

THE IMPORTANCE OF INSTITUTIONS IN MODERN SOCIETY

Lunchtime address at The Moriah Foundation Trusted Advisors Network

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Introduction

- 1 I begin by acknowledging the traditional custodians of the land on which we meet today, the Gadigal of the Eora Nation, and pay my respects to their Elders, past, present and emerging.
- 2 I also offer my full support for the Uluru Statement from the Heart which is an eloquent, accurate and powerful statement, which looks forward to “a fuller expression of Australia’s nationhood” with great dignity. It is a very important time in the nation’s history and let us all hope that the proposed referendum is a positive and unifying step for all and our indigenous Australians in particular.
- 3 It is a great pleasure to have been invited to deliver this address on the occasion of the launch of The Moriah Foundation Trusted Advisors Network. Justice Rothman is a very persuasive man as I have shoehorned this address in between three cases in the Court of Criminal Appeal and another speech tonight. Anyone would think I was still at the Bar!
- 4 For the purposes of preparing today’s address, I borrowed Stephen’s copy of Suzanne Rutland’s 2003 history of Moriah from which I learned that eighty years ago in March of this year, “a small group of dedicated men who were dissatisfied with the state of Jewish education met in the schoolroom of the old Central Synagogue in Bondi Junction to discuss the establishment of a Talmud

* The research assistance of Christian Andreotti is gratefully acknowledged.

Torah in Sydney”.¹ From that meeting was born an institution in the truest sense of the word and it is the importance of institutions in our modern society that I have taken as my topic for today.

- 5 Having skimmed the history of Moriah, one may observe that, like all good institutions, while adhering to its core values, it has evolved with the times and is underpinned by a Foundation led now by female as well as male leaders who seek to support the College’s core values and to secure its future. I have long believed that public, cultural and educational institutions play a critical role as foundations of our society and community and I admire those that work to maintain their health and to secure their future.
- 6 For reasons on which I shall expand, stable, progressive civic institutions such as schools which teach history, ethics and social responsibility are more important than ever. They also have the profoundly important opportunity and responsibility of educating future generations, and by educating future generations, I do not just mean in the core curriculum but in values of decency, empathy and compassion, civic responsibility and community.
- 7 I have always been interested in the role institutions play in our community and broader society. My own school, Sydney Grammar, was founded by an Act of Parliament in 1854, as a nursery for the fledgling University of Sydney, which had been founded by its own Act of Parliament in 1850. These two institutions have survived and continue to flourish although they have been joined, and properly so, by many other secondary and tertiary educational institutions that also play a critical role in our community.
- 8 When I was at Grammar in the late 1970s early 1980s, I met and became great friends with many members of the Jewish community and have met and made many more Jewish friends through the practice of the law, including my good friend, the Chief Judge in Equity, Justice David Hammerschlag. One of my favourite formal legal events of the year is the opening of law term service at

¹ S D Rutland, *If You Will It, It Is No Dream: The Moriah Story 1943–2003* (Playright Publishing, 2003) at 24.

the Great Synagogue. The sense of community and both cultural and professional pride within the Jewish legal community on those occasions is palpable.

- 9 The institution which I currently have the privilege and responsibility of leading, the Supreme Court of New South Wales, will celebrate its bicentenary in May 2024, marking it, you may be surprised to learn, as one of the oldest continuously operating courts in the world. That looming milestone has caused me to think a great deal this year about the importance of institutions in our community.
- 10 At their core, institutions bring people together by a common thread of values; they act as repositories of those values and both preserve and promote them. They provide a source of societal stability yet they remain (or should remain) dynamic and receptive to changing social and environmental conditions.
- 11 An institutional framework also allows the lessons and stories of the past to be handed on from one generation to the next. Institutions often also offer a sense of belonging and common mission to their members
- 12 As Robert Dahl, a Professor of political science at Yale University, wrote in 1972, the ideal of “effective government” depends on “public trust, encouraging civic engagement and cooperation within communities and between organisations”. Institutions lie at the heart of effective government, including public broadcasters, the public service, the judiciary and our schools and universities.
- 13 So long as institutions can maintain public trust and uphold the particular values they stand for, they will contribute significantly to the effective government of a prosperous and harmonious society.² And at the educational, cultural and sporting level, they also contribute to the richness of our community.

² R A Dahl, *Polyarchy: Participation and Opposition* (1972, Yale University Press), cited in J Liu, Y Shahab and H Hoque, “Government Response Measures and Public Trust during the COVID-19 Pandemic: Evidence from Around the World” (2022) 33 *British Journal of Management* 571.

- 14 On that last note, I recently had the pleasure of farewelling the New South Wales contingent of the Maccabi delegation for the Maccabiah Games in my capacity as Administrator of the State in the absence of the Governor.
- 15 Although institutions should not be immune from criticism or critical review both internally and externally, crude and often populist “institution-bashing” by some politicians both at home and abroad in recent years has been costly for the whole of our society and has contributed to a decline for the respect and understanding of the importance of our public institutions – think sweeping, undifferentiated criticism of the public service, of the media and in particular the ABC, of the courts, and most recently, by our former Prime Minister, of the United Nations .
- 16 Their work and the values for which such public institutions stand should be respected and indeed celebrated rather than corroded by cheap political attacks and structural emasculation.
- 17 Reflecting on the importance of institutions is timely as we live in an era where we are both told (and our own experience suggests) that respect for many public institutions is plummeting. Indeed, trust in institutions is measured by a number of entities, one of the most well known being the so-called Edelman Trust Barometer which, for the last 22 years, has sought to measure by global survey levels of trust in institutions through 28 countries including Australia. I will return to the deeply depressing results of that survey shortly.
- 18 First, I draw on some sage observations made by friend and predecessor as Chief Justice, Tom Bathurst, who reflected, in February 2021, that:³

“In recent years, trust in institutions has been the subject of renewed attention. Public trust in institutions is declining not only in Australia but in many other advanced industrialised countries. In Australia public trust in institutions has been understandably shaken by a number of high-profile Royal Commissions which have exposed cause for distrust across a range of institutions from financial institutions, aged care homes to detention facilities in the Northern Territory. This growing distrust of

³ TF Bathurst, “Trust in the Judiciary” (2021 Opening of Law Term Address, Sydney, 3 February 2021).

existing institutions is echoed abroad as evidenced by recent scepticism towards the World Health Organisation, the United Kingdom's exit from the European Union and the withdrawal of the United States under former President Trump from various United Nations bodies.

- 19 Returning to the Edelman Survey for 2022, the gloomy bottom line is, and I quote, that Australia's "trust bubble has burst". That Report reveals "sharp declines in trust across all Australian institutions, [with] [o]nly 52% of Australians say[ing that] they trust government to do the right thing (-9% year-on-year) and 58% trusting each [of] business (-5%) and NGOs (-4%)". Trust in the media fell by 8 points to 43%, making it "the only institution in Australia distrusted by a majority of the population."⁴
- 20 Interestingly, millennials report as the most trusting generation with Generation Z the least trusting.
- 21 The recent federal election and the emergence of the so-called teal independents is symptomatic of a loss or lack of trust in our political institutions but, at the same time, manifests a concern and desire not just amongst the candidates but their supporters to restore key values to those institutions including integrity, transparency, accountability and respectful debate.
- 22 The current federal government's support for public integrity bodies such as a federal ICAC is in part a recognition of the loss of trust in government but at the same time may be seen as an attempt to rebuild trust by holding those who compromise public trust to greater scrutiny and account.
- 23 A lesson I have retained from school debating is that one can always find statistics to support any argument. In that context, it was interesting that during the pandemic, some surveys suggested that trust in government increased significantly. I have little doubt that this was at least partly because of the prominence of the role played by public health professionals and governmental

⁴ Edelman, "Trust Barometer 2022 Australia Report" (16 February 2022) <<https://www.edelman.com.au/trust-barometer-2022-australia>>.

deference to their expertise and independence in the framing of responses to the pandemic.

- 24 I obviously have a particular interest and concern in respect for the judiciary as an institution. The Edelman survey to which I have referred does not cover that. A survey conducted under the auspices of the Museum of Australian Democracy in 2020 reported that 55% of participants said that they had “a great deal or quite a lot of confidence” in the Australian judiciary, a figure much higher than that in respect of public servants, journalists, trade unionists and businesses, and second only to medical professionals.⁵ Accepting the limitations of such surveys, however, that figure does not exactly bowl me over. Perhaps we have extremely high standards and expectations. Or perhaps there is a disheartening and corrosive cynicism at play. Or perhaps a combination of both.
- 25 A mature democracy should have a very high degree of trust in its public institutions, not least its courts. In my swearing in speech as Chief Justice in March of this year, I said in reference to what we have seen in the United States that I did not want to see a society where, for example, despite the clear and unanimous rulings of a series of superior courts, a significant percentage of the population did not accept the outcome and integrity of a democratic electoral process. “Where is respect for the judiciary and the recognition or understanding of the importance of its role and independence in this?”, I asked.
- 26 I also said that I did not want to see a society in which a political leader says, as President Trump is reported to have said, that he expected his judicial nominees to the “do the right thing” by his or her appointor. That frankly medieval notion is anathema to and corrosive of a fundamental tenet of a modern democracy, namely the independence of the courts which administer justice without fear or favour, affection or ill-will, to use the language of the judicial oath.

⁵ Mark Evans et al, “Political Trust and Democracy in Times of Coronavirus: Is Australia Still the Lucky Country?” (Democracy 2025, Report, 2020) at 4.

- 27 Fortunately, amongst the judges who upheld the integrity of the United States election, were some who had been appointed by the Trump administration but who did not succumb to the pressure heaped upon them by the former President and his backers in the commentariat.
- 28 Nonetheless, confidence in the United States judiciary is at an all-time low and I suspect that many cases lie ahead in the working out of the recent FBI raids of the former President's residence and any criminal charges which emerge from that which will test the United States judiciary further, ultimately potentially in the United States Supreme Court. Indeed, the independence of the judiciary and respect for the rule of law in the United States is likely to be tested in the next 24 months as it has never been tested before.
- 29 It may be a "sliding doors moment" not only for the United States but perhaps for the democratic world.
- 30 Respect for the Australian judiciary is much higher than it is in the United States partly because we do not have a Bill of Rights (with judges less likely to become bound up in what often become contestable policy debates) and partly because of our largely by bipartisan mode of judicial appointment. But even here, there has been much justified concern about various appointments that have been made to federal administrative bodies in recent years.
- 31 Now I am sorry to spoil your lunch with such an anxious message. Societal stability is hard won but it is fragile. A breakdown in respect for institutions and the values for which they have traditionally stood feeds that fragility and indeed corrodes their very core as they cease to be bodies in which good people aspire to work.
- 32 It may surprise you to learn that, after all of this pessimism, I am at heart an optimist. I believe in institutions and the valuable role they play as foundations of our society. And I believe that most Australians share that view and are anxious for the restoration and revival of public trust in many of our institutions which are currently lacking that trust.

33 To return to Tom Bathurst's 2021 observations on the topic:

“Private and public institutions are coming under greater scrutiny. The public is regularly and deeply questioning the trust they place in institutions, and rightly so. If there was ever a period where we expected the public to blindly trust institutions, it is long gone. We have learnt that public trust in institutions is fragile. Institutions can no longer simply assume the public will trust in them. Instead, all institutions, and particularly public institutions, must continually ask themselves: how can we build trust across all sectors of the community?”

34 At the level of the judiciary, trust is engendered through high-quality but diverse appointments to judicial office, open justice and the expeditious resolution of disputes in a time frame commensurate with their complexity and urgency. When we come to celebrate the Supreme Court's bicentenary in 2024, we will emphasise the continuous operation of the rule of law in this State and its importance as a source of social and economic stability. It is something that can never be taken for granted and, in our contemporary world, is far more vital than an abstract construct or rhetorical refrain.

35 For educational institutions such as Moriah College, teaching students the lessons of history and the inculcation of core civic values is critical. A proud Jewish school such as Moriah it's probably the last institution that needs to be told that. But to the extent that there has been a particular loss of trust in public institutions amongst so-called generation Z, we must all work hard to re-engage respect for and belief in public institutions such as the public service, public broadcasters, the judiciary and government itself.

36 That maybe easier said than done but schools and community organisations lie at the heart of this project and I am sure that the success of this project is something that we all wish for our children and grandchildren.
