

THE UNIVERSITY OF NEW SOUTH WALES

FACULTY OF LAW

THE HAL WOOTTEN LECTURE 2008

Living in the Law

By

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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, Aboriginals, 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 23rd 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 masta; 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.
