

BOOK LAUNCH NOTES - SYDNEY, 8 APRIL 2024

Chief Justice Mortimer

1 We are on Gadigal country, and at the launch of a book about a man who drove the correction of the law about who this country traditionally belonged to and who belonged to this country, it is especially appropriate to pay our respects to the Gadigal people of the Eora Nation, to their elders and to their ancestors. And to acknowledge that despite colonisation, Gadigal law and traditions, culture and connection to these lands and waters endures, and all Australians are the richer for it.

2 Stacy Schiff, an American author, who has written a number of biographies said this about the task:

When finally I mustered the courage to tell a novelist friend that I was talking to editors about a biography, her reply was, ‘Oh, that’s okay. That’s not a real book.’

3 That statement does **not** apply to Jeff Fitzgerald’s biography of Sir Gerard Brennan. It is a REAL book. With extraordinary dedication and determination, Jeff has investigated, interviewed, sifted and sorted a huge amount of material and has produced an account of the professional life of Sir Gerard which aptly reflects the subtitle of the biography, “The Law’s Good Servant”.

4 It is important also to give thanks to Robert Hannaford; the extraordinary artist whose portrait of Sir Gerard fills the dust cover of the book. This portrait so tenderly and appropriately reflects Sir Gerard Brennan the Judge, and Ged Brennan the human being, that it is simply remarkable - his gaze seems astonishingly real. Thank you Jeff for choosing to use it.

5 Biography is a genre that is unlikely ever to satisfy any reader completely – and I imagine, especially not the author. One sets out to capture the life of another person, usually a person with a great many achievements, known by a large number of people, but known in such a variety of ways. Ged is a good example of this. I expect almost everyone who is here, is here because they knew Ged in some way. We all encountered him through particular periods of *his* life, and of *our* own lives; we may share some experiences of him but we may view even those experiences quite differently from one another, and there will be other parts of his life, both personal and professional, about which we know very little, or nothing. There may be strong

yet complicated emotional ties held by family, as family ties inevitably are. They may be ties born of collegiality and friendship outside the law or within it, ties developed through working with Ged in one or more of the Courts and Tribunals to which he devoted so much of himself and his life. We will bring those different perspectives to our reading of this biography. It makes the task Jeff has taken on all the more challenging.

6 I knew Ged from the time I was in my late twenties. So there are parts of Jeff’s biography that are quite familiar to me, but many parts of it which were new.

7 I was fascinated to read about 3 matters wholly new to me:

(a) The paternal care Ged’s father Frank showed towards him as a child, and the diary that Frank kept about Ged’s childhood, some of which can be seen in one of the photos in the book¹. For a professional man in the late 1920’s and early 1930, this was a tender and, I venture to suggest, unusual activity for a father.

(b) The Chapter on the early years of the **Administrative Appeals Tribunal** under Ged’s leadership was full of interesting material. I very much enjoyed the quote from an oppositional bureaucrat that the establishment and entrenchment of the AAT as an administrative merits review body meant that

“Never before have officials had to be conscious of legal details in terms of what is decided and how it is decided.”²

A revolutionary proposition indeed. We have Ged’s leadership, and the inspiration of the federal government in the early 1970’s to thank for the fact that it is a regular expectation in the exercise of administrative power in this country that officials “understand the legal details”.

(c) Finally, I was fascinated to read at many points in this biography about the Ged I did not know as well – the determined and somewhat outspoken lawyer who was committed to law reform and to addressing the way the justice system failed to serve those who needed it most. Of course this was something I knew about Ged in a general sense, but I read with interest those parts of Jeff’s biography about Ged’s time on the Australian law reform Commission, and his roles in the Queensland and Australian Bar Associations. In particular I enjoyed reading

¹ Jeff FitzGerald, *Sir Gerard Brennan: The Law’s Good Servant* (Federation Press, 2024) 12.

² *Ibid* 121.

about Ged's cameo on the then ABC TV program *Monday Conference* in 1973³. Let's reflect that was forty years ago. I was just entering high school. The pressing issues Ged and other participants were asked about included costs of legal representation, costs of litigation, long delays in court proceedings, the role of the legal profession in driving change in these matters. Is it reassuring or disturbing that these sound so familiar forty years later? These stories were a reminder to me of the real changes and constraints brought to Ged's life once he took an appointment as a Judge, and for the most part he then faithfully abstained from participating in public debate. That is, until his retirement, including the documentary he participated in at his retirement. In retirement, his letters to the editor always hit the mark and I remember his satisfaction in being able to express himself again in public debate.

8 Other parts of Jeff's biography involved a new rendition of familiar events

- (d) In 1988, the decision in *Cole v Whitfield*⁴ – that being the year I was Ged's Associate. It's always fascinating to see different perspectives on an event like that which one lived through, - but as I *now* know only too well, what an Associate might see and might believe they understand could only be the tip of the judicial iceberg.
- (e) Jeff's recording of Ged's personal reflections about the 1992 decision in *Marion's case*⁵, and the deep importance of the issues in that case to Ged as a person, especially why he considered the correct approach was to prioritise the inherent dignity of every individual over the concept of the best interests of the child⁶. In our chats over the years, Ged often returned to *Marion's case*.
- (f) The anecdote about the avalanche of Brennan grandchildren towards their grandfather and the official photographers at Ged's farewell ceremony in May 1998. One of Ged's granddaughters is quoted as describing the ensuing photos showing "a grandfather laughing with joy in the middle, his wife at his side, mobbed in all directions by more than a dozen young grandchildren"⁷. Family

³ Ibid 100-101.

⁴ *Cole v Whitfield* [1988] HCA 18; 165 CLR 360.

⁵ *Secretary, Department of Health and Community Services v JWB and SMB (Marion's case)* [1992] HCA 15; 175 CLR 218.

⁶ FitzGerald (n 1) 372.

⁷ Ibid 464.

– and lots of them – was the fabric of Ged’s life, and of Pat’s life. While family is not the focus of this biography we cannot describe Sir Gerard the Judge without talking about his family. Jeff Fitzgerald’s work amply recognises this.

9 Jeff has understandably devoted a large part of the book to Ged’s reflections and commitment to the interests of First Nations Peoples. He has traced some of the ways Ged’s thinking developed over time and what influenced him. Jeff has paid due attention to the decisions **after** *Mabo No 2*⁸, such as *Wik*⁹, and *Kruger*¹⁰, and I found the “Aftermath” section in the Mabo cases chapter insightful.

10 Ged’s contributions through the Mabo decisions resonate through time and place. In November 2022 I was in Waiben, or Thursday Island in the Torres Strait, to make orders recognising more than 40,000 square km of sea country of six groups, extending through the Torres Strait and around Cape York.

11 I often spoke to him about the Court’s native title work and he loved to hear about it. But this day, six months after Ged’s death, sitting right in front of me was a traditional drummer with a t-shirt dating from the Mabo decision in 1992. It had obviously been washed and washed, and worn and worn. This Torres Strait Islander wore that Mabo t-shirt with such pride and remembrance, while he was front and centre in a ceremony in 2022 that would never have occurred but for Ged’s judicial courage and brilliance in 1992. My point is: the judgment in Mabo is not a decision consigned to history in the Torres Strait, nor indeed around this country in First Nations communities. It has become a living and vital part of people’s stories and identity.

12 Jeff, we thank you for ensuring we are all reminded of the Ged we knew, and the Ged we did not know. And for setting down in writing a narrative of the so very many different ways in which he served.

⁸ *Mabo and Others v Queensland (No 2)* [1992] HCA 23; 175 CLR 1.

⁹ *Wik Peoples v Queensland* [1996] HCA 40; 187 CLR 1.

¹⁰ *Kruger v the Commonwealth* [1997] HCA 27; 190 CLR 1.