

**HAL WOOTTEN LECTURE 2015**  
**“THE BLUDGEONING OF CHANCE”**  
**UNSW 30 MARCH 2015**  
**Julian Burnside AO QC**

I am honoured to have been invited to give the Hal Wootten Lecture for 2015.

The history of the lecture has had some interesting moments. When it was given in 2006 by Jose Ramos Horta, he discovered in the nick of time that it was not a memorial lecture. He rapidly revised the tense of some references in his speech, saving Hal from premature extinction. In 2008 the lecture was given by Hal Wootten himself, as if to underline the fact of his continued survival. When I was invited to give the lecture, I was introduced to Hal, presumably to ensure that Ramos Horta’s initial misconception would not be repeated by me.

My pleasure in being invited to speak is increased by the fact that the eponymous subject is present tonight. And because he has long since ceased to sit as a Judge, I can say nice things about him without being accused of descending to that flattery which barristers reserve for Judges in the hope of more favourable decision making – a technique which, I hope, I never indulge in and which, I believe, never works anyway.

Hal Wootten’s lecture in 2008 is genuinely fascinating. So much so that I have attached it as an exhibit to my own lecture tonight. I hope people will read it. It’s a beguiling mix of autobiography and recent history. It is the portrait of a man who is genuinely dedicated to the law: not for what it can provide him, but for what the law can do for Society.

As his 2008 lecture points out, in the years since the Second World War ended, law has taken on the character of a business rather than a profession. Many lawyers, like most members of society, see the acquisition of wealth as their primary objective. But not Hal Wootten. He is an example for all lawyers.

There is another point that illuminates Hal's lecture in 2008: a real appreciation of literature in general and poetry in particular. His lecture recites, or refers to Lord Wavell's anthology "Other Men's Flowers", and to Shakespeare, Dickens, Thackeray, Mayfield, Henley, Cervantes and Jean-Dominique Bauby. Among other things, his lecture quoted the first verse of Henley's *Invictus*:

Out of the night that covers me,  
Black as the pith from pole to pole,  
I thank whatever Gods may be  
For my unconquerable soul.

His taste for poetry is hidden in the title of tonight's lecture. When I agreed to speak tonight, I was told that my theme was to be The Bludgeoning Of Chance. That phrase comes from the second verse of *Invictus*:

In the fell clutch of circumstance  
I have not winced nor cried aloud.  
Under the bludgeoning of chance  
My head is bloody, but unbowed. ...

"The bludgeoning of chance" is an idea rich with possibilities.

Chance has paid a major role in my stumbling from an uncertain Year 12 student to be here tonight speaking in honour of one of the greats of the Australian legal profession.

At the end of Year 12, I did well enough to surprise myself and everyone else, but I had no idea what to do with my future. Back then, when standards were lower than they are now, I was accepted into four or five different courses at both Monash University and Melbourne University. Those were the days when Victoria had only two universities.

I chose to do law at Monash University rather than law at Melbourne, or engineering or architecture or arts, for the unsophisticated reason that a former boyfriend of my sister was doing law at Monash. I had always enjoyed his company and I thought it would be nice if I knew someone in the new and alarming environment of a university.

Although notions of justice had always interested me, I had no intention of practising as a lawyer. My real but secret wish was to be an artist. But I was also interested in the idea of having an income, something most artists do not achieve except posthumously, so being a management consultant seemed like a good idea. Management consulting was the career-*du-jour* in the late 1960s, so I took up an economics degree as well as a law degree.

Back in those days when the world was relatively innocent (apart from the Vietnam War) mooting was an optional activity. Only nerds did it, so naturally I was attracted to it. Perhaps because it was a fairly thin field, I had the good fortune to be chosen as a member of the Monash mooting team in the Australia and New Zealand intervarsity mooting competition in my second last year. It seemed almost too marvellous to imagine that I would be sent to New Zealand at a time when I had never been overseas, not even to Tasmania.

The mooting competition was held in Auckland. The final moot was presided over by the then Chief Justice of New Zealand. I had the great good fortune to win the Blackstone Cup as the best individual mooter. At the prize-giving and drinks function after the final moot, the Chief Justice was talking to me and asked what I planned to do. I was reluctant to tell him I wanted to be an artist, so I said I was thinking of being a management consultant. He said “You should go to the Bar”.

That brief exchange comprised the whole of my career planning. On the instant, I decided to become a barrister, although I had no clear idea quite what that meant. It has occurred to me in recent years that it would be very entertaining to discover what he had meant was that I should go and get another glass of wine. I quite like the idea that a career which has been so influenced by chance might have been shaped by a misunderstanding.

As fortune would have it, a friend of mine gave me a copy of Irving Stone's biography of Clarence Darrow for Christmas later that year. Reading about Darrow fired me up with the possibilities of being an advocate. Darrow, as some of you will recall, was the great trial advocate of the first half of the 20<sup>th</sup> Century in the United States of America. He was famous (some would say notorious) for his championing of unpopular causes and for the rights of the oppressed.

Chance however had a continuing role to play in my career. Because I had an economics degree with a major in accounting, I quickly found myself doing income tax work and then trade practices and general commercial work. It came readily enough, but it was a very long way from Clarence Darrow territory.

Putting to one side the fact that I always felt lucky whenever a new brief came along, chance played another pivotal role in 2001. As some of you will recall, in late August 2001 a Norwegian cargo vessel, the *Tampa*, went to the rescue of a small boatload of refugees – Afghan Hazaras fleeing the Taliban. The captain of the *Tampa* estimated that there might be 50 people on board the *Palapa*, which was falling apart in the Indian Ocean. He was astounded when 438 people climbed out of the sinking wreck. Then he had a problem. A number of the people he had rescued were in a serious medical condition and so he headed towards Christmas Island – a small outpost of Australia in the Indian Ocean. When the *Tampa* entered Australian territorial waters off Christmas Island, John Howard sent out the SAS who took command of the bridge at gunpoint. There was a standoff. Howard would not let the Captain of the *Tampa* discharge the refugees onto Australian soil at Christmas Island; but the *Tampa* was licensed to carry only 50 people and, together with the crew, he had almost 500 people on board.

A friend of mine at the Bar, John Manetta, devised a case theory which he thought might resolve the impasse. He asked me if I would act pro bono on behalf of the people who had been rescued by the *Tampa*. I agreed: not because I knew anything about refugee law or policy (which I didn't) but because I thought it was wrong to hold a group of people hostage on the steel decks of a ship in the tropical sun.

The Commonwealth fought the case very hard. During the running of the case, Mr Howard announced the formation of the so-called Pacific Solution. The Judge reserved his decision on the afternoon of the 5<sup>th</sup> September and delivered judgment at 2.15 in the afternoon (Melbourne time) on the 11<sup>th</sup> September, 2001. It was not good timing. Some hours later, the attack on America happened. Some people said it changed the world. I disagree, but it certainly changed the appearance of many things.

Suddenly, there were no terrorists, just Muslim terrorists. Suddenly, there were no boat people, only Muslim boat people. Suddenly, boat people were not frightened refugees but “illegals” and “queue jumpers”.

By virtue of doing the Tampa case, I learnt quite a lot about Australia’s refugee law and policies. I knew enough about economics from my University days to know that when the price falls to zero, the elasticity of demand goes vertical. So it was that I found myself doing a substantial number of pro bono refugee cases. And that is when I began to see at firsthand what the bludgeoning of chance can do to people.

In case after case, I saw how shockingly people were treated who had run out of luck in their home country and ran into cruelty and indifference when they tried to reach Australia.

I learnt of the young Hazara man who, astonishingly, was returned to Afghanistan by the Australian Department of Immigration and, instead of fleeing into Pakistan as many other Hazaras have done, he went back to his village. There, the Taliban hunted him down and dragged him out into the town square. Then they threw him down the town well; and they dropped a hand grenade in after him.

And there was the case of Mr H who had fled Saddam Hussein’s regime. Within a couple of weeks of his arrival in detention in Australia, officers of the Immigration Department noted that he had suffered torture in Iraq at the notorious Abu Ghraib Prison and that the form of torture which most frightened him was being locked in a small room. In Abu Ghraib, he had regularly been held in a small cell where he was randomly electrocuted through water in the floor.

After about 15 or 18 months in detention, he fell into hopelessness and despair. It is typical for asylum seekers in Australia's detention system to lose hope after about 15 or 18 months. When Mr H fell into hopelessness, he started self-harming. Whenever he could find a bit of broken glass or a bit of razor wire, he would cut himself. When he cut himself, the Immigration Department did two things: they gave him Panadol (which seems to be the universal treatment in immigration detention) and they put him in solitary confinement – in a small cell. This did not help him. After a couple of weeks in solitary confinement, he would come out even more desperate than when he went in. He would then harm himself again and the Department would give him Panadol and solitary confinement. This went on for five years. Eventually, some lawyers in Adelaide took a case to the Federal Court of Australia seeking an order requiring that Mr H, and some others in similarly desperate circumstances, should be taken to the Glenside psychiatric hospital in Adelaide for assessment and, if necessary, for treatment. The Commonwealth resisted the application and fought the case for several weeks. Eventually, the Judge determined that the detainees should be sent to Glenside for assessment and if necessary for treatment.

When Mr H was taken to Glenside he was assessed mentally and physically. The physical assessment showed that he had *10 metres* of scarring on his body from his self-harming in Immigration Detention. He subsequently got a protection visa, but his health is ruined. Saddam Hussein tried to kill him and failed. Australia tried to incapacitate him and succeeded. Chance bludgeoned him almost to death.

There was the case which, for me at least, forever changed my view of this lucky country. It concerned an Iranian family – mother, father and two daughters aged 11 and 7 at the relevant time. They were members of a small, pre-Christian religion: a religion which, in Iran, is regarded as unclean. If ever you think chance has dealt you a bad hand, try being a member of a religion which is regarded as unclean. There are plenty of historical precedents which show what a hard time those people get. This family stayed on in Iran for as long as they could bear it, because their parents and grandparents were buried there. But one day, after a shocking incident involving the 11 year old, the family fled Iran and ended up in detention at Woomera. After about 15 or 18 months, all of them were in a bad way but especially the 11 year old. The 11 year old girl had stopped caring for herself: she had stopped grooming herself, she had stopped brushing her hair; she was careless with her clothing; she had stopped eating. She was frightened to go to the toilet block, which was about 100 metres from their cabin, and she would wet the bed at night and wet her clothing during the day.

Back then, if you were held in Woomera and had serious psychiatric needs, you would get to see the visiting psychiatrist approximately once every six months. The 11 year old girl needed daily psychiatric help. A psychiatrist from Adelaide, who had heard about the case, went to Woomera and delivered a report to the Immigration Department saying that it was essential that the family be removed from Woomera and placed in a metropolitan detention centre so that the 11 year old could get daily psychiatric help. The report emphasized that the child was at extreme risk. Eventually, the Department agreed to move the family from Woomera in the South Australian desert to Maribyrnong in the western suburbs of Melbourne. There, although the purpose for moving them was that the 11 year old should get daily psychiatric help, for the first two and a half weeks of their stay nobody came to see her: not a psychiatrist, not a psychologist, not a doctor, not a nurse, not a social worker – nobody at all. It was as if they hadn't even arrived.

On a Sunday night in May of 2002, while her mother and father and young sister were up in the mess hall having their evening meal, this little girl alone in their cell in Maribyrnong Detention Centre took a bedsheet and hanged herself. But she was only little and didn't know how to tie the knot properly, so she was still strangling when the family came back from dinner. They took her down and she and her mother were taken straight away to the general hospital nearby. They were accompanied by two ACM guards so that, as a matter of legal analysis, they were still in Immigration Detention. Kon from the Asylum Seekers Resource Centre, who had been looking after the family's visa application, heard about the incident and went to the hospital at about 9.30 that night. He said hello to the guards, who know him well because he is a regular visitor of Maribyrnong. He said he just wanted to speak to the mother to see if there was anything he could do to help. They said: "No you're not allowed to see them, because lawyers' visiting hours in Immigration Detention are nine to five" and they sent him away. Kon then rang me at home and told me what had happened.

If fate bludgeoned that family beyond endurance, it bludgeoned my life onto a new track that night. It is a very sad thing to discover that your country has betrayed the principles it once stood for. I learnt that lesson that night.

The 11 year old spent the next 12 months in the child and adolescent mental health unit at the Austin Hospital – until she was well enough to be put back in detention.

That case, that phone call, that night, together represent the most substantial impact chance has had on me.



In my naivety, I thought that, if the rest of Australia knew the things that I had learned, the Government's refugee policy would not long survive. I started accepting invitations to speak about refugee matters. Only those here tonight who are practising lawyers will understand what a difficult decision that is. For members of the profession generally, and members of the Bar in particular, speaking publicly is not quite the done thing. I was deeply conscious of this as, one by one, professional colleagues and people I had thought were friends turned their backs on me. On this occasion however, chance played a surprising role. Kate and I were at a very glamorous social function one night when the wife of a very senior and highly respected professional colleague sidled up to me and said, somewhat archly, "Do you think it appropriate that a member of the Bar should speak publicly about these matters?" With more wit than preparation I replied "Do you think it appropriate to know about these matters and remain silent?"

The conversation ended there. And I gather she has no retort, because she hasn't spoken to me since. And it resolved my anxiety about speaking publicly about "these matters".

As time went on, our mistreatment of asylum seekers got worse and worse. There was Amin's case. Amin and his eight year old daughter were in detention at Baxter. Baxter was a high-tech high security prison designed and purpose-built by the Howard Government for detaining refugees. Amin and his daughter were in their cell in Baxter one day when five guards entered the room and ordered Amin to strip. They thought he had a cigarette lighter. In Muslim culture, it is deeply shameful for a man to be naked in front of other people, but in any event his eight year old daughter was in the room so he refused to take his clothes off.

The guards roughed him up a bit and handcuffed him and took him to the management unit. The management unit at Baxter was a series of 13 solitary confinement cells. Each cell measured approximately 2½ metres square; the walls and floor are bare concrete. There are no furnishings in the cells except for a mattress on the floor. The occupant of the cell has no company for 23½ hours out of every 24 but no privacy either: because each cell is video-monitored 24 hours a day and for that purpose the lights are left on 24 hours a day. The occupant of each cell had nothing to read, nothing to write with, no television, no radio, no form of distraction of any sort. For Amin, the only break in his regime of solitary confinement was a 30 minute visit from his daughter each day. One day, when he had been in solitary confinement for a couple of weeks, his daughter did not come for her visit. Amin complained, and was assured that she had been taken into Port Augusta shopping and would be there the next day. But the next day came and went, and his daughter did not visit. The manager of the centre, an employee of the Department of Immigration, then explained to him that his daughter was now back in Tehran and if he wished to see her again he should abandon his claim for protection and return to Iran voluntarily. But first, Amin thought the man was playing a practical joke but when he was persuaded that it was true he had what amounted to a complete nervous collapse. He remained in solitary confinement for another six or eight weeks.

When the case went to court, the Department's argument was that the Judge had no power to tell them how they should treat people held in Immigration Detention. The Judge disagreed. The Department appealed, apparently wanting to persuade three judges of the Full Federal Court to say that the Department was at liberty to treat people in Immigration Detention in any way it wanted. The appeal was dismissed.

By 2008 the boats had virtually stopped arriving. In July 2008, the first Rudd Government introduced a number of reforms to the Migration Act which satisfied about 90% of the concerns of refugee advocates. A while later however chance played another wild card: Tony Abbott became leader of the Opposition by one vote. As soon as he became leader of the Opposition he began complaining publicly and loudly about boat people. Mr Rudd responded by mounting a ferocious attack on people smugglers. It seems that in the heat of the moment he had forgotten that his moral hero – Dietrich Bonhoeffer – had been a people smuggler, albeit a benevolent one. He had forgotten, it seems, that Oskar Schindler was a people smuggler and that Gustav Schroeder, the Captain of the St Louis, were both people smugglers.

When Julia Gillard became Australia's first female Prime Minister, she ran a very ambivalent line about boat people. While expressing some concern for the circumstances which led them to flee, she said that she understood why Australians were concerned about boat people arriving in Australia. The asylum seeker debate went off on a new tack at about that time.

The low-point of the debate was seen in the campaign that preceded the Federal election of September 2013. That election campaign, for the first time in Australia's political history, saw both major parties try to outbid each other in their promises of cruelty to boat people.

Tony Abbott won the election and made good of his promise to mistreat boat people. We now have the harshest imaginable policies in relation to boat people and arguably the harshest treatment of boat people of any country which has signed the Refugees' Convention.

In broad outline it goes like this.

When boat people arrive at Christmas Island, they have typically spent eight or 10 days on a rickety boat. They have typically come from landlocked countries and have typically never spent time on the ocean. Typically, they have had not enough to eat and not enough to drink. Typically, they have had no opportunity to wash or to change their clothes. Typically, they arrive distressed, frightened and wearing clothes caked in their own excrement.

They are not allowed to shower or to change their clothes before they are interviewed by a member of the Immigration Department. It is difficult to think of any decent justification for subjecting them to that humiliation.

When they arrive, any medical appliances they have will be confiscated and not returned: spectacles, hearing aids, false teeth, prosthetic limbs, are all confiscated. If they have any medications with them, those medications are confiscated and not returned. According to doctors on Christmas Island, one person has a fulltime job of sitting in front of a bin popping pills out of blister packs for later destruction.

If they have any medical documentation with them, it is confiscated and not returned. The result of all of this is that people with chronic health problems find themselves denied any effective treatment. The results can be very distressing. For example: a doctor who worked on Christmas Island told me of a woman who had been detained there for some weeks and who was generally regarded as psychotic. Her behaviour was highly erratic for reasons that no-one understood. The consultation with this woman was very difficult because, although the doctor and the patient were sitting across a table from each other, the interpreter joined them by telephone from Sydney. Eventually, the doctor worked out that the problem was that the woman was incontinent of urine. She could not leave her cabin without urine running down her leg. It was driving her mad. When the doctor worked out that this was the cause of the problem, she asked the Department to provide incontinence pads. The Department's initial response was "we don't do those". The doctor insisted. The Department relented and provided four incontinence pads per day: not enough, so that the woman needs to queue for more but the incontinence pads made a profound difference to her mood and behaviour.

In February 2014 Reza Barati was killed on Manus Island. Initially, Australia said that he had escaped from the detention centre and was killed outside the detention centre. Soon it became clear that he was killed inside the detention centre. It took nearly five months before anyone was charged with the murder of Reza Barati. Nobody has yet been brought to court.

Just a couple of weeks after Reza Barati was killed, I received a sworn statement from an eyewitness. The statement included the following:

“J ... is a local who worked for the Salvation Army. ... He was holding a large wooden stick. It was about a metre and a half long ... it had two nails in the wood. The nails were sticking out ...

When Reza came up the stairs, J ... was at the top of the stairs waiting for him. J ... said ‘fuck you motherfucker’ J ... then swung back behind his shoulder with the stick and took a big swing at Reza, hitting him on top of the head.

J ... screamed again at Reza and hit him again on the head. Reza then fell on the floor ...

I could see a lot of blood coming out of his head, on his forehead, running down his face. His blood is still there on the ground. He was still alive at this stage.

About 10 or 15 guards from G4S came up the stairs. Two of them were Australians. The rest were PNG locals. I know who they are. I can identify them by their face. They started kicking Reza in his head and stomach with their boots.

Reza was on the ground trying to defend himself. He put his arms up to cover his head but they were still kicking.

There was one local ... I recognized him ... he picked up a big rock ... he lifted the rock above his head and threw it down hard on top of Reza’s head. At this time, Reza passed away.

One of the locals came and hit him in his leg very hard ... but Reza did not feel it. This is how I know he was dead.

After that, as the guards came past him, they kicked his dead body on the ground ...”

Some of you will be aware that I have been running a campaign to encourage Australians to write letters to people held on Nauru and Manus. Just before Christmas last year, 2000 letters I had sent to Nauru were returned to me, unopened and marked “Return to Sender”. So far, the Department of Immigration has not responded to the four emails I have sent them asking for an explanation why those letters had not been delivered to the people to whom they were addressed. they have told members of the press that the named recipients of the letters did not wish to receive letters. Apart from being implausible, it stands awkwardly with the fact that, during the second half of last year, the Department assured me that the letters were being received and distributed.

Australia's system of mandatory detention has been trenchantly criticized by Amnesty International and UNHCR. In late 2013, UNCHR delivered a report on conditions in the Regional Processing Centre (RPC) on Manus Island, saying:

“UNHCR was deeply troubled to observe that the current policies, operational approaches and harsh physical conditions at the RPC do not comply with international standards...”

It also reported on conditions in Nauru and said:

“...Assessed as a whole, UNHCR is of the view that the transfer of asylum-seekers to what are currently harsh and unsatisfactory temporary facilities, within a closed detention setting, and in the absence of a fully functional legal framework and adequately capacitated system to assess refugee claims, do not currently meet the required protection standards...”

Just as a person's character is judged by their conduct, so a country's character is judged by its conduct. Australia is now judged overseas by its behaviour as cruel and selfish. We treat frightened, innocent people as criminals. It is a profound injustice.

It is a hard thing to be forced by circumstances to leave the country of your birth in search for a place that is safe. The play of chance is worse again for those who must seek protection in a country whose language and culture is radically different from your own.

How much worse must it be to find that your bid for freedom ends up with punishment as harsh as anything you might have experienced at home. I have received messages from many refugees from many countries over the course of many years which say, in substance “In my home country they kill you quickly; in Australia they kill you slowly”.

One of the most distressing things about the present situation is that it is based on a series of lies. When politicians called boat people “illegals” and “queue jumpers” they are not telling the truth. When politicians say that they are concerned about people drowning in their attempt to reach safety, they are not telling the truth. Australia has recently reintroduced temporary protection visas. Temporary protection visas not only offer only three years’ protection, they deny the prospect of family reunion. That has one obvious practical consequence: families who wish to rejoin the husband or father who is living in Australia on a temporary protection visa are not allowed to come to Australia by any orthodox means, so the only way in which the family can be reunited is by the women and children using the services of a people smuggler. Temporary protection visas are a positive incentive for people to use people smugglers. Quite apart from that, there is something indecent about the idea that in order to prevent people from drowning in their attempt to reach safety you punish the ones who don’t drown. That is precisely what this country is doing right now.

Like most of you, I am aware that Donald Horne was speaking ironically when he wrote of Australia as “the lucky country”. But in most important ways, compared with the boat people who try to reach safety in Australia, we are indeed lucky. Over the past 15 years, 94% of boat people have been assessed, by us, as refugees genuinely fleeing the fear of persecution. In Australia, most members of the community never have to fear persecution; never have to fear for the late night knock on the door; never have to fear for their human rights.

But it is all because of the play of chance. Imagine for a moment that you are a Hazara from Afghanistan. You have fled your country and you have come down the northwest corridor through Malaysia and Indonesia. You can travel through both of those countries because they give you a one month visa on arrival. While you are in Indonesia you can go to the UNHCR office in Jakarta and apply for refugee status. If you are a Hazara from Afghanistan, you will almost certainly be assessed as a refugee. But when your one month visa expires, you have to hide because if you are found by the police, they will jail you. You cannot work because if you work you will be found and then you will be jailed. You cannot send your children to school because if you do you will be found and then you will be jailed. If the UNHCR has assessed you as a refugee, you can wait patiently in the shadows until some country offers to resettle you. That may take 20 or 30 years.

Now, for just one minute, imagine that you have been bludgeoned by chance into that position: you are that person. Will you wait in the shadows for 20 or 30 years or will you take your courage in both hands and get on a boat? I have never met an Australian who would not get on the boat. It's a very strange thing that we criticize, revile and punish those who do precisely what we would do if chance had bludgeoned us into their position.

We know how chance has bludgeoned people who flee for safety. Chance never did them any favours: can't we?



# THE UNIVERSITY OF NEW SOUTH WALES

## FACULTY OF LAW

### THE HAL WOOTTEN LECTURE 2008

Living in the Law

By

Hal Wootten AC QC

It is conventional practice in delivering an eponymous lecture to commence with a tribute to the eponym, a convention usually supported by the injunction 'speak no ill of the dead'. The previous two lecturers generously embraced the convention, although Dr Ramos Horta later confessed that, invited to give a lecture bearing my name, he assumed I was dead ; shaken when I walked into the room, he compared the photo in the program and hastily revised his tenses. Modesty excludes the convention tonight. Instead I will say something about the origin of the Lecture.

One ancient means of honouring the founder of an institution was to bury him or her under the doorstep. When I left the law school 35 years ago it was between the ninth and twelfth floors of the Library building and had no doorstep, even had I been ready. The School instead named its Moot Court after me, and placed in it my portrait, painted by a talented young artist who I was told attracted faculty approval by painting the Barwick High Court as the Last Supper.

The new Law School building has a state-of-the-art Moot Court which required half a million dollars to equip. I was first to agree that the eponym should be the generous donor, but I was still not ready for the doorstep that now existed.

Then came the inspired proposal for the Hal Wootten Lecture, involving no capital expenditure and not vulnerable to market forces. The faithful who were here last year may remember my pleasure that the honour is eponymous but not posthumously memorial. Tonight my colleagues have made it doubly eponymous by inviting me to deliver it, and even hinted that I should make it triply eponymous by speaking of my own life in the law. Such a surfeit of honour from respected colleagues is truly humbling, as is your attendance tonight.

The Law School prepares students for a life in the law, and I saw the Lecture series as an opportunity for lawyers to reflect on what living in the law has meant. Consciously or not, everyone seeks meaning in their lives, although they find it in a great variety of ways; aware of it or not, everyone has a role, however small, in the historical changes that inexorably sweep through and shape our world. In 1944, when I was still at an impressionable age, Lord Wavell published an anthology of verses entitled "Other Men's Flowers". I too have gained much comfort, insight and help in expressing my thoughts by appropriating other men's flowers. For me one unwitting florist was Lord Diplock, who remarked that a judge seldom has the opportunity to say, like Lord Mansfield, 'The air of England is too free for any slave to breathe, let the black go free', but every now and then there is the opportunity to give a little nudge that sends the law along the direction it ought to go. I believe it is not just judges, but every man and woman who, in everything they do, can give the world little nudges that, in conjunction with all its other little nudges, can affect where the world goes.

One role of the Hal Wootten Lecture could be to invite, occasionally perhaps a Lord Mansfield, but more often a little nudger like myself, to discover in their lives in the law personal and social meanings, and connections with the history of the times. In that way the lectures might accumulate, not a pattern for a life in the law, but examples of the varied

opportunities that a life in the law can provide, and the varied ways in which people respond to its challenges.

One of those challenges often comes to law students or young graduates, who are beset by doubt whether the law is for them, whether indeed it can provide a worthwhile life for anyone. There is no lack of generic criticism of lawyers. It flows through the classics – Shakespeare, Burke, Dickens, Thackeray to name a few - through the great social critics like Marx, through the realists and ultimately into postmodernism where the critical legal theorists deconstruct us from within. Equally there is no lack of evidence of the agonies suffered in wrestling with the choice of such a profession. For long it was a literature of personal anecdote and rhetorical affirmation, then from the 1980s and 1990s it was subjected to largely subjective theoretical analysis, followed more recently by statistical collection and analysis, so that it increasingly merges with epidemiological study of mental illness and depression, where lawyers head the tables.

The challenge was for me an intensely personal matter, to be resolved within me. There were no counsellors or mentors, or kindly souls to manipulate my learning or working environment. As so often in my life I turned to other men's flowers, taking comfort in William Henley's *Invictus*:

Out of the night that covers me,  
Black as the Pit from pole to pole,  
I thank whatever gods may be  
For my unconquerable soul.

As a star to steer by I had Polonius's advice to Laertes, hackneyed to the point of derision but still meaningful to me: "This above all: to thine own self be true, And it must follow, as the night the day, Thou canst not then be false to any man."

The world in which we live has changed mightily, and I applaud those who use the new techniques of science to identify and solve or ameliorate problems that have taken a serious, even deadly form. But tonight I will revert to anecdote and rhetoric to tell of my youthful wrestling with such issues, and my early life in the law that did much to shape not only my career but the vision of the law school that these lectures are intended to commemorate.

It is 66 years since I entered law school, found a job in the State Crown Solicitor's Office, and began a life in the law. I became a lawyer by accident. Growing up as a lower middle class boy in the Great Depression, law was not within my horizons. I owed two things to the widowed mother who saw me through Sydney Boys High School by working long hours as a dressmaker. One was to obtain a 'safe' job. The other was to 'improve' myself by further study. The pursuit of these objects landed me in the NSW Public Service attending the only university in the state, as an evening student in Arts, and then a part-time student in Law. I did Law because the alternative was Economics, about which I knew even less.

My arrival at the Law School coincided with that of Professors Williams and Stone, of each of whom I successively became a protégé. My departure coincided with that of Professor Williams, following bitter conflict between the two professors, in which my brief participation as a student activist was to shape my subsequent life. All I did was move an amendment at a student meeting adding the words "and Professor Stone" to a motion that would otherwise have expressed appreciation only of Professor Williams, thus neutralising the resolution as a potential weapon in a struggle of which most students were unaware. My action led Professor Williams to block a then rare opportunity for me to enter an academic career, but attracted the favourable attention of John Kerr, whose subsequent influence on me, as well as on the country, was considerable.

My legal education left me torn. From Professor Williams I acquired a respect, even fondness, for the scholastic, black letter law tradition, a world of the intellect albeit narrowly confined. It was a world where the common law was still found, not made. From Professor Stone, with whom I worked on the production of the first gargantuan edition of *The Province and Function of Law*, I learnt that law as an evolving part of society, accountable to it. From many of the other lecturers, busy practitioners who rushed in to read out issued notes before or after court, I absorbed a different message. Law was a tightly controlled profession, ruled by a narrow clique mainly concerned with the welfare of the profession, enforcing its restrictive practices. Anybody else's welfare was not really its business. What Professor Williams taught us was harmless enough, even admirable if you liked that sort of thing, but what Stone taught was beyond the pale - a not inappropriate metaphor for what some may have felt.

Baffled by the intensity with which part-time lecturers rallied behind the outraged Professor Williams when Professor Stone sought a voice in the running of the Law School, I approached a senior barrister in whose subject I had won the prize. What, I asked, were the issues? "My lips are sealed", he said, "but there is one thing I can say: Professor Stone is not a gentleman." There was no irony; I am sure that unlike me, the barrister had not read Harold Laski's recently published book, *The Dangers of Being a Gentleman*.

However, it was this barrister, not Professor Stone, who was for me the face of the profession for which I was preparing. Browsing in the library in the depths of my gloom, I stumbled on an address by Justice Oliver Wendell Holmes to the doubtless all male Harvard undergraduates of 1886.

*I know that some spirit of fire will say that his main question has not been answered. He will ask, what is all this to my soul? You did not bid me sell my*

*birthright for a mess of pottage; what have you said to show that I can reach my own spiritual possibilities through a door such as this? How can the laborious study of a dry and technical system, the greedy watch for clients and the practice of shopkeepers' arts, the mannerless conflicts over often sordid interests, make out a life?* Gentlemen, I admit at once that these questions are not futile, that they may prove unanswerable, that they have often seemed to me unanswerable. Yet I believe there is an answer...I say – and I say no longer with any doubt – that a man may live greatly in the law as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable....

Although he emphasised the role of scholar, which is not for all of us, the inspiration was irresistible. He went on:

*Thus only can you enjoy the secret, isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought - the subtle rapture of a postponed power, which the world knows not because it has no external trappings, but which to his prophetic vision is more real than that which commands an army. And if this joy should not be yours, still it is only thus that you can know that you have done what it lay in you to do, can say that you have lived and be ready for the end.*

An American wag has translated these last words into the proposition that that "those of us to whom it is not given to 'live greatly in the law' are surely called upon to fail in the attempt." Perhaps that was how I felt – but it was enough. Life in the law was what you made it, not what some miserable lecturer in Legal Ethics reduced it to. It was not about achieving eminence or wealth but realising oneself. It was the antithesis of the life Leonardo da Vinci decried as leaving behind nothing but full privies, an image that haunted my darker moments.

Today I can detect in Holmes's language the voice of the veteran of the Civil War, speaking to restless young men who had never known the challenge and adventure of any similar experience. I could identify with them because medical rejection from military service had excluded me from the wartime experience of most of my peers, many of whom might have reacted to Holmes by saying they had had more than their fill of wreaking themselves upon life and drinking the bitter cup of heroism.

Holmes offered neither argument nor authority, apart from his own. It was pure inspiration. He claimed no magic for a career in law, only the negative virtue that it did not prevent the good life: that you "*can* live greatly in the law *as well as elsewhere*". It was up to you. He made no moral claim for a life in the law; I was to discover that he was the protagonist of the bad man's theory of the law, and supported eugenics and capital punishment. Although his affirmation of the power of the human spirit to survive a life in the law buttressed me against despair, he did not draw me away from my existing values. When Holmes said '*I think "Whatsoever thy hand findeth to do, do it with thy might" infinitely more important than the vain attempt to love one's neighbour as one's self*', for me he posed a false choice.

Between the ages of two and nine I was largely brought up by my mother's parents, who taught me to read and write and share the homely values that had brought them through the life of pioneer dairy farmers on the North Coast. My grandmother communicated to me her love of nature, often expressed in poetry, and her love of the Jesus of the Gospels. As a small child myself I was captivated by the man who welcomed little children; stood up for the poor, the meek and the peacemakers; admired the lilies of the field above Solomon in all his glory; showed his suspicion of the corrupting effect of wealth by likening the rich man trying to enter the good life to the camel passing through the eye of the needle; silenced the self-appointed custodians of other people's morals by inviting the one without sin to cast the first

stone; and provided a simple basis for morality and sociality: do unto others as you would they do unto you.

Happily my grandmother did not suffer the besetting vice of the religious - self-righteousness: she often quoted Burns plea for 'the gift to see ourselves as others see us'. Her message was simply about making the most of life on earth. Those who made the pursuit of riches the purpose of life would find that they did not bring content and happiness in the here and now.

Everyone seemed to share this view. While few of us managed to live up to it, we saw that as our own shortcoming. The relatively wealthy seemed more embarrassed by their wealth than boastful of it; those who acted otherwise were seen as having been corrupted by it. You were judged not by what you had but by what you were and how you treated your fellows.

As my world expanded, I found these basic assumptions were shared by Christians, Jews, Muslims, Hindus, Buddhists, Aborigines, Melanesians, or those who like myself found no foothold in divine revelation or human doctrine, and did their best we could with the critical powers with which they were endowed and the experience and shared wisdom that life brought. I don't remember a religion or philosophy that taught that the chief end of man was the pursuit of wealth, and I still feel shocked by the legitimacy that this view has acquired in recent times.

This outlook was supported by the other great influence in my youth, an atheistic uncle, the only one of four uncles to survive the Great War. Brought up in the sheltered world of strictly Methodist dairy farmers, he found himself as a very young man in the trenches in France, often dependent on men he had once looked down on. He returned a champion of the common man, contemptuous of those who thought



themselves superior, and impatient with rank, pretence or what he called 'humbug'.

I grew up with a love of nature and books, interest in social and political issues, a short fuse in the face of what I felt to be injustice, a belief that the world could and should be improved, and identification with the underdog. Some of these led me to a brief membership of the then pro-war Communist Party, which turned out to be a very boring institution in which dissent from the party line was not so much discouraged as simply unimaginable. I found more interest when a kindly older colleague let me try my hand at drafting Crown Solicitor's opinions, and I spent many contented hours among the musty volumes of the Crown Law Library, including the old digests and the then current but unwieldy English and Empire and Australian Digests, our anticipation of computerised law.

Looking back I see that the young man who left the Law School and the Crown Solicitor's Office in 1945 had some ideas about the right directions in which to nudge the world. However bad one's legal education, one could not spend four years reading cases and common law classics, daily imbibing the embedded ethics of a government law office, and briefing barristers, without some things rubbing off. There was a passion for truth and justice, but no illusions about the difficulties in attaining them. The rule of law was a given: no person was above the law, no person could be deprived of life liberty or property without due process; every power and discretion, however wide, was given for a purpose and had to be exercised honestly for that purpose. Natural justice required that no one should be condemned without a fair hearing, no one should be judge in their own cause, judges should give reasons for their decisions, the burden of proof was on the accuser. Society depended on freedom of contract but it should not be used unconscionably. Words could have many meanings and should be used with care and precision. Scratch a lawyer worth his or her salt and you

will soon start to discover these things. Whether I liked it or not, by my 23<sup>rd</sup> birthday I was a lawyer. But could this make a life?

My legal career, having begun by accident, continued by a series of accidents. On the few occasions I have had a plan for my future, even a plan to abandon the law, it has foundered on some unexpected opportunity I could not resist. I sometimes say that my career has been built on my inability to say no when invited to do something I was not qualified to do.

My first job after graduation was a 'brains trust' position advising the senior partner in one of Sydney's largest and most powerful firms, a position for which Professor Williams had nominated me before I showed my true colours. It carried a promise of a career in the firm or a good start at the Bar after a year in the job. I was a young man who liked to murmur *John Masefield's Consecration*, in which he warned his readers that he would sing 'not of the princes and prelates with periwigged charioteers/ Riding triumphantly laurelled to lap the fat of the years', or of 'the portly presence of potentates goodly in girth', but rather of 'the scorned-the rejected- the men hemmed in with the spears', 'the slave with the sack on his shoulders pricked on with the goad/ The man with too weighty a burden, too weary a load'. I found myself serving the princes and prelates and potentates of business and industry, who not infrequently seemed to ask what was the least they were obliged to do for the man with too weary a load, or the government trying to improve his lot. It was a legitimate question that I could answer to their satisfaction. But Holmes came back to haunt me: 'You did not bid me sell my birthright for a mess of pottage'. Was this living greatly in the law?

In retrospect, the problem was that I had no direct contact with clients – just abstract questions filtered through the senior partner. Not many years later I found myself working happily as a barrister with

representatives of some of the most powerful commercial and industrial interests, finding that more often than not they were ready to be fair to the man with too weary a load; some even shared my taste for Masefield.

My frustration was greater because 1946 was a time of hope and optimism before the chill of the Cold War. The troops were home; post-war reconstruction was under way; the five freedoms of the Atlantic Charter were revered; Germany and Japan were being rebuilt as democracies; decolonisation was in the air.

One day the phone rang, and Colonel John Kerr introduced himself as Principal of ASOPA, the newly founded Australian School of Pacific Administration, which would train staff for the civil administration of Papua and New Guinea, particularly Patrol Officers and District Officers who would be administrators and magistrates.

The charismatic colonel painted an inspiring picture of the part ASOPA would play, through teaching, research and policy influence, in the decolonisation of New Guinea. I accepted a tutorship, giving no thought to the fact that I was sacrificing my powerful employer's promise to give me a good start at the Bar at the end of the year. The five years I spent at ASOPA, mostly as Senior Lecturer in Law, were rewarding in many ways, but I will speak of only one formative experience.

I was attracted to Anthropology, which seemed to offer more scope than law for understanding and getting close to New Guineans and helping to improve their lot. The senior anthropologist at ASOPA, Ian Hogbin, devised a plan for me to switch to Anthropology by undertaking a doctorate based on a field study of what was then called Primitive Law. In 1947 I found myself in the village of Kawaliap, among the Usiai in the middle of Manus, three days walk from the nearest European. No one spoke English, but having studied Melanesian Pidgin

at ASOPA I rapidly became fluent. I started collecting information about the people and their culture, observing the meagre living extracted by the arduous work of shifting subsistence agriculture in rugged muddy rainforest.

I was 24 and men of my age would spend hours each evening yarning in my hut. They told me of the humiliating racism they had suffered at the hands of whites, who, administrators, planters or missionaries, were always the 'mastas' and they the 'bois'. We got close, but they could not bring themselves to sit down and eat with me. One tried but was unable to eat. I asked him why, he pondered, and said with great bitterness: "Yu mastas; mi boi". I learnt the power of humiliation, its ubiquitous and corrosive effect where one group of people believe they are superior to another, the 'others'.

An older man, Kompen, would sometimes come, and contradict the young men, saying that people were very happy with the government and whites. Thinking him a hypocrite, I treated him with increasing impatience. One evening he stayed behind. He had thought I was a government spy; now he believed I was a friend, and would tell me what the people of Kawaliap really thought.

He took me through the serial invasions from an unknown outside world that had shattered traditional Manus. First Japanese, then German governors and planters, Catholic missionaries, Australian forces in World War I, Australian administrators between the wars, an occupying Japanese army, a technologically overpowering recapture by Americans, followed by Australian servicemen, ANGAU ( the military government) and now a post-war civil administration and returning missionaries. One thing never changed: the Usiai were the 'bois', the invaders the 'mastas'. The bois always loved the mastas, Kompen said: "the mastas had guns".

The Usiai were never admitted to the secrets of wealth and power. They knew there must be a key, but it was hidden, and every time they thought they found it they were disappointed. Perhaps the key was Pidgin, but learning it changed nothing. Nor did working on the plantations, going to school, or converting to Christianity. They knew that it was not the colour of their skins, because, although they were not allowed inside the American naval base, they could see from afar that Black Americans shared its fabulous wealth. If only the white man had shared the key, today we would be able to sit down as brothers and eat at one table.

That night changed my relationship with Kawaliap. For the first time in my life I felt the warmth of acceptance into a small community. But it was no longer possible to play the detached academic studying these people. I could not remain a holder of the key. How could I find a way to help these people gain access to the world they envied? Perhaps as a Patrol Officer.

I tried to explain in a letter to John Kerr. Concluding that I was 'troppo', he 'sent the Australian navy to get me out'. A runner brought word that in three days I was to board a frigate which would take me to Rabaul, where the Administrator of Papua New Guinea was joining the vessel. J K Murray was a wise and kindly man. He said that if on reflection I still wanted to be a patrol officer, it could be arranged, but he urged me to return to Sydney and get things in perspective. In my heart I knew he was right. I was a very immature young man, far from ready to be anyone's saviour. I returned to ASOPA, researched and taught law, grew up, handed out how-to-vote-no cards in the Communist Party referendum, saw Humphrey Bogart in *Key Largo*, got married and started a family. I could feel that in teaching law to those who governed New Guinea at the local level, I was giving a little nudge towards an enlightened rule of law that would be no less important for the realisation of Kompen's aspirations than the agriculture, education, and

tropical medicine that others taught. My commitment remained, but I knew I could only fulfil it as a lawyer. There was then only one private lawyer practising in Papua New Guinea. At the end of 1951 I contacted him, he invited me to join his practice, and I resigned from ASOPA.

Not for the first or last time, John Kerr intervened. He had returned to the Bar in Sydney and urged me to join it, one argument being that I could do more for New Guinea as a lawyer in Australia than in the Territory. I yielded and opportunities came.

On the Council on New Guinea Affairs I could give little nudges to New Guinea policy. As a member of a Law Council committee in 1962 I was able to give a nudge to the establishment of a university law school in New Guinea, and in subsequent years I initiated and ran a successful scheme to encourage indigenous students to study law by bringing them to Australia as guests of the Law Council. As a leader of the industrial bar in the sixties I was briefed by the Commonwealth to oppose a claim for equal pay for indigenous public servants, represented by a rising trade union star, Bob Hawke. Professionally trained New Guineans were few and were rapidly pushed into senior positions on New Guinea rates of pay, where they were often senior to Australians enticed to serve in New Guinea by loadings on top of much higher Australian rates of pay. I knew the painful side of this racial dilemma, having stayed in the homes of New Guinea friends, and written about it in *The Bulletin*.

Discovering this, Bob Hawke, without notice, called me as his opening witness. The arbitrator upheld his right to do so, and the Bar Council ruled that it was my duty to remain as advocate if my client so wished.

As a witness I felt no embarrassment in defending the proposition that, deplorable as the discrimination was, the solution lay not in saddling a country on the eve of independence with Australian rates of pay for public servants, but in getting rid of the Australians by training indigenous replacements as quickly as possible. Bob suggested that independence was at least a hundred years away. I disagreed and we

bargained it down to ten. In upholding our case the arbitrator said he had been much assisted by my evidence.

Almost exactly ten years later I attended a celebration of New Guinea's independence in Sydney, hosted by Prime Minister Michael Somare and Minister for Education, Ebia Olewale. I wondered how I would be received, for both had been among the angry young witnesses I had cross-examined. Guests were assembled on a large open floor; the lift door opened and out stepped Somare and Olewale. They surveyed the crowd and walked directly to me. With a puckish grin Somare sought my sympathy on the problems of balancing a budget when public servants wanted higher pay. It was for me one of many lessons that conflict is often not between good and bad, but between competing goods, in this case racial equality and the viability of an independent state. Much legal work is resolving conflicting claims, each of which has some legitimacy. When I left the Bar I had completed without shame the trifecta of opposing equal pay for New Guineans, equal pay for Aboriginals, and equal pay for women.

Four years after independence the Supreme Court sentenced the Minister for Justice to eight months gaol for contempt, Somare released her, and the Supreme Court judges (all expatriates) resigned. The Opposition accused Somare of wrecking the system; no reputable lawyer would accept appointment as a judge in New Guinea again. He asked me to be Chief Justice, no doubt calculating that if an Australian Supreme Court judge was willing to accept office, the crisis would be over. New Guinea still tugged my heartstrings, and I was sympathetic because I felt the judges may have over-reacted, but in any event Somare had been taught his lesson, and the important thing was to get the legal system back on the rails. However for personal reasons, the last thing I wanted was to be away from Sydney in the next few years.

I agreed to go to New Guinea at the end of the year and stay twelve months, calculating that with a grateful government supporting me I would be able in a year to do a lot to rebuild the Court and develop the

profession. My appointment was announced, I found some immediate appointees, and the crisis passed. However before I took up office Somare was defeated on a vote of confidence over other issues, and I had no wish to spend a year overcoming the suspicions of the new government. I helped persuade a young indigenous lawyer to take the Chief Justiceship, where he performed admirably. Both the Court and the legal profession developed, I understand, as institutions of integrity supporting the rule of law in a country where corruption and chaos have been rife. Perhaps my little nudges in developing an indigenous legal profession, supporting debate on New Guinea's future, deflecting a major fiscal issue and assisting the Supreme Court over a constitutional crisis went some way to vindicating John Kerr's prediction and Holmes's affirmation, as well as redeeming my commitment to Kompen and the Usiai.

In persuading me to come to the Bar in 1951, when chambers were unavailable, John Kerr generously offered me a desk in his spacious room. The close professional association that continued till he became a judge in 1966 shaped my career at the Bar. Briefed by Jim McClelland, he was appearing for Laurie Short to wrest the Federated Ironworkers Union from Communist control. I spent much of my early years at the Bar acting for clients fighting thuggery, conspiracy and undemocratic manipulation of unions, and took part in developing a jurisprudence of union government that brought more effective rule of law to institutions that I consider vital to a liberal democracy. There was a political side, reflecting a bitter Cold War struggle between Communists and anti-Communists. I became entwined in the affairs of the Labor Party, and when the great split came in 1956 I vowed never again to join a political party. I like to be a maverick, a word coined by American cattlemen for the animal that bears nobody's brand.

Successful clients who had learnt to rely on me were suddenly in charge of big unions, with all the business of industrial regulation in Higgins's 'new province for law and order', and turned to me for advice and



representation. What started as a trade union practice soon broadened. I was the first to transcend a fairly rigid division between employers' and union barristers, acting not only for major unions, but governments, employers like BHP, CSR and newspaper and television proprietors, and industry groups like meat exporters, stevedoring companies and retail traders. This made real for me the vaunted independence of the Bar. I had no connections with employers; they sought my services and there were plenty of others in the queue.

A great value of independent lawyers is that they can tell clients what they may not want to hear. Clients often come to lawyers wrapped in their own self-righteousness, unable to recognise any merit in their opponent's case. The best service of the lawyer is often not just to explain the law but to make clients see how their case looks to others, not only to the party on the other side, but to the judge who will hear it, perhaps to the journalists who will report it. Intelligent clients appreciate this and some use lawyers as sounding boards on a wide range of issues.

Despite my youthful misgivings about acting for the big end of town, I found that most big employers were motivated at least by enlightened self-interest. Like Edmund Burke, they were interested not only in "what a lawyer tells me I may do; but what humanity, reason, and justice, tell me I ought to do", and expected their lawyer to share that interest. Unenlightened policies were more often the result of short-sightedness than malevolence, and by the time I explained the problems of defending such policies clients would either gratefully change their position or realise that I was not the best barrister for them.

Not many barristers ventured into the industrial jurisdiction; those in more conventional practice often regarded it as mysterious or inferior, not 'real' law. But there was plenty of real law, and judicial and quasi-judicial process. That one often had to take more explicit account of

Burke's humanity, reason and justice went along with working on great social, political and economic issues. One recurring theme in my practice was the conflict between workers seeking to retain purpose and sociality in their work or defend treasured practices, and those who sought to override them in the pursuit of maximum efficiency and profitability. Charlie Chaplin long ago satirised this conflict in *Modern Times*, but I participated in its re-enactment as bulk-loading and containerisation took over the waterfront, computers took over newspaper production, division of labour spread in the meat industry, and tradesmen resisted the unpicking of their trades. Along with automation and the incipient information revolution went conflict between egalitarian ideals and claims of a new elite.

I needed ways to switch off from practice. My refuge was as a small weekend farm, where I personally did the fencing and pasture improvement and managed cattle and horse breeding. Each of my portrait painters, commissioned to paint the Dean of Law at UNSW and the Chancellor of the NSW Institute of Technology, decided that the real me was a Kangaroo Valley farmer. I took part in public debate, for example over Barwick's amendments of the Crimes Act, against the campaign for a Royal Commission into the Professor Orr case and about the conviction and death sentence of the Aboriginal Max Stuart in South Australia. From 1967 I put much time, including most of the Law vacations, into the role of Secretary General of Lawasia, an organisation initiated by the Law Council of Australia to develop cooperation between the varied legal professions of Asian and Pacific countries. Founded in 1966, it was virtually defunct a year later, when John Kerr, then President of the Law Council, asked me if I could revive it. Over the next few years I engaged most of the professional organisations in the region, enrolled thousands of individual members and held successful conferences in Kuala Lumpur, Djakarta and Manila.

My values did not change. A comfortable income was a by-product of my practice, not its purpose. When my services were in great demand I did not feel tempted to charge high fees. I had a client who wanted me to charge more, but never one who thought my charges excessive.

On two occasions I rejected opportunities to take up what would have been more lucrative work. Jim McClelland was known as the 'kingmaker' because of his power to make the fortunes of barristers from the vast pool of common law negligence claims available when our once struggling clients gained control of unions. 'Nello' as it was affectionately known, was immoderately lucrative to barristers, because they received not only well-paid briefs for the largely formulaic work in drafting pre-trial documents, but a brief on hearing, carrying a fee for the preparation of the case and the first day's hearing, paid even when the case was settled, as it usually was. Jim was insistent that that I, who had done so much to help the clients win control of the unions, should participate. He would allot me all the work from the great steel city of Wollongong; it did not matter that I was busy doing the industrial work for the unions – indeed this was all the more reason why I should benefit. I would have the fees from all the cases that were settled, and if I was not available when the odd one went to trial, another barrister would take the brief. It was perfectly legal - the way the system worked: what did I have to lose? I was tempted to quote: What shall it profit a man if he shall gain the whole world but lose his own soul? I never regretted or even thought about the very considerable wealth I rejected, because I felt that my most precious possession, the one thing I could not surrender without destroying myself, was my self-respect. This above all, as Polonius had said.

The other opportunity I rejected had no ethical problems and many attractions. After a forensic triumph of great importance to the stevedoring industry, my instructing solicitor, a senior partner in the largest Melbourne firm, made an offer hard to refuse: if I would

abandon my specialisation in industrial law he would brief me across the whole range of his diverse practice. It would have given a young barrister great prestige, high income, and the kind of practice that could lead to appellate judicial appointment. The downside was greatly increased pressure and hours and the risk of becoming a slave to practice.

I also declined two offers of appointment, one State one Federal. That the drop in income was not the major reason for refusal is shown by the fact that shortly afterwards I found irresistible an offer to become foundation dean of law at UNSW at about half the judicial salary. There was a limited right of private practice, but I did not expect to make much use of it, as I thought the Law School would be all absorbing. It turned out to be not altogether all absorbing, as I became involved in the establishment and running of the first Aboriginal Legal Service. This cut into other activities, as I was forcibly reminded when my teenage daughter greeted me late one evening with "Daddy, it's not our fault we're not black".

Another who thought my time could be better spent was a client who offered to pay for a full-time manager for the Aboriginal Legal Service as well as whatever fees I liked to charge if I would give the time saved to his companies' work. I declined, feeling that it would be too difficult to explain to my new Aboriginal friends why an arm of Lord Vestey's empire was paying for the manager of their Legal Service. More importantly it would have meant limiting one of the most rewarding experiences of my life, my entree to the Aboriginal community with all its warmth, humour, wisdom and generosity of spirit that were to mean so much to me, and to engage much of my subsequent life.

Those later years have been rewarding and rich in experience in other ways, but I have outlined my life in the law up to the time I was, out of the blue, asked to become founding Dean of this Law School in 1969. As

things worked out, I enjoyed a very free hand in distilling out of that life a vision of what a law school should be, and selecting the initial staff to implement it. However I left early in the third year of operation, going back briefly to the Bar and then to the Supreme Court. Other hands have nurtured and built the Law School and I feel at once humble and proud that nearly four decades later they value and honour the vision.

Their achievement has been remarkable because for many years Government funding has been hostile to the vision, and geared to the old view that students are receptacles into which the law should be poured, rather than minds and personalities to be developed into lawyers who can accept the responsibilities of a profession critical to the functioning of an economically complex liberal democratic society. However inequitable it was, the period of domestic full fee paying students gave a respite, but its ending without alternative funding threatens teaching practices that have been fundamental to the vision.

The vision saw lawyers as a socially important and honourable profession, the purpose of which was not to maximise the income of lawyers or the GNP but to serve society and those who lived in it in an enlightened, honourable and socially responsible way. This was the accepted view when I entered the profession and I could still articulate it without fear of challenge when the Law School was established. Making an income was a by-product of practising a profession, not its rationale. One continually sees evidence that the professional spirit endures, as integrity, the rule of law and human rights are defended by a profession which, dare I say, is now overwhelmingly composed of graduates of this and like-minded law schools.

In recent decades however the concept of a profession has been increasingly rejected or ignored in the prevailing wisdom that individuals and societies are to be judged by their economic achievement. The chief end of man is the production of wealth. A

profession is just another business or job, whether you are a lawyer, a doctor, an architect, an engineer or a journalist – all callings where integrity and independence are vital.

My life is now far from practice, and I must rely on others to explain how the profession is being affected. Brett Walker, a former President of the Bar Council, gave a detailed account in the 2005 Lawyers Lecture at the St James Ethics Centre. One major change has been the appearance of large firms, some employing 1000 lawyers, and structured on a business model to generate income for equity partners. Old conflicts that bedevilled the factory floor in Chaplin's day, and brought other industries to my chambers in the sixties, are now being worked through in the law.

Another big challenge is the incidence of depression, a growing scourge in the whole community, but particularly high in law, across students, solicitors and barristers. Research as to causes is in early stages, but is looking at the type of personality attracted to law, the nature of legal work and the way it is organised.

Against this changing backdrop, a review of my own experience as a young lawyer seems almost antiquarian. Have I anything to say to young lawyers of today? Much of what life taught me is not peculiar to law. Holmes himself said that the questions he raised were the same as those that meet you in any form of practical life. "If a man has the soul of Sancho Panza, the world to him will be Sancho Panzo's world". As a fan of the common man, I dislike Holmes's elitist dismissal of Don Quixote's earthy servant, but the point is clear and you can substitute a name of your choice – Donald Rumsfeld perhaps, or one of the Australian equivalents that spring to mind.

For want of a better word, much of the inspirational literature, like Holmes, uses the word 'soul' to refer to whatever it is that encapsulates one's precious individuality, the indomitable thing that remained in

the central character of *The Diving Bell and the Butterfly* when he lost all capacity to move or communicate except the fluttering of one eyelid, through which he yet managed to write a book. I prefer the word 'self', the self of self-respect, the self to which Polonius told Laertes he should be true. For me the most important thing in life is to retain my self-respect. I have felt that if I lost that I would lose everything, I would have no ground on which to stand.

I remain convinced of the perennial wisdom that it is more important to be than to have, that the pursuit of wealth is not the road to the good life, to happiness and satisfaction. I am not opposed to wealth. I would love to have the power of George Soros or Bill Gates to do some of the things they do. On a more modest scale I sometimes regret that I did not take wealth more seriously when I had the opportunity to accumulate, so that I would now be able to do some of the things I would like to do – endow the Law School in its hour of need, or provide scholarships and fellowships to students and staff of the law schools of Nablus and Jenin that I got to know during my recent three months on the West Bank, men and women who are isolated by the checkpoints and travel controls of the occupation, the obscene wrangling between Fatah and Hamas, and the lack of access to English language scholarship, yet aspire to help build in Palestine a liberal democratic state that respects the rule of law and human rights. It would be like rain in the desert, a Jewish friend said, when I mentioned my dream that these Palestinians might have opportunities to spend time in Australian law schools.

It is destructive when the pursuit of wealth becomes an end in itself, to which the good life must be sacrificed, or redefined as simply 'more' – more assets, more palatial houses, more luxurious holidays, more powerful or ornate boats and cars, more ostentation. One of my most powerful film memories goes back to 1948; in *Key Largo* Humphrey Bogart and Lauren Bacall become the hostages of a gangster, Edward G

Robinson, in a house battened down for a hurricane. As the tension builds, Bogart says to Robinson: "I know what you want; you want more". Robinson thinks about this and chuckles. "Yes, that's right, that's good." "Will you ever have enough?" responds Bogart.

The consequences of rejecting the perennial wisdom, of always wanting more, are clear not just in threats to the legal profession, but in the crumbling world around us, spectacularly in climate change and the collapse of the market, which has had to turn to its old enemy the state to avert complete catastrophe resulting from the pursuit of more. In climate change our inability to abandon the pursuit of more is leading us to re-enact two great parables – the tragedy of the commons and the boiling frog. Amid mounting evidence that climate change is much faster than predicted, no government has had the courage to give the lead in reducing a country's carbon input into the stratospheric commons, because it might impinge on the pursuit of wealth. And for a decade we belittled the idea of an international authority that is needed to protect a global commons. Meanwhile we sit like the frog awaiting our fate as temperatures slowly rise. By contrast when the water boiled and actual money, not just the future of the world, was at stake in a market collapse, frogs leapt everywhere. Billions that could not be found to tackle climate change appeared from nowhere to bail out delinquent banks.

What I say is not original; I learnt it from my grandmother who probably learnt it from hers. Life is not about the pursuit of wealth, of GNP, of getting more. It is about nurturing and respecting that precious self, and realising its potential to do worthwhile things, however small the nudges you give to the world may seem. Always be true to that self, never surrender it to greed or a cause or creed or ideology. Don't enter law if you really want to do something else. Don't be slow to seek or give help. Don't be afraid to take comfort from other men's flowers,



however worn the clichés, whether from the New Testament or Shakespeare or Humphrey Bogart, or Henley's concluding lines:

I am the master of my fate:  
I am the captain of my soul.

In conclusion let me say to the students and young lawyers, 'Don't let the bastards get you down, and **don't forget about climate change**', and to all of you, thank you for coming and listening.

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