

The Hal Wootten Lecture 2007

Acknowledgment by Hal Wootten, following lecture by Michael McHugh AC QC

When the Dean invited me to speak tonight I rejoiced in the long-awaited opportunity to use an elegant adjective, so I start by confessing that, despite the risk of embarrassment by such overgenerous remarks as Michael made tonight, I find great pleasure in this eponymous lecture series.

Regrettably I cannot find an elegant adjective to capture the other feature that attracted me last year, and continues to attract me this year, namely that it is not the Hal Wootten Memorial Lecture. To describe it as immemorial would miss the point, to call it non-posthumous would be inelegant, and to adopt the term 'prehumous' would be to compound the etymological fallacy that first inserted the 'h' in 'posthumous'.

I hasten to assure our speaker, who has given us such a serious lecture tonight, that these linguistic trivialities were not my only reaction when, as the phrase goes, David ran Michael McHugh's name past me. The suggestion was accompanied by somebody's thought there was merit in strengthening associations with High Court judges. While I enthusiastically embraced the nomination of Michael on the basis of his personal qualities, I resisted the notion that invitations to give the lectures should favour the holders of particular offices.

Over 60 years ago, as a disenchanted law student wondering whether I had made the right choice, I took comfort from the conviction with which Justice Oliver Wendell Holmes had answered a question he imputed to his audience of Harvard undergraduates in 1886. The question was: *how can the laborious study of a dry and technical system, the greedy watch for clients and practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life?* – and he answered it with the ringing declaration that he could say—and say no longer with any doubt—that a man may live greatly in the law as well as elsewhere.

Holmes spoke in an age when the masculine by definition included the feminine, but in practice excluded it. One hundred and twenty years later I can say with equal conviction and a great deal more evidence, that a woman or man may live greatly in the law as elsewhere. Holmes had recently published his great work of scholarship *The Common Law*, and could not have known that he had 45 years as a judge ahead of him, so it is not surprising that he went on to emphasise the opportunities the law provided for the thinker. However, to me a great charm of the law as a vocation lies in the varieties and combinations of ways it offers to men and women to live greatly – as thinkers, as scholars, as teachers, as counsellors and advisers, as advocates, as judges, as arbitrators and fact-finders, as people who take their legal training with its skills and values into journalism, politics, business, administration, literature or service of the international community, to name but some of the spheres where we find men and women recognisable as lawyers.

Decision-making on the basis of rational argument, integrity and a passion for justice are not the monopoly of the legal profession but they are central to its values. In the dark days through which

democracies have been travelling, it has heartened me to see how often it has been lawyers who have stood firm for these values, not only and indeed not always the courts at the top of the hierarchy, but all the way to the humbler servants of the law.

We have had reason to reflect that Atticus Finch and Rumpole of the Bailey are not entirely fictitious characters. When David Hicks was left to rot in Guantanamo Bay, and when Mohamed Haneef found himself in Brisbane Watchhouse with no one listening to his explanations, the calls that went out were unhesitatingly answered by unpretentious lawyers like Major Mori and Peter Russo, and, I am happy to say, they received the moral support of most of the profession.

When the tumult and the shouting dies, and the captains and the kings depart, there still stands the ancient sacrament of the law: the right of everybody to a fair hearing and a reasoned decision according to the facts and the law, by an honest and unintimidated judge. In the end this is often all the law can offer a person, whether individual or corporation, rich or poor, strong or weak, but it is a precious thing. Striving to make it a reality and to make the law applied in it more just and rational are at the heart of what it means to be a lawyer.

For more than 2000 years lawyers have blithely repeated Piso's maxim: *Let justice be done though the heavens fall*, although sometimes more hesitantly since September 11, when it seemed that the heavens really might be falling. At least the law has so far maintained the process of decision-making by reasoned argument, once considered central to the effective rule of law and to democratic practice generally, but in the political arena increasingly

displaced today by dictated responses to recently discovered emergencies.

Here in Australia we have seen revolutions in immigration policy and indigenous policy enacted with barely enough time to read, let alone debate the legislation; and the fundamental assumptions of federalism dismantled in a series of off-the-cuff executive decisions in marginal electorates. These local examples illustrate the degree to which decision-making on the basis of rational debate, even by legislators, let alone the public, is being leached out of supposedly democratic societies.

I like to hope that in some small way this eponymous and ultimately posthumous series of lectures may help to keep alive in the law the tradition of rational public debate by giving voice, as it did last year and again tonight, to some of those who understand what it means to live greatly in the law, whatever their role or rank, race or gender.