

# Some recollections of a golden age

By John P Bryson QC

I worked in the law from 1954 until 2011 in many positions from junior clerk to the Court of Appeal, and had opportunities to observe many barristers and judges, their abilities and their styles. There is a ceaseless tide at bench and bar; when seven years have passed the array of ability and leading personalities has changed: many are still there, but the kaleidoscope has been shaken. Some stay at the top for decades, but there is always room at the top. I first saw cases fought out in 1955; I went to the bar myself in 1966. To me it seems that there was a golden age from about 1960 to about 1980 when men who had served in the Second World War were at the ascendancy of their careers – distinguished for learning – but there are always those, distinguished also for powers of expression which I attribute in part to education centred on language and literature including the Latin studies which they themselves belittled: distinguished most for untroubled and well-based self-confidence, fearlessness which I attribute to war service and the experience of survival. Every age is a golden age to someone, but this was my observation. The bar is always led by splendidly able people who seem to have been formed by nature for that purpose, and I have never lost my wonder at them, but in those years the leaders of the bar were golden for me. Reflections like these have led me back to the background of the legal world I entered.

When the war ended in 1945 I was eight years of age. The war had been the main event in the news for as long as I could remember, but I had little idea of what it was. Children were not told the horror of it, and news and public discussion maintained a determined optimism and portrayed the thing as if it were a great adventure story. It was a crime to spread alarm and despondency, and soldiers were often told ‘Maintain a positive outlook and a cheerful disposition.’ Wartime publications usually exemplify this. All adults must have known the falsity of this, as friends departed overseas and were reported dead, wounded or captured. Widows and the wounded must have been within everyone’s close knowledge. My mother’s cousin died while training and she did not tell me of him for twenty years. So far as I understood in my childhood innocence, it could all have been a story in the *Boys’ Own Paper*. Over the next twenty years or so the works published about the history of the war became more real and I gradually came to know what I had lived through and the danger of it all, still by far the greatest

danger of my whole lifetime. The Cold War was far less threatening.

I have quite strong recollections of the impact of war on life in Sydney during the war and during the long period when its effects continued. I heard many anecdotes from lawyers who practised in those days: for some, their minds were full of it for decades. I remember some wartime scenes, which I saw with the eyes of a child and did not understand until many years passed. I remember seeing a huge ship, which I was later told was the *Queen Mary*; it seemed to fill the harbour when viewed from Circular Quay. I remember travelling on the Manly ferry and passing through the narrow submarine gate. I remember seeing Captain Collins and the crew of HMAS *Sydney*, returned from the Mediterranean, marching in Macquarie Street through a cheering crowd. This must have been 11 February 1941 when a history book says they were honoured in this way. The ship and crew, under another captain, were lost in November of that year. I remember seeing a display of captured German tanks and guns in the grounds of Government House, where the public was rarely admitted.

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At my first school at Avoca near Bowral in 1942, kindergarten training included practising evacuation from the schoolroom to a slit trench in the playground. For a few months our family lived on a farm a mile from the school. The rural roads bore much military traffic, preparing against a feared incursion by the Japanese to the port and steelworks on the coast. The farmer worked under controls which required him to supply the army with potatoes, and rabbit skins for felt hats. After a few months our family returned to the city. At my next school in Burwood there were elaborate covered trench shelters and dugouts in the playground. My father became an air raid warden, with a steel helmet and a whistle. He was trained to deal with incendiary bombs by picking them up with a long-handled wooden shovel and rake. As well as teaching high school he was required to work shifts in factories, and spent many evenings bottling tomato sauce. He was also required to work on the wharves, for which he wore a blue singlet and learned to wear a wharfie’s

hook on his shoulder. He described to me sorting out a shipload of potatoes which had been kept at sea far longer than was good for them and required to be examined one by one to reject those which had rotted. My mother who had left teaching on her marriage 10 years earlier was recalled and resumed her career, with great success.

Every window bore blackout paper and reinforcement tapes. Signs identifying suburbs and railway stations were removed to baffle any invader. Buses carried shields to direct the glare of their headlights downwards, and many buses were painted in camouflage colours. In the city signs pointed to the nearest air raid shelter. The submarine net stretched across Sydney Harbour from Bradleys Head, with a small gate for shipping through which the Manly ferry passed, as did the Japanese submarine when it arrived. Manly Beach was strewn with coils of barbed wire, and to reach the water it was necessary to follow a roundabout track through several gaps in the wire.

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Infrastructure works around Sydney suffered no war damage, but they were in a neglected state when the war began. There was energetic construction of roads and railways in the 1920s, but relatively little happened after the Harbour Bridge was completed. Defence of Sydney against invasion presented strategic nightmares; there were few roads in or out. There was no road bridge over the Hawkesbury River, and all motor traffic crossed on the ferry at Peats Ferry. The Hawkesbury River railway bridge was foundering, and trains crossed it very slowly. The bridge was guarded by elderly soldiers, ruthless and toothless. A new rail bridge and road bridge were constructed during the war and completed about the time it ended. Bells' Line of Road was reconstructed and made trafficable: for some years it was open only to military traffic. The Mount Kiera Road was constructed: until then the only descent was at Bulli Pass.

The Americans and their determined ways gave Sydney some severe shocks. They brought with them an amplitude of resources beyond what anyone here had ever seen, reinforced by determination and

directness. If they needed something they insisted, not at all politely, and they got what they insisted on. They pursued their military necessities. They felt no embarrassment at the display of their resources. When General MacArthur and the American army arrived in Sydney and established their headquarters they needed many telephones and told the Postmaster General's Department what they required. The PMG usually took several years to install a telephone, and they explained to the Americans how difficult it was to give them what they wanted. The Americans were not willing to wait, but sent their trucks around suburban streets to remove telephones from public phone boxes, and installed them in their headquarters. In some ways they behaved as if Sydney were a conquered province. If their own troops misbehaved on leave their military police were ready with firearms.

When the war began a social revolution was already under way in New South Wales. No-one gets shot or frightened in Australian revolutions, but they happen all the same. When my father attended East Maitland Boys' High School about 1915 there was no other country high school in the state system. All other high schools were in Sydney or Newcastle, and there were few. Public education was significantly improved and new high schools began to be established in the 1930s. The education standards of the general public improved, and this eventually had an impact on advocacy as jurymen developed their critical faculties. Reform of the Legislative Council in 1933, when members appointed for life were replaced by members indirectly elected, is an indication of a kind that the profound conservatism of society was breaking down, or was becoming less profound. The war greatly accelerated social change, enhanced ability and devalued social position. The war brought cruel losses of highly talented people with a strong sense of public responsibility, but it also brought the great advantage of the inflow into higher education of many people who otherwise would not have seen university, and they enhanced the community's stock of talents. The social revolution continued; indeed it has continued rapidly all my life, and its main driver has been ever-increasing prosperity. There is far more for everybody now, more opportunities and more resources, and people live at about four times the rate at which people lived in the 1940s, as I remember it.

During the war there were economic controls of such

severity that it is difficult to depict them to anyone who has not lived under such stringency. The economy was marshalled into war production, manufactures for the armed services and food for the Allied Forces in the Pacific and for Britain. Rationing of consumer goods took effect by stages early in the war. The high point arrived about 1942 when there was severe rationing of all clothing and footwear, significant foods such as milk, bread, butter and meat, and liquid fuel, particularly petrol. Many products disappeared: there were few sweets and no chocolate, and any flavour of ice-cream other than vanilla was forbidden and stayed so until 1949. There was no new crockery, and whatever old stock there was had to serve the market until the war ended: cups, saucers and plates were manufactured out of bottle glass. Everything was in short supply, and bottled beer and lemonade could only be bought on production of an empty bottle in exchange.

Those who had backyards grew as much food as they could, and there were door to door sellers of rabbits, which existed in plague numbers and were not rationed. No chicken meat could be had, unless you kept your own, which chicken thieves made difficult. Suspicious characters surreptitiously sold hams which turned out to be wombat. Rigid price controls covered practically everything that one might wish to buy. Purchase of half a pound of butter at the corner store, if they had any and they often did not, required production of a ration book and scissors to cut off the coupons. Tea was severely rationed, although the price of tea was subsidised, to encourage consumption of products of the British Empire; coffee, which came from Brazil, was practically unobtainable for much of the war. Emergency legislation regulated an astonishing number and range of aspects of the economy, cream filling in cakes was forbidden, as were pink icing, waistcoats, trouser cuffs and ladies' corsets. Racehorses could not be transported by vehicles and had to walk between racecourses, and permission from Canberra was needed to purchase an alarm clock. The lengths of broom handles and of shirt tails were prescribed. Evening dress could not be sold, and could not be dry-cleaned. A permit was needed to travel interstate, or to take a long train journey.

Rationing of petrol had severe effects on the economy overall. Milk and bread delivery men used horses and carts. Many businesses could not function, and commercial travellers used elaborate gas producers

bolted onto their cars, burning coke or charcoal to produce explosive gas which wore their engines to destruction. Cars could not be replaced. (Coke was a by-product of the coal used in production of town gas.) Many people placed their cars on blocks and left them unused for four or five years. Petrol rationing became a huge administrative task, and fraudulent dealing with petrol tickets and stealing fuel became industries. Great power was in the hands of public officers who had discretion to issue petrol ration tickets in emergencies, and rumours of corruption surrounded such people. Parliamentary candidates had an entitlement to petrol tickets so that they could campaign, and some nominated for office and forfeited their deposits to get tickets at a cheaper rate than the black market. At that time practically all petrol was imported from the Gulf of Mexico, either from the United States or Mexico, by ships which had to pass through the Panama Canal and then cross the Pacific, taking huge diversions southward to stay well away from warlike activities; with practically complete success. Fuel ships to Australia were fairly safe from submarines, whereas losses in the Atlantic were huge. Early in the war the Australian coast was beset by enemy action, first German raiders, later Japanese submarines, with severe losses. In 1944 German submarines established a base in Koepang, Timor, and did some damage to Australian shipping.

### *Suspicious characters surreptitiously sold hams which turned out to be wombat.*

The regime of rationing, price control and general economic regulation achieved some kind of overall fairness in the distribution of resources; they kept wages and needs in a balance and kept discontent within tolerable limits: mitigated by widespread evasion and dishonesty. Many people seemed to know how to buy petrol tickets on the black market. Liquor of all kinds was officially in very short supply, but many people seemed to know where sly grog, non-rationed liquor, could be purchased at a price. Taxi drivers carried a jockey, who sat in the front seat and claimed to be a paying passenger when the cab was hailed by someone with a destination to which the driver did not wish to go. Building materials were practically unobtainable by the general public. There was a housing construction boom in 1940, but in 1941 the private construction

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industry was shut down, for practical purposes completely. The needs of the war created heavy demand for services of builders and manufacturers, and if they were engaged in war production their position was quite privileged. Their workforce was exempted from conscription. Civil conscription, known as Man Power, directed labour into their employment, and they were paid in an extravagant system called 'cost plus,' in which the manufacturer was paid whatever he could convince government officers was his cost of production plus an extra 10 per cent. Manufacturers for war production led a charmed life, with assured payment and an assured workforce. As the army needed almost all manufactures, manufacturers had a highly qualified golden age, soured in various ways. Company tax reached 19s 6d in the pound, and everyone could have done without a world war, whatever they were earning.

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There was rigid control over sales of land and houses. Every sale of real property required the consent of the Commonwealth treasurer. This complicated conveyancing business beyond all measure. After contracts had been exchanged they had to be sent off to a department in Canberra called Land Sales Control which was famous among lawyers for its dilatory responses. However long they took to respond, the terms of the response were reliable; treasurer's consent would be forthcoming only if the price was the value assessed by the valuer general in 1942. 1942 was the year when invasion was feared, all the energetic people who might otherwise have been establishing rural properties or other enterprises were engaged on war service or government tasks, there was practically no market and land values reached their nadir after a long decline beginning in 1929. Few transactions actually took place in accordance with treasurer's approval; solicitors had to be careful to avoid personal involvement in illegalities in which large sums of cash passed from purchasers to vendors in addition to the contracted prices.

Retail price control was enforced with energy and

supported strongly by public opinion. Many people in the community took great joy in reporting that they had been charged seven pence, not six pence for half a pound of butter, or eleven pence, not ten pence for a glass of whisky. There were swarms of inspectors about, besetting shopkeepers and publicans with trap orders based on tips from the public in the hope, often satisfied, that they would be sold a glass of whisky for eleven pence, precipitating a prosecution. Punishments could be savage: a publican who sold a bottle of whisky, fixed price £1 1s 6d for £4 was sentenced to six months in prison: see *Ex parte Cullen* 44 SR 324. Presumably the magistrate felt the unavailability of whisky quite severely. Repeated offences against price control resulted in orders which required storekeepers to display banners outside their stores in huge letters: 'This store has been convicted of black marketing.' In my early days I met several barristers who had been elderly even during the war, and had been required to give their time to prosecuting such cases, a complicated matter if one required hotel accommodation in some country town while performing this duty.

It was compulsory to answer an inspector's questions and averment of facts in the information was *prima facie* evidence. The orders which fixed prices were sometimes expressed in complex or obscure ways and required the trader to ascertain further facts and make debatable calculations, and it was not really possible to comply: see Jordan CJ on the retail price of bananas in *Ex parte Ryan* 46 SR 152. Many of the reported cases in the *State Reports* of 1944 to 1947 seem to be about trifling breaches; and many more in the *Weekly Notes*. Price control could be ridiculously heavy-handed: in April 1946, when the war was well and truly over, a 1939 Buick could bring £900 but the seller was prosecuted for selling one for more than the fixed price of £434: *Ex parte Rowston* 46 SR 414. The report is indexed under national security as are all price-control cases, a classification which may have been outside the range of George Orwell's imagination.

As the war went on the volume of civil litigation declined, but the war generated much legal business. There was a proliferation of quasi-judicial boards and enquiries, and much business dealing with the enforcement of National Security Regulations and economic controls, conscription and direction of labour and the treatment of refugees and aliens. Prosecutions abounded. The

regulations and orders made under them were often drafted by unskilled people, and lawyers who could bring knowledge and ability to bear often exposed their weaknesses. Repeatedly decisions of Jordan C J nullified what unskilled draughtsmen had sought to establish. The chief justice seems to have enjoyed exposing ridiculous elements of what came before him. The attack was frequently made by Barwick KC, and the Commonwealth was frequently represented by David Maughan KC and McKillop, around whom Barwick could have run several rings before breakfast, even if he had not had Jordan CJ on the bench. So I was told by Frank Hutley, but I have not seen this particular array of counsel in any of the reported cases.

The war called into existence a huge new administrative machine. Wartime economic controls created a great deal of clerical business, forms to fill in, check and forward to someone elsewhere, far from the applicant, for a decision divorced from close knowledge. After a stagnant decade of widespread unemployment there came to be jobs for all. Many people had to live in poor accommodation, and work in places where they did not want to be in jobs they did not want to do and were not very good at. Some people of very high ability emerged. Rae Else-Mitchell became the secretary of the Commonwealth Rationing Commission at the age of 30. Many people were thrown into positions for which they had only minimal skills, ability or disposition. The War drew into public employment many people with no experience of government, little experience of responsibility, unpleasant attitudes and a persecutory outlook. Administration was characterised by adherence to routine and procedure and conformity with instructions, without imagination or flexibility, by people on whom no discretion was conferred. Interaction between bureaucracy and the public was usually unfortunate. Most clerks at the interface maintained a terse, gruff and unhelpful attitude, underlying which was the reality that there was very little that they could do. Applicants were treated as if they were trying to work the system, and successful applicants were treated as if they had done so.

As the war in Europe ended, the presence in Sydney of British forces, especially the Royal Navy, became evident. There was a huge build-up of Sydney as a naval base for a campaign of reconquest of British territory. British sailors were everywhere. In Burwood,

our neighbour, in a grand house with a tennis court, entertained British officers each weekend for tea and tennis. They must have brought their own tea. It was a Home Counties scene. When many years later I read of Joan Hunter-Dunn in John Betjeman's poem I recognised the daughter of the house, who eventually married one of the English officers. He became Australia's most prominent scientist, head of the CSIRO and fellow of the Royal Society, studying stars at Parkes. The war ended a year or so sooner than the British Navy had expected, and they went off to re-establish the empire, with limited success.

One aspect of the economy which remained regulated for a very long time, long after any relation with the war had evaporated, was control over rents and lettings of business premises and houses. Controls over lettings of business premises ended little by little by 1960 or thereabouts; controls over rents and lettings of dwellings continued long after, and were a staple of litigation in my early bar practice, which commenced in 1966. Increases in rents were limited to proven increases in rates and outgoings. Eviction of a tenant was available only on proof of one of a number of stated grounds, which were difficult to prove and easy for a magistrate so minded to assert had not been proved. The landlord had to prove that suitable alternative accommodation was available: suitability was always debatable.

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An occupant was further protected by the need for the landlord to pass through several discretionary barriers before succeeding. Sir Charles Bickerton Blackburn, a knight of the realm and chancellor of the University of Sydney, who had occupied a luxury Eastern Suburbs flat for over twenty years at 1938 rent with no more than increases in municipal rates, resisted eviction on the ground of hardship – it would be difficult to find a suitable alternative home in which to display his collection of antique furniture – and he got a patient hearing.

A greater protection for occupants than any other was the high technicality of the process at every stage – fine

points of the drafting of notices to quit were debated in detail, and often with effect, and any point would do to dismiss a landlord's summons. Murder convictions were easier to obtain than eviction orders.

Federal legislation created a statutory right of preference in employment to ex-servicemen, and this accorded with a strong general opinion in society that great assistance should be given to ex-servicemen and great forbearance extended to any shortcomings they had. In the NSW Public Service and in the legal world there were many men who had obviously been impaired by their war service. Even 15 years after the war ended people could be noticed in the public service who seemed to suffer shock and bewilderment, to have lost all force of personality. Little was expected of them and they were left to do whatever they did in unimportant jobs and small niches of the service. Some were obvious alcoholics, of whom no work was to be expected after noon. There was remarkable tolerance of alcoholism in the workplace, and this faded rapidly after about 1975. There were significant numbers of men in the workforce who bore obvious signs of war injuries. It was commonplace to see men at work who had severe permanent injuries, limbs shot off, lost eyes, limbs and scars, driving lifts, collecting entrance money at swimming baths, operating switch boxes above tramlines and so forth; and in more responsible positions as well. There were people in the legal world who had been prisoners of war, and those who had been captured in Malaya stood out for their impaired general health. Many were plainly fading away in a process which took twenty or thirty years or so, although there were a few who surmounted this. Reverential awe attended dealings with these men. David Lewis practised at the bar with success and later served as a judge of the District Court although disabled by the loss of a hand and part of his arm. He took all as of course, and his disability had no observable impact on his work or attitude to life. He had several pieces of equipment in his chambers which eased the impact. His telephone handset was held permanently where he could put his ear and he opened the line by pushing a button. The ease with which he treated this disability as normal and overcame it enhanced my horror at it.

The war and earlier economic disasters left a heavy impact on life. Most ordinary equipment of daily life such as railway carriages and tram cars was aged

and ramshackle, usually left over from the 1920s. Bunnerong Power Station was decrepit and unreliable. There were continual breakdowns and interruptions to electricity supply. Town gas supply was also unreliable. There were many strikes, in the coal mines, on the wharves, in the railways and electricity supply. The economy depended on coal, there were no reserves and a miners' strike soon came close to closing down the economy.

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Public buildings and government offices were decrepit, long unpainted, and subdivided with wooden panelling, inconvenient workplaces, unsafe and combustible. Hyde Park Barracks contained many court rooms and judges' chambers, discernibly subdivided out of convict barracks. The barracks had a flanking of court rooms and offices made of timber planks, erected during the First World War or earlier, draughty creaking relics, undignified, uncomfortable, inconvenient and unsafe. Some court rooms were made of fibro cement sheeting. There was no warmth in winter and no cooling in summer. A palm tree at the front of the building inspired irreverent remarks about the justice dispensed inside. For more than 10 years after 1945 only one public building was erected in Sydney. The Maritime Services Building on the western side of Circular Quay was built about 1948 in the Stalinist style, an indication of a kind of the direction in which most people felt that Australian society was heading. Only about 1955 did construction of another office building in the City of Sydney take place; the Qantas building in Hunter Street, facing along Elizabeth Street at the intersection. Slowly at first, then in a huge rush, new construction began, and many new office buildings were erected after 1960. Regrets are now expressed at the demolitions, but I am able to say, having worked in one or two of them, that there was little lost when the older government offices were demolished. I go on to say that there was little gained with the new buildings of which the present Supreme Court building is a prime example.

The telephone system was primitive. If you had a



Opening of Law Term service at St James Church, 1948. Photo: Gordon Short / Fairfaxphotos

telephone you could only dial a number yourself for Sydney suburbs – Avalon and Palm Beach were trunk calls. To call a country town or interstate you had to speak to the exchange and book your call. The exchange would take half an hour or so to connect and ring you back when they had done so. You had to tarry by the telephone for that half hour, and the telephone charges were high.

When I came to the bar in 1966, the Bar Common Room and lunch in the Common Room were very strong institutions, very useful for maintaining good personal relationships among barristers, a good point of contact for doing business, a good place to avoid if you had something to be ashamed of. It was a good place for the elderly to reminisce and instruct: to pass on knowledge and legends from the depths of leather armchairs, and to reinforce continuity and institutional memory. In my early years an elderly barrister who had grown up in the world of graziers and farmers at Gunnedah told me: 'When we came back from the war our attitude to everybody changed. We would not bow to the matrons.' I had no idea what this could mean, and when I said so he told me that before the war when young gentlemen who wanted to be thought respectable arrived at the Gunnedah Races they would present themselves in front of the Members' Stand, raise their hats and bow to the matrons, who occupied the front row of the Members' Stand dressed in finery, the mothers and wives of the most prominent in the Race Club, graziers, farmers and committee men. No

doubt they commented to each other on the behaviour and prospects of the young men and noted absences. He said 'When we came back from the war we knew we didn't have to do that any more.' It seems to me that attitudes like this were widespread among those who had fought in the war, gone overseas and risked their lives in the defence of Australia. They had a much better claim to respect and social prominence than almost anybody else.

Success at the bar comes most readily to those with a strong constitution, a clear mind, a firm honest character and an unremitting work habit. There seemed to be many who had these attributes, although there were a few walking wounded. It seemed to me that those at the bar who had served in the war were imbued with high confidence by their wartime experiences. They had seen and participated in conflict and danger, they had seen many people including some of the best people they knew perish, had seen death and grave wounds strike at random, and they had survived. The experience of being a survivor confirmed their confidence in themselves permanently. They had little more to fear from anything, and they behaved accordingly. This affected courtroom demeanour. This was not true for everybody, but it was true for many, and their abilities were released by it.

Most successful barristers seemed to fall within a number of broad groups. There were patrician gentlemen of polished manners and profound learning, often with independent means. There were clearheaded and determined modern men with a strong address to the business in hand. There were happy-go-lucky hail-fellow-well-met chappies who sought to convey to the jury that their opponent's case was a joke of scarcely believable effrontery. There were pub ruffians who sought to enlist the jury in their paranoia against their clients' opponents. There were also a few wealthy idlers for whom the bar was a convenient platform for lives of dignified leisure. One gentleman used his bar chambers as the business office from which he managed an extensive trust estate of city properties in the interests of his many relatives. The bar was not so large as to prevent everybody from knowing everybody else and knowing what sort of behaviour could be expected or feared of each colleague. Part of the background in which everybody acted and spoke to everybody else was knowledge of what everybody had done in the

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war. I heard no boasting and no rebukes, but there was a general awareness of whether or not so-and-so had 'heard the bugle.'

The transformations of prosperity could not be understood by someone who had not lived through them. In my school days few people we knew had motor cars or refrigerators. The telephone was down at the Post Office. Nothing was disposable. Every empty container was hoarded. Burwood was a prosperous suburb, but no-one had anything to spare. Radio sets cost several weeks' pay, and no household had more than one. There was no such thing as a restaurant: there were two or three in the city. Many women made most of their families' clothes, with paper patterns and knitting needles. Much shoe repair was done at home, not very well. In the lower ranks of the public service, where my working life began, clerks wore shirts made by their wives, and some wore their old army boots. No-one bought sandwiches, which came from home in a paper bag. The workers of today as they go to the city on the trains seem to me like a fairy tale by the old standards, dressed like princes not paupers. They carry electronic toys and telephones, and buy coffee in containers which they soon throw away. Sixty years of growing prosperity, with a few slight set-backs, have transformed everyday life beyond any old reformer's dreams. Vast rivers of revenue flow to Canberra out of fountains of wealth, highly efficient collection and a high degree of compliance. The most pressing political problem is to devise ways of spending it all, and the available talents are equal to this.

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As I passed through my schooling I imbibed an understanding, never explicitly taught to me, that Australia was proceeding along a gentle but inevitable evolution into a socialist society. I was never directly taught that this would and should happen; it was simply in the air as the general state of opinion. I encountered no passionate commitment by anyone towards attaining this outcome, and obviously there were many for whom this was not in the air. The shape

of the future was described in novels and writings of which my high school teachers told me, without any overt advocacy. *Looking Backward* by Edward Bellamy is the one that I recall, although I never troubled to read it. The expected outcome was spoken of, in a phrase common at the time but now attributed to Chifley as if he had coined it, as 'The Light on the Hill'.

As I made my way at work and university through the fifties the real state of the world presented itself to me. My scene moved from education and the public service to legal practice. In the first world, minds were drifting towards a vague, distant, splendid future, illuminated at a height. In the second, minds were engrossed with the pursuit of present rights and interests in the context of everyday realities. My world changed and I changed in it. I studied the law, lived and worked, and I saw how life actually goes. Things were not going to develop that way, human motivations are different and the pursuit of advantage brings out more resources for everyone than planning and public service methods. Pursuit of one's own interests produces satisfaction of the needs of others. Observing and working with the bar was a great part of my change in outlook. Hard-working realists dispelled vague ideas about the future and firmed up my grasp of the present. Plainly most of the population now thinks the same way, although they usually do not talk that way. Indeed the conviction that one has radical opinions on the verge of being dangerous is widespread in Australia, among the wealthy as well as among the poverty-stricken, and judged by conduct and outcomes is usually delusional.

The barristers of my golden age lived through the war, saw the succeeding adversities of severe economic conditions, government controls and threats to civil peace and order. They saw these adversities pass with relatively little trouble and be succeeded by decades of unprecedented prosperity, more people, more resources, better access to justice and a strong propensity of governments to refer ever more conflicts and disputes to judicial forms of resolution. There were wide extensions of judicial review, new courts and tribunals and new things for a much larger legal profession to do. They confidently rode the crest of all this, and their confidence proved to be justified.



## Farewell to the Hon Justice Clifford Einstein

The Hon Justice Clifford Einstein retired from the Supreme Court on 3 May 2012, after nearly 15 years service as a judge.

Justice Einstein came to Australia with his family from South Africa in 1963. He won a Commonwealth scholarship to the University of Sydney, where he undertook a combined arts and law degree. After working as a solicitor at Minter Simpson (now Minter Ellison) he came to the bar in 1973. In 1974 he joined the 10th Floor of Wentworth Chambers, which in due course merged with 10th Floor Selborne. He took silk in 1987.

While still at the bar Einstein J was involved in many well known cases, particularly in the area of equity and trusts. In a number of these cases he was led by Daniel Horton QC, including *Hospital Products Limited v United States Surgical Corporation & Ors* (1984) 156 CLR 41, *United Dominions Corporation Limited v Brian Pty Ltd* (1985) 157 CLR 1, *Timber Engineering Co Pty Limited v Anderson* [1980] 2 NSWLR 488 and *Catt v Marac Australia Limited* (1986) 9 NSWLR 639

Einstein J was appointed to the Supreme Court on 1 September 1997. He sat in the Commercial List of the Equity Division. During his fifteen year tenure he heard innumerable cases. A few may be singled out for mention.

The *Idoport* litigation was the longest over which Einstein J presided. The main proceedings commenced on 24 July 2000. Ultimately the defendants succeeded after the proceedings had continued for a number of years. His Honour's decision on the issue of security for costs, *Idoport Pty Limited v National Australia Bank Limited* [2001] NSWSC 744, is still regularly cited, including at appellate level.

Another lengthy and significant case was *Baulderstone Hornibrook Engineering Pty Limited v Gordian Runoff Limited*, known as the *Third Runway* case. The matter went to the Court of Appeal where Einstein J's decision was upheld.

Anyone who appeared before Einstein J could not help but notice, and appreciate, his invariable courtesy, patience and calm. There was never a cross word. Even at his swearing in as a judge his 'calm and unflappable disposition' was remarked upon by the then president of the Bar Association, David Bennett QC – a comment which proved prescient over the next fifteen years.

The following is a speech given by the Hon Justice Bergin CJ in Eq at a ceremony on Thursday, 3 May 2012 to mark Einstein J's retirement.

The staunch maintenance of judicial independence while performing duties as part of a high-powered team is not a given.

But you have made it look that way.

You have been a pivotal part of the development of the Commercial List of this Court so that it now has not only a national but also international reputation as the court of choice in this region for the determination of complex commercial litigation.

We are extremely lucky to have enjoyed so many years of your company and lovely personality. Idiosyncratic at times and conforming at others. An example of your idiosyncratic nature was when you piloted a scheme for increasing the productivity of the commercial judges of the court. You entered Court A and pressed a button on a tape recorder that played your voice delivering a reserved judgment while you adjourned to Court B to

commence the next case. We were most grateful that this practice did not take hold.

An example of your conforming side was your insistence on the equitable application of the rules to the frivolity of the egg and spoon race at the Equity judges' annual picnic – we look forward to your continued umpiring at this annual event (the next picnic being on Sunday 17 June 2012 at an exotic location, this time on the north shore).

Your compassion and concern for others has been to our enormous benefit. This combined with your extraordinary work ethic saw you presenting to the chief judge, the list judge, the duty judge the Common Law List judge to see if you could assist with the work load of the court or to relieve others who needed respite. You have always been up to date. You have seen it as your duty to deliver judgments expeditiously.