

University at Buffalo School of Law

Digital Commons @ University at Buffalo School of Law

Book Reviews

Faculty Scholarship

8-1-2021

Susan Bartie, *Free Hands and Minds: Pioneering Australian Legal Scholars*

John Henry Schlegel

University at Buffalo School of Law, schlegel@buffalo.edu

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/book_reviews



Part of the [Legal Biography Commons](#), and the [Legal History Commons](#)

Recommended Citation

John H. Schlegel, *Susan Bartie, Free Hands and Minds: Pioneering Australian Legal Scholars*, 39 *Law & Hist. Rev.* 615 (2021).

Available at: https://digitalcommons.law.buffalo.edu/book_reviews/134

This article has been published in a revised form in *Law and History Review* [10.1017/S0738248021000377](https://doi.org/10.1017/S0738248021000377). This version is free to view and download for private research and study only. Not for re-distribution, re-sale or use in derivative works. © John Henry Schlegel, 2021.



This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Book Reviews by an authorized administrator of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

Susan Bartie, *Free Hands and Minds: Pioneering Australian Legal Scholars*. Oxford: Hart, 2019. Pp. 323. \$94.00 hardcover (ISBN 8791509922611). doi:10.1017/S0738248021000377

It is seldom sensible to speak knowledgeably about a culture one knows only by rumor. It is even worse to speak other than lovingly when the author quotes one approvingly in the conclusion. But here goes anyway.

Free Hands and Minds is centered in absolutely first rate, short-form—longer than an article and shorter than a book—intellectual biographies of three Australian legal scholars, all active at the time when Australian law teaching was professionalizing. For each, the scholarship is taken seriously, the life is taken seriously, and the academic surround is taken seriously, largely all at the same time. No one could ask more from work in this form.

The first scholar is Peter Brett. He was British, articulated in a solicitor's office at 16, and earned a college degree while attending part time. After service in World War II, he worked in the British Treasury Office, met and married an Australian, and moved with her to Australia. He began teaching law at Western Australia University in Perth in 1951, and then moved to the University of Melbourne in 1955. There he secured a leave to earn a JSD degree at Harvard under Henry Hart and Lon Fuller and became attracted to legal process theory. His work was primarily in criminal law and he became well known for creating a textbook that viewed criminal law through a legal process perspective, as well as for finding time to participate in the appeals of several significant criminal cases.

The second is Alice Erh-Soon Tay. She was of part of the Chinese diaspora, born and raised in Singapore. After World War II, she went to England where she trained at the Inns of Court, eventually qualifying as a barrister. She returned

to Singapore in 1957, where she practiced for 2 years before becoming an assistant lecturer in law at the National University of Singapore. A public affair with Edward Kamenka, a married, intellectual historian colleague, led the couple to leave, eventually landing in Canberra. There, she began a doctorate at Australia National University's Law School and he completed his at its Research School of the Social Sciences (RSSH) and continued to teach there. She finished her degree by 1965, at which point she had secured a job at that same university. She regularly collaborated with her husband, Kamenka, most often focused on sociological aspects of comparative law—especially comparisons with and between the Marxist legal systems of China and Russia. In 1965, she became Challis Professor in the Department of Jurisprudence at the University of Sydney Law School. Her individual scholarly project later came to focus on questions of human rights, and she became the first president of the Australian Human Rights and Equal Opportunities Commission.

The third is Geoffrey Sawer. Born in Burma of Australian parents, he earned his law degree from the University of Melbourne in 1933 and immediately began the practice of law. In 1946, he joined the law faculty at Melbourne and in 1950 moved to ANU as professor of law in the RSSH. He held this position until he retired in 1975, all the time believing that the advanced degree program in law which he directed was of little use to a practicing lawyer. Almost all of his work was about the law governing Australian federalism seen from the perspective of political and social circumstances.

This book contains so much fascinating material as to suggest that writing an engaging review of a book about any one of these scholars would be a pleasure. Thus, I am sorry for readers who instead get only my thumbnails and one modest observation.

What likely makes this book so engaging is the energy of a quite personal devotion. Every historian needs a hero. Brett, Tay, and Sawer are clearly Bartie's. Mine is Underhill Moore, a fact that she already knows. Each of her heroes, like mine, show a way to do law professing differently. She makes this clear in the book's introduction: "The 'assumptions and ideals [of these scholars] might serve as more reliable and interesting reference points' for 'more robust and critical appraisals of the current generation's . . . practices'" (16). She concludes that: "collectively, their careers make a case for studying the outsider, and for the deeper insights that viewing the discipline and Australia's laws from the outsider's perspective can bring" (273).

I too wish for more law professors like these. But I am less optimistic, and for a reason that Bartie identifies. She affirms that we live in "a time when many speak as if the future of the legal academy involves fulfilling externally imposed expectations" (271). The increasing presence of historians in law schools has not led to an explosion of historical work by colleagues, much less to an explosion of the integration of history into everyday law school teaching. The doctrinal imperative that is legal education means that outsider

work will be, at best, discouraged, perhaps tolerated, maybe even suppressed in the name of disciplinary integrity. Still Bartie's book is testament to the fact that there have been, and, one hopes, will continue to be, those who nevertheless resist such proto-totalitarian behavior because doing so is so much fun.

John Henry Schlegel

The University at Buffalo School of Law

Reproduced with permission of copyright owner.
Further reproduction prohibited without permission.