

companion to law (1980, Clarendon Press, at page 565), the successful claimant was 'characterised as perhaps the worst chief justice since the seventeenth century, not as being dishonest but as lacking in dignity, fairness, and sense of justice.' Stawell was an attorney-general happy to reward his own

ambition, but the result is a chief justice of vitality and probity, vain perhaps, but not lacking in those three qualities of the ideal judge.

Reviewed by David Ash

To have but not to hold: a history of attitudes to marriage and divorce in Australia 1858-1975

By Henry Finlay

The Federation Press, 2005

The institution of marriage, in all facets including its breakdown, has been central in the development and evolution of Australian society. The study of the manner in which the colonies, states and Commonwealth imported and developed principles dealing with the breakdown of relationships and the attitudes evinced in the process is the focus of this work.

The author prefaces the work with a quote from G M Young, *Portrait of an age* which reads '[f]or that matter, what is history about? And the conclusion I reached was that the real, central theme of history is not what happened, but what people felt about it when it was happening.' The scene is set for a glimpse into the attitudes of Australian society during the period from the introduction of divorce in South Australia in 1858 to the sweeping reforms of the *Family Law Act 1975*.

The book commences with a promising introduction which outlines the emergence of divorce in England and outlines various models of marriage and separation. What then follows is a detailed account of the adoption and amendment within Australia of the English legislation. Unfortunately for those seeking a broader societal analysis of the development of the various principles and their emergence in Australia, this work disappoints.

The introduction and conclusion are of considerable insight, interest and substance. The freely dissoluble marriage prior to the Council of Trent to the declining relevance today of the formal marriage itself mark the two historical extremes of the analysis and reflect a curious evolution of attitudes in the light of the increasing regulation of, and consequences attaching to, marriage.

The balance of the work records in considerable detail the commissions of inquiry and debates in each of the colonial legislatures and their successors surrounding the introduction and development of the various pieces of state and ultimately Commonwealth legislation. The research into these processes is meticulous and the result a comprehensive overview of the lengthy gestation that divorce legislation endured in the parliamentary arena.

Complete as such analysis is, it represents a largely arid survey of the utterances of members of the various legislatures without providing a broader view of societal attitudes save to the extent that parliamentary committees recorded the same. The result is an exploration of the legislative development of divorce without providing the reader with a broader social context within which to appreciate the attitudes of members of the community at large.

Reviewed by Michael Kearney