

Foreword

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John McLaughlin had a long career in the law before his retirement as Associate Judge of the Supreme Court of New South Wales in 2010. As a law student, he had a special affinity with Australian Legal History and in 1973 completed a Master of Laws on the New Wales magistracy before 1850. After retirement he embarked on a PhD thesis on the migration of Irish lawyers to Australia in the nineteenth century and his thesis has now been turned into this posthumously published book. His experience as a lawyer, his Irish Catholic ancestry and his membership of the New South Wales Working Party of the Australian Dictionary of Biography more than prepared John McLaughlin for tackling his subject, which has largely been ignored by legal historians. I had the pleasure of examining John's PhD thesis and that, along with my research into the Irish in Van Diemen's Land/Tasmania, constitutes my qualification to write this Foreword.

McLaughlin tackles his subject coherently and systematically in rich detail, drawing on a range of primary and secondary sources, including the relatively few surviving private records produced by lawyers. He sets the broader context by describing the governance, society and rapid population growth of Ireland in the late eighteenth and early nineteenth centuries and examines the limited prospects for men seeking to enter the legal profession. Facing bleak futures, emigration became a lifeline for many Irish from the early eighteenth century. There were push and pull factors. The main reasons why lawyers left Ireland were the 1798 and 1848 uprisings, depressed economic conditions, the surfeit of lawyers, religious disadvantage for Catholics, the limited amount of work for lawyers after the Incumbered Estates statutes of the 1840s and 1850s, their ability to secure patronage and references of good character (essential in the colonies) and the plentiful opportunities for professional advancement abroad. McLaughlin adds a global dimension by exploring opportunities in England, in British colonies, including India and Canada, and in the United States of America, but for different reasons they were not overly attractive to many Irish lawyers.

Although the most remote, especially in the 1840s, many Irish lawyers favoured the Australian colonies, where most prospered in their careers and some attained high judicial office. The legal profession in the Australian colonies was much smaller than in other places, Irish legal qualifications were

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readily accepted and the system of law was similar to Ireland's, although McLaughlin points out various "practical differences". Many emigrated during the gold rushes hoping to make their fortunes, but did not and returned to the legal profession. Apart from the distinctive Irish brogue of some lawyers, McLaughlin finds the "total professional coalescence of Irish lawyers with their non-Irish colleagues" by the end of the colonial era.

Although anti-lawyer and anti-Irish prejudice was much less than in America, prejudice did exist at all levels of society in the Australian colonies and Irish lawyers, whether Catholics or Protestants, often banded together to provide professional and material support, which McLaughlin demonstrates most clearly by using the valuable diary of young Irish Catholic barrister Thomas Callaghan, who practised in Sydney. But, like some of his confrères, Callaghan was not immune from casting aspersions on rival Irish lawyers and others, all making for entertaining reading. Also entertaining were Irish lawyer celebrations on St Patrick's Day. McLaughlin has an eye for a humorous anecdote and a significant quote. One quote that underpins McLaughlin's point about the influence of Irish lawyers was recorded in Legislative Councillor John Pascoe Fawkner's diary in 1865: "No Court. St Patrick's Day. Irish taste rules here – Irish Judges, Irish Attorney-general, Irish Barristers, Irish Clerks of Courts ... and Irish Holy days."

As the Irish suffered prejudice in Australia, Irish lawyers felt sympathy for the most downtrodden section of the Australian colonies, the Aborigines. Whether as private practitioners, Crown Prosecutors or Judges, Irish lawyers, aware of the problems of language and understanding of British legal principles, generally treated Aborigines in criminal cases as equally deserving of legal rights as European settlers. Sometimes, as in the case of Redmond Barry, lawyers received no fees for defending an Aboriginal accused. The role played by Attorney-General John Hubert Plunkett in the Myall Creek Massacre trials best illustrates "Irish feeling for the victims and a determination to pursue the ends of justice" at great personal risk. McLaughlin notes that equality before the law was extended to giving Aborigines the right to vote, but offers limited evidence of Irish support for granting Aborigines this right.

Although McLaughlin focuses most attention on New South Wales and Victoria, Chapter 6 concentrates on South Australia as a case study in the influence of Irish lawyers. Although South Australia had "few Irish settlers, few lawyers and hardly any Irish lawyers", three well-known and ambitious Irish lawyers were significant in "the development of the colony, upon the local administration of justice, and upon the Federation movement". They were Sir Richard Graves MacDonnell, who served as Governor; George John Crawford, a Supreme Court Judge; and Patrick McMahon Glynn, lawyer, politician, and a Father of Federation. McLaughlin encourages his readers to fill gaps in his research, which could include expanding on what he says about Irish lawyers in Queensland, Western Australia, and Tasmania in various chapters.

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Not all Irish lawyers practised the law in Australia and in Chapter 7 McLaughlin widens his research lens to view their contributions outside the law in fields as diverse as goldmining, politics, business, farming, owning and editing newspapers or writing for them often in devastating fashion and, to a lesser extent, academia and the Church. McLaughlin also considers Irishmen who only took up the law in Australia after giving up other occupations. The aggressive attitude that Irish lawyers showed in their desire to succeed at everything they attempted to do in the Australian colonies was also evident in their propensity to solve disagreements by duelling, not verbally but physically. In Ireland lawyers embraced duelling with pistols more than any other class of Irish society well into the nineteenth century. The less fatal practice of horsewhipping was popular too. Duelling and horsewhipping were certainly favoured by Irish lawyers and other Irishmen in Australia as shown in Chapter 8.

In Appendix A John McLaughlin consolidates his contribution to scholarship by listing personal and professional details of over 200 “Noteworthy Irish Lawyers” in the six colonies as a starting point for future research. John died in March 2023 before this book was published, but he has bestowed to posterity a major contribution to our understanding of the history of the legal profession and the history of the Irish in Australia.

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