

OPENING GALA DINNER SPEECH, ALSA CONFERENCE
DINNER, MONDAY, 13 JULY 2009, LEGENDS ROOM, 'GABBA
FUNCTION CENTRE, BRISBANE

LIFE IN THE LAW – A PLAY IN THREE ACTS

Prologue

I was sorry to hear the Commonwealth Attorney-General, the Hon Robert McClelland MP, was unable to give this Opening Gala Dinner speech at the annual Australian Law Students Association Conference ... especially when I was asked late last Thursday to give it instead!

But how could I refuse to help out ALSA? The organisers were so desperate they even told me it was one of the highlights of the ALSA year! Now that's taking advocacy too far – even for ALSA's silver-tongued mooted devils! Come on! Some old fool talking for 20 minutes about life! The usual predictable stuff. Act 1: the good old days. Act 2: how things have changed since the old fool was at uni. Act 3: how ALSA members should use the privilege of their position as law graduates to save the world. This, the highlight of the ALSA year? I don't think so! But desperate times call for desperate measures and here they are.

Before commencing the play proper, I note that Australian universities have been educating law students for 154 years, since Sydney University's law school opened its doors in 1855. No doubt, those first law students quickly began organising meetings, mooted competitions and celebrations like tonight's.

This is all but a pinprick in the real timeline of Australia, where for tens of thousands of years before European contact, Indigenous groups lived and prospered. The Jaggera people, here, on the south side of the Brisbane River, educated their children in the Jaggera customs and lore. I suspect the clever young Jaggera people held meetings, competitions and celebrations not, in essence, so very different from this ALSA conference and dinner.

Act 1: The Good Old Days

It's almost impossible for me to believe that it's 37 years since I started, and 34 years since I finished, my studies at UQ Law School. I was 21 when I took my law degree which means that I have been a law graduate for most of my life. How old is that?

I enjoyed my university days in the halcyon early 1970s when university tuition was free. UQ was then the only graduate law school in Queensland. Full-time students all knew each other. University life was more campus-centred and slower than now. No-one had computers. Lots of time for political discussions over the world's worst coffee in the Refec. Some students were known to skip lectures to catch the latest film at the Schonell. The social life was a whirl. And on fine spring days the slopes of the lake were dotted with students soaking up the rays, determined not to let lecture and tutorial timetables get in the way of a tan.

I had part-time jobs during my full-time university days, but that was the exception. Most students did not work in paid employment. The 1970s student life was time-rich but income-poor. The overwhelming majority of the UQ law students were young white males of Anglo-Saxon descent, straight from private schools. There were no Indigenous law students.

The law students' society functions included regular "porn and prawn" nights at which a stripper (female, of course) by the name of Lana Banana performed. Female law students grumbled about these sexist events. But they were grateful to have at last been provided with a dedicated women's toilet within the law faculty. It took us girls a while to realise that the contraption attached to the wall was not a stylish new shower, hand basin or contemporary work of art, but a disconnected urinal! And, contrary to the jibes of the blokes, we girls did not use it! The term "sexual harassment" had not then been coined. But sexual harassment was rife at UQ Law School in the 1970s. Hushed silence and leers greeted young women law students when they entered lecture rooms or the law library. And some particularly charming blokes defaced the English Reports by writing the names of women law students against the name of Cockburn LJ (spelt C-O-C-K-B-U-R-N). I am sure many clever young women were deterred from legal careers because of this atmosphere in which women were made to feel very much like outsiders.

Unlike the uncertainty facing today's law graduates, when I left law school, it was not a question of "Will I get a job?" but rather, "Which job?": an articulated clerk in a law firm; prosecuting with the Crown Law office (there was no DPP); public defending; or straight to the bar.

The reality of "the good old days" is that they were, like the curate's famous egg, "good in parts".

Act 2: How much things have changed since I was a law student

The first obvious difference is that, nowadays, students have far more choice in law schools and law subjects, whether in Queensland or elsewhere in Australia. UQ is now but one of nine law schools in Queensland and northern New South Wales offering more elective subjects than 1970s law students had even heard of!

The next obvious difference is in the makeup of the law students. No, I don't mean mascara or lip gloss! But it is true that most law schools now have more women than men students. The students are also culturally and ethnically more diverse and, thankfully, include an increasing representation of Indigenous Australians. Not as many law students as in my day come to university straight from school; there are more mature age students. And the students are from more varied socio-economic backgrounds.

The method of teaching law has changed, too. Lecturers are more student-focused. They have to be. The incomes of universities are dependent on attracting and keeping students, whether they are HECS students or full fee-paying. Foreign students are a major business and tertiary education makes an important contribution to the Australian economy. The teaching of law also seems to be less centred on "black letter" law and more on legal reasoning and the bigger picture of the role law plays in contemporary society.

Law courses are not as entirely campus-based as in my time. This is, in part, because of on-line opportunities for imparting tertiary knowledge. A computer is an essential tool for today's law students. University tuition is no longer free. Most law students nowadays work many hours each week in paid employment. This is an additional reason why they have less opportunity for the luxurious time-wasting in which my generation indulged. Law students today probably have more money (at least if they delay paying HECS), but less time than I did.

In the 1970s, well before the High Court's decision in *Street's* case,¹ the practise of law in one State was largely confined to practitioners who had studied and been admitted in that State. Nowadays, students are encouraged to complete a part of their undergraduate degree at an overseas university. Opportunities abound for mooting and other related competitions, both in Australia and in glamorous locations overseas, including Vienna, Hong Kong, London and Washington. The future promises even greater internationalisation with common international admission rules.

And unlike me, many of you will graduate and enter the workforce in the worst global economic recession since World War II. You may have difficulty in finding jobs in your chosen or preferred fields. If so, remain optimistic. The tough economic times will soon end and prosperous times will begin again. If you are unsuccessful in obtaining one position, you may obtain a better one next week or next month. If your dream job remains elusive for now, think creatively. Does this challenge present an unexpected opportunity? Perhaps you could return to university for further studies; travel; visit friends and relatives; do meaningful community work either here or overseas; learn a new language; or up-grade your skills. Perhaps you have an idea for a great business opportunity. Or why not feed the creative side of your brain that has probably been neglected whilst studying law: compose that chart-topping song, paint that masterpiece or write that prize-winning novel. Perhaps you could just enjoy a long languid break: after all, once you start in the rat race of full-time employment, you are unlikely to have that chance again. With a little lateral thinking, there are great possibilities for turning an unexpected glitch in your life plan (like a world economic crisis) into an unplanned pleasure in your life adventure.

Things have changed since my time as a student, but not unrecognisably so. As the French say, "plus ça change plus c'est la même chose" (the more things change, the more they stay the same).

¹ *Street v Queensland Bar Association* (1989) 168 CLR 461.

Intermission before the longest Act.

Act 3: How you should use the privilege of your position as law graduates to save the world.

Perhaps you did not study law to save the world, or even improve it. You probably just didn't like maths! You may simply see a legal career as an intellectually stimulating way to earn a decent income. It is. There is nothing wrong with high incomes. Aspirational is good. But all lawyers, whether working for a community legal service or for an international megafirm, are united by their professional legal obligations. This is what keeps law a profession and not just another business. The independent legal profession, together with an independent judiciary, plays a crucial, institutional role in a democracy. It ensures that all citizens, even the weak and the dispossessed, have access to the rule of law.

There will be many times throughout your legal careers, no matter how different those careers may be, when you will have the opportunity to use the law to make a positive social contribution. Some cynics would have you believe that lawyers making a positive social contribution is an oxymoron. They are wrong. It is no coincidence that the first African-American US President, Barack Obama, is a lawyer. President Obama's iconic Illinois role model, Abraham Lincoln, was also a lawyer, indeed, a celebrated one. He was known affectionately and without irony, as "Honest Abe". Lincoln vehemently disliked unnecessary litigation. One day a client stormed into his office and demanded that he sue a defendant for a \$2.50 debt. Even then, that was not a lot of money. Lincoln solemnly requested a \$10 retainer fee. He then gave half his fee to the impecunious debtor, who immediately admitted his liability, paid Lincoln's client the \$2.50 debt, ended the law suit and pocketed the difference. Everyone was happy.²

Creative non-linear mediation "win-win" type thinking, like Abe Lincoln's in the mid-19th century, has become an essential tool for the 21st century Australian lawyer.

² Gallanter M, *Lowering the Bar*, University of Wisconsin Press, 2005.

Let me give another example of how lawyers make positive contributions to the community. A young man was sick of hearing his opera-loving neighbour screeching out arias. Hoping that she would apprehend his real meaning, he politely told her, "Your voice surprises me." Completely missing the nuance and instead thinking this was a compliment, she smilingly responded, "Why, thank you. I spent \$100,000 studying voice." The polite young man (he wasn't a lawyer) responded, "I would love you to meet my sister." "Is she a singer, too?" enquired the aspiring diva. "No," responded the young man, "she's a lawyer. She'll get your money back."³

And then there was the sleazy businessman who hired his shapely young female receptionist for her looks, rather than for her computer skills. After frequent reminders of who paid her salary, he eventually seduced her. Within a few months he became increasingly angry at her constant tardiness in attending work until he snapped, "Listen, honey, we may have gone to bed together a few times, but who said you could start coming in late to work?" She sweetly replied, "My lawyer!"⁴

But there is no need to turn to the joke book to find examples of the positive community contribution made by lawyers and the judiciary. There are plenty of genuine ones.

Over the last 100 years, common law lawyers and judges together have developed the law of torts, ensuring that millions of claimants, seriously injured through the fault of others, have received fair compensation. These claimants would otherwise have led lives of poverty, dependence and misery.

In 1951, when the Cold War was at its peak and Macarthyism rampant in the US, Australian lawyers persuaded the High Court to reject Prime Minister Menzies' attempt to legislate against the Communist Party by holding invalid under the Constitution the *Communist Party Dissolution Act 1950 (Cth)*.⁵

³ Gallanter M, *Lowering the Bar*, University of Wisconsin Press, 2005.

⁴ Gallanter M, *Lowering the Bar*, University of Wisconsin Press, 2005.

⁵ *Australian Communist Party v Commonwealth* (1951) 83 CLR 1.

Similarly, the High Court, again assisted by the lawyers who argued cases like *Muschinski v Dodds*,⁶ has refashioned the law of equity and its concept of "unconscionability" to meet modern conditions and to extend the boundaries of long-established doctrines to assist the vulnerable.

In like manner, the High Court developed the common law concept of "undue influence" as a doctrine related to the wider framework of equitable unconscionability, assisting weaker litigants who had suffered detriment through a relationship of trust and confidence in cases like *Yerkey v Jones*;⁷ *Garcia v National Australia Bank Ltd*;⁸ and *Australian Competition and Consumer Commission v Berbatis*.⁹

Australian lawyers and judges were responsible for the seminal *Mabo (No 2)*¹⁰ decision in which the High Court finally stated that the colonial concept of *terra nullius* did not apply to Australia and that the Merriam people from the Torres Strait had common law native title to the possession, occupation, use and enjoyment of the Murray Islands. *Mabo* was a major turning point in Australian history. It is rightly seen by Indigenous and non-Indigenous Australians alike as a keystone in the stairway to reconciliation.

Since 1990, the substantive and procedural criminal law relating to women and children as victims of crime has also changed significantly. Offenders can now be convicted of sexual offences solely on the testimony of the complainant. A man can be convicted of raping his wife. Complainants in sexual cases give their evidence in courts which are closed to the media and the general public and their names are not published. The original statements of complaint to police from child witnesses are now tendered as the child's evidence, and any cross-examination is video-recorded before the trial to minimise the trauma of court appearances. Although the legislature enacted these changes to the law, many lawyers played an active role in effecting the reforms.

⁶ (1985) 160 CLR 583.

⁷ (1939) 63 CLR 649

⁸ (1988) 194 CLR 395.

⁹ (2003) 197 ALR 153.

¹⁰ *Mab v The State of Queensland (No 2)* (1991) 175 CLR 1.

Whilst Australia's Constitution does not contain a bill of rights, the High Court has interpreted it as implying certain rights. Lawyers, in taking the appeals and presenting legal argument to the High Court enabled the Court in *Lange v The Australian Broadcasting Commission*¹¹ to say that our Constitution protects freedom of communication between people concerning political or government matters.

Earlier this year, the Supreme Court of Victoria prioritised cases arising from the bushfires, such as wills and probate matters, to alleviate the suffering of survivors. The Victorian legal profession announced a cooperative pro bono scheme to provide legal information, advice, referrals and casework for those affected by the bushfire. It helped survivors begin again by providing much-needed advice for those who had lost their homes or employment, or documents, such as mortgages wills and insurance policies.¹²

Not everyone will have the opportunity, either as lawyer or judge, to take part in ground-breaking legal decisions. But you will all have opportunities to use the law to improve the life of individuals, or the systems in which individuals live, for example, through pro bono work or by lobbying for law reform. The National Pro Bono Resource Centre recommends that every lawyer provides at least 35 hours per year in pro bono services.

Obviously, using the law to effect positive change will help others, either individually or systemically. Importantly, it will also ensure the maintenance of public confidence in your chosen, and all too often unfairly maligned, profession. Most important of all, using the law to help others will give you great personal satisfaction and add meaning and purpose to your life.

Epilogue

I once read that, for most people, life is about 90 per cent maintenance, about five per cent intense pleasure and about five per cent intense pain. No doubt you will each have your share of tragedy in amongst the drama and adventure of your individual life journey. A sense of the comedic will help get through the tough patches and the boring maintenance.

¹¹ (1997) 189 CLR 520.

¹² The Australian Financial Review, Thursday, 12 February 2009 at p 6, "Court Pledges Speedy Justice" by Patrick Durkin.

Thank you for inviting me, even by default, to share in this special occasion. I hope you have enjoyed both the dinner and the show – all three acts. The sequel is for you to write and perform. I wish you all a prosperous and satisfying legal career and a contented personal life. May the tragic be less and the pleasurable be more than the usual five per cent.

And when you are old men and women moving into retirement and reflecting on your careers in the law, I hope you will look back with pride, knowing that you have upheld your professional responsibilities and used the law and your knowledge of it to effect positive change.