LAUNCH

TOM HUGHES QC: A CAB ON THE RANK

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The New South Wales Bar for several years has had, on the wall of its Common Room, a fine portrait of TEF Hughes QC, one of its former Presidents. Now there is another fine portrait of the same subject, this time in book form, available to the Bar and to the public.

The author, Ian Hancock, is to be congratulated. This book contains a skilfully written account of Tom's life and, as well, a measured and just assessment of his contribution to the law and to politics.

The Federation Press made an excellent decision that Tom's story should be available to the profession and the community, and followed through with a handsome publication.

In a substantial sense, Tom himself has been an active contributor to the work. This is not just an authorised biography written with the cooperation of the subject. At important times in his long life Tom kept a diary. He was also a prolific correspondent, and he took pains to keep a collection of letters covering much of his life. Ian Hancock had available to him extensive source material, which has been deployed to great advantage. Many diary entries and letters are quoted and, of course,

speak in distinctive cadences. We not only have a large portrait of Tom; we have many miniature portraits by Tom of other people, including prominent figures in the legal profession and in public life. I should mention that some of the observations about lawyers and judges are unflattering. (The reason I should mention this is that it will promote sales of the book among barristers.)

This is a life that has been long, varied and full: in the words of the poet Vildrac, a life that has had nothing in common with death. Tom Hughes has lived at the height of his times. Over many years he was a leader of his profession and he played an important part in its corporate life. His time in politics is now sufficiently distant for it to be examined without that process affecting, or being affected by, current issues.

The care that Tom took, over a long period, to make and keep records seems to suggest a desire to create a legacy for his descendants and to discharge an obligation to his family and his profession; but the range of potential beneficiaries is much wider. This prompts a reflection. What will be the comparable source materials available to historians in the days of email and text messages?

A major part of what emerges from this book is the background – the context – against which Tom's records of his activities and impressions are made. A reader of his experiences as a young officer in the Air Force during World War II may be interested in what he did, but perhaps of even greater interest are his observations and descriptions of what was going on around him. Because he was such an astute and articulate

observer, what he says conveys a powerful impression of past circumstances and events. He was operating close to Normandy at the time of the D-day landings. His personal account of active service in wartime England is full of interest.

Being able to produce diary entries from World War II is, of course, a sign of a certain age. One of Tom's contemporaries, a very senior member of the New South Wales judiciary, was famously non-committal about his age. He told me that once, while speaking to a group of young women at the Law School, he inadvertently mentioned that he was in the war. One of them said: "Were you in Vietnam?" He wrestled with his conscience – or so he told me – and wondered whether he could get away with saying he had been in the Korean War. He realised that some of his audience would be unlikely to have heard of that conflict, so he replied: "Yes, Vietnam."

This biography includes an extensive description of Tom's personal and family life and makes a just acknowledgment of the importance of his family and his wife, Chrissie. Many lawyers will be surprised by the extent and intensiveness of his farming interests. (He now lives at "Bannister", near Goulburn, which was selected originally by Saxe Bannister, the first Attorney-General of New South Wales.) Robyn and I, some years ago, spent a weekend with Tom and Chrissie in the country. During a walk on the Saturday morning, we came across a sheep with some kind of infestation. Robyn and Chrissie went on, and I stayed with Tom, who set about dealing with the sheep's problem. After he had been

doing this for an hour, and being aware of how much it would have cost, say, Consolidated Press to engage his attention for that time, I asked him what the sheep was worth. He said “About $8.50”. He evidently read my thoughts and added: “With sheep, there are humanitarian considerations involved.”

The account of Tom’s political career in the 1960s and early 1970s (before the Whitlam era, and hence, for some people, in a time of pre-history), its description of the contentious issues of the time, and its reporting of Tom’s observations of leading political figures, will attract members of the political class and students of history. What is likely to be of greatest interest to lawyers will be Tom’s professional career, from which the book takes its title: a reference to the “cab-rank rule”, which obliges barristers to accept work within their areas of practice even if the client is unpopular or the case uncongenial. Observance of this rule is part of the barrister’s duty to the court, and in turn protects the barrister from being identified with the cause of his or her client.

Tom Hughes was one of the best and most successful advocates produced by the New South Wales Bar. The book conveys the enormous range of his experience and the extent of his achievements. Ian Hancock, no doubt assisted by Tom, has made an excellent selection of cases to bring this out, and his commentary on these cases is balanced and well-informed.

Some of the cases discussed are of obvious importance to legal history. An example is the Concrete Pipes Case, argued by Tom while he was

Commonwealth Attorney-General. Because of the importance of precedent, developments in the law tend to take on an appearance of inevitability. This is an example. How many lawyers, today, would expect that, under the Constitution, anti-trust legislation should be a matter for the States, rather than the federal Parliament? Or, on another issue about which there was controversy at the time, who would expect that control of offshore oil and gas production should rest with the States rather than the Commonwealth? Tom Hughes had a clear appreciation of the centripetal forces at work in the Federation by reason of a number of developments since 1901, including the importance now attached to the role of government in economic and financial management. This made him a “centrist” at a time when powerful elements on his side of politics were distrustful of that tendency.

Legal developments may also be seen by reading between the lines. The author mentions that Tom’s old friend, Antony Larkins, was appointed to the Supreme Court of New South Wales. It could have been added that he became a Judge in Divorce. How many of today’s lawyers think in terms of a divorce jurisdiction in the Supreme Court? The author refers to the appointment of Sir Harry Gibbs to the High Court while Tom was Attorney-General. It could have been added that he was the Federal Judge in Bankruptcy and that, at the time, the federal judiciary, apart from industrial judges consisted substantially of the seven members of the High Court and the Judge in Bankruptcy. While Tom Hughes was Attorney-General, there was no Federal Court of Australia and no Family Court. One reason the federal judiciary was so small was that, at the

time, the Constitution required that (as in the United States to this day) federal judges had life tenure. It would be interesting to know what was happening within government, while Tom was Attorney-General, about the momentous changes affecting the federal judiciary that came fairly soon afterwards.

The Bar has every reason to recognise Tom Hughes for his generous and unstinting contribution to its life as an institution. He was in the long tradition of barristers who accepted an obligation to repay their debt to their profession in that way.

He is a great barrister, and a great Australian.