

Bullfry and the wasteland

By Lee Aitken



'April is the cruellest month'. It is always then that the first doubts of the new practice year assailed him – 'July is a desert!' said Bullfry ruefully to himself, as he contemplated an empty diary, and the skull gave him its batrachian, mirthless smile.

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He looked dolefully (unbelievably) at the 'statistics' as recently recorded by the Bar Association. One barrister in three was more than sixty; a little under two thirds were north of fifty. And, perhaps most sinister of all, the raw number of practitioners had only increased by some 200 over some fifteen years. So, the cohort of ageing, dyspeptic advocates had steadily increased in size while, so it would seem, at the bottom, the bar as an institution was not attracting much, if any, new talent.

As he wandered the Street he was conscious of this ageing herd around him – law and life had numbed their elastic powers. But what did the current membership numbers presage? If eighty-odd youngsters joined the bar each year, surely there should be a constant

growth, and a year-on expansion in the number of much younger counsel? Far from it – assuming that most newcomers were solicitors of recent vintage in their early thirties, there was obviously, and forebodingly, a constant, roiling mass of young barristers, male and female, joining the bar each year, and then departing, unwept and unlamented, after a couple of years of moderate practice to some more congenial, or profitable, pursuit.

He went down in the lift to the library but the doors clanged open prematurely and he found himself greeting Victor as ever. In front of him, the glass walls of the Wasteland glinted – but where had Mary Gaudron gone? Of old, she had wagged a minatory finger at Bullfry against a mosaic backdrop, tessellated to the terms of sections 75 and 76 of the Constitution.

Was 'the Wasteland' of the old common room an architectural metaphor for the state of the bar itself? To wit, an empty space, rarely occupied except for some notional 'educative' gathering, or the odd-Fifteen Bobber, or book launch, when a few slabs had to be trundled in for the trestles! Otherwise, an empty husk lying abandoned, unused, unoccupied, and with no very obvious purpose, at the very heart of Phillip Street. For what purpose, exactly, was the old Bar common room now used? Perhaps if the clerk

would print out *InBrief* he might find the answer. Maybe it might even help him locate Mary.

Writing in 1985 in *Bar News* under the rubric, 'What the bar needs' AM Gleeson QC had a grand ambition for it as a place to spur a 'revival of corporate spirit'. He had said,

'To identify our enemies and declare them anathema would be emotionally gratifying, but politically unprofitable. A more positive solution may be to concentrate upon a revival of our corporate spirit. A new carpet in the bar Common Room (tastefully furnished in the style of former President McGregor, indulgently elaborated by Meagher QC, and now in a state of aesthetic collapse) might draw more members to a central meeting place. There is reason to believe that funds for such lavish expenditure will soon be available'.

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For reasons now historical but never fully disclosed to the readership of *Bar News* (since it contains no detailed discussion of the event at all), the Sydney Bar in its wisdom had dispensed with a popular meeting venue in the early years of the new century. The editor of *Bar News* merely said at the time, 'the physical fragmentation of the bar continues to increase, certainly within the Sydney CBD. The Bar Common Room, after continual decline in attendances will be closed'. Perhaps, too, the licensing requirement to disclose the emolument of relevant office holders had its impact.

What a contrast with the Paris of the South. Only the week before Bullfry had attended a long, boisterous lunch with

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an ageing Victorian QC at the Essoign Club, which was situated discreetly behind frosted doors in the bowels of the Melbourne Bar in Owen Dixon West – on that Friday, the place had been packed. In operation since 1961, and separate from the bar itself for licensing purposes, the Club had continued to prove a most popular and congenial location to foregather for members of the Victorian Bar. According to its webpage, ‘The Essoign is open daily (Monday to Friday) from 7.00 am for breakfast, morning tea, lunch afternoon tea, snacks and drinks till late ...!’ Alcohol could be purchased throughout the day from 11:30 am at a 15% discount to bottle shop prices. ‘In the early evening, The Essoign is a friendly bar facility for those looking for a drink at the end of a long day’. On Friday night, there is a Happy Hour.

Was that closure fifteen years ago of the old NSW Bar Common Room simply a symptom of other fundamental ‘cultural’ differences between the two rival *metropoleis*? Did Victoria simply do a large number of ‘cultural’ things – including providing a common, frequented, meeting place for members of the same profession - better? In Melbourne you could fear a genuine, Parisian, riot – armed sans-culottes, denizens of Footscray and other banlieues, would descend after lunch on the City and attack policemen and their poor horses; there was a real Underworld, with career criminals, not some ersatz ‘milieu’ involving a misconstrued ethnic group with its own ‘Crime Squad’ or occasional, retired and cashiered, members of the constabulary; there, a sporting event attracted 100,000 spectators, all brought felicitously to a large stadium by public transport – bars, large and small, then stayed open ‘til the small hours.

Down South, Counsels Chambers owned most of the rooms from which the bar practised and space was made available

for all neophytes. In the Emerald City, in keeping with its general overweening interest in all things to do with property acquisition, a room in Wentworth and Selborne on a desirable floor could change hands for the price of a small house. The grand plan to provide accommodation for the entire Sydney Bar under one roof *a la* Melbourne by accumulating the necessary land had foundered because, among other reasons, it would have necessitated a dilution of the very ‘goodwill’ which produced the astronomical figures payable for rooms on certain bespoke floors.

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Perhaps, also, that desperate tension so clearly articulated by Jackson QC at a Bar Dinner years ago between the bar as a trade union, which looked to support its members through thick and thin, and develop their practices as a matter of course, as opposed to a government-mandated regulator, and stipendiary steward, was simply too large to be resolved. Apart from titivation around the social edges, *what concrete steps*, wondered Bullfry, *had the bar taken to increase the work available to younger, newer barristers in all the time he had been there?* And yet, the apparat running the show now seemed to require, expensively, a cast of thousands - or was it three, at market rates, as some junior suggested - monitoring CPDs, DVDs - any sort of acronym you liked – all a far cry from 30

years before, when Captain Cook ran the entire operation with only the doubtful assistance of Wheelahan as the Association’s honorary secretary! To be fair, the Bar Association’s chief office bearers then were men like ‘The Smiler’, Roddy, and ‘Fat’ Roger - *Vixere fortes ante Agamemnona multi* is, sadly, true for each generation.

And the decline in work for the journeyman junior threatened to accelerate. Ageing, retired jurists now supplemented exiguous defined benefit schemes by acting as mediators at large – most matters had to go, perforce, to mediation in any event, so trial work was decreasing. Solicitors were advertising their own high competency (and, indeed, superiority over the junior Bar) in criminal causes. Trial dates for anything longer than a day or two had dried up. One could go on and on. No wonder so many were seeking the comfort of the consolidated fund – *sera parsimonia est in fundo* was always in Bullfry’s mind as he contemplated his Zurich scheme – ‘thrift comes way too late when you are at the bottom of the barrel’.

The question is, thought Bullfry, recalling the insight of that famous Slavic agitator: ‘What is to be done?’ A small voice replied, ‘What have *you* done? Ask not Bullfry, ask not’.