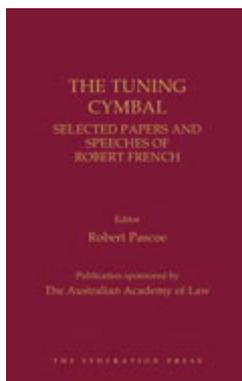


BOOK



Tuning Cymbal: Selected Papers and Speeches of Robert French

Edited by Robert Pascoe and
published by The Federation Press

The *Tuning Cymbal: Selected Papers and Speeches of Robert French*, edited by Robert Pascoe and published by The Federation Press, is a noteworthy compilation of the ideas, reflections and, at times, subtle advocacy of one of Australia's most prolific jurists. It is a collection of 29 pieces which, as Kevin Lindgren explains in the publication's foreword, are drawn from no fewer than 94 published articles and speeches, 24 book chapters and 214 unpublished conference and seminar papers. Mirroring the broad intellectual interests of the former Chief Justice, the selected articles are grouped into diverse sets of topics, ranging from Indigenous issues through to competition law and legal education.

Critical to the success of this collection is the adoption of a format in which the articles in each topic grouping are prefaced by an introductory comment from an expert in the field. The structure was adopted by Pascoe at French's request in order to avoid the tedium that otherwise infects many edited collections of articles and speeches. It produces a profound effect. The comments resonate against the articles that follow in a manner that is not only befitting of the title of the book, but which also serves as an archetype for respectful academic engagement – informed, considerate, but not always in agreement. Thus, for example, while French asserts in his examination of Indigenous recognition and sovereignty in Chapter 2 that the Noongar Settlement – a piece of Western Australian legislation that acknowledges the Noongar people as the traditional owners of the Noongar lands – is a species of a regional treaty, Megan Davis

rejects that notion in her corresponding comment. The dialogue between these two opposing views provides the reader with a glimpse of the deeply contested nature of the concepts that French has, throughout his legal career, grappled with. Indeed, in paying regard to his spirited and often prescient contributions, Professor Davis concludes her comment by acknowledging that French's legal writing has 'provided great succour to Indigenous leaders' and has influenced the development of critical aspects of the constitutional reform agenda, including the Uluru Statement.

In Anne Twomey's examination of the public law section of the collection, the reader is treated to an insightful account of one of French's most influential constitutional papers: 'The Constitution and the People'. Professor Twomey observes that the paper presented a more layered depiction of the concept of popular sovereignty than had been, until its publication in 2003, the prevailing notion. In doing so, French engaged with difficult questions, including defining 'the people' of the Commonwealth against a history in which certain groups of people had been excluded from the meaning of that term on the basis of their race or sex. French also sought, in the same paper, to reconcile the tensions between Indigenous rights arising out of cultural relationships with the land with the liberal concept of equality before the law. While Professor Twomey suggests that the compromise French reached – to suggest that there could be recognition of pre-existing traditions and customs without conferral of special rights or privileges – may have been optimistic, she also acknowledges that it is an argument that continues to resonate.

In his commentary on the chapters dealing with the judicial system, Chief Justice Tom Bathurst recognises the important insights that French has offered in response to the increasing complexity besetting modern litigation and the judicial task in the 21st century. One of those is the novel idea of a 'judicial exchange' program between members of different jurisdictions, aimed at avoiding geographic parochialism. Chief Justice Bathurst sees merit in such an idea as an aspect of cooperative federalism, even

if its practical implementation has been stalled. On the other hand, his Honour expresses greater reservation about French's suggestion that a national intermediate court of appeal is required. While the justification offered by French is that such a court might promote interjurisdictional comity, Bathurst CJ is far more sceptical of the radical 'ambition' underpinning it. Nonetheless, his Honour does not dismiss the idea outright as an 'outdated curio', but rather notes that it typifies a commitment to a national view of the judiciary which remains relevant in the face of an ever-integrated Australian economy.

Lindgren observes that French was reluctant to adopt 'A Well Tuned Cymbal' as a suggested title for this collection on the basis that it would import a notion that his journey of learning had concluded. This sense of humility and the curiosity of mind of which it speaks has produced a body of work that is a delight for the engaged reader. While many of the concepts and ideas presented have been and will continue to be respectfully contested, it is through that contest that the resolve of our institutions is gradually strengthened. At a moment in time when the foundations of democracy are under siege in many corners of the world, this collection is a testament to that invaluable legacy.

Shipra Chordia



The Hon Robert French AC