

THE AGE

BOOK REVIEW

K.L. Hall & Ors (eds) *The Oxford Companion to the Supreme Court of the United States*, Oxford University Press, New York and Oxford, 1992. Recommended retail price \$75 (hardcover).

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This is a fascinating book about a fascinating institution. It will be of interest far beyond the legal profession.

The entries range from important case names, through various legal subjects, the careers of judges who have served and others who, although nominated, failed to secure confirmation in the Senate. The book is a large tome. Yet considering the history of the court, which extends over 200 years, the number of the leading cases, and the close inter-relationship of the court and American history, it is truly remarkable that so much has been packed into a single book.

For those who just want to browse, the book yields countless hours of pleasure and fascinating detail. There is also enough trivia to break the spell of the serious business with which most entries are concerned. Thus on one page the reader stumbles on the entry on "gymnasium". As described, the Supreme Court's gym is sometimes called "the highest court in the land" (because of its location on the top floor of the Supreme Court building). There is a single shower, and it is apparently used at different hours by men and women.

It is easy to look up the famous cases to find a potted history of how they came about, what they held and what followed them. For example, *Dred Scott v John F A Sandford* (1857), upheld the legality of slavery. It helped to precipitate the Civil War, and later the 13th and 14th amendments to the US Constitution. In its entry, the decision is described as "the worst ever rendered by the Supreme Court". To those sceptical about judicial power, the case demonstrates the dangers of too much enlargement of power of the unelected branch of government.

There are also all of the recent decisions of note. The entry on *Roe v Wade* (1973), the leading decision of the Court on abortion, covers nearly five columns.

Tiring of substantive subjects, the reader can quickly explore the stories of the lives of the judges appointed, and those rejected for appointment. Abe Fortas, is an interesting case in point. The entry on him is very candid indeed. Fortas was President Lyndon Johnson's lawyer. Wanting him on the Supreme Court, Johnson found another posting for Justice Arthur Goldberg, who had served for less than three years. As successor to the great Justice Felix Frankfurter in the "Jewish seat", it was expected that Goldberg would stay longer. But he was "manoeuvred off" to make place for Fortas. Goldberg's post-Court career was described as "ignominious". So, for that matter, was that of Fortas. An extremely able man and a splendid advocate, he was forced to resign when embarrassing details of his continuing association with President Johnson came out during the consideration of his nomination to succeed Earl Warren as US Chief Justice.

The entries of the other great, and not so great, judges make fascinating reading because of their compressed detail and generally terse style. Oliver Wendell Holmes Jr (who served from 1902 to 1932) held the view that judges decided cases first and found their reasons afterwards. Their actual grounds for decision were, in his opinion, based on the "felt necessities" of their time as much as on precedent or purely logical calculation. To that extent Holmes recognised that judges, consciously or unconsciously, expressed the wishes of their social and economic class.

There are many personalities whose careers are remembered in this book and who are probably well known to American lawyers but unknown, or virtually unknown, in Australia. For example, few Australians know of William Howard Taft, the only man who served both as President and Chief Justice of the United States. Taft was serving as a Federal Judge when President McKinley recruited him to his Administration. Eventually, and rather reluctantly, Taft contested the 1908 Presidential election for the Republicans. He became a somewhat unhappy President. It is suggested that he appointed as Chief Justice a man not likely to last long and

whose empty seat he hoped to fill (Edward White). Annoyingly enough, White lived long. It seemed that Thomas Jefferson's famous lament would be borne out. Speaking of the Supreme Court Judges, he had bitterly observed that "few die and none resign". Eventually, however, the central seat fell vacant. Taft was nominated and confirmed in a day - something Robert Bork and Clarence Thomas must have wished had been their fate.

Why should we bother to buy this book in Australia in 1993? As a history of a court of unequalled power, the book displays a great deal of information which is engaging simply to leaf through. Because the Australian constitution was so heavily influenced by that of the United States, there are many common themes in our country which find reflection in the United States, and thus in the decisions of its highest court. Recent developments of constitutional law in Australia also suggest that notions of implied fundamental rights must now be taken seriously.

De Tocqueville, in an assessment written soon after the birth of the United States, said that he was unaware of any nation on the globe which had "hitherto organised the judicial power in the same manner as the Americans ... A more imposing judicial power was never constituted by any people." The fulcrum of that power was, and is, the Supreme Court of the United States - brilliantly chronicled and described in this beautiful book.

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