

# Theatricalising Law in Three, 1929-1939 (Brisbane)

Marett Leiboff\*

*Technique in theatre and the attitude that it presupposes is a continual exercise in revolt, above all against oneself, against one's own ideas, one's own resolutions and plans, against the comforting assurance of one's own intelligence, knowledge, and sensibility. It is the practice of a voluntary and lucid disorientation in the search for new points of orientation .*

Barba 2000: 56

## 1 A Dramaturgical Note

I begin this article with a manoeuvre that presages three stories of lives lived with law. But because they speak of law *past*, there is a temptation to read them as curiosities, when their purpose – the thing I ask of them – is to disorient and challenge, to prompt and trigger the questions: ‘what do I bring to law, what do I miss because I am me, and what do I see because I am me?’ So rather than an exercise in law *past*, my purpose is to use those stories of law *past* to trigger something in us, as legal interpreters, *now*, as an ‘exercise in revolt ... against oneself’. I want the stories to challenge our own lives by asking – ‘what could I know in law through the life of someone in law other than me’.

I use these personal pronouns quite unselfconsciously and quite strategically, as a provocation of the first order. For the stories that

come later could only be discovered by *me* because of the life I have lived, the experiences I have had, and because of the knowledge I have collected through my life. You, none of you, could write these stories. You certainly can trace the same data – but really, would you? Would you go careering down rabbit holes to trace the academic past of a (now) obscure Queensland judge? Or wonder about a series of newspaper entries into hearings of a case involving a named individual (who just happens to be my grandfather) and then ask to see the said judge’s notebook? You might, but then again, I don’t think so. The stories – or snippets, because they really don’t go anywhere – spring from a sliver of knowledge researched, followed up, lines of inquiry traced and tracked of lives lived with law 80 or 90 years ago, in the third and fourth decades of the 20th century. That sounds, inevitably, like history and of jurisography (Genovese and McVeigh 2015), but my purpose is to have you to respond to what *I* notice and I hope to ask *you* to think – how do I (you) notice law *now* in such a way that works ‘against the comforting assurance of one’s own intelligence, knowledge, and sensibility’.

Repetition and reiteration of doctrine and dogma forms that same comforting assurance found in the ur-stories of law: law is objective (anything else is subjective), strict and complete legalism renders law in its most perfect form, that the rule of law and not of men produces justice. This is law’s (continued) picture of itself, and it is one nurtured as law’s perfection that pulls us back time and again, even if only to challenge. But scratch the surface of law through the micro-history and the miniature, through lives lived with and through law, and a very different image of law is revealed that disorients the ideal. The disorientation I want to provoke, from that which *was lived* as something that speaks to law *lived now* demands the presence of encounter; rather than the passivity of the story, I want the story to live through a bodily encounter that impels a response, a reaction, or something which disorients us from the thing we believe or assume we know. Paper is passive, and we can pick and choose where we look, what we see, and where we take ourselves. But the encounter is something different (Rush 1990). Even if we try to ignore what is

### Theatricalising Law in Three, 1929-1939 (Brisbane)

happening (closing our eyes, falling asleep), we are still in that place and participating in the encounter, even as an encounter of avoidance, in everyday life and in the enclosed theatrical space. I am asking you to read this piece as an encounter in the theatrical sense (as the epigraph prompts) by drawing on dramaturgy, that theatrical practice that forms a middle path between the place of text and the place of actual encounter which ‘impels a searching inquiry into the material conditions and cultural work of theatre animating each production’ (Worthen 2014: 175), to try to provoke something that invests the stories of the law of the past with law *now*, by challenging that which we know, or assume we know:

Dramaturgs enunciate an understanding of theatre, an understanding of performance, an understanding of the ways theatre and performance relate to social reality beyond the theatre. A dramaturg’s responsibility is to understand that reality, to formulate its contestable nodal knots in relation to the material of a given production, be it a dramatic play, a performance text, or a series of images from which the verbal and visual language of the production develops. Dramaturgy arises at the politico-aesthetic nexus of performance: between its conception and its execution, between its practices and its purposes, between its aesthetic and artistic aims and its action with and through the audience (Worthen 2014:176).

It is the encounter that twists together the stories of law *past* through the ‘nodal knots’ of law *now* as a means by which the ‘voluntary and lucid disorientation’ of the expectations and assumptions of the lawyer might be provoked. To do so theatrically forces that disorientation, through the provocation created by the encounter. So another provocation (perhaps of the second order): I will seek to disorient by asking you to read the words of the title in a moment, and I ask that you just *deal with* what I will do with them. Deal with what I do however you want. You may be amused/irritated/baffled/ incredulous/astonished, but it is how you deal with the disruption wrought by the words that follow that is important, for that is the dramaturgical agent that disorients what we know, to read the stories as an ‘exercise in revolt ... against oneself’, to challenge what we think we know in law past, and what that means

for how what we understand of law now – and how we do that law.

### **A Disorienting my title**

Let me bother an aspect of my title: *Three, 1929-1939 (Brisbane)*. It baffles through its unlikely conjunctions of numerals, a word, and typographical symbols, and the absence of grammatical imperatives. So let me start at the beginning, with the numeral *three*. Numerals seemingly have clear and confined interpretative limits, and function as the ultimate Hartian core of certainty of meaning. I have told you that three stories will follow: three thus limits and confines arithmetically. But numerals are symbols and are open to and productive of endless possibilities of meanings and interpretation, and of all the numerals or numbers, *three* brims with myriad narrative possibilities: the Trinity, the triumvirate, the three arms of government, the three years of an arts degree, the three terms of an old school year, the three acts of a play, the appellate bench of three, the three witches of Macbeth, the Three Graces, the Aristotelian unities of time, place and action, a UK telephone company. *Three* is anything but determinable, and the three stories reveal that the ‘proper’ and assumed markers and boundaries of law – case, statute, procedure and practice – are as porous and fluid as *three*, as they reveal law and its actors as living public lives, and law revealed as a part of the social world and vice versa, that belies the idea that law was always ontologically solidified in an analytical and strictly legal straightjacket, of law without life, when nothing could be further from the truth.

Complicating something as simple as the word or numeral *three* is precisely Barba’s point about disorientation, and in law this kind of simple exercise forces us to think both about the permeability of law’s texts brought about through the fragmentation of the lifeworlds; this fragmentation reveals that something as simple as a word or number like *three* is subject to the interpretative choice of the legal reader, confounding law in its positivist register which assumes that forms of life are left aside from legal interpretation. It is axiomatic that this mode of law prefers to negate or erase the life in judgment, but such

## Theatricalising Law in Three, 1929-1939 (Brisbane)

erasure ‘works’ only if those interpreting law share uniform lifeworlds, whether consciously chosen or unconsciously assumed (Leiboff 2014). But even when shared, the loss of textual immediacy, or the loss of the memory informing the legal text means that reading of law past is an act of imagination, as a reconstruction through the arc of time. The question is begged – what do we bring to the texts of law that allows us to enter into a lifeworld of law and understand what it meant then, and what it might mean for us now?

Working this nodal knot further, I now move to the next part of the title: *1929-1939*. I assume that these dates won’t be coded as a telephone number, but I might be wrong (Leiboff 2014). Naturally, the span of time to which these dates relate speak to the Great Depression (1929) and World War Two (1939), but none of the stories to come are concerned (directly) with either historical marker, though each is present, albeit in unexpected ways. Law prefers to defer to meta-questions and narratives, the triumph of the political or economic over the small things, meaning that they overbear the quotidian and everyday, that reshapes the quotidian within law. But it is impossible to ignore one key marker: that we are entering into an era where Nazi Germany looms. However, it is the quotidian normality of lives affected by, through and with law in the stories to come, that matter as if to underscore and highlight where we are in time. It is where we see law in its normality, not screaming of meta-events, but operating as most law does in the Seinfeldian register (‘the show about nothing’). It is law in this everyday register, through its agents and actors that we see law as it is experienced by a few individual Jewish people – though for the most part far away from Nazi Germany. This quotidian legality to come, encountered theatrically, plays in sharp contrast to the use of stories of certain individuals – three, as it happens - by Kristen Rundle to shape what she calls the ‘Jewish experience of Nazi legality’:

The point to emphasize, then, is that even though the Nazis used law instrumentally for deeply unjust ends, this does not exhaust the factors relevant to how we should understand that legal effort, because it seems clear that so long as Nazi governance was structured by the constraints and conditions that constitute legality, life was qualitatively

## Marett Leiboff

better than the lawless life of arbitrariness and terror that followed (Rundle 2009: 122).

Hannah Arendt's post-war accounts and arguments, the memoirs of a Nazi lawyer, Loesener, who was responsible for the administration and bureaucratic practices within the Third Reich, and the diary of a Jewish lawyer, Klemperer, a convert to Protestantism who is protected to a small extent at the beginning of the Nazi regime because of his service in World War One and his marriage to a non-Jewish German, provide the key sources for her account of that Jewish experience of law. How law functions, that is how it is applied and administered, is sidestepped, its eyes avoiding the conduct of its legal interpreters and its actors, its practices and its administration:

For present purposes, however, the point that needs emphasis is that the Nazi legislative program against the Jews was intended to – and largely did – function in a manner that was not ‘the gunman situation writ large.’ Instead, it was a system, at least until the assumption of primary jurisdiction over Jewish affairs by the SS, in which there remained a general measure of congruence between official action and declared rule that is crucial to the very idea of governance through law. By functioning through means of official action mediated by rules, this system necessarily recognized and relied upon the capacities of its subjects for self-direction, and, in doing so, granted those subjects a certain room to manoeuvre within an otherwise oppressive social order (Rundle 2009: 89).

I read these statements with a rising sense of disquiet. Rundle is not meaning to suggest that these degraded and debased lives were acceptable, but this is how these statements read:

In making these claims, I do not intend to discount the atrocious excesses that increasingly accompanied the administration of the Jewish legal program through the courts. My point, rather, is to emphasize that the degradation of legal institutions that was the hallmark of the Nazi period was itself a degenerative process that involved successively greater departures from conventional standards of legality as time progressed. This means that the legal measures against the Jews, situated predominantly in the period 1933–1938, belonged to

## Theatricalising Law in Three, 1929-1939 (Brisbane)

the era during which the attributes of the Nazi legal system bore their greatest resemblance to legality as we might ordinarily understand it (Rundle 2009: 87, citations omitted).

The stories that come challenge Rundle's uses of these lives and their history. I suggest that legality broke down in 1933, when those institutions themselves were compromised at the very beginning of the Nazi era in a move which debased the administration of law itself. Much later in these stories, I return to Germany; I begin in Australia, reiterating the question posed at the outset – 'what would I have noticed then, what do I notice now?' – within a place and at a time that is as much imagined as it is to actual.

Which brings me to the final facet of the title: (*Brisbane*). Brisbane and its presence provide a marker that should have us ask: 'What is this word, why is it here?' Brisbane is a place, the capital city of an Australian state that was, during World War Two, a potential point of abandonment in any defence of Australia from invasion (though the so-called 'Brisbane line' was never implemented). The inclusion of this place complicates the parsing of the title, the juxtaposition of numbers and words rendering its coding dependant on the assumptions of the text, and the imagination of the legal interpreter, for it would seem inevitable that these stories must read off Europe, or Germany. Brisbane is the place that links the stories, and where they are generally located. It is useful too, because it is a place that doesn't necessarily register, or that, in a sense, matters all that much in the scheme of things. Regardless, it is a place where lives are lived and law applied, and in so many ways a place seemingly removed from the horrors of Germany as they took hold in 1933, a date now that inserts itself into the parameters of the title, in a place on the other side of the world barely noticed beyond its national borders let alone beyond, but a place which turns itself outwards beyond itself into the events that unfold throughout the world in surprising and unexpected ways that are still to come.

### **B Voluntary and Lucid Disorientation**

We notice things in law that matter to us, and we bring our own

## Marett Leiboff

interpretative assumptions into the reading of legal texts without realising it. A very different dramaturgical instinct to that proposed by Worthen is the wont of most lawyers, as Jungian introverts, for whom textual interpretation is directed within, based on expectation and assumption (Leiboff 2015). These practices are less inclined towards disorientation and potentially far more likely to be drawn to the self and what that self expects. As part of this dramaturgical note, I mention one of the triggers behind the stories that follow, a remark contained in the dissenting judgment in *S395/2002 v Minister for Immigration and Multicultural Affairs* of Callinan and Heydon JJ that I included in a study of different generations of lawyers and what they brought to the reading of texts:<sup>1</sup>

In 1951 those who drafted the Convention were not seeking to guarantee all human rights. Rather they were seeking to deal with refugees in the context of the immediate aftermath in Europe of the Second World War ([107]).

It was this unstated historical allusion (rather than the express reference to the Convention *per se*) that study participants were asked about, paired with a question designed to benchmark some basic knowledge of that war: ‘Can you name the countries known as members of the ‘Axis’ during World War Two?’ The results were generationally split: 85 per cent of participant lawyers born in the period 1925–65 correctly answered Germany, Italy and Japan, while fewer than 50 per cent of those born 1966–2000 were able to identify the countries. The pattern was repeated in connection with the ability to identify the allusion, albeit in significantly diluted form: 40 per cent of the older group, dropping to 20 per cent for the younger category (in those born 1986–2000, this fell to 10 per cent). Proximity in time and space bred familiarity, something that the bare statistics revealed, but there needed to be some awareness of Nazi Germany and its atrocities for the text to speak beyond the page, either through lived experience and encounter or the sympathy and empathy borne of association and connection. Without this awareness, it became apparent that other forms of encounter and connection were interpolated into the



### Theatricalising Law in Three, 1929-1939 (Brisbane)

text, from identifying that their Italian and Greek family members were able to come to Australia in the 1950s, to the existence of the White Australia Policy, a racist policy embedded into Australian law at Federation, only to be dismantled in the aftermath of World War Two, before finally being extinguished during the Whitlam era in the 1970s, or contemporary political border control. The responses demonstrated just how much legal interpreters invoke their own *lived experience* in understanding the texts, with few overall aware of the historical circumstances of Germany in the 1930s to which it alluded.

And so this is the nodal knot that is the dramaturgical provocation that inhabits this piece, something that speaks of this era, and its contemporary occlusion and myopia, but also as a challenge to that which all of us know. It is this latter observation that tracks to the interpretation and reading by most participants, which intimates that non-Anglo-Celtic/Irish immigration to Australia somehow only happened after the end of World War Two. Crowded out by more visible images of racism against those targeted by the White Australia Policy, along with the familiarity of post-war immigration, it has rendered nearly invisible the small number of other Europeans who came to Australia before 1939. While the period between 1891 and 1947 is a void in the publication of statistics of population in Australia, Europeans comprised 7 per cent at the earlier date to just over 8.6 per cent at the later period (DSS 2014: Table 1.1 'Ethnic Composition of the Australian People'). The next year, 1948, is re-instantiated as the locus of immigration through which all non-British Australians are imagined, pulled down as a shutter against other pasts.

What results is an image of pre-war Australia as eternally Anglo-Celtic, a place where individual and perhaps heroic non-Anglo-Celts might be glimpsed, but are otherwise cast into what Natsu Taylor Saito calls 'perpetual foreignness' (Saito 2015: 462). The idea of perpetual foreignness takes on distinctly different shapes, however. For the most part, the existence of Jewish people in Australia returns to an imagined past grounded in and of World War Two, even though Jewish colonial Australians like Isaac Isaacs were forefront in legal and public life,

born before the nation existed and instrumental in its creation. Some came to Australia from the UK, others from Europe, but however longstanding a history (eight Jewish convicts came to New South Wales in 1788 as part of the First Fleet), this ‘perpetual foreignness’ is reiterated in the popular (and legal) imagination. The former Federal Court justice and Dean of Law at UNSW Ronald Sackville (who was born in 1943), observed of growing up Jewish in the 1950s and 1960s Melbourne: ‘it led to a feeling that in some respects I was an outsider who was not necessarily part of the Australian mainstream, even if I played sport and followed Australian Rules football’ (2014: 1146), alongside an awareness of outright injustice and exclusion. In recalling a conversation with a fellow legal academic in Melbourne, who asserted a right of exclusion, he observed that Jews were not able to become members of the establishment Melbourne Club: ‘it was not entirely coincidental that, unlike the more robust state of New South Wales, no Jewish lawyer had ever been appointed to the Supreme Court of Victoria’ (Sackville 2014: 1147), despite the existence of highly qualified silks.

Law, however, was robustly used against Jewish refugees attempting to enter Australia during the timeframe of the stories to come. Some have been embedded in the legal imaginary – the *cause célèbre* of the Kisch affair of 1934–5 (*R v Carter; Ex parte Kisch, R v Wilson; Ex parte Kisch, R v Fletcher; Ex parte Kisch*, Rasmussen 2000, Mason 2014), when the Jewish Czech socialist journalist was refused entry to Australia through a range of manoeuvres including an application of a dictation test – in Scots Gaelic – under the then *Immigration Restriction Act*. This case remains in law’s mind’s eye (Rasmussen 2000, Mason 2014), taking on the mark of a legal cinematic epic of rights and justice, and its own nod to the White Australia Policy and the attitude of members of the High Court who were disposed towards its application (Mason 2014). Not so easily remembered is the uttering of sentiments of the kind in the 1938 case of *Blum v Lipski*, where Mann CJ in the Victorian Supreme Court was moved to remark that: ‘a man and his wife arrived from Europe entirely without means. It may be noticed in passing that the immigration laws apparently presented no obstacle

### **Theatricalising Law in Three, 1929-1939 (Brisbane)**

to their entry' (248-9). The couple, the Blums, arrived in 1937 from Poland, and their names reveal amply that they were Jewish. At the time, European refugees had to have 'landing money' of £50, which was the source of the remark. Mrs Blum had been killed in an accident only a few months after arriving in Australia, and the case had nothing to do with immigration.

That a judge might proffer such a remark seems extraordinary, but we tend *not* to notice that law is of its time and place (Leiboff 2016). 1938 was a far from ordinary year. The Second World War hadn't yet begun, but we tend to forget that war doesn't just appear from a standing start. The chain of events that led to Kisch's visit to Australia, and the Blums to move here, had begun in formal terms in 1933 with the almost accidental ascension of Hitler as Chancellor of Germany, and the immediate imposition of actions designed to harm the Jewish population of Germany, long before the formal introduction of racist Nuremberg Laws (Morris 2013, cf Rundle 2009). 1938 stood out: the year of the Austrian Anschluss and *Kristallnacht*, the night of terror in Germany against Jews, and the expulsion of Jews of Polish origin from Germany. It was also the year of the Evian Conference on Jewish Refugees, where the Australian had made it clear that it did not want to take more foreigners, that is Jews, from Europe (Turnbull 2000); between 1933 and 1939, limited to barely 7000 people (Turnbull 2000).

#### **C A Revolt against Myself?**

Mann CJ's remark is likely to pass unnoticed, unless, of course, you have lived a life which animates it. And that can be all of us, though for some of us, it has a resonance that will differ from others, as my earlier study reveals. For even though his remark is couched within a lived experience of 1938, in isolation the remarks can be read across time and space to mean something very different, as permeable and open as the readings by participants in my study of Callinan and Heydon JJ's allusion to the 1930s. In 2016, the spectres of the 1930s reiterate: without knowledge of the 1930s, Mann CJ's remarks inevitably trigger the obnoxious image and language of 'illegals'. The trigger of

## **Marett Leiboff**

familiarity that comes from a life lived in the shadow of these events makes us notice the small things that presage law sustaining injustice. To live without that shadow means it is harder to notice what is so obvious to the person in whose body injustice is imbricated, and so the theatrical takes us to the Seinfeldian, a law of the everyday where nothing in particular happens, in order to notice, at the point of the nodal knot that ties something of the present into the reading of the past, and back again. So Kisch's story, with its cinematic rendering of injustice, is dramaturgically unable to make us notice in the same way that stories of nothing do.

And so I am about to close off this dramaturgical note by reminding us that in law we expect texts to unfold in particular ways, and for law to be found in its boundaries, for doctrine to be complete and for law to turn its face from the world into its own forms of logic. But to find and read into texts beyond our own experiences demands something obvious – that it is necessary to look beyond ourselves, and the things we know and take for granted, to ask why someone else notices or worries about a remark or a word that is meaningless to another. As if to underscore the Seinfeldian everydayness of these stories, there will be surprises, beyond where we think law resides, for in 1920s and 1930s Australia, law was lively and enacted throughout the social world, where the most minute of cases were reported in the papers, and the lives of judges and litigants regular fodder for a curious public in ways now unimaginable. But there is more to these stories, as the dramaturgical note alerts. What you will see next is now very much up to you but through the nodal knot instantiated through this dramaturgical note, the clues left, the traces to be followed, might have us asking: what is the experience of lives lived with law that is not our own – then and now.

### **2 Story One. Trams.**

There is a Masonic Lodge in Brisbane called the Charles Stumm Lodge, founded in 1930, and named in honour of the second Masonic Grandmaster in Queensland, who held that office in 1922-24 and again in 1925-29. Charles Stumm was born in 1865, only six years

### Theatricalising Law in Three, 1929-1939 (Brisbane)

after the then colony was founded in 1859. Educated at Toowoomba State School and at Toowoomba Grammar School, he left school in 1880 at fifteen, and spent three years as a teacher in the Department of Public Instruction of the colony. In 1883 he changed direction, and became articled to the Toowoomba law firm of Brown & Ruthning, and admitted as a solicitor of the Queensland Supreme Court in 1888. Admitted to the Bar in 1894, and subsequently appointed King's Counsel in November 1910, he had a full life outside of law. As well as freemasonry, he was member and subsequently became president of Brisbane's exclusive but now defunct Johnsonian Club in 1909. The Club, founded in Brisbane in 1878 was modelled on Dr Johnson's Literary Club, with its pursuit of cultural formation among the professional classes, and associated networking for members. He was a member of the Queensland Philharmonic Society and also became president of the choral society, the Apollo Club (Priest 1977).

Stumm, who became a Mason in 1899, laid the foundation stone of a new Masonic Temple in Ann Street, Brisbane, on Anzac Day, 25 April 1928. His installation as Grandmaster that year was carried out for the fourth time by Installing Master, A Hertzberg (*The Brisbane Courier* 1928: 15). Hertzberg was also a trustee of the Brisbane Hebrew Congregation (*Pughs for* 1927: 352). Jews had lived in Queensland since its separation from New South Wales in 1859, and probably earlier (*The Brisbane Courier* 1905: 12). There were no bars to them becoming Masons and indeed, to most (but not all) other facets of public life. The leading personalities of the community featured in news reports in the daily newspapers, with reports of sermons of the minister published regularly in the newspapers, and lunches and dinners revealed regular interactions with members of the Queensland elite, including the Governor and leaders of other faiths, each attending each other's events. The Jewish community was well established enough for their synagogue to be included in a series about Brisbane's historic churches [sic] published by *The Brisbane Courier* in 1905. The series set out the history and personalities of the community, and gave details of the origins of its Margaret Street Synagogue, whose foundation stone was laid in 1885. It also featured pictures of its interior and exterior. *Pughs Almanac*, in

## Marett Leiboff

use in Queensland until 1927, included a Hebrew calendar and dates of Jewish festivals in its pages, and the Brisbane Hebrew Congregation was listed in its Ecclesiastical Directory (*Pughs for 1927*: 352), coming in priority after the Church of England, the Roman Catholics, Presbyterians, Baptists and Methodists, Congregationalists and Lutherans, but before the Quakers, the Salvation Army, Seventh Day Adventists, the Church of Christ, Christian Scientists, Theosophists and the New Church (*Pughs for 1927*: 346-53).

Stumm's family must have been one of the mostly Protestant Germans who had been brought to Queensland from the 1860s to work on farms and properties in the Darling Downs area. Along with other prominent Queensland lawyers like Ruthning, whose firm he was articulated to, and the Feez brothers, his name spoke of this German heritage – indeed, his mother's maiden name was Streich. Though Australians popularly think that German settlements in Australia were confined to the Barossa Valley in South Australia, the Darling Downs region became home to large number of German settlers. Surnames like Heussler and Zillman and Hirschfeld and Kleinschmidt, Meibusch, Wagner, Webcke and Langer still occupy the Queensland cultural, political, educational and sporting landscape, but by the beginning of the 20th century, a significant number of Germans had moved denominationally to the preferred Church of England, and perhaps to Presbyterianism or Methodism in place of their, largely, Lutheran origins (Anderson), Charles Stumm included. His adherence to the Church of England (Supreme Court Library), speaks of this social shift, and in 1922, twelve years after he took silk, his move from schoolteacher in Toowoomba to the acme of social life in Brisbane was complete, when he bought a house called *Vailele*, in Brisbane's exclusive town (and after 1925, suburb) of Hamilton.

## Theatricalising Law in Three, 1929-1939 (Brisbane)

MONDAY, 27th NOVEMBER, AT 11 O'CLOCK.  
POST OFFICE AUCTION MART, ADELAIDE-STREET.

### THE MOSSMAN OF BRISBANE, "VAILELE,"

GLORIOUSLY SITUATED ON THE HAMILTON HEIGHTS, FACING HILLSIDE CRESCENT, JUST OFF TRAMLINE, WITH UNINTERRUPTED AND ABSOLUTELY THE FINEST VIEWS OF ANY HOME IN BRISBANE, FROM ALL POINTS A PANORAMIC VIEW OPENS, WITH MORETON BAY IN THE DISTANCE, THESE REACHES OF THE BRISBANE RIVER, AND SURROUNDING SCENERY.

"VAILELE" IS COMMODIOUS IN EVERY PARTICULAR, AND COM-  
PRISES DRAWING-ROOM (21 x 18), Dining-room (24 x 21), with mantelpiece  
and grate, Superb Sleeping room (40 x 16), Sleeping Porch off verandah,  
enclosed with lattice and Thurlow's Patent Blinds, opening to a pretty bushhouse,  
our bedrooms upstairs, elaborately fitted bathroom with enamel bath, Humphrey  
Teyser, porcelain basin, septic tank, wide verandahs, which are all laid  
down in Park flooring, kitchen with Early-Kooka Gas Stove, sink, linen  
presses, pantries, maids' rooms, laundry with set-in concrete tub, tank and  
sp water, up-to-date electric light fittings, prettily decorated right through  
with steel ceilings, &c., telephone, large bushhouse, tool house, fowl run, motor  
garage.

THE GROUNDS COMPRISE AN AREA OF 2 rods 24 9/16 perches,  
AND ARE NICELY LAID OUT IN FLOWER BEDS AND BUFFALO  
LAWNS, WITH CONCRETE FISH POND AND TWO FOUNTAINS, CON-  
CRETE AND ASPHALT PATHS, AVIARY, &c.

Described as rebus. 20/23 of sub. 18 & 19, 20/30 and rebus. C of sub. 20 of  
lots. 7/8, portion 1, parish of Toombul.


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Figure 1: The Mossman of Brisbane: "Vailele"  
(*The Brisbane Courier* 1922)

Five years after he moved into *Vailele*, on 12 February 1929, Stumm KC was sworn in as a justice of the Supreme Court of Queensland, at the age of 63. His appointment had been announced a short time earlier, along with another new justice yet to be appointed, HH Henchman (*The Daily Standard* 1929: 1). At his swearing in, he spoke of his gratitude to those Queensland lawyers who had come before him, noting of the 'late Chief Justice Sir Samuel Griffith ... these legal giants at *nisi prius* ... I have in Queensland the great judges of the past as exemplars'. Blair CJ noted that the new justice had 'Robust common sense, consistent thoroughness, indomitable perseverance, courage, and a high standard of professional honour, these attributes have been the principal factors in his well-merited advancement' (*The Brisbane Courier* 13 February 1929: 17). The profession was proud that Stumm J was appointed 'to the Bench of his native State', and indeed the Chief Justice noted that: 'Step by step we have seen him ascend, a product of our own educational

## Marett Leiboff

system, from the State school to the exalted position which he assumes today'. There seemed to be a genuine affection for this Queensland boy made good in the newspaper reports of his swearing in, and the remarks of those who spoke at his swearing in.

This fondness was rendered even more poignant, when only three weeks after his elevation to the Bench, Charles Stumm died following injuries he received after being struck by a motor car whilst alighting from a tram in the early evening of 27 February 1929. His journey started ordinarily enough, taking the tram that left the Oriel Park terminus at Ascot at 7.06 pm in the direction of the city, getting on at the Crescent Road stop on Hamilton Road (now Kingsford Smith Drive). To get there, he would have left *Vailele*, walked down a short street that turned into a long set of steps to Crescent Road, before crossing Hamilton Road. February in Brisbane is summer: stormy, cyclonic and monsoonal, and Charles Stumm carried his umbrella that night. It would have been dark, the summer evening in a latitude 600 kilometres south of the Tropic of Capricorn becoming dark early.

He didn't go far on his journey, alighting at a treacherous spot on Breakfast Creek Road, then cut through by two sets of train tracks that pointed towards the docks and warehouses of inner industrial areas, close to the intersection of Ann, Wickham and Montpelier Streets. Today these streets are in the midst of inner city renewal. He stepped towards the footpath but was struck by a car, and fell back hitting his head on the tram's timbered lower area. He was conscious and talking, protesting the need for help; as he was assisted to his feet, it was reported he said: 'I am quite all right. There is no need for any fuss' (*The Brisbane Courier* 28 March 1929: 16). The driver (who was later charged and acquitted of causing Stumm J's death), offered to take him to hospital, but he was ferried to St Martin's Private Hospital, located in the grounds of St John's Church of England Cathedral about 10 minutes away, by another driver. Its matron, Florence Ethel Green, said that when he arrived 'he was apparently quite conscious, and spoke clearly and sensibly. He said, "They tell me I tripped over my umbrella. They are making a great fuss about nothing"' (*The West Australian* 1929: 20).



### Theatricalising Law in Three, 1929-1939 (Brisbane)

But he must have sustained a fatal heading injury, and he died the next morning, on 28 February 1929.

The tragedy of his death was profoundly felt. The afternoon newspaper, *The Telegraph*, published this editorial, which expressed sentiments that overwhelmed a city of 285,000 people:

Following so quickly upon his elevation to the Supreme Court bench, the death of Mr. Justice Stumm is additionally tragic and a greater shock to the community than it would have been otherwise. Only yesterday he was performing his high office; to-day he is claimed by the Great Reaper. Thus in a flash, without a suspicion of the sad event before him a distinguished Brisbane citizen and Queenslander is gone. Deep regret will be felt throughout the state and beyond, and sincere sympathy for those who are so suddenly bereaved. Three short weeks ago it was our pleasure to comment upon his appointment as a Judge, and the approval we expressed was endorsed by the public with a unanimity speaking volumes for the esteem in which he was held. The deceased gentleman had spent the whole of his adult life in this community, and by unusual talents, unswerving probity, enthusiasm for high Ideals, and endearing personal attributes he had widespread affection and admiration. He combined a large and a noble mind with a magnificent figure. He adorned any company in appearance, in manner, in intellect, in eloquence, and in loftiness of character. For years he had been Grand Master of United Lodge of Queensland Freemasons, and it is not only Freemasons who realise what a very high honour that it is for any citizen to attain (*The Telegraph* 1929: 8).

His State funeral at St John's Cathedral came just the next day, on Friday 1 March 1929. The public outpouring was profound. Thousands of people waited outside the Cathedral and others lined the route from the Cathedral to Toowong Cemetery, travelling through the main street of Queen Street, where tram and other traffic was temporarily suspended. Over 200 cars formed the procession from the cathedral to the cemetery.



Figure 2: ‘The Funeral of the Late Mr Justice Stumm’  
 (*The Daily Standard* 1929: 1)

The newspapers were filled with the details of the service, and of those attending. The Dean of the Cathedral, Dean de Witt Batty, Archbishop Sharp and Canon Armstrong, with Bishop Le Fanu (the chaplain of Justice Stumm’s Masonic lodge), officiated. His widow, brother, sister and nephews and nieces were the chief mourners. His brother justices, including the Chief Justice were among the pallbearers, who included the Acting Premier. The cathedral was crowded with dignitaries, parliamentarians, alderman, members of the profession, the University of Queensland Senate and academics, and hundreds of representatives of Masonic Lodges in Brisbane and beyond. Mr Hertzberg was present, as was the President of the Old Boys of Toowoomba Grammar. Other clergy was represented, including the Catholic Archbishop Duhig and the Reverend Nathan Levine. The list was reported in detail in the newspapers, and omissions quickly corrected in subsequent reports. Members of his Apollo Club sang at the gravesite.

## Theatricalising Law in Three, 1929-1939 (Brisbane)

The panegyrics were to continue. The next day:

during his sermon preached at the Margaret Street Synagogue on Saturday morning the Rev. Nathan Levine referred in sympathetic words to the tragic death of the late Mr. Justice Stumm. He said that as a community they mourned with the rest of the citizens of Brisbane the passing of so noble a citizen and a just judge. They could see in the late judge a follower of all that was noble and of good report. In his exalted position he held himself with a gentle modesty which was an example of all who were privileged to know him. "We grieve for the loss to the State, to the city, and to his bereaved wife and dear ones," he added. "May the Almighty comfort and sustain them." (*The Brisbane Courier* 4 March 1929: 15).

It must have been too much to bear, for within only a few months, *Vailele* was sold:

**FOR SALE.**  
The Beautiful Home of the Late Mr. JUSTICE STUMM,  
**"VAILELE,"**  
HILLSIDE CRESCENT, HAMILTON.  
Immediately overlooking two reaches of the river. Convenient to tram, contains 4 bedrooms, large double drawing room, smoke room, sewing room, lumber room, maid's room, kitchen, linen room, 3 bathrooms, 2 lavatories, laundry, bushhouses, fish pond, and garage, verandahs all sides, six allotments of land, prettily laid out in terraces and gardens.  
For full particulars as to price and terms, apply—  
**HALL, CHADWICK & CO.,**  
"Pioneer House,"  
108 Edward-street,  
BRISBANE.

Figure 3: 'For Sale: The Beautiful Home of the Late Mr Justice Stumm, 'Vailele"  
(*The Brisbane Courier* 13 August 1929: 32)

It is possible, but unlikely, that my grandfather, Morris Leiboff, was in the congregation that day. In 1929, he belonged to the Russian Deshon Street Synagogue on the southside of the city. By the next year, 1930, he had moved his membership over the river to 'Margaret Street', though he still lived on Brisbane's southside. Since his naturalisation as a British subject ten years earlier (Leiboff 2011), Morris had become

## Marett Leiboff

established in his adopted city, and he was making good his promise contained in his naturalisation application that the status of British subject would enable him to exercise his rights in law (Leiboff 2011). In 1931:

Charles Edward Beck (30, seaman) was remanded till March 30 by Mr. P. M. Hishon, P.M., in the Police Court to-day, charged with having on February 26, at South Brisbane, broken and entered the shop of Morris Lieboff [sic] and stolen three men's suits, valued at £15, the property of Lieboff (*The Daily Standard* 27 March 1931: 9, *The Brisbane Courier* 28 March 1931: 14).

Beck, an American who arrived in Queensland in 1927, pleaded guilty to 13 charges of theft committed in Brisbane and Toowoomba between 8 February 8 and 25 March. The total value of the stolen property was £158 8s 10d, of which £144 6s 11d worth was recovered, mostly in pawnshops; Morris' portion was £31.10s. The reports involving Morris generally spell his name 'Lieboff', not Leiboff. His name is Russian, but the transliteration of Cyrillic is confusing in a place where German spelling is familiar. You hear Lee-boff and you write 'Lieboff'. It was the same when, later than year, he was knocked down by a motor car whilst attempting to get onto a tram. His accident was reported on *The Brisbane Courier's* 'The Law Courts' page:

As he walked out on the road to board an inbound tram car at the corner of Stanley-street and Merton road, South Brisbane, shortly after 7 o'clock yesterday morning. Morris Lieboff, Church Avenue, Woolloongabba, was knocked down by a motor car, also proceeding towards the city. He was later attended by ambulance bearers for a compound fracture of the right thigh, lacerations and abrasions on the face and knees, and shock, and conveyed to the Mater Misericordiae Private Hospital (*The Brisbane Courier* 2 September 1931: 12).

### Theatricalising Law in Three, 1929-1939 (Brisbane)

*The Daily Standard*, published on the day of Morris' accident, reported the events in somewhat more lurid terms:

Knocked down by a motor car, in Stanley-street this morning, Morris Lieboff, 30 [he would have been closer to 50], of Church-street, South Brisbane, was taken to the Mater Hospital by ambulance bearers suffering from a fractured right thigh, lacerations and abrasions, on his face and knees, and shock;

LIEBOFF, it is stated, "was standing on the roadway at the corner of Merton-road and Stanley-street, about .7.20, waiting for a tram to come to the city. As a tram car approached, a motor car also came along the street parallel with it. The driver, on seeing Lieboff on the road, drove in close to the kerb to allow him plenty of room, but Lieboff apparently became excited for he is said to have jumped back towards the kerb right in the path of the motor car knocked down, and two of the wheels of the vehicle passed over his right leg and the under carriage cut his face (1 September 1931: 7).

It is only a block or so to the hospital, and his house on Church Street (now Trinity Lane) was close by. He was in hospital for weeks, and he remained at home, with visits from his surgeon, for some time afterwards. This was a dreadful accident early on a spring morning; my father, then a four year old boy, was deeply traumatised by what happened, for when I asked, he didn't want to talk about it. Anything could have happened to his business during this time, and it clearly did. On Friday 2 October 1931, *The Charleville Times* reported that:

The case in which Leslie Allie, cook, of Charleville, is proceeding against Morris Leiboff, 148 Adelaide Street, Brisbane, for money had and received by defendant for use of plaintiff, has been adjourned to November 6 (2 October 1931: 7).

Charleville, a small country town 700 km west of Brisbane, was serviced by 'travellers', or agents, for Brisbane based businesses. In December, the case proceeded against Morris for the recovery of £9/9/. *The Charleville Times* reported the case in detail. Louise Alley deposed that she was present when her husband gave a traveller named Brum an order for a suit, paying him £2 as a deposit. Brum handed her a card

## Marett Leiboff

with his name written on it, as being the agent for Leiboff & Sons. The suit arrived C.O.D. about two months after the order had been given but it was much too small; the C.O.D. charge was £7/14/. The suit was returned to Leiboff & Sons but it came back marked 'refused'. Cross-examined by Mr. Jackson for Morris, the witness said she had known of Leiboff Bros for a few years but had not been visited by one of their travellers before. Brum introduced himself by saying he was travelling for Leiboff Bros, and he would like to get an order. No evidence was called for the defence, and judgment was awarded plaintiff for the full amount claimed, £9/9/, with costs of court 7/6, witnesses', expenses 5/, and professional costs £2/10/.

Morris would be back in the courts within a couple of years, and I will come to that story later, however once the 1930s closes, his name never appears again in the law lists or the law reports. But there is a postscript to these stories of trams. In 1949, Morris and his family, including my father, moved from the southside of Brisbane to Hamilton. Morris bought *Vailele*, and they lived there until the late 1950s. It's a house I have visited but never lived in. I grew up next door, in a house built on some of its land. And I have caught trams from the Crescent Road stop, walking down the street and the long set of steps, and crossing the road to catch them. But never on my own, for trams stopped running in Brisbane in 1969 when I was 10. In 1969, the national anthem was still *God Save the Queen*, we wore hats and gloves to school, Brisbane hadn't shaken off its reputation as a Big Country Town, and England still loomed large as the Mother Country. And World War Two had started only 30 years earlier, its warm breath of connection everywhere in our midst.

### 3 Story Two. 'Mr Justice Henchman Dead'

Something seemed out of place on the front page of Brisbane's *The Courier-Mail* newspaper on Tuesday 25 April 1939,<sup>2</sup> a brief entry signalled by 'Mr Justice Henchman Dead' disrupting the careful shape and balance of its Anzac Day front page. Anzac Day remembers the bloody military sacrifice of Australian and New Zealand soldiers

### Theatricalising Law in Three, 1929-1939 (Brisbane)

(the ANZACs) at Gallipoli in Turkey, who under British command, attempted to land at dawn on 25 April 1915.<sup>4</sup> Yet most of the front page of *The Courier-Mail*, speaking to Brisbane's population of 326,000 (and beyond to the rest of the state), was devoted to Federal political intrigues, but placed top and centre and at the top right hand of the page, firmly in the eyeline of the reader and unmissable at the turn of the page, was the newspaper's commemoration of the Anzacs. It was 24 years after the horrors of Gallipoli, and the surviving Anzacs were now aging; those who somehow managed to join up at the age of 13, 14 or 15 were in their late 30s, the rest in their early 40s. Their lives and experiences, their memories and stories, were becoming rarer. And this was *The Courier-Mail's* Anzac Day message that year: don't forget, especially as it won't be long before we will be at war again – understand your duty. The newspaper selected an abiding image to underscore its point: two photographs of schoolgirls sitting at their desks for 'The Story of April 25'.

Interest held by the stirring story, pupils of the Central Practising School listened with rapt attention as the deeds of the Anzacs were recounted by speakers yesterday. Thousands of children throughout Queensland heard addresses on this gallant episode of Australian history (*The Courier-Mail* 25 April 1939: 1).

This intergenerational recounting of the story of the Anzacs took pride of place on the front page, supplanting the formal messages from the King, relayed by the Governor-General, Lord Gowrie: 'Royal Anzac Day Messages: Proud to Join with Australians'. It was here, sitting directly under formal messages about Anzac Day and squeezed next to a brief political story, in a prominent but awkward position, was that headline – 'Mr Justice Henchman Dead' – with a brief account of his death on that Anzac Day, followed up on the next page: 'Career – page 2', sitting next to news about 'German organisations suppressed' in Alsace Lorraine; 'Peasants shot at Memel: Objected to seizure of crops by Nazis' in Poland.



Figure 4: Anzac Day 1939  
 (The Courier-Mail Brisbane 25 April 1939: 1)

Henchman J died in office, just a little over 10 years after his elevation to the Bench. He had been conducting a case in Toowoomba, where one of his sisters lived. Daily news updates on his condition filled the papers after the seizure he had the Thursday evening before he died. The report in *The Courier-Mail* was matter-of-fact: "The body will be brought to Brisbane to-day and arrangements for the funeral



### Theatricalising Law in Three, 1929-1939 (Brisbane)

will be announced later' (25 April 1939: 1), though making note of his widow and children, a son and daughter from his first marriage, and two sons from his second, his brothers, including the state Solicitor-General, and sisters. Henschman J's state funeral was held the day after his death, on 26 April 1939. Like Stumm J 10 years earlier, it was held at St John's Cathedral. Crowds of people watched the procession pass through the city, and representatives of the Governor and Premier were in attendance. The Chief Justice (Sir James Blair), Mr. Justice Macrossan, Mr. Justice Webb, and Mr. Justice E. A. Douglas were the official pallbearers. As he had been a soldier 'in the Great War the coffin was enfolded in the Imperial flag. Red roses and a scarlet and ermine robe lay on the top of the coffin' (*The Courier-Mail* 27 April 1939: 3). The clergy, Archbishop Wand, Bishop Dixon, Dean Barrett, and Minor Canon Whitehouse assisted in the Burial Office, which was begun in the cathedral and concluded at the graveside by Dean Barrett.

Hereward Humfry ('HH') Henschman's appointment as a justice of the Supreme Court of Queensland had been announced the same day that Charles Stumm KC's appointment was announced (*The Daily Standard* 6 February 1929: 1), and the two appointments were intertwined, inevitably, through the older man's untimely passing. At Henschman's J swearing in ceremony on Tuesday 5 March 1929 it was remarked:

But over the ceremony - though no reference was actually made to it - there hung the shadow of the grief felt by the legal profession at the death of the late Mr. Justice Stumm, which had called for the hastening of the swearing in of the new judge (*The Brisbane Courier* 6 March 1929: 16).

HH Henschman was nearly 10 years younger than Stumm, and the first Queensland Supreme Court justice to hold a *university degree* in law. But he was not a Queenslanders by birth. Born in Leeds on 29 November 1874, he arrived in the city of Rockhampton, 600 km north of Brisbane, as a small boy of four in 1878. He was evidently brilliant, and after a period at the new Rockhampton Grammar School, he moved to Brisbane Grammar School where he was awarded the first

of three exhibitions to the University of Melbourne by the colonial Queensland Government.<sup>4</sup> Later he achieved further exhibitions and scholarly accolades. As a member of Trinity College, he was awarded a Bachelor of Arts in 1895, followed by his Bachelor of Laws in 1898, and in the English tradition, these were converted to Masters degrees after the relevant qualifying period.<sup>5</sup> He stood out in both degrees. He received a First Class result for his examinations in Classics and Comparative Philology (*Annual Report, 1894-1895*: 319), and though he came second, was awarded another exhibition (*proxime accessit*) (*Annual Report, 1894-1895*: 323), also receiving the Prize for Greek, Part II (*Annual Report, 1894-1895*: 325). In second year law, he received a first class result again (*Annual Report, 1897-98*: 370), and was awarded a scholarship as a result of the Final Honour Examination held in the First Term, 1898 (*Annual Report, 1897-98*: 375), and his degree of Bachelor of Laws was conferred in 1897 (*Annual Report, 1897-98*: 377). Regular updates on his career after he returned to Queensland were recorded in the Trinity College magazine, and his university honours were recorded in the obituary published by the magazine (Obituary 1939: 27-28).

Henchman was called to the Bar in 1899, but had to sit exams first in Queensland, specifically on local constitutional law and legal history (including the Queensland statutes relating to the *Constitution*) before his admission, though his fees for examination were reduced by the court because of his degree (*The Brisbane Courier* 1898: 3). At his swearing in, he spoke of the twin facets of his life – his status as outsider and of someone who benefited from the education policies of the then colony:

“While I cannot claim the honour of having been born a Queenslander,” he said, “yet I can justly describe myself as a Queenslander bred. More than 45 years of my life have been spent in this State. It was to the far-seeing wisdom of this then young colony in establishing its excellent chain of Grammar Schools that I owed my secondary education. It was Queensland’s system of Government exhibitions that gave me an opportunity of receiving the higher education afforded at an Australian University” (*The Brisbane Courier* 6 March 1929: 16).<sup>6</sup>

### Theatricalising Law in Three, 1929-1939 (Brisbane)

But he never took silk, though the post-nominal 'KC' appends the reporting of his appointment and swearing in. There was no question that Henchman J was highly qualified, but the reporting of his swearing in seemed muted, and there was no trace of the affection of the kind that characterised the welcome of Stumm J. Henchman was lauded for his brilliance, and there was some warmth from his brother judges and the profession, but there were some odd turns of phrase: the leader of the Bar spoke of 'our confidence in your fitness to efficiently discharge the duties of the high office to which you have been called', while Blair CJ remarked: 'In his courts we believe practitioners will find a sympathetic and helpful judge and litigants consideration and justice' (*The Brisbane Courier* 6 March 1929: 16).

Henchman had seen tragedy – his first wife died in 1914, and he enlisted soon after in 1916. He married again in England in 1919 before returning to Australia, and now also living in Hamilton, in a house named *Totnes* in Circe Street, having moved from a different part of Brisbane entirely, Indooroopilly. He and his second wife had two sons. His son of his first marriage, Hereward John Humfry Henchman lived in Sydney, having finished his schooling at The Armidale School before going on to the University of Sydney to study law. He, too, became a judge, this time in New South Wales. By the 1930s, *Totnes* was regularly mentioned in the social pages, along with the social activities of his wife and his daughter from his first marriage. The report of Henchman J's swearing-in in 1929 was full of detail of a kind that would grace the social pages of the era:

The scene was a bright one, the judges being robed in scarlet and white, and wearing the regulation fullbottomed wigs of the judiciary. The jury box was filled to capacity by ladies, who evinced a keen interest in the proceedings, while the body of the court was crowded by eminent counsel and other members of the legal profession. It was one of the hottest days of the summer, and the judges' attire was certainly not conducive to their comfort, but there was no relief possible for them (*The Brisbane Courier* 6 March 1929: 16).

Henchman J and his family caught the attention of local, state

## Marett Leiboff

and national publications, and his daughter, Gwynneth, an 'it' girl of the era, attracted considerable attention. In 1935, Gwynneth, then 27, returned to Brisbane after a yearlong trip to Europe, which was reported breathlessly in a range of publications. She mentioned that going to the opera in Vienna figured among her many pleasures, and spoke of her visit to Nuremberg, 'the most beautiful town in Germany', her visit to Oberammergau as well as visiting Munich and Mainz (*The Daily Standard* 1935: 12). Speaking to 'a representative of *The Courier-Mail*, in the course of a chat with her at her home at Totnes, Hamilton, [that] gleaned some of her impressions of the other side of the world', Gwynneth 'waxed enthusiastic' about Nuremberg, but remarked that:

'Vienna is very sad and depressing,' said Miss Henschman, 'for there is frightful poverty existing, and the spontaneous gaiety that one expects is lacking, for they are a worried people, and the pavements cafes and their bands, of which one hears so much, are now difficult to find' (*The Courier-Mail* 25 March 1935: 16)

That same year, her father took a period of leave from the court, for health reasons and study purposes, and visited Japan and Java: 'He is eulogistic regarding the thoroughness with which the Japanese set about their tasks. He especially mentioned the marvellous irrigation system' (*The Telegraph* 1935: 13). This slightly unenthusiastic reporting of Henschman J's visit to Japan wasn't to do with his period of leave. A deflection by Henschman J of a question about Japanese defences spoke of a reporter's concern: there had been disquiet about Japan's foreign policy – the invasion of Manchuria and the threat to withdraw from the League of Nations – that had been fomenting since 1933. That Japan was chosen for this visit certainly seemed to raise eyebrows, but a casual glance at places, names and events that swirled around the observations of father and daughter revealed something that couldn't have been missed even then. Miss Henschman's 'most beautiful town in Germany', was the site of the Nazi Rallies that had been held, sporadically at first in the 1920s, and then annually from 1933 until 1939, that meant even then Nuremberg could not have been understood as being anything other than a place associated with Nazi Germany. Its

### Theatricalising Law in Three, 1929-1939 (Brisbane)

chief claim to infamy was to come in September 1935, a few months after Gwynneth returned to Australia, when the Nazis passed its most formally constructed laws against Jewish people or those of Jewish origin (see Rundle 2009).

Life for Jewish Germans had already become intolerable, yet despite this, Miss Henchman did not seem to notice. Over the next few years, she had other matters to attend to. On a later trip to the UK and America, she had met an American surgeon, V C Southworth, who she married in a closed ceremony in early 1939 in Sydney, where her brother and sister-in-law, a member of the White family, lived (*The Courier-Mail* 1938: 15; *The Telegraph* 1938: 13). She and her new husband left Australia for America in March 1939. A month later, her father was dead. There was something wretched, then, in the juxtaposition of another story, adjacent to the brief front-page report of the death of Henchman J, that was headed 'Deported Jews in Tears':

LONDON, April 24.— The Jerusalem correspondent of the News-Chronicle says that 270 terrified German and Czechoslovakian Jews were forced to sail from Haifa on a tiny Greek steamer. They are men, women, and children who were without passports, but hoped to find a refuge in Palestine. They prayed for mercy, and wept when they were ordered to leave.

One woman screamed: 'We escaped from concentration camps to the land of our fathers. Now you are sending us to death.' A second small boat, which contained 170 refugees, was also ordered to sail, but the refugees threw the vessel's food supplies into the sea, and the authorities ordered it to return (*The Courier-Mail* Tuesday 25 April 1939: 1)

A casual, perhaps careless read in 2016 will pull out familiar words – Palestine, Greek steamer, refugees, without passports, concentration camps, throwing food into the sea, terrified Jews. There is something uncanny and unsettling about this report for Australians now, and then. People had been seeking refuge for years, because the Nazi terror had not just begun in 1939 or even in 1935. The stripping of legality in Germany in March 1933 presaged worse to come; but Germany wasn't

the only place where someone Jewish attempting to seek redress in the courts might have found themselves rebuffed.

#### **4 Story Three: March – May 1933**

On 10 March 1933, a Munich lawyer, Michael Siegel sought the release of his client held by the police in so-called ‘protective custody’ – being held without recourse to law and with no possibility of seeking release through the courts. It was just a couple of weeks after the burning of the Reichstag on 27 February that formed the pretext for the removal of conventional law by the Nazi regime (which had seized power earlier in 1933) and any idea of remnant legality – a word I use intentionally – was suspended the next day, through the voiding of Constitutional guarantees by the *Reichstag Fire Ordinance*. The state of emergency declared – a legal device in itself – enabled the paramilitary wing of the Nazi party, the Brownshirts or SA (the *Sturmabteilung*), to act along with formal agents of the law, or to supplant formal legal entities at the time (American Bar Association 2014).

Five days earlier, on 5 March 1933, the last election that bore some relationship with the forms of democracy was held in Germany, but the result was a foregone conclusion. The Nazis were now in power. It was in this environment that Michael Siegel attempted to obtain the release of his client. The police, or more particularly the SA, responded to Siegel’s request vigorously: he was stripped of his trousers, shoes and socks, had his head shaved and had a placard placed around his neck saying ‘I will never complain to police again’. He was then marched through the streets of Munich, captured in a photograph that became an emblem of the threat to law in the early days in the Third Reich, and the embodiment of the threat to individual lives in the absence of law and legality. Siegel’s problem, like his client, was that he was Jewish, and this was just one of the myriad actions taken against Jewish lawyers and judges in the early weeks of March 1933, some more or less violent than others. The election itself provided a means to act, and the next day, the SA violently entered courtrooms, viciously forcing Jewish judges and lawyers out of the court. Within a few weeks, formal

### Theatricalising Law in Three, 1929-1939 (Brisbane)

law was introduced to remove most Jews from the legal profession, swiftly introduced so that by May 1933 (Morris 2013: 119), Jewish lawyers and judges were left without livelihoods. These actions were taken *before* Hitler was able to pass an *Enabling Act* on 23 March 1933 (Morris 2013). Any opposition had already been imprisoned or worse. Dictatorship was now absolute: all other political parties were banned and the Reichstag deinstitutionalised, replaced with a legislative body made up of Nazis and associates. By the end of 1933, on 12 November 1933, another election was held, but with all other political parties banned, the only candidates were Nazis.

What happened to Michael Siegel didn't make the news in Brisbane, but there were murmurings in Brisbane's newspapers about goings on in Europe. But another case started to capture attention in Brisbane the same day that Siegel attempted to have his client released: a bankruptcy petition in which Morris Leiboff – my grandfather – was creditor. The case had started to take shape on 14 November 1932, when a petition was presented; the debtor, Fred Thomas, was subsequently brought from Western Australia with Morris subscribing £60 towards the cost. Mr Thomas' move to Western Australia from Townsville, and Morris' action in seeking to proceed against him suggests that Morris knew something about Fred Thomas and his assets that were ultimately not going to be revealed in this case. Mr Thomas, the debtor, was lodged in His Majesty's prison on 5 March 1933, but released by order of the Chief Justice on 16 March 1933 (*The Telegraph* 10 May 1933: 1). At the time, Federal jurisdiction, like bankruptcy, was exercised in the state courts, and the case was then allocated to Henchman J, who, a few months earlier, had had enough of cases being unprepared and not ready to proceed. At that time, he:

announced that all cases remaining on the civil list for the present sittings would be liable to be called at any time after next Monday. He would accept no excuses, his Honour said, and if those concerned were not ready to go on with a case it would be struck out (*The Telegraph* 1932: 11).

This case (*Re Fred Thomas; Ex Parte Morris Leiboff*), was listed in

## Marett Leiboff

the daily law reports in the newspapers, as a chambers matter, firstly on Wednesday 15 March 1933, and the listed again as an adjourned hearing on Friday 17 March 1933, and again on Friday 31 March 1933, and yet again on Wed 12 April 1933. Finally, the case was relisted with the Chief Justice, Sir James Blair on Wednesday 10 May 1933. Henchman J, who had original carriage of the case, seemed in no mood to hurry the case along, something that can be traced through the scant notes of the chambers hearings recorded in his official judicial notebook. At first, the annotations say nothing of substance, simply noting the adjournments, most of which occurred by consent: the note of 15 March 1933 remarks that the adjournment of the case to 17 March 1933 (*Judge Henchman's Notebook*: 38); then on 17 March 1933, the note observes that M Graham appeared for M Leiboff, while Mack appeared for the debtor, and that another adjournment was agreed by consent and the case again set down for hearing on 12 April 1933 at 10 am (*Judge Henchman's Notebook*: 40).

The final time notes were made occurred on 12 April 1933. Henchman J now records that Fred Thomas wanted to satisfy all creditors, and that he was in negotiations with third parties. He makes another note that day at 12.53 pm, this time of more substance, which says that all the combined creditors other than the petitioner were owed £99, and that the petitioner (that is, Morris Leiboff), was owed £527. The defendant requested more time, and this time Henchman J obliges in the form of an order in the following terms:

Order:

It appearing that the petitioning creditor is by far the largest creditor of the debtor, and that all his other creditors are comparatively small and that negotiations are on foot [illegible] the parties are consulting, [I] order that the hearing of the petition [be] adjourned until 10 May 1933 at 10 am. (*Judge Henchman's Notebook*: 50).<sup>7</sup>

But 10 May 1933 wasn't in Henchman's J notebook. As the Law Lists reveal, the case had returned to the Chief Justice. There are many possible reasons why, but I will leave the sub-text open: on that day,



### Theatricalising Law in Three, 1929-1939 (Brisbane)

Henchman J was not on leave. The constant adjournments seem to bear the mark of a judicial version of trial by battle, that Henchman J did not want Morris to succeed, the oddly worded order suggesting that he disapproved of the application, or that he disapproved of my grandfather, or a combination of all of these for any or all reasons. He, too, could have been ill-disposed to someone of Morris' background.

In the end, Morris received very little, other than an acknowledgment that he was owed a substantial sum of money, though he could be confident, at least in the hands of the Chief Justice, that he would be treated fairly, for reasons that will become clear soon:

The Chief Justice (Sir James Blair) sitting in Federal Bankruptcy Jurisdiction in the Supreme Court to-day heard an application by Mr. A. D. Graham (instructed by Messrs. Macnish, Macrossan and Dowling), on behalf of Maurice Lieboff [sic], of Brisbane, for leave to withdraw a bankruptcy petition which he (Lieboff) had presented against Fred Thomas, formerly of Townsville, tailor ... Evidence was placed before his Honour that it had now been discovered that the debtor had no assets and no available moneys for discharging the debt on which the petition against him was founded and consequently the petitioning creditor did not now desire to proceed further with the petition. The amount of the debt to the petitioning creditor was £573 and the debtor had obtained assistance in the sum of £50 which amount such friend was willing to pay to the petitioning creditor towards the costs incurred in and about the bankruptcy. His Honour made an order granting leave to withdraw the petition (*The Telegraph* 10 May 1933: 1).

This report made page 1 of the afternoon newspaper. Though the case was of no particular legal importance (few cases are), it had clearly captured the attention of the public, not least that the public display of law as a social phenomenon had been captured in the drama of a case that seemed never to end. And to underscore its capture of the public imagination, another of Henchman's *J bon mots* appeared on the same front page: 'Heard in Court. Mr. Justice Henchman: It sounds contrary to common sense but it may be the law'. But the front page had more news, this time from Europe. In May 1933, the paper was reporting German rearmament, and violence against Jews in Vienna:

## Marett Leiboff

Exceptional Brutality Anti-Jewish Riots In Vienna University Foreign Students Battered By Nazis ... London. May 10.

The Vienna correspondent of the 'Dally Telegraph' says that anti Jewish riots of exceptional brutality were started in Vienna University. Thirty students have been injured, including- seven American doctors, who are studying in Vienna. These have lodged a protest to the American Consulate. The police stopped the disorders in the streets but an ancient privilege prevented them from going into the University, where Nazi students, with sticks studded with nails, attacked Jewish and Socialist foreign students. The latter jumped from windows into the streets. Their faces in many cases were streaming with blood. A serious aspect of the Austrian situation, the correspondent adds, is 'that the Civil Service has been undermined by the Nazi movement' (*The Telegraph* 10 May 1933: 1).

The juxtaposition of this news with the report of my grandfather's case was most likely accidental, but in a relatively small city, it was probably no great secret that Morris, well known in legal circles, was Jewish. And just so you don't make too many assumptions about Morris' reasons for pursuing Mr Thomas, it was unlikely to be money. Morris had made a name for himself for his generosity during the Depression years, helping people in need to assistance in his adopted country. This was brought into sharp relief when we found out that a caller to an ABC radio program called 'Australia All Over', at some time in the 1980s or 1990s, rang in to talk of what he had done to help her mother and her struggling working class family in the Depression. But this does seem to be the last time he brought any legal action against anyone, or at least that proceeded through the courts, though he was prosecuted for underpaying one worker in 1937 following union audits of clothing manufacturing businesses like his. But he, my grandmother, and my aunt (my father and his other sister were too young) appeared in the newspapers regularly, as part of the social world of Brisbane of the 1930s.

## **5 A Postscript**

'I think your grandfather knew Blair', my father said, when I asked him about some of the things I found in the course of researching this article. Blair CJ died in 1944, and as well as his role as Chief Justice, had a number of stints as acting Governor of Queensland. 'He danced with Violet (my father's sister, my aunt) at the deb balls', he told me. This must have been the topic of some conversation in the family, because my father was still only a small boy at the time. 'Blair was known as being gay (in the old sense)'. It sounded like Blair CJ liked to be the heart and soul of parties - and he routinely wore a gardenia. I wasn't surprised that my dad, who turned 89 in 2016, could tell me that Blair CJ danced with my aunt, who regularly appeared in the social pages, an 'it' girl in her own right. Violet had been presented to Blair CJ as one of four debutantes at the eighth annual ball of the Jewish Women's Guild, held at Lennon's Ballroom in 1936 (*The Courier-Mail* 1936: 22), and he had attended these balls during the 1930s before she made her debut. These balls were also fundraising efforts; the contemporaneous reports all made it clear that donations received were distributed throughout the wider community. But there was much to report, and like the other balls and events of the time, the detail of the evening was noted with precision, from the fabrics of the ladies' dresses to the decorations, to the flowers.

Blair CJ again received debutantes (five this time) in 1939, accompanied by Lady Blair, at the 11th annual ball of the Jewish Women's Guild, this time held at the Belle Vue Hotel. Mr and Mrs M Leiboff and Miss Violet Leiboff were among the organising committee and reception party (*The Courier-Mail* 1939: 2). The next month, World War Two began.

## Notes

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- 1 The project was funded by a *UOW University Research Committee Small Grant awarded in 2009* and approved by the University of Wollongong Human Research Ethics Approval HE10/206, 10 June 2010 as extended. All results are held on file with the author. The surveys have no identifying information about individuals and interviews are anonymised. I would like to thank all the participants for their time and enthusiasm for the project, and in particular my research assistant Daniel Byers, and the numerous, helpful interventions, comments and questions at presentations of this research in a range of fora since 2010.
- 2 A morning broadsheet serving the city of Brisbane, the capital city of Queensland in Australia. It was still a relatively new masthead at the time, the result of the merger of *The Brisbane Courier* and *The Mail* in 1933.
- 3 A public holiday in Australia since 1927, Anzac Day in 1939 commemorated those who had fought and suffered at the Dardanelles, and its singular role in the formation of the Australian national identity. Over the next six years, Anzac Day extended to become a more generalised day of memorial for those who had fought in the Great War, and since then, all wars. But in 1939, Anzac Day commemorated those who had been at Gallipoli. Until then, all the other theatres of the Great War were remembered on Armistice Day throughout the British Empire, including Australia: the two minute silence held at the 11th hour of the 11th day of the 11th month, instituted at the direction of King George V on 7 November 1919.
- 4 The word in this guise is more or less extinct, as the OED notes, and it is cognate with ‘maintenance or support’, ‘The ‘foundation’ of a grammar-school and an allowance of money for a person’s support; a pension, salary’. ‘A gift, present’. ‘Pecuniary assistance given to a university student’, ‘A fixed sum given for a term of years from the funds of a school, college, or university, generally upon the result of a competitive examination’, ‘One who holds an exhibition at a university’.
- 5 There was no university in Queensland until the second decade of the 20th century. Along with other judges who held degrees from elsewhere, he was awarded *BA Ad Eundem Gradum* on 1 June 1911, and to mark the occasion of the founding of The University of Queensland.

## Theatricalising Law in Three, 1929-1939 (Brisbane)

- 6 In 1935, a year in which he took leave from the court for a visit to the Japan, a sabbatical taken for health reasons, he was upbraiding the boys of his Brisbane *alma mater*, lamenting the loss of the study of the classics at a school once renowned for its learning in the classics (Latin and Greek), as being:

of advantage to no man ... [instead] the best opportunity of living a full and useful life in any community, whether as man or woman, was afforded by a knowledge of the history and literature of those who had gone before. All that we knew came from them and all we would ever know had sprung from them (*The Courier-Mail* 14 December 1935: 7).

- 7 My gratitude to the Supreme Court of Queensland for authorising the reopening of the metadata relating to access to the notebooks held in Series ID 18554, Judges' Notebooks (Supreme Court), which had originally been accessed in 2010 and 2011. In 2013, the Supreme Court of Queensland, increased the restricted access period from 30 years to 100 years, meaning that the Notebooks were no longer available for public access without the permission of the Supreme Court. My thanks to Queensland State Archives staff, in particular Colleen Sippo Archivist/Librarian, Archival Collections and Caroline Fewtrell Archivist/Librarian, Collections & Access for facilitating the reopening of access to the metadata.

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