

Good Manners in Law: *I – Good Thoughts in Bad Times*

About 350 years ago a Cambridge-educated clergyman named Thomas Fuller published *Good Thoughts in Bad Times*, containing, according to the critic Coleridge, "sound, shrewd good sense, and freedom of intellect". It comprised meditations on his own shortcomings, observations on passages of scripture, applications of historical incidents and anecdotes to current events, whimsical and humorous, pithy and wise.

In my opinion, the time has come to talk about legal etiquette. Now, there's a phrase to empty a room by – as Gore Vidal used to observe about his own conversational gambit, "The last time I ran for Congress ..."

Even so, it seems to me that the practice of the law in the contemporary world has become an experience roughly equivalent to being tackled on the back line in a game of grid-iron – and I use the American analogy deliberately, because an over-crowded profession is aping American practice in pursuit of dollars.

"Money," as British dramatist James Agate once observed, "has begun to talk too loudly." And the pity of it is that people are listening, and tailoring their conduct accordingly. It is weak to appeal to standards of behaviour. You're a loser if you're not a plugger. The new "legal industry" is a bear-pit, and the only people who are getting any fun out of it are those who enjoy bear-baiting. Sit back and enjoy the spectacle of the legal profession tearing itself to pieces.

Hang on, I seem to have lost track of the whimsy and humour here. Well, perhaps we need to remember that the Puritans banned bear-baiting not out of sympathy for the pain of the bear, but to end the pleasure taken in it by the spectators.

The Law has never been exempt from bad manners. Calculated insolence, perfected by that unapprehended manslaughterer, later Chancellor Lord Birkenhead – Mr F E Smith – has been one of the deadliest weapons in the advocate's arsenal – "the difference between us, My Lord, is that I'm trying to be (rude), whereas you can't help it."

These were bad manners elevated to an art form – slightly obscene, but disciplined, focused on a target with a goal. There was wit at work.

The manners all too common between legal practitioners today are of the "can't help it" variety – undisciplined, self-indulgent and self-serving. Thuggish. It is time the profession stood up for itself against them.

I suggest we begin with three of the most common types of professional discourtesy:

1. Unreturned Calls: Practitioners who fail to return calls within 24 hours without apology or explanation should be reported to a central agency – in the Law Society – and a running file kept to which all practitioners may refer. This could have implications on referral work.

2. Over-Familiarity/Condescension: Practitioners, unless known personally or by shared repute to one another, should wait to be invited before presuming to address one another by first names.

Given the appalling behaviour of some lawyers, I would not want to share a tram-bench with them. Why would I want them greeting me like an old school mate?

"Please call me Murgatroyd," is very easy to say in a warm voice.

"Please do not call me Murgatroyd", is a far more difficult challenge to one's affirmative action capacities.

Easy to avoid tension by erring on the side of polite formality. It is not proof of stuffiness, superiority, inferiority or reactionary conservatism to deal with potential opponents more with correct restraint than as is you had just signed on together at the local sailing club. Think about it.

3. Croneyism, "Outsider-ism": the Groucho Marx syndrome. When you plan to victimise someone it helps to make them ugly in your eyes or the eyes of others.

"We do a lot of networking", as one lawyer told me a few months ago. She didn't invite me into the gang. What she meant was, "Networking is our cloak for

otherwise illegal discriminatory conduct which bypasses merit in the name of affirmative action". At the very least, such a remark is potentially actionable on the implication of defamation – which is why the "please explain" calls were never returned.

"All I do is supply a demand," said Al Capone,; the Eichmann defence, raised hoping to evade condemnation for illegal conduct.

"I'll appoint you and you can come over here and run the place instead of me," said one lawyer, never heard from again. He meant, "You scare me to death and you're not getting inside the door." At next meeting he looked through the addressee as if made of glass.

"Have you still got that investment property at Wherever?" – one Oldtimer to Another, talking past two Newertimers in the queue waiting to sign up for the Law Society.

Investment properties, holidays (Italy) kids (schools) – thrilling stuff, all talking past the two invisibles. No "excuse my talking past you, please." No. No "have you been in Italy recently?" Well, yes, as it happens, but no. No "would you mind if I stepped past you to talk to my old friend whom I haven't seen in a week/since she got back from *bella Italia*/her kid died of alcoholism?" No.

And certainly never, in a million years, "Hello, I'm Murgatroyd. We haven't met." (Alternatively, "I'm Ezekiel.") "Who are you? Why don't you join us afterward for a drink?" Certainly not.

To which the only possible response is Groucho's – "Well, I wouldn't want to be a member of a club that would have me as a member."

TO BE CONTINUED....

Signed
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