

HAL WOOTTEN LECTURE 2014

Response to Lecture delivered by Professor Richard Abel

by

Hal Wootten

Before I begin the serious business of responding to Rick Abel's inspirational lecture I would like to say something to that faithful band who have been coming regularly to these lectures since they were initiated. With them I have developed a standing "in-joke" about my annually recurring pleasure at finding that this eponymous lecture has not yet become the Hal Wootten Memorial Lecture, as the inaugural speaker assumed it was. I have some statistical research to pass on. Every five years the Australian Bureau of Statistics issues fresh life expectancy tables. When the lectures began in 2006 I was 83 and one could deduce from the latest tables that the Hal Wootten Memorial lectures were likely to begin in six years, that is 2012. However in that year, in the nick of time, the Bureau published new tables which, for a then 89 year-old, extended the date to 2016. A further set of tables will be published in 2017, but alas they will not be retrospective.

All that of course is of no importance, because the real purpose of the lecture series is to commemorate, not me, but the founding vision of this Law School, with which my name has been generously associated. My name stands proxy not only for the happy band of staff and students who first lived the vision in 1971, but for all the staff and students who have lived and nurtured and developed it over the last forty years. As I always hasten to add, it is not a vision of which this Law School claims any monopoly, but a vision that, wholly or in part, is shared widely across Australian law schools, across the Australian legal profession, and by many law schools and lawyers across the world. Indeed we are humbled to remember that in many countries not only lawyers, but other citizens, suffer and die for the values and with the aspirations enshrined in this vision, whereas for us the greatest obstacles to realising them are our own lethargy and selfishness.

Tonight we have heard a speaker who shares at least part of the vision, and has researched the story of how it fared in the hands of military lawyers charged with trying prisoners held at Guantanamo. Hitherto our knowledge of it has come mainly from following the battle for justice for David Hicks waged by his counsel Major Mori, now a revered figure in Australia. Rick Abel has told us the story of four other men, ordinary men of varied backgrounds, who also shared part of our vision and, regardless of their personal interests, stood up for it when one of its fundamental premises was challenged.

There is no neat Nicene Creed encapsulating our vision; like the common law it must be ready to respond to the ever-changing realities of human life. But fundamental to it are some very simple tenets, including one I see Rick's subjects as defending: justice is for everybody. Not just for the privileged and powerful, the worthy and respected, but for everybody, including, like those for whom John Masefield consecrated his verse, "the dirt and the dross, the dust and scum of the earth". For that is how the inmates of Guantanamo Bay were portrayed, and how those who are perceived to stand in the way of powerful interests are always at risk of being portrayed.

One of the basic premises of our founding vision was for me that the Law School is educating young people not to conduct a business, but to practise a profession. A profession is a body of women and men who are given a special status and independence by their society, in return for which they accept certain responsibilities, in this case in relation to the legal system and justice within it. In a

democratic country it is inherent in the deal that the responsibilities are to the whole of society. Justice is for everybody.

This aspect of the vision has always been taken very seriously in the Law School. On the wall outside this lecture theatre you may have seen the words: "A Law School should have and communicate to its students a keen concern for those on whom the law may bear harshly, either because they cannot afford its services, or because it does not sufficiently recognise their needs, or because they are in some way alienated from the rest of society. The poor, the Aborigines, the handicapped, the deviants, all need their champions in the law as elsewhere". The words first appeared in the Dean's letter to new students when the Law School opened in 1971. They were not, as some seeing them in isolation have assumed, a narrowing or skewing of the focus of the Law School, but a reminder that, in contrast to "business, industry, trade unions [and] governments [which] supply much of the work and income of the legal profession and are not likely to be forgotten", these marginalised groups are easily forgotten and their special needs call for conscious attention.

The words have been prominently displayed near the entrance to the Law School, here and in its former home, for many of the subsequent forty-three years, and have found expression in the lives of both students and staff. Just one example, which follows the inherent values outside the strictly legal field. Not long ago one of the students to whom the words were addressed over forty years ago was asked by the Australian government to head a group reporting on the funding of school education. Fulfilling the promise shown at the Law School, he had in the intervening forty years become a wealthy and influential businessman, and some may have thought of the problem of camels and needles. However the basic premise of his report had a familiar ring: education is for everybody. To use his actual words: *Differences in educational outcomes must not be the result of differences in wealth, income, power or possessions*. I hope young David* does not mind me using him as an example – he is a good lad. He has scratched my back on more than one occasion, so I have welcomed the opportunity to reciprocate.

The examples given in 1971 of people who needed champions reflected the language and the priorities of forty years ago and would be formulated differently today. They would undoubtedly include, for example, asylum seekers, whose treatment has been and remains deeply troubling to Australian consciences. Professional lawyers have been honourably active on their behalf, but the scope for forensic action is limited. I was proud to learn that when our Faculty recently had the possibility of a generous private benefaction it seized the opportunity to establish the Andrew & Renata Kaldor Centre for International Refugee Law. There is an important role for academic lawyers in documenting, exposing, analysing and critiquing what is going on and proposing ways forward.

Like inconvenient groups everywhere, asylum seekers have suffered serial vilification: we have been told they threatened piracy on the Tampa, they threw their children overboard, they were secret terrorists, they destroyed their papers to conceal their criminal records, they were wealthy people buying access that others could not afford, they were queue jumpers, they were not genuine refugees but economic migrants, they were disorderly and violent people who destroyed the accommodation we generously provided, they insulted and provoked the local population in their host country.

We in contrast have been patient and forbearing, and, oh, so humane. Naturally we had to defend our borders against invasion, and stand up for genuine refugees. But our real concern has always been to save the lives of the poor boat people who were drowning in leaky boats; at one stage we even planned to buy up all the leaky boats in Indonesia. If preventing drowning were our real aim, it would have been much cheaper to provide some boats that didn't leak or some storm proof

capsules. Our Navy could then have played "turn the boats back" without fear of anyone drowning. We did not think of that, instead we humanely set out to make the lives of those who did get through so painful, bleak and hopeless that no one else would even try. We did not intend Reza Barati's death, but it really made our point.

This absurd farce has left the motivation of Australian policy nakedly exposed for all to see. We are a privileged, wealthy country in a world where nearly everyone else is poorer and less privileged, often undernourished and distressed, but we are not prepared to share what we have in any significant degree, not even with persecuted refugees or people who are prepared to work hard and take extreme risks to give their families a chance to live in a world like ours. We do not even acknowledge a problem. The world is not for everybody; this part at least is for us.

There is a parallel with climate change. We are not prepared to curb our greedy consumption even a little to share the world with future generations. It will last us out. The world is not for everybody, but for us, here and now.

I am not seeking to cast the first or any stone; I am as implicated as everyone else, and I have no easy answers to what are difficult problems. But it is essential that we first see clearly what we are doing, acknowledge that it is not acceptable, and be open to working with people of goodwill throughout the world in the search for solutions. A whole new world order awaits imagination and negotiation, one that takes account of changing patterns of aspiration, expectation, need, consumption and technical capacity. We may have left it all too late, but we must retrieve what we can. If we can take something away from this evening, perhaps it may be this: If humanity's problems are to be solved, they will be solved only by people who start their thinking and their negotiation from the premise that justice is for everybody; not only procedural justice for the wretched inmates of Guantanamo, Manus and Nauru, but substantial justice for all who have a claim on the world and its resources. We cannot go on pretending that nothing is wrong or that we are not responsible.

Thank you Rick for coming all this way, for your stimulating lecture and for provoking us to think more honestly about where we stand in the world. Thank you all for your patience in enduring what I have come to assert as the eponym's privilege.

**David Gonski AC, now Chancellor of UNSW, was present at the Lecture.*