

The Human Dimension of the Law

Chief Justice French

University of Canberra – Isaacs Law Society - Law Ball

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Vice-Chancellor, Mr President, ladies and gentlemen:

Today has been a big day. Today the High Court held the Tax Bonus Act to be valid. After the decision was handed down my mobile phone rang hot. However, the calls had nothing to do with the tax bonus. Somebody had placed an advertisement for a four wheel drive on the net and had incorrectly entered their mobile phone number so that it came out as mine. As a result I have been fielding phone calls beginning with the question "Is that [BJ]?", followed by the statement: "I am ringing about the [four wheel drive]."

After a day of these calls, it is a pleasure to speak to the Isaacs Law Society. In doing so I should like to say a few words about the person after whom your Society is named.

Isaac Isaacs was once, like all of you are now, a law student. When he studied law there was no University of Canberra. There was no Canberra. He studied at the University of Melbourne. He became a barrister. He went into politics and was elected to the Victorian Parliament while Victoria was still a self-governing colony. He became Solicitor-General and Attorney-General of that Colony. He was one of those who took a leading role in the drafting of Australia's Constitution. He was elected to Federal Parliament and became Attorney-General in 1905 and was appointed to the High Court a year later. He served on the High Court for 23 years. He was appointed Chief Justice in 1905 and served in that office for 42 weeks. He was then appointed as the first Australian born Governor-General.

He was a great Australian and the reason I say something about him is to remind you that the name of your Society is not just a name from the dead past. It is the name of

a person who was once, like you, full of hope and energy and confidence. He also had an abundance of that attribute to which we all might aspire – a deep commitment to excellence and building a better society; in his case through nation building and the implementation and interpretation of our national Constitution.

Of course it helped that he had a pushy mother. When she went out with him to help him buy his first barrister's wig she told the wig maker that she would be back to buy him a judge's wig. And she was¹.

On 1 September last, I was appointed as one of Sir Isaac Isaacs's successors. He was the third Chief Justice after Sir Samuel Griffith and Sir Adrian Knox. I am the 12th Chief Justice.

Looking back at the stature and contribution of the eleven who came before, a sense of the history of the office is inescapable. It is, however, necessary to keep that sense of history in perspective. I keep it in perspective by reminding myself that the High Court of Australia is not a museum of the law and of great judges and chief justices of the past. It is a living, working and inescapably human institution. It has to engage with important questions, some larger than others, the answers to which can affect the lives and liberties of all of us, the way in which we are governed and, related to that, the extent and limits of the powers of the lawmakers, the judges and the Ministers and public officials who make up the three branches of government. We have much to learn from what our predecessors have written and decided on the great issues that faced them. We are respectful of the need for continuity and consistency in the law, although we are not bound to treat as immutable the precedents which they established. But the challenges that face us in this very contemporary institution are not the challenges of the past. They are the challenges of the time and they are different for our generation as they are different for every generation.

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Oxford Companion to the High Court at 360.

Today we gave a decision about the Tax Bonus Act. We held by majority that the Act is valid. No doubt some of you will be grateful. The case raised important questions about the relationship between Parliament and the Executive and the lawmaking powers of the Parliament. It did so against a backdrop of global economic difficulty which is challenging governments all around the world and affecting the jobs and futures of many Australians.

Yesterday we gave a decision about the powers of a city council in Sydney to compulsorily acquire private land for a large urban redevelopment. The case did not raise issues of great constitutional importance. But it did involve a question about the limits of official power to acquire private property without the owner's approval. By coincidence, the Castle was repeated on television the night before. I can assure you however that the screening of the Castle had nothing to do with the decision.

Since I became Chief Justice the Court has decided cases including a constitutional challenge to some parts of the Northern Territory intervention laws, the use of secret evidence in State courts and in the Migration Tribunal, the international abduction of children, criminal cases, property and family law cases, and cases involving personal injuries and death, one arising out of a road accident on a mining road, another arising out of the death of a man from occupational exposure to asbestos.

The cases which I have mentioned are all important cases. But as we focus upon the questions of legal principle which they throw up we must not forget their human dimension. Behind every case, even the most esoteric piece of constitutional litigation, there are real people with real concerns. It matters how as judges we deal with those concerns even at the level of legal principle. It matters that we have a commitment to excellence in deciding the legal questions. It matters that we try to be fair and courteous and to be clear and accessible communicators of our decisions and the reasons for them. The same is true for the solicitors and barristers which many of you will become. The importance of these attributes cannot be understated for you will be the access point to which people will turn for advice and representation in important and sometimes critical points in their lives.

In a sense it was the human dimension of the law that enlivened my interest in it. I enrolled in the study of law at the University of Western Australia in 1968 with no particular idea of being a lawyer. I had graduated in physics the previous year and had decided that I was not going to be a great theoretical physicist. This decision was assisted by the Dean of Science who, after I gave a seminar presentation in my third year, complimented me on the magnificence of my presentation but expressed a doubt that I knew what I was talking about.

While studying law I found a lot of more interesting things to do. These included getting involved in student politics and standing for parliament in the second last year of my law course in 1969. Fortunately I lost. I do not think I would have made a very good politician. It probably helps me to say that I stood against Kim Beazley Snr for the Seat of Fremantle. He secured over 60% of the vote. I secured 30%. The only spin I could put on the outcome was that the swing against the Liberal party at the time was less in that seat than anywhere else. There wasn't much room for a swing anyway. It was an enjoyable learning experience. It involved the kind of valuable interaction with people whom I would never normally have encountered. That has served me well in later life.

I was assisted by a rock band called "The Time Piece". I took the band to Rottnest Island and set up on the back of a truck outside the Quokka Arms Hotel. We handed out pamphlets with the heading "Pop Politics in the Swinging Seat". The band played music and between songs I made short political speeches. A large crowd gathered and listened to the music, but whenever I started to speak would move forward and begin rocking the truck. The drummer became upset and said that they didn't appreciate good music. I assured him that the demonstration of popular discontent with my political speeches had nothing to do with his music.

When I qualified in law in 1970, I was not sure that I wanted to be a lawyer but I decided to do articles and get admitted. This changed everything. For the first time I was engaging with real people, with real needs or problems and had to deploy legal skills in order to respond to them. I had the immense good fortune of serving my

articles in a small, but good quality firm with a diverse practice, including a substantial group of clients from rural Western Australia. I had to be a generalist from the beginning, drafting leases, wills, bills of sale and contracts of sale with the benefit of carbon copy rather than electronic precedents. Commercial clients got into trouble from time to time so it was necessary to get cases ready for court. I was involved in the establishment of the Aboriginal Legal Service and arranged representation for Aboriginal people facing prosecutions of one kind or another. This was all in the course of two years of articles prior to admission as a practitioner at the end of 1972.

Western Australia is a fused profession, which means that when you are admitted you are admitted as both a solicitor and a barrister and can practice as both. When I was admitted I could not wait to get into court.

One of my first cases involved the defence of a young man charged with careless driving. To the astonishment of the police prosecutor and the magistrate I brought law books into the court including reports of cases from Canada and from other States of Australia dealing with the offence of careless driving. The magistrate listened politely and then, without referring to any of the learning with which I had favoured him, observed that: what with the fog and the grog my client had not known where he was going.

I once tried to deploy science in aid of justice. A young man was charged with speeding on his motorbike in an outer suburb of Perth at twice the prescribed speed limit. He was picked up by a radar gun travelling at 70 miles an hour (that is how long ago this was) in a 35 mph zone. He claimed he had only been travelling at 35 mph. I wondered what could have given rise to this false reading. Then I remembered from my physics that when a wheel is turning, the speed at the top is twice the speed at the middle, in this case, twice the speed of the bike itself. It might have been that the radar had picked up a bounce from the top of the shiny spokes of the motorcycle's wheel. A friend who was doing a PhD in physics came along as an expert witness, bringing a bicycle wheel to court together with an audio frequency generator and an oscilloscope. He demonstrated our theory to the magistrate. The magistrate was not a very scientific sort of chap. He was transfixed and bemused by

the technical evidence. However he managed to side-step the whole question by saying, "I accept the police estimate of speed".

I have told you of two losses. There were wins and sometimes they were so surprising they induced a sense of euphoria. I developed something of a reputation in representing drunk drivers, drug importers and prostitutes. An interesting common law problem known as the "single operator problem" involved the question whether one prostitute could constitute a brothel. When my wife and I were married I received a telegram from the Vice Squad saying, "We warned you, the single operator would get caught". Subsequently I moved up-market to wilful murder, competition law, intellectual property, public law and constitutional law. But I have never forgotten my practice in criminal law.

In the criminal jurisdiction there is no moment quite as dramatic as the moment when the jury returns with its verdict. Counsel, the accused, the judge and everybody in the court has their eyes on the 12. There is much conventional wisdom about how to guess what verdict they are about to give. It is said that if they look at the accused as they walk in, it will be not guilty. If they avert their eyes from the accused, it will be guilty. Joy, sorrow and/or recrimination follow.

The practice of law in the courts from Petty Sessions to the District, Supreme, Federal and High Courts is a demanding but a privileged occupation. When the liberty, the reputation or the assets of a client are at stake, the sense of responsibility is acute. At the same time understand that what you do as a practitioner and how you do it can make a significant difference to the lives of other people.

I have mentioned these things simply to illustrate that a life in the law is about the law and much besides. It is more than logic and principle and argument. It is informed by a vital human dimension. I commend it to you all.