

ST JOHN'S COLLEGE FACULTY OF LAW DINNER ADDRESS

The Hon A S Bell¹

Chief Justice of New South Wales

22 March 2023

1. I begin by paying my respects to Gadigal of the Eora Nation and extend those respects to all First Nations people. In doing so, I also acknowledge the support that St John's and other Colleges at Sydney University have provided to indigenous students.
2. Let us hope that 2023 will be remembered as a positive year in terms of genuine reconciliation and, however citizens choose to vote, that the referendum is approached with generosity of spirit, respect and open minds. They are values which should underpin every liberal academic institution and society. A former law student of this College and now one of the country's most senior solicitors, Danny Gilbert AM, is a leading non-indigenous player supporting the introduction of the Voice to Parliament.
3. The last time I spoke in this Hall was on 22 October 1987. The occasion was the St John's College Wine Shop dinner for that year.
4. Rather remarkably, I came across the menu recently when going through some *very* old papers. The meal on that occasion consisted of: Canadian smoked salmon; roast rack of lamb; spears of broccoli; asparagus in Georgoise sauce; crepes Suzette (flamed tableside); coffee; chocolates; vintage port and international cheeses. Following this, or so the menu records, there was a selection of 50 year old brandies from the Wine Shop cellar, to be served with genuine Cuban cigars!

¹ The Chief Justice acknowledges the assistance of Mr J Lerner in undertaking some research for this address.

5. Whether there were in fact 50 year old brandies served and whether the crepes were in fact flamed tableside or whether that was all a little bit of undergraduate poetic licence, I cannot remember although I strongly suspect the latter.
6. The menu also records that a number of toasts were offered that night. One was to the College. Another was, and I quote, to “The Temptation to Embezzle” in which the then College Cellar Master was called upon to account for missing wine shop funds in an attempt to clear his name! I was a guest at the College and was called upon to offer the toast which was “To Henry VIII”. I can’t remember what I said on that occasion. I would like to think it was amusing although the fact that it has taken 36 years for me to be asked back may suggest otherwise!
7. Of course, as a then member of St Paul’s College, being asked in a Hall full of Johns men and Sancta women to toast the first head of the Church of England who had removed the authority of the Roman Catholic Church in England, was like getting a brief to defend Scott Morrison’s secret ministries or convincing Rupert Murdoch of the merits of the number 4.
8. Whatever I said that night in 1987 was, I am sure, a light-hearted affair but the speeches given 130 years beforehand, on 4 August 1857, at St Mary’s Cathedral to raise money for the foundation and building of St John’s College, had a very different and altogether more serious flavour. More about that shortly.
9. Sydney was then a town of about 90,000 people. The University of Sydney had been established by the *Sydney University Act* of 1850. The recital to that Act proclaimed that:

“it is deemed expedient for the better advancement of religion and morality and the promotion of useful knowledge *to hold forth to all classes and denominations of Her Majesty's subjects resident in the Colony of New South Wales without any distinction whatsoever an*

encouragement for pursuing a regular and liberal course of education.”
(emphasis added)

10. I emphasise the words “*to all classes and denominations ... without any distinction whatsoever*”. There is every possibility that these words were drafted by John Hubert Plunkett who occupied the office of Attorney General for almost 20 years (with one brief hiatus) between 1836 and 1856 and about whom I shall also say more shortly.²
11. Now the reason that I emphasise the non-discriminatory and pointedly anti-sectarian words in the Recital to the *Sydney University Act* is that, at that point in time in the United Kingdom, Roman Catholics were still not permitted to attend Oxford or Cambridge. That was modified slightly for Oxford in 1854 (the *Oxford University Act 1854*) and for Cambridge in 1856 but even then, Catholics were precluded from becoming a member of the Senate or holding an office in the University (*Cambridge University Act 1856* s 45).
12. Indeed it was not until the *Universities Tests Act 1871* that religious tests were abolished that Roman Catholics, non-conformists and non-Christians could take up professorships, fellowships, studentships and other lay offices at Oxford and Cambridge. So, the explicit anti-sectarian and non-discriminatory language in Sydney University’s foundation statute, almost certainly the language of John Plunkett, was quite remarkable for its time.³
13. Plunkett was also one of the leading speakers at St Mary’s Cathedral to raise money for the foundation and building of St John’s College in 1857 on the occasion to which I have already referred. The strong sectarianism which still existed in the United Kingdom at that time featured prominently in his speech.

² See generally, John N. Molony, *An Architect of Freedom* (Australian National University Press, Canberra, 1973).

³ It was echoed in the language of the *Sydney Grammar School Act* of 1854, the recital to which provided that:

“it is deemed expedient for the better advancement of religion and morality and the promotion of useful knowledge to establish in Sydney a public school for conferring on all classes and denominations of Her Majesty’s subjects resident in the Colony of New South Wales without any distinction whatsoever the advantages of a regular and liberal course of education.”

The contrast between the “old country” and the fledging New South Wales democracy was extraordinary. The laws still on the statute books in the United Kingdom, Plunkett said that night, “set class against class, and religion against religion”.⁴ He contrasted the position in New South Wales – “here”, he said proudly “instead of having any hostility against each other, we all run in the same race, and wish success one to another.”⁵ The *Sydney Morning Herald* recorded that there were “cheers” at this point. Plunkett rose to a crescendo (albeit not a conclusion, for it was a very long speech) saying:

“We all have the same object in view – the general elevation of the country, and to prove to the world that the best way to make all classes satisfied is to have laws based on civil and religious liberty.”⁶

The *Herald* recorded “loud applause” at these lofty and progressive sentiments.

14. To the students in the Hall tonight, I remind you that these words were said on the occasion of a most important night in this College’s history. They capture the strong sense of justice, and spirit of non-discrimination and equality of opportunity, which underwrote its foundation, albeit that it took until the turn of the 21st century for the admission of women. That course was not only appropriate but, to my understanding, has been enormously successful. Returning to 1857, the *St John’s College Act* was passed later that year. The College was granted its current land, just as land was granted to St Paul’s College and would subsequently be granted to St Andrew’s and Wesley Colleges.
15. Now John Hubert Plunkett was much more than simply the longest serving Attorney-General of New South Wales and a supporter of the foundation of this place. It was his courage and tenacity as an advocate that saw the perpetrators of the Myall Creek massacre brought to justice. The case involved the slaughter, in cold blood, of at least 28 unarmed indigenous

⁴ “St. John’s College”, *Sydney Morning Herald* (Sydney), 4 August 1857 at 5, <https://trove.nla.gov.au/newspaper/article/12998866/1496578>.

⁵ *Ibid.*

⁶ *Ibid.*

Australians. Against public opinion at the time, he fearlessly prosecuted eleven of the perpetrators.⁷ A not guilty verdict followed initially after the jury had deliberated for “about a quarter of an hour”.⁸ Undeterred, Plunkett requested that the perpetrators be held in custody pending a second trial. He re-prosecuted seven of the perpetrators in front of a jury who were subject to intimidation: only 28 of the 48 people called for jury service showed up.⁹ Guilty verdicts followed; the seven men were hanged.¹⁰

16. This was one of the very few times that those who committed atrocities in the early days of settlement in Australia were brought to justice. It demanded courage, conviction and a deep sense of justice, qualities which coalesced in Plunkett.
17. Plunkett had diverse other achievements including as the inaugural President of the Legislative Council upon the passage of the *Constitution Act* that ushered in representative government to New South Wales in 1855, the first Queen’s Counsel in Australia and as Vice Chancellor of this University from 1865 to 1869.
18. In his commitment to justice, liberty and anti-discrimination, Plunkett’s name should be revered in this College and the University of Sydney; his role in the history of Australia should never be forgotten. Although never a student here, he was, as I have sought to point out, a central figure in the College’s and the University’s foundation and went on to serve St John’s College for many years as a member of its Council. Any of the Fellows here tonight would appreciate that to sit through 144 meetings of a College Council, as he did, should nudge you up the Sainthood ladder!¹¹

⁷ *R v Kilmeister (No 1)* [1838] NSWSupC 105.

⁸ *Ibid.*

⁹ Lyndall Ryan, ““a very bad business”: Henry Dangar and the Myall Creek Massacre 1838” at 14: https://www.newcastle.edu.au/_data/assets/pdf_file/0015/31056/Henry-Dangar-and-the-Myall-Creek-massacre.pdf. See also Mark Tedeschi, *Murder at Myall Creek: A Trial That Defined a Nation* (Simon & Schuster, 2016).

¹⁰ *R v Kilmeister (No 2)* [1838] NSWSupC 110.

¹¹ R.A. Daly, *One Hundred Years on Grose’s Farm* (1977) at 612.

19. It is particularly fitting on the occasion of the College's Law Faculty Dinner to say something, albeit more briefly, of a number of other legal giants who were students and closely associated with St John's College.
20. Also at St Mary's Cathedral on that historic night in August 1857 when funds were raised for the College's foundation was a man named Richard O'Connor. His son, also Richard O'Connor, would become one of the College's first students and, subsequently, one of the most important figures in Australia's Federation. He was a delegate to the constitutional conventions and a key figure in the drafting of the Australian Constitution, the first leader of the Senate, Vice President of the Executive Council and trusted member of Sir Edmund Barton's first Cabinet, before going on to serve as one of the first three High Court judges, with Barton and Chief Justice Sir Samuel Griffith.¹²
21. O'Connor, like Plunkett, had a deep sense of justice and also of the *injustice* that can flow from populist majoritarianism. He argued, unsuccessfully, in the 1898 Convention Debates, for a constitutional guarantee of due process to guard against any unjust deprivation of life, liberty or property.¹³ In another example of his progressive views and sense of justice, he was a supporter of indigenous voting rights, saying in the Senate:
- "It would be a monstrous thing, an unheard of piece of savagery on our part, to treat Aborigines, *whose land we were occupying*, to deprive them of any right to vote in their own country simply on the grounds of their colour."¹⁴ (emphasis added).
- It is remarkable to think that these words were uttered 90 years before *Mabo*.
22. O'Connor's accomplishments as lawyer, politician and judge were vast, and many of his judgments are still regularly cited.

¹² Martha Rutledge, 'O'Connor, Richard Edward (Dick) (1851-1912)', Australian Dictionary of Biography, <https://adb.anu.edu.au/biography/oconnor-richard-edward-dick-1102>.

¹³ *Official Record of the Debates of the Australasian Federal Convention*, Melbourne, 8 February 1898 at 688-9 (Richard Edward O'Connor).

¹⁴ Commonwealth of Australia, *Parliamentary Debates*, Senate, 10 April 1902 at 11584 (Senator O'Connor).

23. He was also known to be something of a restraining influence on his great friend Sir Edmund Barton, who legend has it required restraining from time to time.¹⁵ (Some people say that I could myself do with a restraining influence from time to time, but I don't think that the Chairman of the College Council, my old friend John Coorey, is the man for the job!)
24. Richard O'Connor is not St John's only High Court judge. His companion on that Honour Board is Sir Cyril Walsh who was born on 15 June 1909 in Sydney, the son of a labourer. From very humble origins, he achieved great distinction. He entered this College in 1928 and stayed until 1932. He was Secretary and then President of the Students' Club.¹⁶ He graduated Bachelor of Arts in 1930 and Bachelor of Laws in 1934, both with Honours. What sets him apart from every other student ever to attend this University are his triple University Medals in English, Philosophy and Law, as well as an additional First Class Honours in Latin.¹⁷
25. He was elevated to the Bench at the young age of 44, in 1954, having not yet taken silk, a mark of the very high regard in which he was held.¹⁸ He was the judge at first instance in *Wagon Mound (No 2)*,¹⁹ a foundation member of the New South Wales Court of Appeal in 1966, and was appointed to the High Court in 1969. Upon his premature death in 1973, Sir Garfield Barwick said of him:

"He was a great lawyer and a great judge. He had not reached his zenith. The Court has lost a Justice from whom increasingly distinguished service was confidently expected. The community has lost a great servant devoted to the maintenance of the law and of the freedom it protects. We have lost and mourn a friend."²⁰

¹⁵ Rutledge (n 12).

¹⁶ John Kennedy McLaughlin, 'Walsh, Sir Cyril Ambrose (1909-1973)', Australian Dictionary of Biography, <https://adb.anu.edu.au/biography/walsh-sir-cyril-ambrose-11950>. The Hon. John McLaughlin AM served as Sir Cyril Walsh's Associate. He ultimately became Master in Equity and an Associate Justice of the Supreme Court of New South Wales (1989-2010). He was due to attend this address but sadly passed away unexpectedly on the morning it was delivered.

¹⁷ John Kennedy McLaughlin, 'Walsh, Sir Cyril Ambrose' in Blackshield, Coper and Williams, *The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001) at 702.

¹⁸ McLaughlin (n 16).

¹⁹ *Miller Steamship Co Pty Ltd v Overseas Tankship (UK) Ltd* (1963) SR (NSW) 948.

²⁰ (1973) 128 CLR, opening pages.

26. Sir Cyril Walsh maintained a very strong connection to this College throughout his career. He was a Fellow from 1955 until his death, also serving as Deputy Chairman from 1969 to 1972.²¹
27. One final John's man and legal luminary of whom you must all be or should become aware is the late Justice RP "Roddy" Meagher AO, formerly a judge of the NSW Court of Appeal.²²
28. He came to St John's College in 1950 via Temora (also the home of Pale Face Adios, the famous trotter). Like Sir Cyril Walsh before him, he had a glittering university career in classics, as the Cooper Scholar, with First Class Honours in Greek and then First Class Honours and the University Medal in Law.²³ But he was no mere bookworm. He was an eccentric and a polymath with a particular interest in the arts, a raconteur and noted wit. Even though he had a famous dislike of sport, such was his magnetic personality that he too, like Walsh, became President of the Students' Club.²⁴ He would go on to be President of the New South Wales Bar Association before becoming a Judge of Appeal. He lacked the agility of his younger brother Chris, also a lawyer and alumnus of this College, who spent a number of years as a matador in Spain before commencing legal practice (as you do)!
29. As to sport, Roddy once attended a conference on Sport and the Law in the Swiss Alps as some kind of extended Dadaist joke, as it always seemed to me. Of table-tennis but applied to ball sports more generally, he said on that occasion: "I, for one, am incapable of involving myself deeply enough in the fate of a ball [as] to want to hit it somewhere".²⁵
30. In one celebrated judgment, he said:

²¹ McLaughlin (n 17) at 703.

²² See generally Damien Freeman, *Roddy's Folly* (Connor Court, 2012) and D T Freeman, 'R P Meagher and the idea of a university' (2011) 35 *Australian Bar Review* 71.

²³ J. D. Heydon, 'Address at Funeral Service of Roderick Pitt Meagher' (Speech, 8 July 2011) at 3, <https://www.hcourt.gov.au/assets/publications/speeches/current-justices/hedyonj/R-P-MEAGHER-FUNERAL-8-JULY-2011.pdf>.

²⁴ *Ibid.*

²⁵ Quoted in Freeman (n 22) at 454.

“Whilst all reasonable people know that any form of physical activity is both unpleasant and dangerous, and probably unhealthy as well, and whilst sport, which is communal physical activity, suffers the added feature of exposing its participants to the perils of tribal barbarism; nonetheless the law has never regarded the playing of sport as contrary to public policy or even unreasonable.”²⁶

31. But Roddy Meagher was not just a humourist; he was a great lawyer and the two books he co-wrote, *Meagher, Gummow & Lehane’s Equity: Doctrines & Remedies* and *Jacob’s Law of Trusts* are widely regarded as two of the finest legal texts ever written, not only in Australia but throughout the common law world where they have been regularly cited for over 50 years.

32. As with Justices O’Connor and Walsh, Meagher gave back to his College and University immensely, serving on the College Council for 38 years,²⁷ as a Fellow of the Senate and as Challis Lecturer in Equity and a lecturer in Roman Law at the University of Sydney Law School for about 30 years.²⁸ In this regard, he once said that conducting lectures at the Law School was:

“rather like having intercourse with an elephant: firstly, because it involves no physical pleasure whatever; secondly, because it involves a distinct possibility of being damaged; and thirdly, because it take an enormous time before one gets any result”.²⁹

33. In the citation for the Honorary Doctor of Laws conferred on him by Sydney University in May 2000, it was said of him that “he is a living illustration of the way this University disdains compulsory orthodoxy and encourages those who stand against the tide even when the tide reaches tsunami’s proportions”.³⁰

34. “Compulsory orthodoxy” is anathema not only to a flourishing College or University but to a society that rests upon the principles of political and religious liberty which John Plunkett fought so hard to establish all those years

²⁶ *Trevali Pty Ltf v Haddad* (1989) Australian Torts Reports 80-286 at 60,036.

²⁷ Heydon (n 22) at 3.

²⁸ Dame Leonie Kramer AC, ‘Citation – the Honourable Roderick Pitt Meagher’ (Speech, 19 May 2000), <https://www.sydney.edu.au/content/dam/corporate/documents/university-archives/honorary-awards/m/the-hon-roderick-pitt-meagher.pdf>.

²⁹ Quoted in Freeman (n 22) at 235.

³⁰ Kramer (n 28).

ago. Compulsory orthodoxy would never have seen this College founded in the first place.

35. St John's College should be extremely proud of the four lawyers of whom I have spoken (and, I should add, many others besides, some of whom are present tonight). All four of the lawyers I have spoken about were men of high principle and deep scholarship, who gave, in their various ways, immense public service to the College, the University and the broader community.
36. It is not controversial to suggest that their values and beliefs were forged in this place in precisely the same kind of community of learning and collegiality that you are all now so lucky to enjoy. So make the most of it. You are all fortunate and must never forget the opportunity afforded to you.
37. I wish all the law students the best of luck in their legal studies and careers in the law and beyond, and I wish the College well more generally in the exciting years ahead. In another 36 years, I will be 93 and there are currently some spots in my diary to speak again at St John's!
38. Good night.
