

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
OPENING OF LAW TERM JEWISH SERVICE
GREAT SYNAGOGUE: REMARKS
WEDNESDAY 7 FEBRUARY 2018*

1. I would like to begin by respectfully acknowledging the traditional owners of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their elders, past, present and future. I also acknowledge the Elders from other communities who may be here today.
2. It is a great pleasure to have been invited to give a few remarks at this dinner. I extend my thanks to Rabbi Dr Benjamin Elton for inviting me to speak. Tonight is an important opportunity for members of the legal profession and the judiciary, both Jewish and non-Jewish, to come together. Because of this, I will be very brief. I don't want to distract from the company, the conversation, but most importantly, the catering.
3. For the last 7 years I have attended a service at the Great Synagogue to mark the opening of the new law term. On this occasion I have often spoken about the enormous contribution that the Jewish community has made to the legal system in Australia. I won't mention all the historical examples again tonight, one of the earliest being the first Australian-born Governor-General, Sir Isaac Isaacs and a recent example being my immediate predecessor, the Honourable James Spigelman.
4. However, it should be noted that this is not a trend that is slowing or diminishing in any way. Just two weeks ago, at the Australia Day Awards, 26 of those people awarded, comprising 3% of the total number, were

* I express my thanks to my Research Director, Ms Naomi Wootton, for her assistance in the preparation of this address.

Jewish.¹ This is remarkable when considered against the fact that Jewish Australians make up only 0.4% of the population.²

5. In relation to those recognised for their contribution to the law, we saw Jewish Australians, Dr Rosalie Balkin who specialises in maritime law; Emeritus Professor Michael Coper from the Australian National University; and Professor Howard Nathan, a former Judge of the Victorian Supreme Court. These distinguished individuals were all made Officers of the Order of Australia for their service to the law, and through the law, the Australian community.
6. When Professor Coper was asked to speak about his award, he noted that his father came to Australia as a refugee from Nazi Germany. Apart from his brother, the rest of his father's family perished in the Holocaust. He continued that in his mind, his major achievement in the law was in fact in his involvement in university legal education. He had worked to reorient the idea of a career in the law, from the selfish pursuit of material personal reward, to the more altruistic notion of using one's legal knowledge and skills to improve the legal system.³
7. Professor Coper's response gives practical effect to the two Jewish traditions of *tikkun olam* and *gemilut chasadim* – repairing the world and reciprocal acts of kindness – which in turn are characteristic of the approach of the Jewish Community at large in Australian society.⁴ Although making up less than half a per cent of the population, the extent of Jewish leadership and civic participation is tremendous.
8. Of course, there is also the experience of persecution on an unimaginable scale, throughout great stretches of history, which remains inseparable from

¹ 'Jewish Australians reap honours', *The Australian Jewish News* (online), 26 January 2018 <<https://www.jewishnews.net.au/jewish-aussies-reap-honours/73346>>.

² 'Religion in Australia', *Australian Bureau of Statistics* (online), 28 June 2017 <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Religion%20Data%20Summary~70>>.

³ '2018 Australia Day Awards', *J-Wire* (online), 26 January 2018 <<http://www.jwire.com.au/2018-australia-day-awards/>>.

⁴ Dvir Abramovich, 'Australia's Jewish People and Democracy' (2015) 74(3) *Meanjin Quarterly* (online) <<https://meanjin.com.au/essays/australias-jewish-people-and-democracy/>>.

the Jewish experience. It is perhaps for this reason that this community has always been at the forefront of advocacy for the equal and non-discriminatory treatment of disadvantaged and disenfranchised members of the Australian community.

9. For example, in an updated statement released in September 2013, the NSW Jewish Board of Deputies stated in its policy on refugees that the “community reaffirms its support for a humane refugee admission program in Australia”,⁵ noting that the Convention on the Status of Refugees grew out of the need to assist Jews seeking new homes.⁶ The Board reaffirmed that asylum seekers should be regarded as human beings with “hopes and aspirations and dreams”⁷ who “feel the same pain and suffer the same grief as each of us”,⁸ and acknowledged the “great benefits that multiculturalism ... has created for Australian society as a whole”.⁹
10. In 2010 the Board released a policy on counteracting hatred and discrimination against the LGBT community. The Board noted its particular opposition to any form of hatred or discrimination in terms of legal rights or human rights against any person on the grounds of sexual or gender identity, and called on the Jewish community to support improvements in the wider Australian community.¹⁰ Now, I could go on for hours, but I’m sure you can all just visit their website yourselves. My point is simply that the Jewish community is consistently at the forefront of opposing all forms of inhumane treatment and eliminating discrimination.
11. Now, these are all activities that share parallels with the role of lawyers in public life. Respect for human rights and individual liberties are at their

⁵ Jewish Board of Deputies, ‘Updated Refugee Policy’
<<http://www.nswjbd.org/ArticleDocuments/180/JBD%20STATEMENT%20ON%20UPDATED%20REFUGEE%20POLICY%20130917.pdf.aspx>> 1.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid 2.

¹⁰ Jewish Board of Deputies, ‘Policy on counteracting hatred and discrimination against gay, lesbian, bi-sexual and transgender persons’
<<http://www.nswjbd.org/ArticleDocuments/180/Policy%20on%20counteracting%20hatred%20and%20discrimination%20against%20gay%20lesbian%20bisexual%20and%20transgender%20persons.pdf.aspx>>.

core, concerns of the law. Last week I gave an address to solicitors to mark the opening of the law term, and I spoke then about the place of lawyers in politics. The recent explosion of populist sentiment in the West has the capacity to undermine the fundamental rights of individuals against whom that popular sentiment is roused, and the rule of law.

12. While these concerns do invoke the domain of politicians, they also concern lawyers, who are the custodians and guardians of the rule of law. The legal profession holds the privileged position of being able to understand the law. For that reason, it is well situated to navigate the complexities of legislative drafting, understand the concrete implications of policy decisions, and use this knowledge to the advantage of society. One way in which it can contribute is simply by correcting ignorance in public debate.

13. However, I also noted last week that it cannot necessarily be presumed that just because a law has been duly enacted it complies with the precepts of the rule of law. I hardly need mention the repeated use of the law against Jewish communities in an attempt to cloak institutionalised prejudice and discrimination with an aura of legal legitimacy. Indeed, Rabbi Elton has noted, in an article written in 2016, that it was not very long ago when Jewish people did not enjoy access to fair and equitable treatment under the law. He explained that “Jews were arrested on trumped up charges ... their punishment would be worse ... and in many cases the public trial of Jew became a pretext for pogroms and the vicious persecution of entire Jewish communities”.¹¹ Thankfully, as Rabbi Elton observed, these circumstances do not apply in modern Australian society.¹² But they serve as an important lesson to the lawyers who are tasked with defending the rule of law.

14. That is, the rule of law must comprehend “some statement of values which are universal and ought to be respected as the basis of a free society”¹³ – of which

¹¹ Rabbi Benjamin Elton, ‘Judaism and the Demands of Australian Law’ *ABC* (online), 18 April 2016 <<http://www.abc.net.au/religion/articles/2016/04/18/4445344.htm>>.

¹² *Ibid.*

¹³ Lord Goldsmith QC, “Government and the Rule of Law in the Modern Age” (Speech delivered at the LSE Law Department and Clifford Chance Lecture Series on Rule of Law, London, 22 February 2006).

non-discrimination and equal justice are surely part. To this end, a state which “savagely represses or persecutes sections of its people cannot ... be regarded as observing the rule of law”¹⁴ no matter how detailed, duly enacted or scrupulously observed the laws may be.

15. One way I think that the profession can engage with these issues whilst avoiding political minefields, is by using human rights discourse to abstract the debate into a rational legal frame. Where breaches of fundamental human rights demand professional action, lawyers should not ignore matters which impact on the rule of law, and matters affecting the ability of all persons in this country to get fair and impartial justice.¹⁵ As I said last week, for them not to do so would, in my view, be an abdication of responsibility.¹⁶
16. The approach of the Jewish community has much to offer lawyers seeking to uphold this responsibility. It is uniquely placed to understand the evil that racism and bigotry can lead to. Tonight provides an opportunity to learn from each other in this regard, but also to celebrate the diversity and multiculturalism that enriches our community. In many cases, antagonism and discrimination are based on a lack of understanding, which can be cured by gestures as simple as a conversation over some food.
17. On that note can I encourage you all to stay, mingle and enjoy the catering. Thank you again for the invitation to speak tonight.

¹⁴ Tom Bingham, *The Rule of Law* (Penguin Books, 2011) 67.

¹⁵ See T F Bathurst AC, ‘The Place of Lawyers in Politics’ (Speech delivered at the Opening of Law Term Dinner, Sydney, 31 January 2018) <[http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2018%20S peeches/Bathurst_20180131.pdf](http://www.supremecourt.justice.nsw.gov.au/Documents/Publications/Speeches/2018%20S%20peeches/Bathurst_20180131.pdf)> 22.

¹⁶ Ibid.