

SOCIETY OF AUSTRALIAN GENEALOGISTS

AND COLLINS PUBLISHERS

LAUNCHING OF THE BOOK

"ROOTS AND BRANCHES : HOW TO TRACE YOUR FAMILY TREE"

BY ERROL LEA-SCARLETT

TUESDAY 20 FEBRUARY 1979, 6 P.M.

The Hon. Mr. Justice M.D. Kirby  
Chairman of the Australian Law Reform Commission

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INTRODUCTION

The importance of family history in the Australian mind was brought home to me upon my appointment to the Australian Conciliation & Arbitration Commission. This appointment followed closely upon the retirement of the first President of the Commission, Sir Richard Kirby, whose distinguished record as a judge and public figure had stretched back to 1944.

Representatives of business and industry and of the trade union movement welcomed my appointment with copious and properly laudatory references to the work done by Sir Richard Kirby and congratulated me, his "son", as ending up on the same Bench where, as you know, judges refer to each other as their "learned brother".

The only problem for me was that I was neither son nor brother to Sir Richard Kirby. So far as we are both aware, we are not related. Perhaps if we applied ourselves with diligence to the search made easy by Mr. Lea-Scarlett's book we would find some distant link (probably in far away Ireland). Sir Richard's wife, Lady Kirby, has told me quite clearly that she had no objections to being called my mother. She draws the line at being described as my grandmother.

Sons, brothers, mothers and grandmothers make up, with others, the Australian community. We have a natural inquisitiveness about history. Some of us have a special interest in family history. Mr. Lea-Scarlett's book has the merit of providing, in a mercifully short and practical form, an everyday guide to the way in which Australians can go about tracing their background and their origins.

In the rush of busy events, there will be some who will ask: "Why should we bother?" "What does it matter that we can trace a family tree 'bushranger to barrister' or 'convict to capitalist'?"

#### FAMILY HISTORY MATTERS

Mr. Lea-Scarlett points out a few very practical ways in which tracing the family history can actually turn into a remunerative business. We have all heard of the Tichborne case and the way in which Wagga Wagga butcher, Thomas Castro, was brought forward as the missing ninth Baronet Tichborne, and accepted by his mother, the Dowager Lady Tichborne, as her missing son. The claim was challenged by a brother. The court ruled that Castro was not Tichborne but one Arthur Orton, a bush ranger of the Riverina district.

Mr. Lea-Scarlett also reveals that at the very same time as Castro kept his butchery in Wagga Wagga another claimant, Thomas Maher, became the central figure in a disputed will case which ran second in Australian sensation only to the Tichborne affair. I am assured by Wagga solicitors that disputed probate suits no longer feature significantly in

their day-to-day practice. For every Castro and Maher, there are claimants for whom a search of the family tree can be financially rewarding.

But the rewards are not limited to financial gain, as this little book plainly demonstrates. Trapped in the human body, millions of individuals inhabit the world and a great number of them are concerned to identify themselves and their reason for being here. Ultimately, family history (if it could be done) would trace each and every one of us back to Stone Age man and beyond. Without ancestors, we are not. It is this element of continuity of life and of man's place in the world that sets many upon an inquiry about those who, directly or indirectly, are responsible for our being here.

Mr. Lea-Scarlett begins his book with the well-known assertion by Henry Ford that "history is buck". Acidly, he notes that Henry "made it" and that all of us, in one way or another, contribute to the history of man. He might have reminded us that Edward Gibbon said that history "is little more than the register of the crimes, follies and misfortunes of mankind" or that Ambrose Bierce asserted that it is "an account, mostly false, of events, mostly unimportant, which are brought about by rulers, mostly knaves, and soldiers, mostly fools". The continuity of history (and its tendency to repeat its errors in each succeeding generation) is well illustrated for me in the following anonymous poem :

"In his chamber, weak and dying  
While the Norman Baron lay  
Loud, without, his men were crying  
Shorter hours and better pay".

The judges of the Arbitration Commission frequently recite this for reassurance that nothing much changes.

Therefore, we look to the past and to those who have gone before us for the lessons which their lives have for us. But I suppose that, selfishly, we look to their lives because we are seeking to identify ourselves to ourselves. We are, currently, by the grace of God, at the end of the line. Those who have gone before are part of us and seeking our own identity, we seek out theirs.

#### TRACING FAMILY TREES IN AUSTRALIA

What I liked most about this book was its entirely Australian perspective. It collects the lists of official records, church registers and other published records and it tells something of the early musters and censuses by which the population of the infant Australian colonies were counted. It starts with a practical message about how to commence the business of tracing the family. It outlines the sources that are available and the typical problems that will befall the inquisitive.

Not all of us can trace ancestors back to the First Fleet. It has become somewhat fashionable nowadays to be descended from a convict. Perhaps this is taking enlightened criminology too far. Perhaps it is simply recognising (as the 18th century juries in England did) that social values and definitions of what is crime and what is suitable for punishment change with each generation.

Many in the Australian community today are newcomers and their records will not lie in the colonial history of this country. Our Governor-General, Sir Zelman Cowen, typifies this fact. Sir Zelman was born in Melbourne in 1919, on the very day upon which Alfred Deakin, one of our Founding Fathers, died. He was the son of Bernard Cowen, an immigrant from Poland who had lived for a time in Palestine. The Governor-General's mother, Mrs. Sarah Cowen, is still alive in her 90s. Sir Zelman is patron of the Society of Australian Genealogists and his family history is not contained in early colonial records. About one-third of Australians today were born, or their parents were born, overseas. It is a signal of

our multi-cultural society and of the egalitarianism which colonial days fostered, that arrival on the First Fleet (convict or soldier) is no prerequisite for the highest offices in the land.

But, just as possessing notable Australian ancestors is not a qualification, neither is it a disqualification. The Prime Minister, Mr. Fraser, is (as is well known) the grandson of Senator the Honourable Sir Simon Fraser, one of the Founding Fathers of our Federation. Simon Fraser was a Member, first of the Victorian and later of the Federal Parliament, for more than forty years. He was a Member of the Constitutional Convention which framed our Constitution. Simon's family history reveals that he was born in August 1832 in Nova Scotia, son of an immigrant from Inverness. He arrived in Australia in 1853. After two years at Bendigo he set up business in Melbourne where he traded in horses. He played a vital part in importing the Canadian notion of tapping our vast artesian water supply. In 1901 he topped the Victorian poll for the Senate, where he opposed the infant Labor Party's proposals on private enterprise. He supported the Canberra site for the Federal Capital, where his grandson is now Prime Minister.

Take the other side of politics. Mr. Whitlam was the son of the late Harry Frederick Ernest Whitlam, one-time Crown Solicitor of the Commonwealth of Australia. He was born in April 1884 at Prahran, Victoria, the son of H.H.G. Whitlam of South Belgrave. One of Mr. Whitlam's uncles became Director of the Zoological Gardens in Victoria but history does not disclose whether this uncle ever showed an interest in horse trading with Simon Fraser.

Harry Whitlam was described as "a man of the finest character, deep scholarship and breadth of knowledge". He occupied the office of Crown Solicitor of the Commonwealth from 1936 to 1948 and also acted as Solicitor-General. His interest in international affairs was well known. In 1946 he attended the Paris Peace Conference as part of the

Australian Delegation. He twice represented Australia at the Human Rights Commission of the United Nations. Who can doubt that his interest in a new international legal order had its influence on his son Gough.

#### DESTROYING THE CENSUS

These few illustrations reveal something of the background of just a couple of our leaders. In Australia there is no necessity to have a "background". Sir Robert Menzies' father was a shopkeeper. Mr. Chifley's parents were humbler still and it is part of the Australian legend that Chifley himself was an engine driver who nonetheless ran rings around the economists and constitutional lawyers, with whom he came to work.

All of us have ancestors and whether it is for reasons of intellectual curiosity, selfish financial gain or, as I have suggested, personal identification, a search to identify them, who they were and what they did, is a legitimate and growing concern of Australians. Mr. Lea-Scarlett's book tells the ordinary layman how to do it. It also refers to the invaluable assistance which the layman can get from the Society of Australian Genealogists, in whose splendid headquarters we meet today.

There is one serious observation of a controversial kind contained in the book upon which I would like to comment. Mr. Lea-Scarlett records the fact that it has been the official State and Federal Government policy in Australia to destroy all Census returns completed over the past 130 years. The New South Wales Census of 1828 is still available, chiefly because of copies made from seven hand-written volumes in the Public Record Office in London. The meticulous destruction of every Census taken since the establishment of the Australian Commonwealth in 1901 is described by Mr. Lea-Scarlett. He asks this question :

"As recently as 1972 the destruction of surviving returns actually formed part of an election promise, and who can blame the vote catcher or the worried elector? Posterity, it seems, will

sigh for ever over the obliteration of individuality because the statistician came to ask too many personal questions and the computer threatened to remember all the answers" (p.80).

The Law Reform Commission has been asked to propose new laws for the protection of privacy in Australia. Next month the Commission will put forward its tentative view on the implications of privacy for the Census and upon any amendment to our laws and practices necessary to ensure that the Census is conducted with due regard to personal privacy.

The Society of Australian Genealogists has submitted that the Census forms should be preserved as an historical document. Its views have been strongly supported by representatives of the Royal Australian Historical Society, the Australian Dictionary of Biography and the Federation of Australian Historical Societies. The destruction of the nine Commonwealth Censuses between 1911 and 1976 plainly removes an important source of personal history in Australia. There is no doubt that Censuses have been extensively used for historical, biographical and medical research in the United Kingdom, the United States and other countries. In these countries and New Zealand and Canada the practice has not developed to destroy the Census forms. They are kept and access to them is limited to periods of more than 75 years. In Sweden access is forbidden for only 20 years. Initially, it seems the pressure to destroy the Census in Australia came from the mid-Victorian attitudes of New South Wales politicians descended from convicts. Before it became fashionable to be so descended, there was a great flurry of political activity to obliterate the roots and branches of ancestry. Hence the early destruction which established a policy that has not varied. In the United States of America, where it has never been the policy to destroy the population Census records (and where concern about individual privacy is acute) a House Committee has recently reported that the relevant legislation be amended so that Census forms be transferred to the National Archives within 50 years of the Census date and be available



for qualified researchers after 75 years. The U.S. Bureau of the Census argued that the release of Census records, even after the lapse of 75 years, would be in breach of the guarantee of confidentiality and privacy. The Congressional Committee reported that it found this contention "purely speculative". Testimony was received regarding the usefulness of linking Census data with health data and other information that can be derived from Census records. The Committee also reported the potentially favourable developments which could come from "full use of available information ... for medical research at an earlier time than access for historical or genealogical research purposes" *Report on H.R. 10686, 94th Congress, 2nd Session.*

In Australia, where we do not keep the record, the issue simply does not arise. Should the Census forms be kept for research purposes or are the dangers of privacy invasion in the comprehensive nature of the National Census just too great to run this risk? Historians, including family historians, medical and other researchers, urge retention of the Census. Mr. Lea-Scarlett advances their case. How can we protect privacy of the individual during his lifetime but ensure the retention of relevant information to his descendants? Privacy is itself an endeavour to retain perceptions of one's own individuality. Part of that individuality is knowledge of one's roots and branches. These controversial issues will be explored in a discussion paper that will be issued next month. The opinion of the Australian community will be sought before we report to Parliament. Mr. Lea-Scarlett's book makes a positive contribution to our thinking.

#### CONCLUSION

The fact that this book is being launched at a time when the American television series, "Roots", has just been revived on Australian television is coincidental. The fact that that American series has not been assigned to the midnight to dawn parade indicates that there is an interest in the subject in the Australian community. With a finite history that is generally well documented and recorded, the prospects

of tracing one's past is much more feasible in our country than in most.

Admirable modesty has prevented the author from saying much about his own family. And so I have done a little research. The first of his ancestors to reach this country did so in 1815 when the *Francis and Eliza* dropped anchor off Sydney after an eight-month voyage from Cork. Among the passengers was Frederick Garling, Sydney's first solicitor and 124 convicts. Also on board was Charles Fairclough, not, I am afraid to say, a convict, whose daughter was to marry one William Lea. This same Lea owned the property now occupied by Messrs. Nock & Kirby in George Street. One of his daughters married Robert Campbell Scarlett whose son, Robert Dalley-Scarlett, was the grandfather of our author. Dalley-Scarlett was one of Australia's leading musicologists and antiquarians. His national broadcasts in the 40s and 50s will be remembered by many. What Dalley-Scarlett did for the history of music, Errol Lea-Scarlett is now doing for ancestry in Australia. If his little book inspires some of us to be interested in our past and in those who made it, it will be an important contribution to the life of Australia. In that hope, I have much pleasure in launching it.