HAL WOOTTEN LECTURE 2015

Response to Lecture delivered by Julian Burnside AO QC

by

Hal Wootten AC QC

For the eighth year I thank the Faculty for honouring me with this Lecture and express my pleasure that it has not become the Hal Wootten Memorial Lecture. I know this can't last forever, but it is nice while it does - much preferable to the alternative. I can still endorse the view of George Bernard Shaw and Malcolm Fraser that life, while not meant to be easy, can be delightful. To live is to share both its sorrows and its moments of delight, of which tonight is one for me.

As always I stress that my name is not only an eponym but a metonym. In contrast to a static creed, a vision is organic, and my name stands in for all those - staff, students, administrators and benefactors - who as time goes by contribute to developing, shaping and nurturing the vision cherished in this Law School.

We took our first students in1971. Young Julian Burnside had turned 21, so even if he had not had the misfortune to be born in Melbourne, it would have been too late for a most desirable conjuncture. That had to wait four decades until he joined the board of our International Refugee Law Centre, generously endowed by Andrew and Renata Kaldor.

Julian had gone to Monash, opened seven years earlier. Monash and UNSW were the two new kids on the block, Monash the first law school in Victoria for 107 years, and UNSW the first in this state for 116 years. On the Monash Law School website a five minute video celebrates its 50th anniversary last year. An early student, Julian Burnside, recalls something strongly impressed on him:
Law is deeply embedded in society and unless it is working for society it is missing the point.

A succinct way of putting part of a vision we share, one which enables us to assure our students that there are many ways in which they can find rewarding, satisfying and worthwhile lives in the law, or, to use the eloquent phrase of Justice Holmes, for a man or woman to live greatly in the law, as elsewhere. We like the Hal Wootten Lecture to illustrate this, as it has done tonight.

Julian was a leading commercial and taxation barrister until he appeared for the asylum seekers rescued by the Tampa in 2001. Three years later he wrote:

I learned, through the Tampa case, something I should have recognised earlier: that asylum seekers are confronted by unjust laws being implemented by a government which has lost touch with ordinary standards of decency. It had a profound effect on me. I knew that it was not possible to stay in Australia and do nothing about these outrages.

Julian's pro bono legal work alone meets that challenge, but there is much more. He has given tremendous personal respect, support, comfort, indeed love to individual asylum seekers and families. Most remarkable has been his effort to tell the Australian public of the terrible things done in its name. This has required courage and disregard of his personal interest. The quantity and quality of his public speaking and writing have been staggering. He has even confronted hostile shock jocks.

In his Tim Costello Lecture Julian has told how, whenever he was quoted in the media saying something outrageous like "it is wrong to imprison innocent children and drive them to suicide", he received a torrent of hate mail. He decided to answer it all. Sitting up late at night he answered thousands of emails, mostly abusive. The rudeness and vehemence of most was surprising, but what followed was even more astonishing. Nearly all responded and every response was polite.

Where appropriate Julian replied with more facts to answer objections. About 50% ended up saying, in substance: "Thank you for discussing this issue with me. I agree with you now"; and about 25% ended up

saying, in substance: “Thank you for discussing this issue with me. I don t agree with you, but it is good that you stand up for what you believe”.

One can only marvel at his stamina and patience, not to mention his command of the cut and paste function of his computer.

Tonight we heard a sample of what Julian has been saying publicly in many forums. Again and again he has given these and many equally distressing case studies with checkable detail. He has been non-partisan, saying that “Both sides of politics are in a race to the bottom in the mistreatment of asylum seekers,"

How has this indictment, built up over fourteen years, been answered by those accused? Apart from one dubious case that Julian has mentioned tonight, I have been unable to find examples of disputing his facts. They seldom even bother to shoot the messenger, mostly they simply ignore him.

Two recent incidents show how our Prime Minister responds to criticism of Government policy. The Human Rights Commission reported adversely on the effect of detention on asylum seeker children, and the UN Special Rapporteur on torture and other inhuman or degrading treatment had the temerity to uphold four complaints against Australia while dealing with 200 complaints involving 68 countries.

In neither case was any attempt made to answer the findings. In both cases the reaction was to attempt to shoot the messenger, quite shockingly in the case of Gillian Triggs, and then adopt a holier-than-thou attitude, pleading with injured innocence that, far from criticising, everyone should be complimenting his government for stopping the boats and thereby saving asylum seekers from drowning.

Our poor misunderstood PM claimed that Australians are “sick of being lectured to by the United Nations, particularly given that we have stopped the boats, and by stopping the boats, we have ended the deaths at sea”. What I am sick of is the hypocritical self-righteous cant that implies that Australia is only interested in saving lives at sea, and that that justifies treating asylum seekers cruelly, locking up their children, and acting to stamp out any hope of a decent future.

We do not do this to stop asylum seekers coming to Australia in leaky boats; we do it to stop them coming to Australia, full stop. It would be easy to allow them to come to Australia safely; instead we make it impossible for them to do so. Australia left them with only the dangerous option, which the Government thinks it should be congratulated for closing. I am not suggesting that anyone wants the drowning of asylum seekers, but the brutal fact is that Australia simply doesn’t want them, dead or alive.

Many asylum seekers flee the Middle East, Iran and Afghanistan by flying southeast. Pakistan, India, Bangladesh, Sri Lanka, Malaysia, Singapore, and Indonesia are not parties to the Refugee Convention, but beyond them beckons Australia, which prides itself, or used to pride itself, on being multicultural, just, law abiding and a party to the Convention.

Having flown safely to Indonesia, why do asylum seekers transfer to leaky boats? Because an airline can’t sell you a ticket unless you have an Australian visa: Australia gives visas to investors, businessmen, tourists or students, but not asylum seekers. Australia cuts off air travel, leaving only boats.

In Indonesia there are plenty of good sound boats and competent crews capable of getting them safely to Australia. They were doing it before Europeans discovered Australia. Why are they not used by asylum seekers? Because when a boat load of asylum seekers arrives, Australia confiscates the boat and imprisons the crew. Australia again rules out the safe option; the only option left is a throwaway boat making its last trip with a makeshift crew.

Desperate asylum seekers took the risk and a significant number - men, women and children -drowned. They continued to do this even when the survivors were cruelly treated and sent to small impoverished countries that could not offer them a decent future, didn't want them, and simply took them for an Australian bribe.

That didn't look good, but in any event it wasn't achieving Australia's overriding objective: to see that asylum seekers didn't get to Australia at all. So Operation Sovereign Borders and the Navy were mobilised at great expense to ensure that asylum seekers didn't even have a chance to get here in leaky boats. This is the action that Tony Abbott thinks so wonderful that it should silence all criticism of our cruel and brutal treatment of, and our denial of all hope to the survivors who escaped drowning and are now at the mercy of his Government. It is, he said "the most humanitarian, the most decent, the most compassionate thing you can do", "the best thing you can do to uphold the universal decencies of mankind". What about allowing asylum seekers the safe cheap methods of travel available to investors and tourists?

I haven't gone through this exercise to argue that there is no real problem and Australia should just throw open its doors to asylum seekers. I am not persuaded that if we did the number of arrivals would be no more than the Australian public would accept. Many unpredictable factors affect the flow of asylum seekers. In any event, it gives me no pleasure to say, acceptance by Australians of significant numbers would require a quality of political leadership of which I see no sign, even on the horizon.

The reason I have gone through the exercise is to expose the dishonesty of arguments based on the hypocritical cant that our interest is as humanitarians saving people from drowning. The truth is that we are a very privileged group in a world where suffering and desperation are growing apace and we want to protect our patch. Let us acknowledge that, at least to ourselves.

The world-wide problems of refugees and displaced persons are beyond the capacity of any one country to solve; let us start discussing them honestly and realistically. We weren't up to leading the world on climate change; perhaps we can take up the cause of the millions of refugees creating in many countries problems so great that they make ours look trivial. I am delighted that our Kaldor International Refugee Law Centre is striving to initiate informed discussion, for example in recent collaboration with Australia21 and the Centre for Policy Development.

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If Australia gets used to talking honestly about refugees, perhaps it will be able to recognise and retreat from the terrible wrongs it is inflicting on innocent people in Nauru and Manus. Perhaps it can repeal the shocking repudiation of its international obligations and its once inviolable standards of justice and fairness that was legislated through the Senate in relation to onshore asylum seekers on 4-5 December with the critical vote of Ricky Muir, blackmailed by a Ministerial threat to deny relief even to the children among desperate detainees on Christmas Island.

Julian's moving and enlightening lecture has led me to stray beyond my main task, for which I earlier laid the ground. Please join me now in thanking him for his lecture and acclaiming him for his example of how a man or woman may live greatly in the law, as elsewhere.