



UNSW
SYDNEY

Australia's
Global
University

THE 2017 HAL WOOTTEN LECTURE

Response to the Lecture delivered by Elizabeth Broderick AO

by Hal Wootten AC QC

Tonight is the first occasion I have met our guest speaker, but reading or listening to conversations with her or about her on the Internet, I discovered something we have in common: we have both persuaded the world to address us and refer to us by a three letter diminutive rather than a more cumbersome full name or title. The only difference between us in this respect is that everyone knows what Liz is short for.

I rise to thank Liz for delivering the eleventh Hal Wootten Lecture with more than my usual annual pleasure. For me there is the usual personal pleasure that my eponymous Lecture has survived into a second decade without becoming the memorial Lecture the first lecturer assumed it to be. For all of us associated with the Law School there is pleasure that the Lecture has been delivered by one of its graduates and that in reviewing her own life story Liz has provided a rich store of evidence to endorse Justice Holmes' assertion that a person may "*live greatly in the law as elsewhere*".

In a rich life, her primary focus has been the removal of obstacles to equal opportunities for women in the workplace. In the profession of Law the battle against gender discrimination is of relatively recent origin, and still far from complete. Back in 1970-71, when we were preparing to open this Law School, the best consolation I could offer to a mother who expressed concern that her daughter might suffer discrimination as a lawyer was to say: "Of course she will, but she's not going to let that stop her, is she?"

Cold comfort, but there were women ready for the challenge. I vividly recall that only a few years later, I was to find myself, over little more than a decade, married successively to the first woman Crown Prosecutor, the first woman District Court Judge, and the first woman Supreme Court judge in New South Wales. I hasten to add that this unique experience was not a matter of trophy hunting or multiple marriage on my part, but simply the speed with which my then wife, Jane Mathews, was breaking through glass ceilings that had limited the progress of women at the Bar.

In the Law, the relative position of women has continued to improve, but often at a glacial pace, glacial that is in the sense we understood before climate change took a hand. Ironically women have fared better in the High Court than in most other courts, currently holding three of seven appointments, including the important role of Chief Justice. Perhaps our politicians are conscious of the greater news value of High Court appointments.

Recent research by George Williams, our Dean, has shown that even when women barristers are briefed to appear in higher appellate courts, they do not get equal shares in the speaking roles. Hold on, I thought, before criticising the rest of the profession too much I had better check what the Law School does. So I counted the appointments as full professors, the highest academic rank. I found there are 34 and, believe it or not, seventeen women and seventeen men.

Liz was asked to speak tonight under the rubric of the Hal Wootten Lecture, which the Faculty established in 2006, and I quote, “*to honour Hal Wootten's founding vision of the Law School*”. By definition the founding vision itself must be at least 45 years old. I may be wrong, but I cannot recollect that 45 years ago any of us who were there thought or spoke in terms of a vision, let alone tried to write one down. We were too busy starting a Law School.

From the beginning the Law School was conceived neither as an intangible vision nor as a mere organisation, but as an institution. As our own Martin Krygier reminded us recently, his mentor Philip Selznick identified the difference between organisations and institutions as being that institutions are organisations that have become ‘*infuse[d] with value* beyond the technical requirements of the task at hand.’ This usually happens as a result of the working of spontaneous social processes over time or as the result of a deliberate project of institutionalisation.

It seems to me that what is different about this Law School is that it was never conceived as a mere organisation, an impersonal bureaucracy as it were. From the beginning, it was conceived and established as an institution with infused values, and the values embodied in it are what is referred to the “founding vision”. This was unusual, but there were particular historical reasons, which I don't have time to go into tonight, that made it possible.

The first (1971) Faculty Handbook was introduced by the “Dean's Letter to New Students”, which appealed to the incoming students to join with staff in establishing a new “@” (we used the word). The Letter spelt out some of the embodied values most relevant to students, and I will quote from it.

“The members of the staff share a number of attitudes. One is that our first obligation is to our students. Individually and collectively we hope to make worthwhile contributions to scholarship, and to the solution of social problems. But as teachers we are to be judged primarily by the extent to which we make your stay in the Law School a worthwhile experience and send you out better equipped to face the great challenges that your generation of lawyers will meet.

We accept the need to have a big Law School, but we are determined that we will not allow it to become an impersonal factory in which we mass-produce graduates we barely know....

We will be striving to keep our classes as small as possible. We will use them mostly, not to tell you things you can learn from textbooks, or notes, or in the Law Library, but to help you develop your understanding of the law, and the skills a lawyer needs, by active discussion with your teachers and with each other...”

Having accepted the centrality of the obligation to students, the Letter went on to assert a view of the function of law in society, which in turn implied a view of the obligations of the legal profession. I quote:

"We share the belief, too, that law is not an end in itself. It is to be judged by the extent to which it promotes the well-being of the people living in society. We believe that the study of the law should never lose sight of the social problems that law exists to deal with, and that lawyers should always be ready to criticise and reform the law..."

The worlds of the profession and of the wider university are important in a Law School but there are other worlds with which it should have contact. Some of these worlds – business, industry, trade unions, governments – provide much of the work and income of the legal profession and are not likely to be overlooked."

The Letter then went on to use words that have so appealed to subsequent generations of staff that they have been repeated and displayed so frequently that some have assumed they were the founding vision, not just part of it. I resume quotation:

"But we believe that a Law School should have and communicate to its students a keen concern for those on whom the law may bear harshly, whether because they cannot afford its services, or because it does not sufficiently recognise their needs, or because they are, in some way, alienated from the rest of society. The poor, the Aborigines, the handicapped, the deviants, all need their champions in the law as elsewhere."

The Law School was about to open at the end of the benevolent Sixties. Richard Nixon was in the White House. The age of Aquarius lay behind our students; ahead of them lay the possibility of conscription by lottery to service in the still-controversial Vietnam War. We concluded by saying to them:

"We admire the social concern that so many of today's students bring to the University. We hope that when these students emerge from the Law School these qualities will have been sharpened, not blunted. We hope that they will feel not frustrated, but better equipped, through soundly developed professional knowledge and skills, to express their concern in constructive contributions and lead satisfying lives."

The response of those early students was terrific. We felt that we had succeeded in establishing our instant institution.

Liz came to the Law School about eight years later, when I was long gone. Gough Whitlam had come and gone, having removed the threat of the Vietnam War. Malcolm Fraser was in Yarralumla and Jimmy Carter in the White House. It was a different world.

I have been delighted to learn this evening that in that very different world Liz still found value in the founding vision of the Law School, and that she believes it has helped her live greatly in the law, as elsewhere. Certainly something led her to do so, and she has been generous in giving the Law School a share of the credit, which we accept with pride.

The story you have told us, Liz, with neither boasting nor false modesty, is one of great achievement, of innovative ideas, of courageous experiment, of carefully thinking things through, and of accumulating wisdom. As Australians we are all in your debt, and I ask everyone to join me in expressing our thanks, not only for your absorbing and enlightening Lecture, but for all you have done and are continuing to better our society.
