

*Matthew Stubbs**

SIR RICHARD HANSON

By Greg Taylor
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I INTRODUCTION

The latest book from the extraordinarily prolific and always interesting Greg Taylor is a biography of Sir Richard Hanson (1805–76). An impressive figure in early South Australia, Hanson was involved in London in the promotion of the enterprise that was the Province of South Australia,¹ and although overlooked for appointment as the first judge of the Province, he arrived in Adelaide in 1846 and went on to serve as South Australia's fourth Premier (1857–60), second Chief Justice (1861–76) and Acting Governor (1872–73).

Sir Richard Hanson makes a welcome contribution to the field of nineteenth-century South Australian legal history.² Taylor remains one of the preeminent experts in this field.³ With a striking photograph of its subject on the dust jacket, *Sir Richard Hanson* also features a superb foreword by Emeritus Professor Horst Lücke, which admirably sets the scene for the extended analysis that follows.

* Senior Lecturer, Adelaide Law School, University of Adelaide.

¹ Greg Taylor, *Sir Richard Hanson* (Federation Press, 2013) 19–20.

² The twentieth century is perhaps rather better served. See, eg, Wilfrid Prest (ed), *A Portrait of John Bray: Law, Letters, Life* (Wakefield Press, 1997); John Emerson, *First Among Equals: Chief Justices of South Australia Since Federation* (University of Adelaide Barr Smith Press, 2006); Susan Magarey and Kerrie Round, *Roma the First: A Biography of Dame Roma Mitchell* (Wakefield Press, 2007); Penelope DeBelle, *Red Silk: The Life of Elliott Johnston QC* (Wakefield Press, 2011).

³ See, eg, Greg Taylor, 'The early life of Mr Justice Boothby' (2013) 34 *Adelaide Law Review* 167; Greg Taylor, 'The Torrens System – Definitely Not German' (2010) 30 *Adelaide Law Review* 195; Greg Taylor, 'Parallel Statutes: Another Look at the Origins of Australia's Not-for-Profit Associations Legislation' (2009) 30 *Adelaide Law Review* 57; Greg Taylor, *A Great and Glorious Reformation: Six Early South Australian Legal Innovations* (Wakefield Press, 2005); Greg Taylor, 'John Baker's Act: The South Australian Origins of Australian Claims-Against-the-Government Legislation' (2004) 27 *University of New South Wales Law Journal* 736; Greg Taylor, 'The Origins of Associations Incorporation Legislation: The Associations Incorporation Act 1858 of South Australia' (2003) 22 *University of Queensland Law Journal* 224.

II HANSON'S PATH TO SOUTH AUSTRALIA

Hanson was an intellectual from an early age,⁴ although not a poet: his sonnets are derided as 'of execrable quality'.⁵ Legal practice proved less exciting to the young Hanson than journalism,⁶ but both appear to have taken a back seat to his advocacy in favour of the South Australian project.⁷ Hanson's consolation for not being appointed the first South Australian judge was to be appointed to the staff of the Earl of Durham for the controversial *Report on the Affairs of British North America* prepared in response to the Patriote Rebellion in Lower Canada in 1837–8, which took Hanson to Canada in 1838.⁸ Taylor makes a convincing case for Hanson acting diligently in difficult circumstances, although this is but a minor deviation on the journey.

Hanson was the founder of two colonies, the first being New Zealand, where he arrived in early 1840.⁹ Taylor presents a balanced assessment of Hanson's performance, revealing the more ambitious and sharp aspects of Hanson's business ventures during his early years in New Zealand,¹⁰ where he was engaged in the entirely private venture of the New Zealand Company to establish a settlement at Port Nicholson (now Wellington). Hanson parted ways with the company in 1840, remaining in Wellington but returning to the legal profession in 1841. He switched allegiance to the government that same year, taking up part-time positions as magistrate and Crown Prosecutor.¹¹ Taylor observes that 'conflicts of interest marked Hanson's every move',¹² although in a small settlement with a tiny legal profession this was to be expected.

Taylor offers little by way of explicit reflection at the end of the chapter addressing Hanson's time in New Zealand, but the chapter itself is an excellent study in the maturation of Hanson as a professional and public figure between the ages of 34 and 40. Hanson's experience in New Zealand saw him transition from his (relatively) youthful idealistic commitment to colonisation in private hands, to a more mature understanding of the significance of the colonial enterprise and the role of colonial governments in it. It also gave Hanson broad experience in private enterprise, journalism, the legal profession and the judiciary. These understandings of colonial theory, life and governance were an important foundation on which Hanson would later build as a statesman in South Australia.

⁴ Taylor, *Sir Richard Hanson*, above n 1, 13–14.

⁵ *Ibid* 28; see also 14, 198.

⁶ *Ibid* 20–1.

⁷ *Ibid* 16–29.

⁸ *Ibid* 33–46.

⁹ *Ibid* 49.

¹⁰ *Ibid* 54–5, 60–2.

¹¹ *Ibid* 70, 72.

¹² *Ibid* 78.

III HANSON AS A GREAT SOUTH AUSTRALIAN

Given his involvement in the genesis of South Australia, Hanson must have already felt a remarkable connection to Adelaide when he arrived in 1846. He appears to have settled quickly into journalism and legal practice,¹³ not to mention civil society.¹⁴ That other great occupation of colonial lawyers – politics – also beckoned, and Hanson was quickly involved in a brisk campaign to stop state aid to religion.¹⁵ As was commonplace in a time when politicians were unpaid, Hanson maintained his private legal practice throughout his political career, even when serving simultaneously as Premier and Attorney-General.¹⁶ In 1851, Hanson was elected to the newly-formed Legislative Council, the first taste of representative democracy in South Australia. Ironically, given his relatively liberal views, Hanson immediately resigned his elected seat to take up appointment (and a nominated seat on the Legislative Council) as Advocate-General.¹⁷ Another surprise in the planning for responsible government was Hanson's preference for an appointed upper house (although this did not eventuate).¹⁸

With a new constitution and the introduction of responsible government in 1856 came an update in title: Hanson won strong public support in securing election to the representative Parliament (there being no further appointed members), and became Attorney-General.¹⁹ The first Parliament of the new era met in April 1857, and remarkably Hanson was already the fourth Premier when he assumed the role in September of that year.²⁰ Against that background, one significant achievement of Hanson's Premiership was that it lasted until May 1860, providing relative stability in the chaos of colonial politics.

Hanson's years as Advocate/Attorney-General and Premier produced many important reforms. These achievements include the successful countering of the population drain to Victoria brought on by the gold rush of 1851,²¹ one of the most extensive (male) franchises for lower house elections in any polity at that time,²² an

¹³ Ibid 131–3.

¹⁴ Ibid 104–6.

¹⁵ Ibid 103–7.

¹⁶ Ibid 117, 140.

¹⁷ Ibid 117. Advocate-General was the title used for the Attorney-General before responsible government: 116.

¹⁸ Ibid 128–9.

¹⁹ Ibid 132–3.

²⁰ Ibid 136.

²¹ Ibid 123–4.

²² Ibid 112, 128. However, Hanson was later critical of the effects of such a broad franchise: at 193.

elected upper house (albeit with a property franchise),²³ the secret ballot,²⁴ legislation permitting suits against the Crown in place of the petition of right procedure,²⁵ the abolition of the grand jury,²⁶ the abolition of public executions,²⁷ the introduction of the Torrens system of land registration,²⁸ and the establishment and structuring of the departments of the executive government under the new constitution.²⁹ Hanson, of course, was not the sole driver of these reforms. At the very least, however, during his political career Hanson was a significant influence in seeing these important South Australian reforms and innovations to fruition.

Hanson had one more period of service in the executive government, serving as Acting Governor from December 1872 to June 1873, during which time Justice Gwynne was appointed Acting Chief Justice.³⁰ Taylor reports that the Colonial Office was so pleased with Hanson's performance that it formalised the arrangement.³¹ Indeed, from then on, Chief Justices served as acting Governor until a separate Lieutenant-Governor of South Australia was appointed in 1873.³² Hanson therefore served as Advocate/Attorney-General, Premier and acting Governor — a notable contribution to statesmanship in the fledgling Province.

IV HANSON AS CHIEF JUSTICE: REFLECTIONS ON COLONIAL JUDICIARIES

Hanson became the second Chief Justice of South Australia on Sir Charles Cooper's retirement in 1861.³³ The most notable incidence of his Chief Justiceship was the protracted battle with Justice Benjamin Boothby, whose personal conduct was 'egregiously offensive'³⁴ and who as a judge had a predilection for invalidating

²³ Ibid 128. As Taylor notes, the property franchise remarkably remained until 1873.

²⁴ Ibid.

²⁵ Ibid 122.

²⁶ Ibid 126. This might be thought a retrograde step, but as Taylor has explained elsewhere, it reflects the fact that 'citizens of the very young Province of South Australia were already confident enough in the institutions [of government] ... that they were willing to forgo the extra safeguard of the grand jury in the interests of convenience': Greg Taylor, 'The Grand Jury of South Australia' (2001) 45 *American Journal of Legal History* 468, 516.

²⁷ Taylor, *Sir Richard Hanson*, above n 1, 169.

²⁸ Ibid 134–5.

²⁹ Ibid 143–4. Hanson also opposed primogeniture (at 126, 137) although that would not be successfully removed until the *Intestate Real Estate Distribution Act 1867* (SA).

³⁰ Taylor, *Sir Richard Hanson*, above n 1, 194.

³¹ Ibid.

³² See Matthew Stubbs, 'The Constitutional Validity of State Chief Justices Acting as Governor' (2014) 25 *Public Law Review* 197, 199–200.

³³ Taylor, *Sir Richard Hanson*, above n 1, 155.

³⁴ Ibid 161.

laws (often) on the basis of arguments Taylor describes as ‘tendentious rubbish’.³⁵ Taylor succinctly summarises this well-known episode, adding the following useful reflection:

Boothby appears to have thought that human society existed for the sake of allowing technical points of law to be argued ... Hanson appreciated that the ultimate aim of the law was to serve society and that the validity of laws should be assessed not only against technical requirements but also having regard to the shape of the society in which the law operated.³⁶

Taylor’s point about Boothby and Hanson can be generalised to other colonial judiciaries. In the circumstances of a developing colonial society, the imperative of considering the broader context in which the law operates is abundantly clear.

Unusually for a judicial biography written by a lawyer, *Sir Richard Hanson* contains relatively little examination of its subject’s judicial work. Taylor notes in his introduction that ‘the vast scope of [Hanson’s] extra-legal activities and intellectual interests sometimes claims the lion’s share of attention’.³⁷ Nonetheless, Taylor does usefully examine some key judgments of Chief Justice Hanson.³⁸ However, given that only the rarest of judgments remain relevant after more than a century and a half, that Hanson is studied primarily for the broader perspective that he brings to early South Australia is a strength of Taylor’s biography.

In any event, evaluating the performance of Hanson as Chief Justice is an intriguing task. Horst Lücke’s foreword perceptively nominates a frame for such an evaluation, indicating that: ‘Among Hanson’s greatest assets as a judge were his thorough understanding of the problems of colonial government and his skill in dealing with them’.³⁹ Lücke notes that, when appointed Chief Justice, Hanson ‘had gained a sober and mature appreciation of the needs of the young community’.⁴⁰ Lücke commends him as a great judge if measured by impartiality, empathy and a ‘sense of fairness and justice’.⁴¹ Although Taylor regards Hanson as ‘an insightful jurist’,⁴² one of the messages of *Sir Richard Hanson* is that it was more important for a colonial judge to understand the societal needs of their polity than to be a talented doctrinal scholar. This is particularly so if the legislature is active and reforming, as it was in the Province of South Australia during Hanson’s time.

³⁵ Ibid 159.

³⁶ Ibid 156–7.

³⁷ Ibid 2.

³⁸ Ibid 166–75.

³⁹ Horst Lücke, ‘Foreword’ in Taylor, *Sir Richard Hanson*, above n 1, v, vii.

⁴⁰ Ibid.

⁴¹ Ibid vi.

⁴² Taylor, *Sir Richard Hanson*, above n 1, 165.

The judges sent to the colonies were a varied group,⁴³ a point well illustrated by the impecunious Justice John Jeffcott (who beat Hanson to the first judicial appointment in South Australia, despite having been previously stripped of his role as Chief Justice of Sierra Leone after narrowly escaping a murder conviction in England for killing a man in a duel, and notwithstanding the efforts of his creditors, but spent only a few months in Adelaide before his death at sea in December 1837)⁴⁴ and the extraordinary Boothby. One aspect of Hanson's success in South Australia that should not be overlooked is his dedication and commitment to the Province and its high ideals. Moreover, one reason this commitment was able to result in Hanson's appointment was that, in keeping with the spirit of the grant of responsible government, he was chosen by the South Australian government and not by the Colonial Office.⁴⁵ Hanson was the right man at the right time — a South Australian statesman of considerable legal ability to guide its Supreme Court through the great difficulties of the Boothby years and contribute to the advancement of the Province through bringing stability and independence to its judiciary.

V HANSON AND INDIGENOUS PEOPLES

Taylor is to be highly commended for frequently drawing attention to Hanson's views on, and treatment of, Indigenous peoples. Taylor generally praises Hanson's approach, although the picture that emerges is complex,⁴⁶ and again highlights the difficulty of making comprehensive assessments of the treatment of Indigenous peoples by English settlers.

Hanson was originally a promoter of colonisation and subscribed to the Benthamite view that settlement in Australia, with its abundance of 'uncultivated land', was an acceptable solution to the 'crisis of overpopulation in England'.⁴⁷ Hanson was also uncomfortable with early New Zealand settlement being under the authority of Maori chiefs, objecting to the rule of 'a few ignorant, though well-disposed individuals'.⁴⁸ Further, there is evidence of Hanson possessing (not uncommonly for the time) a racialised view of intelligence and capacity.⁴⁹

Yet, in New Zealand, Hanson 'deprecated the "ignorant contempt" of the "labouring class"' towards the Maori.⁵⁰ Taylor demonstrates that Hanson's youthful disregard of Maori interests in the original negotiation of land purchases gave way to a more

⁴³ See, eg, John McLaren, *Dewigged, Bothered and Bewildered: British Colonial Judges on Trial, 1800–1900* (Federation Press, 2011).

⁴⁴ Taylor, *Sir Richard Hanson*, above n 1, 28

⁴⁵ *Ibid* 155.

⁴⁶ As Taylor acknowledges: *ibid* 83–4.

⁴⁷ *Ibid* 23.

⁴⁸ *Ibid* 51.

⁴⁹ *Ibid* 182–3.

⁵⁰ *Ibid*.

empathetic approach, in which he recognised the New Zealand Company's 'unprincipled' and 'grasping' expansion of land purchases (in which he had played a leading part) as involving significant injustice to the Maori.⁵¹ Hanson was clearly sympathetic to the plight of the Maori,⁵² being the voice of reason in defusing passions for violent revenge after the Wairau massacre,⁵³ and ending up advocating Maori land rights in his professional capacity and publicly, both within New Zealand and by correspondence back to England.⁵⁴

The good intentions of the settler government towards South Australia's Aboriginal peoples are clear;⁵⁵ but settler violence towards Aboriginal people, both in accordance with and outside the law, sometimes belied those intentions in practice.⁵⁶ In South Australia, Hanson pursued no great reforms to benefit Aboriginal peoples.⁵⁷ He was practicing law in Adelaide at the time of the Avenue Range Station Massacre in 1849,⁵⁸ where murder charges against the settler James Brown for the killing of a group of Aboriginal people were not pursued because the uncorroborated evidence of an Aboriginal witness was inadmissible.⁵⁹ Hanson is not recorded as responding to the case. However, Taylor records instances of Hanson acting to reduce settler violence against Aboriginal peoples by opposing police instructions and the arming of explorers, which he feared would result in the killing of Aboriginal people, and successfully opposing a reduction in spending on Aboriginal welfare.⁶⁰ Taylor gives the powerful example of Hanson's charge to the jury as Chief Justice in 1866, which resulted in a jury acquittal for two Aboriginal men charged with the killing of a member of a party of settlers pursuing a group of Aboriginal people to exact revenge for cattle stealing.⁶¹ This is to be contrasted, however, with the fact that four of the six defendants executed whilst Hanson was Advocate-General (1851–6) were Aboriginal men.⁶²

⁵¹ Ibid 66–7.

⁵² Ibid 22.

⁵³ Ibid 91–2.

⁵⁴ Ibid 79–80, 98–9.

⁵⁵ *Letters Patent of 19 February 1836* GRG 2/64; *Order in Council of 23 February 1836* GRG 40/6; *Proclamation of 28 December 1836* GRG 24/90/401.

⁵⁶ See, eg, Robert Foster, Rick Hosking and Amanda Nettelbeck, *Fatal Collisions: The South Australian Frontier and the Violence of Memory* (Wakefield Press, 2001); Robert Foster and Amanda Nettelbeck, *Out of the Silence: The History and Memory of South Australia's Frontier Wars* (Wakefield Press, 2012); S D Lendrum, 'The "Coorong Massacre": Martial Law and the Aborigines at First Settlement' (1977) 6 *Adelaide Law Review* 26.

⁵⁷ Taylor, *Sir Richard Hanson*, above n 1, 146–8.

⁵⁸ See, eg, Foster, Hosking and Nettelbeck, above n 56, 74–93.

⁵⁹ Supreme Court — Criminal Side, 11 June 1849 in *South Australian Register* (Adelaide) 13 June 1849, 3.

⁶⁰ Taylor, *Sir Richard Hanson*, above n 1, 147.

⁶¹ Ibid 167–8.

⁶² Ibid 169.

For his time, Hanson was undoubtedly enlightened in his approach to Indigenous peoples, and Taylor identifies many instances where Hanson's actions are deserving of praise. Nonetheless, we should not forget that the good intentions and actions of Hanson (and others) were part of a complex picture that also involved less creditable opinions and actions, and were in any event insufficient to save Aboriginal peoples from extraordinary hardships and deprivations arising from settlement that in many ways remain unresolved today.

VI RELIGION, SCIENCE AND FAMILY

Hanson lived through a period of extraordinary technological change. Growing up before the railway age,⁶³ by 1858 as Premier he welcomed to Adelaide his friend Rev Thomas Binney (who had been preacher at the church he attended in his youth in London) as part of a tour of Australia.⁶⁴ As Acting Governor, Hanson later reported on the opening of the overland telegraph (1872),⁶⁵ probably the greatest single communications advancement in Australian history. Sadly, Taylor does not address Hanson's response to these innovations — although it may be assumed that as a man of intellectual curiosity and dedication to education, Hanson was struck by the technological progress of the era.

In one profound respect, however, Taylor shows how scientific advancements affected Hanson. An intriguing, but rewarding, aspect of *Sir Richard Hanson* is its examination of religion. Notwithstanding his strict Dissenter upbringing,⁶⁶ and his youthful Sunday school teaching,⁶⁷ Hanson eventually lost his faith. Advancements in geological knowledge regarding the age of the earth and the science of Darwinian evolution convinced Hanson that the biblical version of creation was not literally true.⁶⁸ Hanson had publicly revealed his disbelief of the creation story as early as 1860, although it was in 1864 that controversy arose with the publication of substantial works outlining his views during his Presidency of the Bible Society.⁶⁹ By the late 1860s, Hanson's disbelief in the creation story had broadened to become a publicly acknowledged total loss of faith.⁷⁰

Taylor outlines the quality of Hanson's religious scholarship,⁷¹ viewing Hanson's religious texts as just as important a legacy as his legal achievements.⁷² As befits a

⁶³ Ibid 9.

⁶⁴ Ibid 8.

⁶⁵ Ibid 195.

⁶⁶ Ibid 6–7.

⁶⁷ Ibid 8.

⁶⁸ Ibid 176, 179.

⁶⁹ Ibid 176–8.

⁷⁰ Ibid 201.

⁷¹ Ibid 180, 184–5.

⁷² Ibid 201.

lawyer and judge, Hanson's religious scholarship was (perhaps ironically) conducted in much the same way a trial would be, with a detailed analysis of the evidence for various alleged facts.⁷³ With the exception of the loss of the Presidency of the Bible Society, Hanson's loss of faith had little (if any) impact on his public standing — a striking tribute to the strength of the ideals of religious freedom that had been an essential part of the South Australian enterprise from the very beginning.⁷⁴

Although he lost his faith in religion, Hanson never lost his faith in education, a cause he had long championed.⁷⁵ Indeed, it was Hanson's commitment to intellectual pursuits that led to his loss of faith. Hanson was therefore an excellent candidate when elected the first Chancellor of the University of Adelaide,⁷⁶ although his sudden death on 4 March 1876 came before the University was formally inaugurated.

Religious belief is the main area in which any insight can be gained into Hanson's personal life, there being sadly little material from which to draw an understanding of Hanson's family.⁷⁷ He married Ann (a young widow) in 1851,⁷⁸ and was later forced to defend his wife's honour against unfair slights arising from her humble background and her family's involvement in a minor criminal matter in New Zealand when she was a child⁷⁹ — which became the basis for yet another attack by Boothby and also delayed Hanson's knighthood until 1869.⁸⁰ Clearly, family was an important part of his life — in the end, his three brothers and two of his three sisters joined Hanson in South Australia.⁸¹ Ann and their five children survived him.⁸² The Hanson family's Adelaide Hills property Woodhouse remains familiar to generations of South Australian children and continues to be operated as an activity centre by Scouts Australia.

VII CONCLUSION

Greg Taylor's *Sir Richard Hanson* illustrates for a modern audience the life and times of one of the great Australasian colonial statesmen. Hanson made contributions as a supporter of the South Australian enterprise in London, as a leading figure in the establishment of the settlement at Wellington in New Zealand, and as Advocate/Attorney-General, Premier, Chief Justice, acting Governor and public intellectual in the young Province of South Australia. Taylor concludes his excellent book with the

⁷³ Ibid 204.

⁷⁴ See also: *ibid* 203.

⁷⁵ Ibid 133, 155, 223.

⁷⁶ Ibid 222.

⁷⁷ Ibid 198, 200.

⁷⁸ Ibid 115.

⁷⁹ Ibid 69–70, 187.

⁸⁰ Ibid 185–7.

⁸¹ Ibid 198–9.

⁸² Ibid 199–200.

reflection that Hanson deserves a prominent public memorial.⁸³ Whether or not that hope is realised, in *Sir Richard Hanson*, Taylor has created a worthy literary tribute to a great South Australian. Hanson also enjoys a fitting geographical tribute in the ruggedly beautiful Hanson Bay on the south-west coast of Kangaroo Island.⁸⁴

⁸³ Ibid 228.

⁸⁴ Named for Hanson, then Premier of South Australia, by Captain William Bloomfield Douglas in his 1858 survey aboard the *Yatala*. See, eg, *The Discovery of Australia: Naming Australia's Coastline*, The Discovery and Exploration of Australia <<http://www.australiaforeveryone.com.au/discovery/names2.htm>>.