of the hurricane: 'It doesn't mean one doesn't appreciate there's a hurricane out there': *The Highest Court,* above n 50. Regardless of external criticism of their work, the Justices indicate that their response is to 'soldier on': ibid.

139 Brennan, 'Lessons from a Life in the Law', above n 122, 263–4:

> It has been a great adventure to have been in the company of those whom I have respected for their devotion to justice according to law, not least when we have not been unanimous in our definitions of the law. Among the enjoyable phenomena of life on the High Court were the lunch-time walks when four of the justices – utterly anonymous, I am pleased to say – would walk around the Parliamentary Triangle discussing shoes and ships and sealing wax and cabbages and kings.

See also Brennan, 'The Rule of Law', above n 119, 37; Mason, Interview with Sir Gerard Brennan, above n 50.

140 Brennan, 'Lessons from a Life in the Law', above n 122.

141 On the origin of this nickname and the role of Justice Roderick Meagher in ensuring its longevity, see Pelly, above n 46, 130–6.

142 Australian Broadcasting Corporation, 'The Retirement of Chief Justice Gleeson', *The Law Report*, 19 August 2008 <http://www.abc.net.au/radionational/programs/lawreport/retiring-chief-justice-murray-gleeson/3200662>.

143 Pelly, above n 46, 176.

although it was readily acknowledged that Gleeson had never moved actively in political circles in the way Barwick or Murphy had. On the eve of his retirement, and like others before him, Gleeson was clear in rejecting the identification of eras of the High Court as 'activist' or 'conservative'. He regarded such labelling as 'an oversimplification'.[145] In reflecting on his term as Chief Justice and the leadership he had exercised during his decade at the helm, it is possible to see his actions, both curial[146] and extra-curial, as purposeful. As an able lawyer of introverted temperament[147] and largely uninterested in self-promotion, he had no egocentric reason for extending the extra-curial activities of his role. When he made speeches their function was educative[148] and one theme dominated above all others: the rule of law. The choice and reprise of this leitmotif had a serious purpose, namely as an effort to redraw the institutional boundaries of the Court's role in the wake of the Mason and Brennan eras. There is an immediacy and drive in Gleeson's extra-curial output and little evidence that he was concerned to ensure that his speeches found their way into the pages of law journals. His primary role as Chief Justice was not intellectual[149] but practical, to steer the institution back into the more pacific waters of traditional legal methodology. This is abundantly evident from the early period in his speech to the Australian Bar Association Conference in New York in 2000. In the wake of this speech, his captive audience of legal professionals can have been in no doubt about the legal philosophical commitment of the Chief Justice:

> The quality which sustains judicial legitimacy is not bravery, or creativity, but fidelity. That is the essence of what the law requires of any person in a fiduciary capacity, and it is the essence of what the community is entitled to expect of judges. There is often room for disagreement amongst lawyers and judges as to what the law requires, but the terms of the trust upon which judges are invested with authority set the boundaries within which the contest must be conducted. In the case of the resolution of federal issues, it is fidelity to the Constitution, and to the techniques of legal methodology, which is the hallmark of legitimacy.[150]

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144 Ibid. John Howard, the Prime Minister at the time of Gleeson's appointment to the High Court notes that Gleeson was never officially aligned with any political party: 'I never thought he was, in any way, one of our men at the bar': ibid.

145 See Australian Broadcasting Corporation, 'The Retirement of Chief Justice Gleeson', above n 142:

> [I]n my ten years on the [C]ourt, I can think of only one case in which the court has divided along the lines of the political colour of the party that appointed the members of the Court. And that was a case that had nothing to do with politics. It was a case about the liability of local councils for non-repair of roads and bridges. Apart from that one case, which is *Brodie v Singleton Shire Council* [(2001) 206 CLR 512], I can't think of any other case in ten years, in which the members of the Court have divided along the lines of the government that appointed them.

146 See Zines, above n 49, 269–80.

147 Sir William Deane has described Gleeson as 'extraordinarily shy' and 'a very unassertive person': Pelly, above n 46, 136.

148 See ibid 202: 'He used his role to deliver speeches that educated the public on the rule of law rather than agitate for change'.

149 See Australian Broadcasting Corporation, 'The Retirement of Chief Justice Gleeson', above n 142: 'I enjoy the intellectual challenge of judicial work. The best thing about the law as a profession is that you're always learning something, and as a judge you're always learning something'.

150 Murray Gleeson, 'Judicial Legitimacy' (Speech delivered at the Australian Bar Association Conference, New York, 2 July 2000) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleesoncj/cj_aba_conf.htm>.

The most distinctive aspect of Gleeson's extra-curial work is without doubt his Boyer Lectures delivered on ABC radio in 2000. Gleeson is the only Chief Justice of the High Court ever to have delivered the Boyer Lectures.[151] His lectures were delivered on the theme 'The Rule of Law and the Constitution'. If Gleeson had hopes of engaging with the profession and members of the public more broadly about key institutional concerns associated with the High Court through the vehicle of the Boyer lectures, it is perhaps surprising that he should have chosen public radio as his medium. However, it is notable that Gleeson agreed to be interviewed on radio both in 2007 and before his retirement in 2008 on ABC Radio National's Law Report at a time when he might have sought out interviews on television as had his predecessors in the role.

F Robert French (2008–Jan 2017; Federal Court 1986–2008, ACT Supreme Court (Additional Judge) 2004–08, Fiji Supreme Court 2003–08)

'*[A] life in the law is about the law and much besides. It is more than logic and principle and argument. It is informed by a vital human dimension*'.[152]

'*[H]e has mostly kept a low profile as chief. He put a media ban on himself in 2013, doesn't bother distributing his speeches and rarely says anything that might engage the wider public*'.[153]

The era of the 12th Chief Justice of the High Court concluded with his retirement on 29 January 2017 after nine years in the role.[154] In a number of respects French's appointment has broken new ground for the Chief Justiceship and the consequences for future patterns of appointment are not yet clear. French is the first Chief Justice appointed directly from the Federal Court of Australia although in recent years an increasing numbers of High Court justices have been appointed from this court. The Federal Court was established in 1976 and unlike State and Territory courts from which High Court Justices have been selected historically, its jurisdiction is statutory. Typically, its justices would be exposed to a more limited range of legal matters in comparison with their State counterparts. Furthermore, apart from his work on the National Native Title Tribunal, French had no experience as a judicial officer beyond the Federal Court itself. In contrast, other appointees to the High Court from the Federal Court had

151 Established in 1959, the Boyer Lectures are a series of talks by prominent Australians chosen by the ABC board to present ideas on major social, scientific or cultural issues. The lectures have been broadcast on ABC Radio since 1959 and are named in honour of the late Sir Richard Boyer, who was chairman of the ABC from 1945 until his death in 1961.

152 Robert French, 'A Human Dimension of the Law' (Speech delivered at University of Canberra Isaacs Law Society Law Ball, Canberra, 3 April 2009). <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj3apr09.pdf>.

153 Michael Pelly, 'Chief Justice Robert French Rails at 'National Disgrace'', *The Australian* (Sydney), 6 May 2016 <http://www.theaustralian.com.au/business/legal-affairs/chief-justice-robert-french-rails-at-national-disgrace/news-story/1d1e7ea5650cb2343b636320a2e7e71a>.

154 Jeremy Gans, 'Chief Justice Announces Early Resignation' on Katy Barnett et al, *Opinions on High* (24 March 2016) <https://blogs.unimelb.edu.au/opinionsonhigh/2016/03/24/news-chief-justice-announces-early-resignation/>.

served on State Supreme Courts prior to that appointment.[155] During the period of French's Chief Justiceship, fully half of the appointments to the High Court were from the ranks of justices of the Federal Court.[156] The significance of the appointment of an increasing number of justices from this very different curial environment has not yet been the subject of detailed analysis and critique. The differences that such appointments may bring to the practice and jurisprudence of Australia's apex court are currently a matter for interested speculation only.

Appointments to the High Court have not been evenly distributed amongst the States in the Federation and French was the first Chief Justice and only the third appointment to the Court from the state of Western Australia. Further, he was the first justice with a legal specialisation in native title law, having served as the inaugural President of the National Native Title Tribunal from 1994 to 1998. Of significance to his leadership role on the High Court is the fact that French is probably the first Chief Justice in the history of the Court whose intellectual formation has been in the sciences rather than in the humane disciplines. French completed a degree in physics before embarking on the study of law.[157] This educational background is likely to have an ongoing influence on his approach to the legal system and the operation of legal institutions.[158]

In analysing his extra-curial output, French's approach emerges as exemplifying a commitment to modernity and empiricism. His modern, more ahistorical,[159] approach to the role of the High Court as an institution and its work in the contemporary environment can be seen clearly in his view that:

> [t]he High Court of Australia is not a museum of the law and of great judges and chief justices of the past. It is a living, working and inescapably human institution. … But the challenges that face us in this very contemporary institution are not the challenges of the past. They are the challenges of the time and they are different for our generation as they are different for every generation.[160]

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155 For example, Kiefel and Keane JJ. Although it is also true that some had not, including Brennan, Toohey, Gummow, Crennan, and Gordon JJ.

156 Justices Kiefel and Gordon were appointed from the Federal Court whilst Justice Keane was the Chief Justice of the Federal Court at the time of his appointment.

157 Robert French, 'From Light and Life to Genes and Galaxies' (Speech delivered at the 35th Professor Harry Messel International Science School, Sydney, 13 July 2009) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj13july09.pdf>.

158 For a discussion of the impact of educational formation on later jurisprudential approaches, see Tomkins and Lindsay, above n 48.

159 To characterise French's approach as 'more ahistorical' than his predecessors is not to deny that some of his extra-curial output engages with historical evidence and themes. See, most notably, Robert French, 'Home Grown Laws in a Global Neighbourhood' (Albritton Lecture delivered at School of Law, University of Alabama, USA, 18 January 2011) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj18jan11.pdf>.

160 See French, 'A Human Dimension of the Law', above n 152. This view is also reflected in Robert French, 'The Changing Face of Judicial Leadership: A Western Australian Perspective' (Speech delivered at David Malcolm Memorial Oration, Fremantle, 19 October 2016) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj19Oct2016.pdf>. In this lecture French states: 'Generally speaking, each occupant of the office must construct the role anew having regard to the history and traditions of the office and the need to adapt it to contemporary society and the particular demands of the time in which he or she serves'.

For Chief Justices of earlier generations, the historical work of the Court was the foundation for current practice, and the challenges faced by succeeding generations of justices carried a timeless and unchanging quality: the need to do justice according to law without fear or favour, affection or ill-will. Chief Justice French's identification of the centrality of the 'human dimension of the law' to the High Court's work has led also to his endorsement of another powerful, contemporary concept – diversity:[161]

> Within the limits of the judicial discipline there is room, as there must be, for judicial diversity. The institutions of the law are human and so long as they are, diversity is inescapable.[162]

These views expressed by French as Chief Justice arguably represent a break with the previous tradition of extra-curial engagement on the Court, which was largely formulated within an intellectual frame of reference deriving from more positivist and natural law roots. It is yet too early to assess how far this signals a fundamental change to the role of Chief Justice or shift in leadership practice.

Although the jurisprudence of the French Court is not our primary interest in this article, it would be remiss not to note the unusually high proportion of unanimous decisions of the High Court in the first years of French's tenure. During the 2009 term of the Court, an unprecedented 44 per cent of cases heard by the High Court were decided without a dissenting judgment.[163] In 2010 this figure increased to 50 per cent.[164] However, from 2011 this early pattern of unanimity was broken with a significant drop in unanimous decisions to around 17 per cent, a pattern which was to continue thereafter.[165] French has commented on the changing dynamics caused by departures and arrivals on the Court during his tenure in a speech launching the essay collection, *The High Court, the Constitution and Australian Politics* in 2015:

> While it is flattering to have a chapter entitled 'the French Court', since I was appointed Chief Justice in 2008 there have been four departures and corresponding new appointments. The fifth will occur in June this year. After

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161 On 'equal justice' see also Robert French, 'The Relevance of Difference – Equal Justice and Equality before the law' (Speech delivered at Faculty of Law and UTS Law Society, University of Technology, Sydney, 27 August 2015) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj_27Aug2015.pdf>; Robert French, 'One Justice, Many Voices' (Speech delivered at Language and the Law Conference, Darwin, 29 August 2015) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj_29Aug2015.pdf>. On diversity, see Robert French, 'Opening Remarks' (Speech delivered at the Judicial Council on Cultural Diversity National Roundtable, Canberra, 24 June 2015) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj24June2015.pdf>.

162 Robert French, 'Don't You Know Who I Am? – Ego and Identity in the Administration of Justice' (Speech delivered at New South Wales Bar Association, Bench and Bar Dinner, Sydney, 8 May 2009) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj8may09.pdf>.

163 Andrew Lynch and George Williams 'The High Court on Constitutional Law: The 2009 Statistics' (2010) 33 *University of New South Wales Law Journal* 267, 270–1.

164 Andrew Lynch and George Williams 'The High Court on Constitutional Law: The 2010 Statistics' (2011) 34 *University of New South Wales Law Journal* 1030, 1032.

165 Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2011 Statistics' (2012) 35 *University of New South Wales Law Journal* 846, 847–9; Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2012 Statistics' (2013) 36 *University of New South Wales Law Journal* 514, 516.

> Justice Hayne retires the only Justice of the High Court remaining on the Court from the date of my appointment will be Justice Susan Kiefel. Every new appointment means the withdrawal of one person and the introduction of another. That is not just one change, it is two and as one might expect these changes can lead to the development of a new dynamic within the Court. In a sense there will have been five different High Courts between my appointment and retirement between 2008 and 2017.[166]

These changes in personnel are sufficient to account for the changing patterns of concurrence and dissent without greater attention here to an assessment of French's leadership style or the differences in jurisprudential approaches amongst particular members of the Court.

Turning to French's extra-curial output, it is most notable in its volume. Over nine years he delivered 142 speeches in a range of contexts from legal conferences, university named lectures, annual dinner speeches, legal professional gatherings and anniversary events throughout Australia. This rate of engagement with the profession, universities and the community more generally is without doubt greater than any of his predecessors. In contrast with the substantial output of Sir Anthony Mason in his day, French has shown little interest in securing the publication of his speeches in journals, periodicals or professional publications. His regular practice in making speeches to a great diversity of groups suggests an interest at odds with the assessment by Michael Pelly of his time as Chief Justice quoted at the beginning of this section. In accord with French's modernist outlook his speeches have strong narrative[167] and biographical[168] elements which make them accessible to wide audiences[169] and reinforce the human dimension[170] which he has stated is so significant to a life in

166 Robert French (Speech delivered at the Book Launch of *The High Court, the Constitution and Australian Politics*, Sydney, 13 February 2015) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj13feb2015.pdf>.

167 See, eg, Robert French, 'Law – Complexity and Moral Clarity' (Speech delivered at the North West Law Association and Murray Mallee Community Legal Service, Mildura, 19 May 2013) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj19may13.pdf>.

168 See, eg, French, 'A Human Dimension of the Law', above n 152; Robert French, 'In Praise of Breadth' (Speech delivered at the Law Summer School 2009, University of Western Australia, Perth, 20 February 2009) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj20feb09.pdf>; Robert French, 'Women Lawyers in a Public World' (Speech delivered at the Australian Women Lawyers Association Fourth National Conference, Australian National University, Canberra, 11 August 2012) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj11aug12.pdf>; Robert French, 'The Future Is Not What It Used to Be' (Speech delivered at the Australian Law Students' Association Conference, Perth, 15 July 2013) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj15jul13.pdf>; Robert French, 'Seeking Higher Things in Higher Education – The Case of Lawyers' (Campion Lecture, Speech delivered at St Aloysius College, Kirribilli, Sydney, 16 August 2016) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj18Aug2016.pdf>.

169 See, eg, Robert French, 'Giving and Taking Offence' (Sir Harry Gibbs Memorial Oration delivered at the Samuel Griffith Society Conference, Adelaide, 13 August 2016) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj13Aug2016.pdf>.

170 See, eg, Robert French, 'Legal Change – The Role of Advocates' (Sir Maurice Byers Lecture, NSW Bar Association Sydney, 22 June 2016) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj22june16.pdf>.

the law.[171] It is arguable that these approaches contribute de facto to a new configuring of the persona of the Chief Justice, one which lacks the full measure of gravitas and mystique associated with the role in earlier times. In his recent David Malcolm Annual Memorial Lecture, Chief Justice French provided a definition of sorts for 'modern judicial leadership', which he says is:

> a multi-dimensional concept reflecting the character of our courts and their relations with the other branches of Government. They are not temples from which oracles dispense the law in more or less Delphic language. They are distinctive and distinct institutions of government, each engaged fully with the community which it serves.[172]

Such a definition certainly reflects his own approach in the extra-curial realm.

V EXTRA-CURIAL LEADERSHIP IN OUR SAMPLE

In Part III above, we explicated our fourfold schema of extra-curial leadership arising from an inductive analysis of the evidence of extra-curial practice on the High Court, namely extra-curial leadership which is intellectual, institutional, collaborative or individualist in character. In linking our categories and analysis of the extra-curial practices of Chief Justices with the theoretical parameters identified for judicial leadership by Danelski, as discussed above in Part II, we would argue that our notion of intellectual leadership has a corollary in Danelski's concept of 'task leadership', although it is likely to be exercised in a distinctly different fashion in extra-curial circumstances. The extra-curial intellectual leader will take the opportunity to speak and publish about matters of substantive law which do not derive their impetus from the cases before the High Court at any given time. The most conspicuous example of this in our sample is Sir Anthony Mason.

Species of institutional leadership in our spectrum of extra-curial leadership are not directly related to the decisions in immediate cases before the court (Danelski's 'task leadership'), but reflect the necessity that a Chief Justice is intimately concerned with the administrative functioning of the court as an institution.[173] Some Chief Justices, by temperament and personal inclination, devote more energy and time to the administrative institutional role. In our sample Sir Garfield Barwick stands out in this category. The leadership associated with these activities may have a significant effect on other Justices, as well as other staff employed by the court. We see this category of ours as more closely aligned with Cornes' third category of 'constitutional guardian and

171 For an assessment of the diverse elements which contribute to a life in the law, see Robert French 'Lawyers, Causes and Passion' (Speech delivered at the Environmental Defenders Office NSW 30th Anniversary Dinner, Sydney, 25 June 2015) <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj25June2015.pdf>.

172 French, 'The Changing Face of Judicial Leadership: A Western Australian Perspective', above n 160.

173 This is a matter of significant concern for contemporary Chief Justices, as is evidenced in Chief Justice Doyle's 2009 paper. See Doyle, above n 37.

statesperson',[174] especially in its manifestation of 'speaking and writing out of court'[175] rather than finding a natural fit with either of Danelski's categories.

Our categories of 'collaborative' and 'individualist' extra-curial leadership represent a diversity of responses to the challenge of what Danelski identifies as 'social leadership'. 'Individualist' extra-curial leadership in our schema recognises the emergence in a Chief Justice of distinctive (and even robust) personality traits. In a sense when we identify 'individualist leadership' we may be talking about a reaction against the challenges of social leadership on the part of certain personality types. Danelski identifies the qualities of the social leader in deciding cases as tending to be 'warm, receptive and responsive' and amongst the best liked members of the court.[176] Where these qualities required for successful social leadership are not present in an individual leader, the tendency on their part may be in the extra-curial realm to assert a form of rugged individualism.

Amongst the Chief Justices in our sample Barwick, Mason and Gleeson all display elements of individualist leadership. Each has a professional career marked by a strong concern for personal achievement. Whilst the drive for personal success and professional excellence is not synonymous with a leadership style directly, we would suggest that it is relevant in some respects to the performance of leadership roles by individuals. Both Barwick and Gleeson identified a special and superior role for the Chief Justiceship beyond its status as *primus inter pares*.[177] Barwick's leadership practice could be characterised as a rule by memorandum[178] which provides insight into its flavour. In his earliest days on the Court, Gleeson's view that the Chief Justice was more important than other Justices was strongly challenged by Justice Gaudron: 'You're no longer in NSW. … It's not first among equals. We are all equal'.[179] We would identify Mason's leadership style as highly individualist, whilst at the same time conceding that he is for us the most enigmatic figure to have led the Court in the last fifty years. Our identification of Mason as an individualist leader is strongly influenced by the corpus of his extra-curial writing, consisting of an abundant sequence of papers and publications individually crafted and launched on the world.

Without doubt Sir Garfield Barwick was the most institutionally focussed of the Chief Justices, which may relate directly to his background in the executive government. Barwick was centrally concerned with the prestige and standing of the High Court as an institution of government alongside the two political branches and this is illustrated clearly in his drive and determination to secure a permanent home for the Court in Canberra.[180] Gleeson, too, arguably took an institutional focus for his leadership but in a distinctive fashion. We would

174 Cornes, above n 8, 571 ff.
175 Ibid 576 ff.
176 See Paterson, above n 1, 146 citing Danelski, 'The Influence of the Chief Justice', above n 4, 487.
177 See text accompanying nn 60–1.
178 See generally Marr, above n 46, ch 17.
179 Pelly, above n 46, 194.
180 See text accompanying nn 62–3.

characterise his leadership as founded in a commitment to the rule of law as a key touchstone for both the institutional credibility of the Court and its operational efficacy.[181] Gibbs in a sense also displayed elements of an institutional leadership style. He had been a member of the Court for a long time before being elevated to the Chief Justiceship and from this position was thoroughly familiar with the changing personal dynamics of the institution. His commitment to upholding the institutional integrity of the High Court was challenged considerably in relation to the Murphy affair.[182] We would also see the institutional dimension of Gibbs' leadership as influenced fundamentally by the fact of his modelling of his judicial persona on Griffith rather than Dixon, and as a consequence his conception of the role of the High Court as an essential mediator in relation to the federal compact.[183]

In terms of collaborative leadership style, Brennan is the exemplar.[184] The clear and unequivocal message from his extra-curial activity in all its variety is his objective at every instance to promote the existence of strong collegial relations on the court. This is well-illustrated in his often quoted description of the lunchtime perambulations of a majority of the Court's members during sittings in Canberra,[185] and in his collegial approach to the roundtable discussions of the Court's work in the *Highest Court* documentary.[186] Gibbs' natural interest in people led to a more collaborative approach to leadership of the Court as a reaction against some of the characteristics of the Barwick era. The circumstances of the Murphy Affair and the attendant challenges to the Court's institutional integrity also invited a more collaborative style of leadership.[187]

In the history of the Court, intellectual leadership in its fullest sense has fallen to very few. There can be little doubt that the long shadow cast by the entrenched view of the intellectual/jurisprudential dominance of Sir Owen Dixon in his 35 years on the bench, particularly during his time as Chief Justice, has cast something of a pall over the assessment of the intellectual leadership of his successors. In the 50 years encompassing our research initiative the contributions made in terms of intellectual jurisprudential leadership arguably do not equal Dixon's. However, in the extra-curial realm, it is arguable that Sir Anthony Mason has surpassed Dixon whom Mason himself has acknowledged as one of his judicial influences.[188] As the guardian of the legacy of the Mason Court, Sir Anthony has been a robust and consistent defender of its decisions

181 See text accompanying nn 150–1.
182 See text accompanying nn 80–4.
183 See text accompanying nn 77–9.
184 See text accompanying nn 138–40.
185 See text accompanying n 139.
186 See text accompanying nn 138–139.
187 See text accompanying nn 150–1.
188 The question of influence upon Sir Anthony Mason is one which needs to be treated with some care. In his conversation with the editors of the *Singapore Law Review* in 1995, Mason revealed a certain reluctance to name any lawyers exercising a direct influence on him professionally. He was prepared to use the language of 'respect' and 'admiration' for other lawyers, and did indicate that his admiration for Dixon extended to Dixon's 'intellectual approach to the law': 'In Conversation: An Interview with Sir Anthony Mason', above n 98.

and methodology both in print and in broadcast interviews.[189] The gatekeeping function which he has adopted since retirement has both institutional and intellectual dimensions. However, the pattern and vigour of Mason's continued engagement with the legal system and the work of courts since retirement is diametrically opposed to Dixon's own practice. As has been the case with other retired High Court Justices, notably Sir William Deane in recent times, Sir Owen Dixon showed no continuing interest in the law in any respect after his retirement from the High Court in 1964. In fact, he turned his face from the law back to the world of classical literature, his first love.[190] This is very far from Mason's ongoing active engagement with a variety of dimensions of the law including legal education,[191] legal research[192] and broader legal professional concerns.[193] He is still a sought-after speaker at legal events nationally and is generous with his time and experience. As such he provides a powerful model of extra-curial leadership both during his time as a sitting Justice and beyond the confines of tenure on the High Court.

Turning to the question of intellectual leadership of other Chief Justices, it is important to reiterate that Sir Harry Gibbs came to the Court with a mature jurisprudential philosophy.[194] During his Chief Justiceship he might be seen to have forged a jurisprudential leadership of dissent in his consistent application of federalist philosophy in some of the most significant constitutional cases of the day.[195] Like Mason, Gibbs continued to contribute in the extra-curial realm after retirement, most notably in the context of the Samuel Griffith Society,[196] at times facilitating the participation of others, such as his presentation of a paper by the elderly, blind Sir Garfield Barwick at the Society's conference in 1995.[197] Such ongoing contributions by retired High Court justices have been facilitated in recent decades by their longevity, good health and mental acuity, as well as the introduction of a constitutionally-mandated retirement age for High Court justices in 1977. Sir Anthony Mason has noted that a characteristic of some, but

189 See above nn 110–13 and accompanying text.

190 Ayres, above n 46, ch 13.

191 For example, he participated in the 'Inaugural Mason Conversation' at the UNSW Law School: UNSW Law School, 'Inaugural Mason Conversation', (4 October 2016) <http://www.law.unsw.edu.au/events/inaugural-mason-conversation-0>.

192 For example, keynote address delivered at the Judicial Independence conference, TC Beirne School of Law, July 2015. This was published in the edited papers as Sir Anthony Mason, 'Judicial Independence in Australia: Contemporary Challenges, Future Directions' in Rebecca Ananian-Welsh and Jonathan Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016) 7.

193 For example, fittingly, as he was the first appointed to the modern office of Commonwealth Solicitor-General, Mason delivered the opening remarks at the event celebrating the centenary of the office in Sydney on 24 October 2016: UNSW Law School, 'Celebrating 100 Years of the Commonwealth Solicitor-General', (24 October 2016): <http://www.gtcentre.unsw.edu.au/events/celebrating-100-years-commonwealth-solicitor-general.>.

194 See text accompanying nn 78–9.

195 See above text accompanying nn 74–5.

196 See above text accompanying n 90.

197 Sir Garfield Barwick, 'Parliamentary Democracy in Australia' (Paper, The Samuel Griffith Society, 1995) <http://samuelgriffith.org.au/docs/vol5/v5chap10.pdf>. See also Lindell (ed), above n 51, 406.

not all, High Court judges is their genuine interest in the law itself.[198] Such personalities are likely to take opportunities to contribute to contemporary debates about law and the legal system.

Gleeson's practice of 'speak[ing] in his own voice'[199] in concurring majority judgments to explain the more complex jurisprudence of his colleagues demonstrates another, perhaps lesser, manifestation of the jurisprudential leadership role. In fact this might be better characterised as an interpretive dimension of leadership for a Chief Justice rather than a sub-class of intellectual. His contribution in the extra-curial role is consistent and largely monothematic, most notably in his presentation of the Boyer lectures.[200] Brennan's contribution to High Court jurisprudence during his 17 years on the Court is a worthy subject for more detailed exploration and it can only be hoped that a ready biographer might be found in the near future to undertake this important task. However, Brennan's Chief Justiceship was short and in some respects seems broadly to reflect the continued intellectual momentum of the Mason years but with tempering in judicial approaches on some issues.[201] However, in terms of extra-curial leadership, Brennan's term is most clearly characterised in terms of collaboration and collegiality. These more social concerns emerging during Brennan's tenure speak significantly to his personal character.[202] From an early dominance of unanimity in cases decided by the French Court, the pattern over time became more diffuse. This may reflect in part French's commitment to diversity in judicial approaches within the broad parameters of judicial method. We have previously made a case for the significance of the intellectual independence of both Justices Heydon and Gageler, both members of the French High Court.[203] French's extra-curial contribution during his time in office is significant both in its breadth and its volume. His many speeches in the great variety of contexts in which they were made neatly highlight core leadership qualities identified by Chief Justices in 2006, and in particular, 'developing a sense of the institution, a collective commitment to justice, and communicating this throughout the court and to the public'.[204]

VI CONCLUSION

In this article we have explored dimensions of the leadership practices of the most recent six Chief Justices of the High Court from the appointment of Sir Garfield Barwick until the retirement of Robert French in January 2017. A consideration of the theory and literature of judicial leadership since its inception in the 1960s has facilitated our own inductive process of analysing the extra-

198 See above n 90.
199 Pelly, above n 46, 198–200.
200 See above text accompanying n 151.
201 See Pierce, above n 1, 245–7.
202 See above nn 121–3 and accompanying text.
203 See Tomkins and Lindsay, above n 48.
204 See Doyle, above n 37.

curial leadership practices of our sample. This is complemented by a discussion of the relevant contexts within which each Chief Justice exercised his particular leadership qualities. The novelty we would claim for our work lies in the combination of our focus on extra-curial activities as an arena within which leadership may be exercised by a Chief Justice, the promulgation of our fourfold schema of extra-curial leadership characteristics arising from our analysis of extra-curial activity by Chief Justices over 50 years and the utilisation in our research of some less traditional sources, particularly interviews conducted for the broadcast media. This combination of approaches potentially opens up for the future some new questions and qualitative research approaches for scholars of judicial leadership and legal biography more broadly.

VII APPENDIX

Extra curial speaking and writing of Chief Justices 1964-2016

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
Academic Conferences			*75 presentations at university conferences, seminars, workshops, forums and lecture series* *36 chapters in books* *160 contributions to periodicals and law reviews* -Australasian Law Teachers Association 50th Anniversary Conference 1995 -Seminar Contract Law Australian National University 1986 -'The Contract' *with* S J Gageler in P Finn *Essays on Contract* (1987)	-Mason Court & Beyond Conference, Melbourne 1995	-Australasian Law Teachers Association Conference 1998	-Unleashing the Tiger? Competition Law in China and Hong Kong Conference Melbourne Opening address 2008 -Rural & Regional Law & Justice Conference Warrnambool 2010 -Australasian Law Teachers Association Conference, Keynote Address 2011 -Cambridge Public Law Conference 12 September 2016
Anniversary Events		-75th Anniversary of Queensland Bar Association 1978 -50th anniversary of the University of Queensland Law School, 1985	*89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies*	-Administrative Appeals Tribunal 20th Anniversary Conference 1996 -75th Anniversary of the Engineers Case, Australian National University, 1995 -50th Anniversary of the International Court of Justice, Opening of Colloquium 1996 -UNSW Faculty of Law 25th Anniversary Dinner 1996	-175th Anniversary of the Supreme Court of NSW 1999 -Centenary of the High Court, Australian Institute of Judicial Administration 2003 -Anniversary of the first sitting of the High Court of Australia Melbourne 2003 -Ceremonial Sitting for the Centenary of the High Court Hobart 2003	-Law Council of Australia 75th Anniversary Dinner 2008 -35th Professor Harry Messel International Science School 2009 -International Committee of the Red Cross and Australian Red Cross 60th Anniversary of Geneva Conventions 2009 -Centenary of Northern Territory Supreme Court Knewaldt Lecture 2011 -UNSW Law School 40th Anniversary 2011

205 Geoffrey Lindell, 'Introduction' in Geoffrey Lindell (ed), *The Mason Papers* (Federation Press, 2007) 1.
206 See also Robin Creyke, 'Extra-Curial Writings' in Robin Creyke and Patrick Keyser (eds), *The Brennan Legacy* (Federation Press, 2002) 141.
207 For speeches as Chief Justice of NSW, see Michael Pelly, *Murray Gleeson: The Smiler* (Federation Press, 2014) ch 28. See also, ibid, ch 34: 'The PR Guy'.

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
					-Administrative Appeals Tribunal 30th Anniversary 2006	-Francis Burt Chambers 50th Anniversary Dinner WA 2012 -50th Anniversary of Prof Harry Messel International Science School 2012 -Environmental Defenders Office NSW 30th Anniversary Dinner 2015 -Australian Law Reform Commission, 40th Anniversary Celebration 2015 -Chartered Institute of Arbitrators Centenary Conference 2015 -Chartered Institute of Arbitrators (Australia) Centenary Gala Dinner 2015
Annual Dinner Speeches			*89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies* -Annual Federation Dinner of the Corowa District Historical Society 1992			-Melbourne University Law Review Annual Dinner 2009 -15th National Schools Constitutional Convention Dinner 2010 -Northern Territory Bar Association Annual Dinner 2010 -Victorian Bar Association Annual Dinner 2010 -The Law Society of New South Wales Annual Members' Dinner 2010 -NSW Bar, Constitutional and Administrative Law Branch Annual Dinner 2013
Awards						-Australian Migration and Settlement Awards Diversity and Law Award 2013

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
Book Launches/ Digital Repositories/ Archives **Book Forewords /Prefaces; Book Reviews**			*34 forewords and prefaces in books* -Review of P Birks *An Introduction to the Law of Restitution* 1988 -Launch of Keith Mason and John Carter's *Restitution in Australia* 1995	-Launch of the *Sydney Law Review* volume 17, no 2, Reporting Papers of the Symposium: The Internationalisation of Australian Law	-*Oxford Companion to the High Court of Australia* Australian National University 2002	-Relaunch of National Archives exhibition on the High Court 'Memory of a Nation' Gallery 2009 -Book Launch *Privatising the Public University: The Case of Law* by Margaret Thornton 2012 -*Historical Foundations of Australian Law*, Book Launch 2013 -*Justice in Arms: Military Lawyers in the Australian Army's First One Hundred Years* Book Launch 2013 -*Legal Limits* Book Launch 2013 -Australasian Legal History Libraries 2014 -*Pericleans, Plumbers and Practitioners* Book Launch Monash University 50th Anniversary 2014 -*Statutory Interpretation in Australia* 2014 -*High Court, The Constitution and Australian Politics* Book Launch 2015 -*The Constitution of the Commonwealth of Australia — History, Principle and Interpretation* Book Launch 2015 -Fourth Edition of *Cowen and Zines' Federal Jurisdiction in Australia* Book Launch 2016

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
Breakfast / Lunch Speeches						-Anglo-Australasian Lawyers Society Breakfast Address 2013 -Intellectual Property Society of Australia and New Zealand (WA Branch) 2015 -European Australian Business Council Luncheon Address 2016
Chambers Opening						-Opening of Owen Dixon Chambers West Extension 2014
Conferences / Presentations – Practitioner / Judicial Conferences	-*(Inaugural) State of the Australian Judicature* 19th Australian Legal Convention 1977 -*State of the Australian Judicature* 20th Australian Legal Convention 1979	-*State of the Australian Judicature* 21st Australian Legal Convention 1981 -*State of the Australian Judicature* 22nd Australian Legal Convention 1983 -*State of the Australian Judicature* 23rd Australian Legal Convention 1985 -Bar Practice Centre, Brisbane 19 November 1985 -Australian Bar Association Second Biennial Conference 3 July 1986 -Fifth Seminar of Australian Institute of Judicial Administration 23 August 1986	*89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies* -*State of the Australian Judicature* 24th Australian Legal Convention 1987 -*State of the Australian Judicature* 26th Australian Legal Convention 1989 -'*Changing the Law in a Changing Society*' Address to the 27th Australian Legal Convention 1991 (9 September 1991) -*State of the Judicature* 28th Australian Legal Convention 1993	-Seventh International Appellate Judges Conference 1995 -Australian Bar Association Conference 1996 -15th Annual Conference of the Australian Institute of Judicial Administration 1996 -Australian Institute of Judicial Administration Asia/Pacific Courts Conference 1997 -Australian Judicial Conference 1996 -6th Conference of Chief Justices of Asia and the Pacific 1995 -*State of the Judicature*, 30th Australian Legal Convention 1997 -15th LAWASIA Conference 1997	-Judicial Conference of Australia Third Annual Colloquium 1998 -Greek-Australian International Legal and Medical Conference 1999 -Seventh Australasian and Pacific Conference on Delegated Legislation, Fourth Australasian and Pacific Conference on the Scrutiny of Bills 1999 -*The State of Judicature*, 32nd Australian Legal Convention 1999 -Women Lawyers' Association of NSW 1999 -Australian Law Reform Commission Conference 2000 -Judicial Conference of Australia 2001	-Australian Law Librarians Association Conference 2008 -Judicial Conference of Australia National Colloquium 2008 -National Judicial College of Australia and Australian Academy of Forensic Science Conference on Judicial Reasoning Opening Address 2009 -Law Council of Australia, Superannuation Committee Conference 2009 -Licensing Executives Society of Australia and New Zealand Annual Conference 2009 -Australian Institute of Judicial Administration Court Administrators' Group Conference 2009 -Second Indo-Australian Legal Forum Meet 2009

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
					-International Conference on Regulation Reform, Management and Security of Legislation 2001 -Family Court Conference, Sydney 2001 -*The State of Judicature* 2001 -Judicial Conference of Australia 2002 -*State of the Judicature*, 13th Commonwealth Law Conference 2003 -Judicial Conference of Australia Colloquium 2003 -Judicial Conference of Australia Colloquium 2004 -*State of the Judicature*, 19th Biennial Conference of LAWASIA 2005 -14th Commonwealth Law Conference 2005 -National Access to Justice and Pro Bono Conference, 2006 -Judicial Conference of Australia Annual Colloquium 2006 -National Judicial College of Australia 2007 -*State of the Judicature* 35th Australian Legal Convention 2007 -LAWASIA Conference 2007 -Judicial Conference of Australia 2007	-2009 Competition Law Conference Sydney -Australia and New Zealand Scrutiny of Legislation Conference 2009 -Law Council of Australia Multi-Door Symposium 2009 -Law Council of Australia Trade Practices Workshop 2009 -Australia and New Zealand College of Notaries Biennial Conference 2009 -*State of the Australian Judicature*, 36th Australian Legal Convention 2009 -Fourth International Conference on the Training of the Judiciary 2009 -28th Annual LAWASIA Conference Welcoming Remarks 2009 -Australian Institute of Administrative Law Annual Conference 2010 -International Association for Court Administration 7th International Conference 2011 -Migration Review Tribunal and Refugee Review Tribunal Annual Members' Conference 2011 -13th Greek/Australian International Legal and Medical Conference 2011 -World Bar Conference 2012

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
						-Commonwealth Lawyers Association Regional Conference 2012 -Tax Institute 27th National Convention 2012 -Australian Women Lawyers Association Fourth National Conference 2012 -Law Council of Australia International Trade Law Symposium 2014 -International Commercial Law and Arbitration Conference 2013 -Australian Institute of Administrative Law 2015 -5th International Conference on Evidence Law and Forensic Science 2015 -28th Annual LAWASIA Conference, Welcoming Remarks 2015 -Asian Competition Forum Hong Kong 2015 -Legal Convergence in an Asian Century Conference, Singapore 2016 -2016 National Indigenous Legal Conference -Judicial Conference of Australia Colloquium 2016 -15th International Criminal Law Congress 2016

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
Court Seminar / Conference		-'Judgment Writing' paper delivered at the Judges' Conference 19 January 1993	-Dinner of Annual Conference of District Court Judges 1992 -Opening Address at NSW Supreme Court Judges' Conference 1993 -Second National Conference, Family Court of Australia 1995	-New Zealand High Court & Court of Appeal Judges' Conference 1996	-NSW Supreme Court Judges' Conference 1998 -Supreme and Federal Court Judges' Conference 2004 -Judiciary of the Commonwealth of the Bahamas 2008 -Local Courts of NSW Annual Conference 2008	-NSW Supreme Court Annual Conference 2009 -Queensland Supreme Court Seminar 2012 -Supreme and Federal Court Judges' Conference 2013 -Supreme and Federal Courts Judges' Conference 2014 -Northern Territory Supreme Court Language and the Law Conference 2015 -Judicial Colloquium, Equitable Compensation, Hong Kong 2015 -Supreme and Federal Court Judges' Conference 2016
Dinner Speeches			-Melbourne University Law Review Dinner 1995 -Mason Years and Beyond Conference Dinner 1995 *89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies*	-Central Queensland Law Association Dinner to Celebrate the Centenary of the First Central Judge 1995 -Law Institute of Victoria Dinner 1995	-Gilbert + Tobin Centre of Public Law Constitutional Law Conference Dinner Address 2004	-2010 Constitutional Law Conference Dinner, Gilbert + Tobin Centre of Public Law, UNSW 2010 -Law Council of Australia, Corporations Law Workshop Dinner 2010 -Australian Bar Association Bar Readers' Trial Advocacy Course, Closing Dinner 2011 -Inglis Clark and the Building of the Australian Nation Conference 2013 (Centenary of ACT, Department of Senate) -*State of the Australian Judicature* – Law Council of Australia and Australian Bar Association (NB Australian Legal Convention defunct) 2016

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
Eulogy / Memorial / Obituary			-Eulogy at Memorial service for The Rt Hon Sir John Kerr AK, GCMG, GCVO 1991 -Obituary Hon Kenneth Asprey 1993			GA Kennedy AO 2012
Guest Lectures			*78 lectures and speeches to university students, meetings of university law societies, graduation and honorary degree ceremonies*	-Second lecture on the "Broadcasting, the Law and Society" Series, University College Dublin	-Law Summer School University of Western Australia 2006	-Law Summer School University of Western Australia 2009 -JD Lecture Series University of Melbourne Law School 2009 -John Fordham Law School Constitutional Law Master Class 2010 -Washington University in St Louis School of Law, USA 2011 -Law Summer School University of Western Australia 2014 -Brennan Justice and Leadership Program University of Technology Sydney 2015
Graduation Address			-Griffith University – Address on receiving Honorary degree 1995	-University of Queensland Law Graduation Occasional Address 1996	-University of Sydney Graduation Ceremony 1999 -Honorary degree Griffith University 2001	-University of Western Australia Graduation Ceremony Occasional Address – Arts, Humanities & Social Science 2011
Interviews: Broadcast and Print Media & Documentary Appearance / Oral History			-ABC *The Chief Justice* Four Corners interviewed by Liz Jackson 24 April 1995 -Interview with Sir Anthony Mason reported in (1996) 17 *Singapore Law Review 1*	-ABC *The Brennan Way* Lateline interviewed by Maxine McKew 21 May 1998 -*The Highest Court* directed by Daryl Dellora (FilmArt Media, 1998). -*Hail to the Chief* UNSW Law School interviewed by Keith Mason 23 September 2010	-ABC Radio National Boyer Lectures *The Rule of Law and the Constitution* 19 November – 24 December 2000 -ABC Radio National Law Report *Chief Justice of Australia* 27 March 2007	

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
			-The Most Outstanding Lawyer of the Century – Sir Garfield Barwick Lateline (2009) -*Hail to the Chief* UNSW Law School interviewed by Keith Mason 27 May 2010 -NSW Bar Oral History Project interviewed by Juliette Brodsky 2012		-ABC Radio National Law Report *Retirement of Chief Justice Gleeson The Law Report* 19 August 2008	
Judicial Organisations (Events)	-'A Regional Court of Appeal' [1969] *New Zealand Law Journal* 315			-National Judicial Orientation Programme 1996	-National Judicial Orientation Programme 1998	-Federal Circuit Court 2014 -International Association for Court Administration, 7th International Conference 2014 -Cultural Diversity and the Law Conference (Migration Council and Australasian Institute of Judicial Administration) 2015 -Judicial Council on Cultural Diversity National Roundtable 2015
Law School Curriculum						-Curriculum review at UNSW 2014
Law Students' Association Events			-Inaugural Sir Anthony Mason Lecture, Melbourne University Law Students' Society 1995			-Isaacs Law Society Ball University of Canberra 2009 -Sir Anthony Mason Lecture University of Melbourne Law Students' Society 2010 -Australian Law Students' Association Conference Perth 2013

Type of presentation	Barwick CJ (1964–81)	Gibbs CJ (1981–87)	Mason CJ (1987–95)[205]	Brennan CJ (1995–98)[206]	Gleeson CJ (1998–2009)[207]	French CJ (2008–29 January 2017)
Law Society / Bar Assoc Events			*89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies*		-Australian Bar Association Conference 2000 -Launch of the Victorian Bar Legal Assistance Scheme 2001 -Australian Bar Association Conference 2002	-Bar Association of Queensland Annual Conference 2009 -New South Wales Bar Association, Bench and Bar Dinner 2009 -Victorian Bar Association Second Annual CPD Conference 2012 -Australian Bar Association Conference, Rome 2013 -Australian Bar Association & Victorian Bar National Conference 2016
Other Legal Practitioner Societies			*89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies*		-Melbourne Catholic Lawyers' Association 2004 -Anglo-Australasian Lawyers' Society 2007 -Anglo-Australasian Lawyers' Society 2008	-Medico Legal Society of Victoria 2009 -Anglo-Australasian Lawyers Society, Sydney 2009 -Society of Trust and Estate Practitioners 2010 -Scottish Public Law Group 2012 -Anglo-Australasian Lawyers Association and Constitutional and Administrative Law Bar Association, London 2012 -St Thomas More Society 2012 -North West Law Association and Murray Mallee Community Legal Service, Mildura 2013 -WA Society of Jewish Jurists and Lawyers 2013 -Hellenic Australian Lawyers Association, Queensland Chapter Launch 2015

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						-Anglo-Australasian Lawyers Society, London 2016
Named Lectures – Universities	- Lionel Cohen Lecture, Hebrew University of Jerusalem 1969 - Inaugural Newcastle Lecture, University of Newcastle (NSW) 1975	- 11th Wilfred Fullagar Memorial Lecture Monash University 1982 -Menzies Lectures (x2), 1987; University of Virginia 8 October 1987; William and Mary College 12 October 1987	- 16th Wilfred Fullagar Memorial Lecture Monash University 1987 -Cambridge Lectures, Canadian Institute of Advanced Legal Studies 1993 -Shimizu Trust Lecture, London School of Economics 1995 -Reshaping Australian Institutions – Lectures (3) Australian National University 1996		-Flinders University Investigator Lecture 2008	-Vice-Chancellor's Oration Edith Cowan University 2009 -John Curtin Prime Ministerial Library Anniversary Lecture 2013 -Sir Zelman Cowen Memorial Oration, Monash University 2015 -Harold Ford Memorial Lecture, Melbourne Law School, 2015 -21st Annual Goff Arbitration Lecture, Hong Kong 2016 -David Malcolm Annual Memorial Lecture, University of Notre Dame Australia, Fremantle 2016
Named Lectures – Practitioner or Judicial Groups			-Second Leo Cussen Memorial Lecture 1987 -Blackburn Lecture, Law Society of the Australian Capital Territory 1989 -Singapore Academy of Law 1995 *89 speeches, opening and occasional keynote addresses and after dinner speeches at conferences and meetings of professional and other societies*		-Singapore Academy of Law 2007 -Martin Kriewaldt Memorial Address 2008 -Justice Hill Memorial Lecture 24th National Convention, Taxation Institute of Australia 2009	-Peter Nygh Memorial Lecture, 15th National Family Law Conference 2012 -20th Annual Singapore Academy of Law Lecture 2013 -Law and Justice Address 2013 (Law & Justice Foundation) -Inaugural Ron Bannerman Competition Lecture 2015 (ACCC & Business Section of Law Council of Australia) -Birkenhead Lecture, Gray's Inn 2015 -Sir Maurice Byers Lecture 2016 -Catherine Branson Lecture Series 2016

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						-David Malcolm Annual Memorial Lecture 2016
Named Lectures – Other			-Sandra David Memorial Oration, St Vincent's Clinic Foundation, 1996		-The Second Magna Carta Lecture, NSW Parliament House 2003 -St Vincent de Paul Society Inaugural Gerald Ward Lecture 2008	-Inaugural Patron's Lecture, Australian Academy of Law 2012 -Inaugural Kep Enderby Lecture, Sydney 2015 -Sir Harry Gibbs Memorial Oration, Samuel Griffith Society, 2016 -Campion Lecture, St Aloysius College, Kirribilli 2016
Law School – Other		-[Address to UNSW Law School students 13 August 1991: Courage in Constitutional Interpretation and its Consequences]	-Inauguration of Faculty of Law University of Wollongong 1991 -Occasional Address at opening of Deakin University Law Program, Canberra 1992	-Lecture at Bond University Law School Feb 1998		-21st Anniversary Celebration for the Centre for Comparative Constitutional Studies, University of Melbourne 2009 -John Marshall Law School, Chicago 2010 -Deakin Law School 20th Anniversary Dinner 2012 -Launch of Thomas More School of Law, Australian Catholic University 2014 -800th Anniversary of the Magna Carta, 40th Anniversary of Murdoch University, 25th Anniversary of Murdoch Law School 2015
University – Other	-Association of Commonwealth Universities Conference, Edinburgh 1973		-Law and Government Seminar Australian National University 1995		-Address at the 150th anniversary of the University of Sydney Senate -Polish Constitution Commemoration 2005	-John Curtin Institute of Public Policy, Public Policy Forum 2009 -University of Western Sydney Biennial Dinner 2010 -University of Southern Queensland 2010

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						-Renmin University of China Law School, 2016
Other	-(1964) 1 *Federal Law Review* 1 article on new Federal Court. [Written as minister, printed when CJ] -1969 opening remarks, Conference of the Australian Regional Groups of the Royal Institute of Public Administration. -*The Preservation of Diversity* (Australian Conservation Foundation Publication, 1971) -'Problems in Conservation' (1975) 1 *UNSW Law Journal* 3 -1979 Presidential address, Bentham Club, University College London -'The Judiciary Joins the Crown and Parliament in the National Capital (1981) 9 *Sydney Law Review* 275 [1981 Book Review of *The High Court and the Constitution*, Leslie Zines] [*Sir John Did His Duty* (Serendip Publications, 1983)]	-'The High Court Today' (1983) 10(1) Sydney Law Review [Various addresses to Samuel Griffith Society in retirement]	-Address to the Sydney Institute 1994 -Official opening of Law Council of Australia's new building 1992 *[13 interviews with the media on retirement]*	-Address on the Occasion of Naming Magna Carta Place, Canberra 1997	-Sydney Institute 1999 -Supreme Court of Japan 2000 -ABC Boyer Lectures *Rule of Law and The Constitution* 2000 -St James' Church Christmas Service for Lawyers Occasional Address Sydney 2000 -Sir Samuel Griffith Society 2002 -Sydney Institute, 2004 -Australasian College of Surgeons St Mary's Cathedral Sydney 2006 -Australian Academy of Law Launch 2007 -Victoria Law Foundation Oration 2008	-Australian Academy of Law Symposium Series 2008 -James Merralls AM QC, 40 Years as Commonwealth Law Reports Editor 2009 -Australian Institute of International Affairs ACT Branch, 2010 -National Archives of Australia Constitution Day Lecture 2010 -Seventh Annual St Thomas More Forum Lecture 2011 -Closing Address Asia Pacific Model United Nations Conference 2011 -Aboriginal Women's Legal Education Trust Launch, Supreme Court of Western Australia 2011 -Planning Institute of Australia, National Congress, Canberra 2013 -State Library of Western Australia Foundation, Behind the Covers, 2013 -Public Law Wales 2016