

# Occasional Address\*

## University of Sydney Law Graduation

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In the 1930s, the French Minister for Finance, Pierre-Étienne Flandin, visited England to consult with his counterpart there. Reading *The Times*, to his bemusement, he noticed that the Chancellor of the Exchequer had written to the Editor to say that he had found on his lawn on the previous day a particular type of water-wagtail, that the time was unusually early for that species, and that he was sure he was not mistaken. M. Flandin thought such a letter unimaginable in France, but soon came to appreciate that, in England, there was a prevailing ethos that to be nothing but a politician, or a specialist, and nothing more, renders a person stale, or sour, at least something rather less than a complete human being.

Federigo di Montefeltro, the first Duke of Urbino in the mid-15<sup>th</sup> century, a very great soldier and ruler, thought the same. The portrait of the Duke — either by Pedro Berruguete or Justus van Gent — depicts him in full armour, in all his chivalric glory. His helmet, however, lay at his feet. He is seated in his library, reading from the precious antique manuscripts he assiduously collected. For he was rather more than merely a great general. He was a highly cultivated and intelligent man, who, for pleasure, read the great works of antique literature, regarding the pursuit of the *studia humanitatis* as an attribute of any great man in any profession. The Duke's humanity was his biographer's recurring theme. 'What are the essential attributes to being a good ruler?', he asked the Duke. '*Essere umano*', the Duke replied, 'to be human'; by which we would mean to be humane, to have within you that quality the Greeks referred to as 'to philanthropon' (το φιλανθρωπον); that is, that deep love and reverence for the human person.

These historical anecdotes commend to our graduates the cultivation of the same attitude, not despite, but because of, the rigours and vicissitudes of the professional lives of lawyers and that can have a jading, dehumanising, effect if one is not careful. There is a risk of the loss of that spirit of disinterested enquiry, pursued for its sheer enjoyment, an acquired taste, an essential part of one's humanity: not just for its utility, but which ultimately, inadvertently, has greater utility. When first things are put first, second things will follow; whereas when the contrary applies, both first *and* second things are lost. Is it not the case that the mathematics which have mattered to us more is not that State or industry-sponsored mathematics, such as existed in ancient Egypt for example, but that disinterested, liberal, mathematical

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enquiry engaged in by gatherings of friends — Euclid, Pythagoras, and their companions — who were simply fascinated and delighted by numbers? Similarly, such a spirit maintained as the backdrop to one's professional life in the law will reverberate back to enhance one's main occupation.

The Duke of Urbino was not a great ruler because he was a great general, but rather because he was a humane man, who could leave his helmet at his feet while he read Aeschylus and Cicero. No doubt the Duke would have said, along with the poet Milton, that '[a] good book is the precious life-blood of a master spirit, ... treasured up on purpose to a life beyond life.'

It has been asked rhetorically, 'for what do they know of the law who only the laws know?' Serious reflection upon this question commends an attitude of mind that will elevate young lawyers beyond the level of mere technicians, propelling them, one hopes, into the realms of the great jurists: the Demosthenes, the Ciceros, the Lord Mansfields, the Chief Justice Marshalls, the Sir Owen Dixons, the Lord Sumptions. It is not to the point that not all will rise to such eminence, but rather that those adopting this same attitude will become the better lawyers for it, reverberating upon the profession as a whole for the benefit of those it serves.

To illuminate the point, might I invite you to reflect upon a sunbeam in a dark windowless tool shed, issuing through a small crack in the door. By looking *at* that sunbeam, one sees a ray of the sun, with specks of dust gently floating downwards, but little else. One might just admire the sunbeam, the most striking thing in what is otherwise darkness. There may be others who, touched by curiosity, or otherwise inspired by some Muse, will approach the sunbeam and place their eye upon it. Their line of sight will be taken through the crack in the door opening up a vista of green leaves on trees, birds, the blue sky and the sun, from which the ray derives, some 150 million kilometres away: an entirely more exhilarating, and the true, vision. To see that, however, one must stop looking *at* the sunbeam and make the effort to look *through* it.

The specks of dust that float through the sunbeam of prescribed casebooks, of lectures attended, the legal tomes poured over, are the many and varied legal principles that students have striven to master; essential of course for technical proficiency and not the least because as lawyers you will be representing people whose property, liberty and rights — indeed, whose very life — will be at stake. However, the laws cannot be sustained by their own devices, but rather by those lawyers who, looking through the sunbeam, see that they belong to one of the great foundational, liberal and learned professions whose maintenance in its form as a *liberal and learned profession* — and not just another trade or business — is essential for the maintenance of ordered liberty in a democratic society and those civil liberties which enable the enjoyment of the fruits of civilised life, for the cultivation of an ethos in society which, without denying the individual's obligations to civil society, maintains that the law and the State exist not for their own sake, but rather to facilitate human flourishing; that no person — no matter how mean or otherwise disreputable — is ever to be regarded as a means to an end, but an end in themselves, a sacred, inviolable and treasured end, for which the law and the State exist. It is not to be wondered that the French attributed nobility to the legal profession: '*noblesse de robe*' — the nobility of the robe, or the gown — referring

to the gowns being worn here today and in the profession. With true nobility, however, comes obligation: *noblesse oblige*.

Looking through the sunbeam, what else might one see? Permit me to share some of the things I saw and recorded in a notebook of quotations kept when I was a law student here, recently discovered gathering cobwebs in the attic, some of which have already been relied on above. Taken down at a time when I was approximately your age, these may be helpful and may also assist my demurrer to any charge of didacticism.

To reflect the point just made, here is the first quotation from the Professor of Medieval and Renaissance Literature at the University of Cambridge in the 1950s, perhaps a throwaway line, but the general point is important:

The State exists simply to promote and to protect the ordinary happiness of human beings in this life. A husband and wife chatting over a fire, a couple of friends having a game of darts in a pub, a man reading a book in his own room or digging in his garden — that is what the State is there for. And unless they are helping to increase and prolong and protect such moments all the laws, parliaments, armies, courts, police, economics etc. are simply a waste of time.

The second relates to the famous criminal barrister Sir Richard Muir concerning the fundamental attribute of all the truly great lawyers: attention to detail, for striving for perfection in small things. ‘He was always polishing and rounding off and revising his cases, and even if a case should be postponed or adjourned over the weekend, the same process would continue. He always wanted to go a little better.’ This brings to mind the story of arguably the most outstanding cellist of the 20<sup>th</sup> century, Pablo Casals. At the age of 93, he continued to practice the cello for three hours a day! When asked why he did so, he replied, ‘I am beginning to notice some improvement.’ Remember, the universe is not just infinite in its vastness. It is also infinite in its smallness.

The third quote comes from William Pitt — that great Prime Minister described by the historian as ‘not just clever, but pure’ — in his speech in the House of Commons in 1763 reflecting upon the rule of law and its solicitous care for the most vulnerable:

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail — its roof may shake — the wind may blow through it — the storm may enter — the rain may enter — but the King of England cannot enter — all his force dares not cross the threshold of the ruined tenement!

Who can forget Lord Mansfield’s judgment in the *Somerset Case* in 1772, (1772) 98 ER 499, not only one of the greatest adornments to the common law, but also the harbinger of the abolition of slavery by the great generation that followed?:

The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political, ... It is so odious, that nothing can be suffered to support it ... Whatever inconveniences, therefore, may follow from the decision, I cannot say this case is allowed or approved by the law of England ...

Its modern analogue is Lord Atkin's famous dissent in *Liversidge v Anderson* [1942] AC 206 at 244, delivered in 1941 during the British Commonwealth's darkest hour in the Second World War:

In [England], amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive ...

In constitutional law lectures, the admonition may have been heard: 'Smell out the Caesars as well as the taxes.' It reflects the calling of every lawyer to be fiercely independent, no matter the personal cost: not only independent of peer group pressure, 'group think', of the untested assertions of any particular 'tribe' to which we may belong, ideology, but also independent of powerful and wealthy interest. We must *see* what others do not, or will not, or cannot, see, calling out an overreaching government seeking to deal with a crisis by imposing disproportionate limits on civil liberties, seeing through the spin of large commercial entities ever seeking to advance their own interests at the expense of the individual citizen and the democratic polity, to expose those who 'know the price of everything and the value of nothing'. The motto of the New South Wales Bar Association encapsulates this rather well: 'Servants of all, yet of none.' This is at the core of our profession, its most enduring service to the commonwealth.

Some of our graduates may entertain doubts about being lawyers, even now. This is not uncommon, especially if one prefers more liberal, less arid, forms of intellectual engagement. Some quotations referred to Sir Owen Dixon, arguably our greatest Chief Justice and the greatest lawyer of the 20<sup>th</sup> century in the common law world. Originally, he aspired to be a classicist, having read classics for his first degree. Difficult family circumstances, however, required him to pursue a more certain career path. Classics' loss was the law's gain; although he never ceased to read Homer and Aeschylus for pleasure — in the original. Being exposed to such high literary art no doubt had something to do with the quality of his judgments. He would have been exposed, for example, to that great dilemma dramatised in Sophocles' *Antigone*, with extraordinary prescience, which confronted the then newly nascent democracy and still confronts democratic societies today: obedience to the State — in this case of a tyrant King who prohibited a proper burial to Antigone's dead brother on the pain of death — or obedience to the higher law of family obligation and religious observance that required Antigone to retrieve her brother's body in order to bury it with all proper ceremony? The tragedy flows of course from Antigone's disobedience to the State decree. Dixon would also have been aware that the very first line of the *Iliad* is an appeal to the Muse to inspire a poem to celebrate a protest against an unjust royal decree. The DNA of any liberal, democratic polity is manifest in the very first lines of our great literature; and happy is that polity whose lawyers and judges are only too familiar with it.

Sir Owen Dixon also set us an example of wide erudition beyond the law; and one often finds a great correlation between the degree of general erudition and that of excellence as a lawyer. One need only peer a little deeper into the lives of the great lawyers and jurists, including academic lawyers, to see this borne out. I name

only one from many: Lord Sumption, one of Britain's leading silks and recently retired from the United Kingdom's Supreme Court Bench, has written a five-volume historical work, *The Hundred Years War*, which some have compared to Gibbon's *Decline and Fall*. Closer to home, and in my own field, I found this extraordinary erudition amongst those constitutional lawyers who have contributed so much to constitutional law scholarship, indeed to the Commonwealth more generally, and with whom I had more than a passing acquaintance: the late Professors Leslie Zines and George Winterton. Their example is commended.

This tension between duty and personal preference, the hard life of the law — and it can be very hard — and the gentler life of private pursuits away from the vicissitudes of public life and human conflict, has been a perennial dilemma of thoughtful people throughout the centuries. This quote comes from late Graeco-Roman antiquity:

In view of the darkness attending the life of human society, will our wise man take his seat on the judge's bench, or will he not have the heart to do it? Obviously he will sit; for the claims of human society constrain him and draw him to his duty, and it is unthinkable that he should not do it.

Actually, it is especially those who have these doubts, who do not actually crave high judicial office, who are not concerned with the gaudy (and very fleeting) baubles of worldly fame, who simply aspire to doing the best job they can for any person they have the privilege to represent, that are not only best suited to such positions, but are actually the ones chosen — heaven help them. The principle of *nolo episcopari* (literally, 'I do not wish to be an overseer', or 'bishop') ought always to be kept in mind. Moreover, it is not just the 'high flyers' who contribute to the legal profession. 'They also serve who only stand and wait' appears in the notebook from the High Court's decision in *Automatic Fire Sprinklers Pty Ltd v Watson* (1946) 72 CLR 435 (per Dixon J), itself a line from Milton's famous poem reflecting on his (Milton's) impending total blindness.

Another quote comes from Sir Ninian Stephen's book on Dixon. Without in any way discounting the achievements of our prize winners, this one is for those students for whom I have the utmost admiration: the ones not necessarily in the top academic echelon or as gifted, or on *Sydney Law Review*, not necessarily the ones who received that coveted graduate job in the large commercial firms, or as associates of our judges; but rather the ones who, despite all this, doing what they could generally to contribute, lending a helping hand to fellow students, going about their study conscientiously, quietly, sincerely striving to learn and to think like lawyers, taking in the ethos and ethics of the law, barely scoring much above a Credit, always attempting their hand at mooting although never quite making it beyond the quarter-finals; but never complaining, or giving up, or succumbing to envy, who kept picking themselves up, dusting themselves off, and returning once more to the fray; and especially the ones who had to endure very difficult personal vicissitudes on top of everything else.

There are such students; and it is their names that are the easiest to remember over the years. For such students will have learnt through hard experience the fundamental secret to success in legal practice: quiet perseverance, pursuing learning for its own sake and not for the glory of prizes and recognition, collegiality, learning

to overcome disappointment and discouragement, knowing that achieving one's personal best is good enough, that serving the true ideals of the profession provides ultimate success and fulfilment in one's career and personal life — not necessarily being appointed partner, Senior Counsel, Professor of Law, or to the High Court. Strangely enough — although it is not so strange — it is those people who often end up being the most successful as lawyers and as human beings. Here is the quote:

It was in practice at the Bar rather than his studies at the University that [Dixon's] great intellect became clearly manifest. ... his results did nothing to mark him as destined for the immense stature which he attained both at the Bar and on the Bench.

To the virtuous and dutiful student, permit me to say: do not let the naysaying, or any general, petty nastiness — I regret to say — of others you may come across, undermine your confidence. Turn it into a stepping stone for the long ascent. For as Marlowe wrote, 'virtue is the fount whence honour springs'. From my experience over many years, *in the long run*, nice guys finish *first*.

Today is a day of happiness and celebration and, on behalf of my colleagues, I extend to you my very sincerest and profound congratulations and best wishes for your future careers. To your parents, family, friends and supporters, I offer the same good wishes, acknowledging with the greatest respect the considerable sacrifices that have been made, often unnoticed and unrewarded. To them too, a quote is offered: 'By loving them for more than their abilities, we show our children that they are much more than the sum of their accomplishments.' May you all drink long and fulsomely from this cup of achievement, relief and joy.

Finally, to our new graduates, permit me to send you off with one final quote you may be all too familiar with, with all good will and sincerity: 'Good morning to you all ...'.