

Unique contemporary challenges: a lawyer's response

How should the conscientious practitioner react to issues of international violence borne of hatred; commercial threats to traditional professionalism; and opportunistic condemnation of lawyers as the authors of a raft of society's woes?

Queensland Chief Justice Paul de Jersey addressed these issues as the Law Society NT's guest speaker for the Opening of the Legal Year. Balance publishes here an edited version of his Darwin speech and parts of his specially tailored Alice Springs address.

We begin this law year in regrettably unique circumstance: we gaze upon a community transfixed by the spectre of war and other cataclysm: graphically here with your proximity to Bali.

We lawyers assert in response the pivotal importance of that great stipulation, the rule of law. But how useful is that to countervail these modern menaces – terrorism borne of hatred and religious bigotry? Our public responsibility as professionals militates our making some helpful response to these onslaughts – historically unique. How are we to fashion a worthwhile response?

At the beginning of 2003, our profession faces other major challenges, challenges of unparalleled intensity. Notably, there is bristling tension between our traditional professional approach on the one hand, and on the other, growing commercialism. One manifestation is the multi-disciplinary partnership. Is that to be seen as a mechanism to secure better public service, or primarily a vehicle to enhance financial returns? We have recently experienced HIH and Enron. Do those experiences encourage some retreat from the business path, with renewed focus on "conservative" professional values?

Then there is the public attitude to our profession. Like the people of Ireland, we lawyers are used to friendly jibes. But last year the assaults apparently became less light-hearted. We were attacked by the insurance industry, medical practitioners, even governments. The legal profession including the judiciary found themselves carrying the blame for many things: high insurance premiums, insupportable damages awards, payouts which should never have been

made. A lot of the criticism was regrettably opportunistic. As a convenient whipping boy for so many of the problems which beset society, how do we lawyers rise through the pressure of unreasonable criticism? Of course if we are to serve the public effectively we must do so, not only with competence and wise judgement, but also with confidence and calm.

Now I at once suggest that it is important that we acknowledge and respond to these challenges. However grudgingly conceded, society depends on the legal profession. Just as the judiciary constitutes a third arm of government, so the profession is one of its pillars. A legal profession healthily discharging its responsibilities is critical to a vibrant, progressive and secure community.

Let me return now to the first and most critical of those challenges, responding to the bleak international landscape. And how bleak it is! The Kuta bombings of 12 October last year removed any basis for a view that Australia is protected from the devastation of these wicked intrusions. The flavour of an even abbreviated list of current flashpoints is desperate: Iraq and North Korea with their nuclear and biochemical warfare potential; turbulent Northern Ireland where the peace process is yet again in hiatus; the long-standing failure to reconcile self-determination for Jews and self-determination for Palestinians in what was British Mandated Palestine; the destruction of life in Zimbabwe, by famine and other criminal activity, where the rule of law has been replaced by authoritarian dictatorship; and now, the looming pervasive threat of terrorism of vastly destructive proportion.



Above: Chief Justice de Jersey AC, addressing the Darwin lunch.

The extent to which countries joined, post-September 11, in vocal condemnation of terrorism, and in devising strategies to counter terrorism, was to us ordinary people greatly reassuring. It was based on the view that these are shared problems. As put by the Australian Minister for Foreign Affairs, "protecting one's home is easier in a safe neighbourhood".

That safety is most effectively secured through cooperative action, as is now happening between Indonesian and Australian authorities in the wake of the bombings. One recalls the words of J B Priestley's "Inspector":

We don't live alone. We are members of one body. We are responsible for each other. And I tell you that the time will soon come when if men will not learn that lesson, they will be taught it in fire and blood and anguish.

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On the face of things, the enormous cultural divides would constitute barriers to effective cooperative action. But global poverty should and does bolster the international commitment of those nations well endowed. There are, we are told, 1.2 billion people who live on less than one US dollar per day. Yet that did not prevent a reasonably effective UN rescue of Afghanistan. The more dangerous wild card, I fear, is hatred borne of religious obsessionism, what we believe inspired the September 11 attacks. Is it conceivable that resurgence of the rule of the law could forestall other unpredictable, evil manifestations of that sort of hatred?

Edmund Burke said, *"It is sufficient for the triumph of evil that good men should do nothing"*. Lawyers are not only good people: they are also highly talented in abstruse but significant fields. I have no doubt that Territory lawyers have worked valuably in restoring lives dishevelled by the Bali bombings. Australian lawyers have done a lot to establish a worthwhile new legal system in liberated East Timor. Lawyers, particularly from the USA, were instrumental in fashioning constitutions and legal codes for areas of the now fragmented former USSR. By such participation, lawyers can instil understanding and acceptance of the importance of the rule of law; likewise by interaction, within Australia, with foreign nationals from contrasting regimes.

In a recently published article entitled *The Bali Bombing*, Colin McDonald QC points from a Territory perspective to what he calls "a new unexpected mutuality" in the joint action of Indonesia and Australia responding to the Bali tragedy. He expresses the sentiment that "information, understanding and reason are the enemies of ignorance, hatred and bigotry". Lawyers are well-placed to promote acceptance of the rule of law for what it is – the lynchpin of civilized society, both through direct involvement with less sophisticated regimes and, as I have suggested, through interaction, at home, with those not familiar with the stipulation.

In all of this, it is mutual engagement which is fundamentally important. The author concludes his paper with reference to Dr Martin Luther King's words spoken in 1968:

Now let me suggest first that if we are to have peace on earth, our loyalties must become ecumenical rather than sectional. Our loyalties must transcend our race, our tribe, our class, and our nation; and this means we must develop a world perspective.

Now to the second of the challenges I present: how to maintain traditional professionalism against a seemingly overwhelming tide of commercialism? The anterior question, I suppose, is "why bother".

The answer is self-evident. Our profession facilitates and ensures the due administration of justice: maintaining the rule of law, upholding basic rights and freedoms, monitoring the exercise of executive power, implementing the system of criminal justice... A narrow self-absorption with material success is repugnant to the effective discharge of such significant responsibilities: the orientation must fundamentally embrace high ideals, integrity, self-restraint, diligence, profound ethical commitment. The established rapacity, venality of only even a few practitioners can erode public confidence in the professional generally, as the experience of recent times in Queensland and New South Wales would regrettably suggest.

The last three decades since my admission into the practice of the law have witnessed an utter transformation in the scale of legal practice. Indeed, such transformation is perfectly exemplified by the evolution of the legal profession in the Northern Territory. In this jurisdiction membership of the Law Society has grown from a mere 25 upon inception in 1968 to over 500 today, while the Bar Association now counts over 25 practitioners as members. Such changes have spawned additional pressures: to meet high and relentless overheads; to attract and keep clients who are more inclined these days to move from firm to firm, with firms now often obliged to tender competitively for work, and being driven even to the length of retaining marketing staff; to operate in an increasingly regulated domain such that to protect and

promote both the position of the firm and the rights of individual people, human resources staff need often to be employed; to command an increasingly complex bank of legislation and judge-made law; to master intricate legal concepts, the courts unfortunately sometimes not assisting with judicial definition marked by particular precision. These sorts of pressures, the product of the changes in practice which have characterized the whole of my professional life to date, mean that the modern practitioner is challenged to display true professionalism in the face of intense business pressure.

The shameful, arrogant self-indulgence recently alleged through the public dissection of HIH and Enron in particular, should provide the catalyst for intense ethical review on the part of any professional tempted to stray from proper acknowledgement of the primacy of the core values to which I have referred.

I was interested to read some observations made by Chief Rabbi Jonathon Sacks at the dawn of the new millennium (quoted by Spigelman CJ, 77 ALJ at 60-1):

When everything that matters can be bought and sold, when commitments can be broken because they are no longer to our advantage, when shopping becomes salvation and advertising slogans become our litany, when our work is measured by how much we earn and spend, then the market is destroying the very virtues on which, in the long run, it depends.

That, not the return of socialism is the danger that advanced economies now face. And in these times, when markets seem to hold out the promise of uninterrupted growth in our satisfaction of desires, the voice of our great religious traditions needs to be heard, warning us of the gods that devour their own children, and of the temples that stand today as relics of civilizations which once seemed invincible...

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The market, in my view, has already gone too far: not indeed as an economic system, but as a cast of thought governing relationships and the image we have of ourselves...the idea that human happiness can be exhaustively accounted for in terms of things we can buy, exchange and replace is one of a great corrosive acids that eat away the foundations on which society rests; and by the time we have discovered this, it is already too late.

The market does not survive by market forces alone. It depends on respect for institutions, which are themselves expressions of our reverence for the human individual as the image and likeness of God.

I have spoken of the significance of our public orientation post-Bali, and the way we lawyers can rise to the

challenge of crafting a more secure society. I have spoken of the individual qualities we as lawyers seek to nourish to ensure the professionalism on which the community in truth depends. But is this commitment to public service properly acknowledged by those we seek to serve?

Probably not, and I think the alacrity with which we were criticized so trenchantly for the woes last year of the insurance industry and medical profession tends to confirm that. But such criticism, however curmudgeonly it may be, cannot distract us from the steady pursuit of this noble profession.

The grandeur of our joint mission, the delivery of justice according to law, can best be appreciated, perhaps, by reference to the position of the individual.

Through my 32 years experience of the law, what has essentially impressed me is our concern in the legal system for the individual person. We are not, in the courts in particular, concerned with legislative or executive generalities or abstractions!

The individual person, before us, is the focus of all intellectual and emotional force.

John F Kennedy said of the American scene half a century ago: *"The poor man charged with crime has no lobby"*. Not so here! In our courts of law, each individual is undoubtedly our only concern. For the other arms of government he or she is but the representative of others. Those other arms of government, we accept, are deeply concerned with the betterment of the people. Ours is instrumentally focused on the welfare of the individual. I think it is an enormous privilege that we are all participants in that process.

Thank you again for affording me this opportunity to address you. It is said that when Karl Marx was asked for a final quote for posterity, he said, *"Last words are for fools who haven't said enough already"*.

Well I certainly have said enough, I believe, and I hope, to the extent to which I have offered advice, I have not presumed. ①

The Alice Springs address

Chief Justice de Jersey had some special words for the Alice Springs practitioners. The following is a slice of what he said to them.

I am greatly honoured to be here. I warmly thank the Society for giving me this wonderful opportunity.

I will revert in more detail as to why it is wonderful, but may I first acknowledge the presence of the Administrator.

His Honour's being here signifies the greatly important public role of the legal profession. It also, of course, signifies a refusal to bend to metropolitan obsessionism.

The Northern Territory and Queensland share the feature of being geographically vast, with all centres tremendously important.

One of the great advantages of being Chief Justice of Queensland is that I have the regular opportunity to visit many non-metropolitan centres. As someone who grew up in the country, that especially appeals to me.

Now I know about the "Berrimah

line" – there once was a "Brisbane line", although differently explained.

Speaking within the jurisdiction of another Chief Justice one should be careful! But just as I moved from the country to Brisbane, so Chief Justice Martin always proudly recognizes his long-term residence in the Alice. I am sure I would please him, and undoubtedly the Attorney-General, in saying that the residents of a capital benefit from a regular substantial dose of regional common sense. We are, as I say, enthused that the Administrator joins us here today: his presence boosts us, and of course the Alice community.

This is my first time in Alice Springs, and it was my seventh in Darwin. As to the Alice, I am charmed, unsurprisingly, by the landscape, charmed by the people. As to the physical beauty of the place, as Ian Morris said

yesterday, "There's a painting in every view". Lexicographers may have devised the word "unique" by reference to Alice Springs. I hesitate to utter an overused word. Modern life seems to foster this crime: paradigm, new millennium...but your situation is, dare I say it, "uniquely unique": true Australians sustaining the continental centre: Australians unperturbed by southern sophistication. You ladies and gentlemen epitomise the spirit which tradition says best ensures our heritage.

You share with Queensland especially, the enormous challenge of dealing, with justice, with the interface between two cultures, one ancient, another much younger. We have some experience of this in Queensland, but this is the more ultimate Aboriginal heartland.