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ARTICLES

SIR FREDERICK JORDAN’S NON-APPOINTMENT TO THE HIGH COURT AND HIS “QUEER VIEWS ABOUT FEDERALISM”

The Hon Keith Mason AC QC

When Evatt J retired from the High Court in 1940, Sir Owen Dixon quickly secured authority from his old pupil, Robert Menzies (the Prime Minister), to offer the vacancy to Sir Frederick Jordan. But Jordan was not interested in swapping a congenial judicial

lifestyle in Sydney for a peripatetic existence with a deeply unhappy High Court. Allowing for traditional hyperbole, it is mysterious why, in his famous retirement speech long after Jordan’s premature death in office, Dixon fibbed about the government’s “failure” to appoint Jordan. This article also explores what Dixon may have been alluding to when he spoke of the “queer views about federalism” that Jordan eventually took during the war years. 893

GENOCIDE: THE STATIC EXPANSION TO INCLUDE THE CRIME OF FORCED EXPULSION

Elizabeth R Plajzer

This article seeks to analyse the essential “character” of the crime of genocide; a crime recognised internationally as the height of human criminality. However, despite such standing the evolution of international crimes and conflicts has revealed that the definition of genocide, as currently provided for under the United Nations Convention on the Prevention and Punishment of Genocide (Convention), is far from comprehensive. This article will focus on such shortcomings in regard to the act of forced expulsion; the forced removal of any national, ethnic, racial or religious group from an area in which they are settled. Analysing historical positions on forced expulsion, current academic debate and the decisions of international tribunals, forced expulsion will be revealed as a “mechanism” crime for both ethnic cleansing and genocidal regimes. The current definition of genocide will be carefully considered, and similarities drawn between the existing class acts and the crime of forced expulsion; proposing that such similarity permits if not necessitates expansion. While it is recognised that there are other forms of international law to provide victims of forced expulsion regimes with some recourse, ultimately the absence of forced expulsion as a crime ipso facto under the Convention leaves victims without comprehensive protection from genocide. 900

TOSTEE, CRIMINAL CAUSATION AND PROVOCATION IN DOMESTIC VIOLENCE: A NOVEL POSITION

Brendan Walker-Munro

After a six-day trial and four days of deliberations, a jury found Gable Tostee not guilty of the murder or manslaughter of his Tinder date, Warriena Wright. Tostee was alleged to have locked Wright on his balcony after physically assaulting her. The Crown ran a case that Wright felt so intimidated by Tostee’s conduct that she had no reasonable recourse but to attempt to climb to an adjacent balcony to escape, during which she fell to her death – a case which was ultimately rejected by the jury. So what does Tostee say about causation principles and provocation in cases of the assault of intimates? An analysis of Tostee against various State and Territory criminal laws will be presented to highlight the uniqueness of this class of case. 916

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