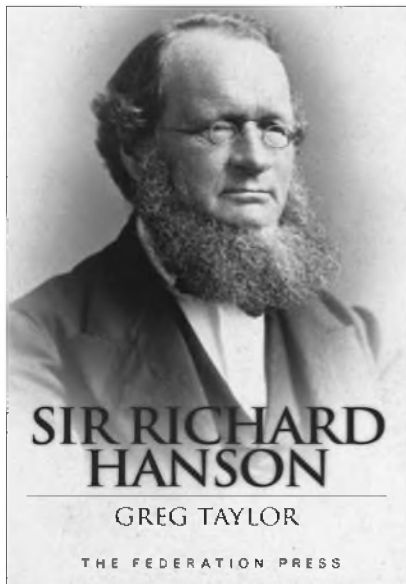


## Sir Richard Hanson

By Greg Taylor | Federation Press | 2013



Any member of the Sydney Bar can be forgiven for thinking Dr Bennett is the sole conscience of that part of our collective mind which turns itself to the judicial lives of our colonial past. His monumental series is now well into double figures; a study of Sir Charles Lilley, premier and chief justice of Queensland, is slated for imminent release.

The publication of *Sir Richard Hanson*, premier and chief justice of South Australia, heralds the arrival of a new entrant in the field. Dr Greg Taylor is an associate professor of law at Monash, and *Honoraryprofessur für Common Law und Rechtsvergleichung* at Marburg.

And what better evidence can we have of Taylor's expertise in matters South Australian, German and colonial than the words of Lord Walker of Gestingthorpe hearing a matter from the St Lucia Court of Appeal? As early as paragraph 2 of the Privy Council's opinion, reference is made to – and reliance laid upon – 'Professor

Greg Taylor, Is the Torrens system German? (2008) 29 JLH 253': *Louisien v Jacob (St Lucia)* [2009] UKPC 3 (9 February 2009). (And yes, according to the online report, an opinion of the council is now a judgment.)

Marburg is the home of Savigny. Among his many achievements was the legal teaching of the brothers Grimm. Whatever the ratio of their output, more relevant is the university's assertion that it is 'the oldest university in the world that was founded as a Protestant institution in 1527'.

Richard Hansen was schooled in Melbourn [no 'e' please, subed], Cambridgeshire, under the tutelage of the Rev Mr Carver. The school was one 'in which the sons of many opulent Dissenters received their education'.

But what to do afterwards? We are apt to recall the Tests Act in the framework of their injustice to Roman Catholics. It should also be recalled that Dissenters such as Hanson were unable to enter Oxford or Cambridge until 1871, unless they were willing 'to simulate membership of the Church of England'. It would be profane to suggest that simulation has proved the *sine qua non* of such membership on more than one occasion, but in Hanson's case, he was not willing to jettison his principles. Too young, perhaps.

Fortunately, then as now, study at a university was not a prerequisite to practice in the practical world of the law, and Hanson found himself articulated in 1822 for a period of six years. He took his

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exam before Lord Tenterden, the great jurist who had risen – as Taylor notes – from even greater obscurity than Hanson. Tenterden, it will be recalled, died in harness; his last words were 'and now, gentlemen of the jury, you will consider of your verdict'. A Dworkinian end?

While in London, Hanson was involved intimately with the Wakefield project soon to bear fruit in South Australia. However, he got no gig, and ended up, via Canada, in New Zealand, where his first boss turned out to be Colonel William Wakefield, Edward Gibbon's brother!

There is relatively scant material about Hanson's time in our neighbour nation. Taylor does some recreation and hypothesis, but his approach is a lawyerly one, sceptically questioning his own conclusions. This method is dryer than the methods chosen by many modern biographers, but one which is I think justified.

Hanson arrived in Adelaide in mid-1846, aged 40. It must have been something of a thrill to walk for the first time down Hanson Street, the 1837 Street Naming Committee's recognition of his

work in London for the proto-colony.

Hanson Street no longer exists, but Taylor informs us that it is the lower half of Pulteney Street, that is, I infer, the part running south from Wakefield Street. And there I was thinking you started with the premise that everything in Adelaide was named 'Torrens' and sought the exception.

I confess I can't find when the name was changed. As Pulteney Grammar School's site records:

The original trustees met in May 1847 to establish a school for the children of Adelaide and after 12 months, on Monday, May 29, 1848, Pulteney Street School opened its doors.

As only a school in the city of fine food can note:

Town Acre No 228 at the corner of Pulteney and Flinders Streets was purchased and a school building was erected immediately north of the present St Paul's Restaurant.

Flinders Street is to the north of Wakefield Street. We cannot therefore infer that the Street Naming Committee had resiled from one of its objects and deprived him of his fame.

It would have been to Hanson's limited satisfaction that 'The School was a foundation of the Church of England but was open to those of all faiths and denominations.'

I say 'limited', because Hanson's major political concern was that of state aid:

But Dissenters such as Hanson did not merely object to state support for religion in England on the grounds

that it went to the wrong type of religion; they were also committed to the view that state support was bad for religion, of whatever type, and thus the grant was to be resisted as not merely potentially, but actually dangerous.

### *Hanson's achievements included dealing with the notorious Justice Boothby.*

Jeffrey Smart, one of the school's students, abandoned Christianity while a chorister at St Peter's Cathedral. Hanson's own abandonment came at the end of his life, and was based on scholarship. Doubtless – or is that faithless? – Hanson's intellectual rigour founded his most well-known work, *Jesus of History*.

With the faith still held in earlier writings gone, what he 'was really writing [was] history rather than theology – indeed, the project of stripping away the accretions of faith and writing a secular history of Jesus' life might even be called anti-theology'. When we think of Barbara Thiering's *Jesus the Man*, we conclude 'Yay verily the life of the exegete never easy'.

Hanson's achievements included dealing with the notorious Mr Justice Boothby. For the many of us who have had to meet arguments about the illegitimacy of Australia, of the state, or of the court in which we are appearing, I set out for comfort a report of Hanson's arrival:

The Commission [of Hanson as Chief Justice] being read, Mr Justice Boothby made objection thereto, that the same had no legal validity,

and is void and of no effect, as being contrary to law. Mr Justice Gwynne declared his opinion to the contrary.

Whereupon Richard Davies Hanson, Esquire, claimed to give a judicial voice on the same question, to which Mr Justice Boothby objected and declared his opinion to be that he was not so entitled. Mr Justice Gwynne pronounced his opinion that Richard Davies Hanson, Esquire, was entitled to a voice in deciding on the validity of the Commission he had laid before the Court.

Thereupon Richard Davies Hanson, Esquire, declared his opinion in agreement with Mr Justice Gwynne on both questions, and in opposition to the opinion of Mr Justice Boothby, and claimed to preside over the Court by virtue of the Commission he had laid before the Court.

Mr Justice Boothby gave his opinion that Richard Davies Hanson, Esquire, had no right so to preside. Mr Justice Gwynne declared his opinion to the contrary, and that Richard Davies Hanson, Esquire, had such right.

Mr Justice Boothby declared his intention to appeal to Her Majesty in Council on each of the several matters whereon he had declared an opinion contrary to that of Mr Justice Gwynne.

So there. By the bye, was either Mr Justice Gwynne or the reporter correct to nominate Hanson as 'Esquire'? By the time the subject of the second paragraph came to pass, was he not, too, 'Mr Justice'?

And so with pre- and post-nominals in question, we close with reference to knighthoods, an issue made relevant by

recent amendments to Letters Patent of our sovereign queen countersigned by Prime Minister Whitlam in February 1975.

Hanson's much-loved wife Ann was herself an émigré from New Zealand. There, as a 15-year-old member of a very poor family, she may have fenced some shoes stolen by her sister. She was not jailed, but a report of the event led some 15 or 20 years later to the Anglican Archbishop of Adelaide asking the governor to exclude Mrs Hanson from a ball.

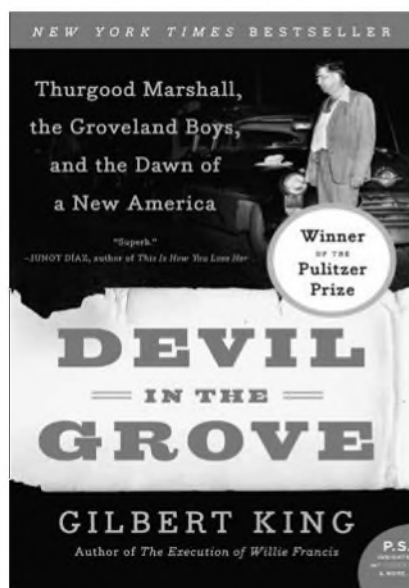
The governor, possibly not at one with this expression of Christian forgiveness, disagreed. However, his own recommendation of a gong for Hanson got nowhere. The end of the story is the real delight. Taylor records that Hanson, doubtless with the governor's encouragement, applied directly to the Colonial Office, with the result that it had to put up, and procure the knighthood, or shut up but – a bureaucrat's nightmare – do so with an explicit and public snub. Hanson got his gong.

I enjoyed this study. It reminds us that the image of superfluous English and Irish barristers flooding the colonial bars is at best misleading, and that many many fine legal minds also had wide life experiences elsewhere in the Empire before taking up the posts for which we now remember them. In Australia, Francis Forbes is only one among many examples, and now we have an excellent life of another.

**Reviewed by David Ash**

## Devil in the Grove: Thurgood Marshall, the Groveland Boys and the Dawn of a New America

By Gilbert King | Harper | 2012



*Devil in the Grove*, awarded the 2013 Pulitzer Prize (General Nonfiction) is the dramatic account of a little known but very significant sexual assault case that

unfolded in Florida in late 1949.

In 1949, Lake County, Florida was a dangerous place to be a young black man. Segregationist 'Jim Crow laws' ensured the continued suppression of black Americans. The Ku Klux Klan was active, well organised and well represented in every echelon of public life – the governor of Florida, Fuller Warren, was a Klan member prior to taking office, as was local sheriff Willis V McCall, a man renowned for his brutal treatment of blacks. The lynching of black men and boys was common, as was the rape of black women and girls by white men. During his 28-year tenure as sheriff, Willis V McCall was investigated numerous times for civil rights violations including the abuse and murder of black prisoners.

This was the South of *To Kill A Mockingbird*, where white juries tried black defendants on racially motivated charges in segregated courts.

In New York, the National Association for the Advancement of Coloured People (NAACP) was making progress toward securing greater equality for African Americans. The NAACP's star attorney, Thurgood Marshall ('Mr Civil Rights') was making his name mounting constitutional challenges to Jim Crow laws, culminating in *Brown v Board of Education of Topeka*, 347 U.S. 483 (1954), which led to the desegregation of public schools across the United States and the eventual dismantling of institutional segregation through the *Civil Rights Act* 1964 and the