

## Lawyers and politics

Bret Walker SC delivered the 2016 Hal Wootten lecture on 'Lawyers and Politics' at UNSW Law on 4 August. The Hal Wootten Lecture is the highlight of the Faculty's year and commemorates Hal Wootten's founding vision for the UNSW Law School.

I am privileged to have been asked to speak this evening. Actually, we are all privileged (in a different sense) to be gathered together for an address on a topic involving politics: as I speak, many lawyers in Turkey and prominent lawyers in China are in dire straits because of their actual, presumed or alleged involvement as lawyers in politics. Australian lawyers need not acknowledge other customs and cultures by setting out to lower our own ideal standards of political participation. We could perhaps reflect more frequently on how high those standards really are by comparison with many other jurisdictions (or countries, as real people call them). That slightly globalized view might even moderate the Australian habit, by no means itself wholly bad, of exaggerating how terrible things are here, how we'll all be rooned, etc.

Unfortunately, this occasion is not privileged (in yet another sense). Not all my thoughts have been rosy or kind as I have reflected on my own experiences as a lawyer in politics. And so, because federal subsidies of universities unaccountably have omitted to fund indemnities in favour of those who deliver defamatory invited speeches, the miscellany of observations I am about to make is not quite so complete or rhetorically frank as it might have been. I feel no duty to add civil defendant to my CV, if I can help it.

Conflicting myths have long driven the profession's, and its critics', stances about lawyers and politics. They are equally pointed in their stock caricatures of elected politicians and appointed judges, which I think are far too often framed in stark opposition, whether favouring one or the other. The disdain sometimes affected and other times, I am sorry to say, genuine, of some judges (and their admirers) for the popular or populist character of elected representatives of the people has produced an amusing fallacy.

Those showing such disdain too often cast the judges as appointments reflecting professional merit, by contrast it is obliquely implied, with the hit-or-miss by which the electors choose members of parliament. How odd, then, that these merit selections for the bench are made by ministers thrown up by the electoral process. Beware disdain for the caste whose decisions to select judges are desirably aimed at merit selection. Its members may well react by living down to over-generalized pessimistic expectations. I will return to the matter of judicial appointments.

As to lawyer-politicians, little need be added by way of my comment to what the public record shows. Historically, David Marr on Barwick and Ian Hancock on Tom Hughes lead me, and I hope others, regardless of voting preferences, to be glad as

citizens that some lawyers attempt to contend in the front rank of politics, that is by standing for public offices as legislators or ministers. I believe New South Wales is fortunate to have a very good silk in the present state Cabinet.

Let others deplore too many lawyers in parliament: for my part, I do not estimate that this country has ever had quite enough skilled and experienced practitioners in that office. The formation of the early American republic, and its pale imitation about a century later in this country, was not merely accidentally a labour of considerable lawyers, some with more history of practice than others. It would be a great pity if the current generation of lawyers in this country lost any sense of professional connexion and social attachment to the examples of Alfred Deakin, H B Higgins, Isaac Isaacs, Samuel Griffith and Edmund Barton – or indeed of James Madison, John Jay, John Marshall, Alexander Hamilton, John Adams and latterly Abraham Lincoln.

Of course, the lamb does not lie down with the lion, or not without soon being set down for dinner. There are observable if not inevitable characteristics of lawyers and politicians, and of law and politics, that do provide warnings to lawyers minded to engage in politics in what they may regard as a properly lawyerly way. The parliamentary chambers have their own decorum, even if it be that of the bearpit. The arguments, to use a polite term, usual in politics are more robust, less testable and certainly much less controlled than is appropriate in lawyers' professional dealings, whether in contentious or non-contentious business. Lawyers might mislead themselves if they were to think they might not be lambs when stepping up to the conflicts of politics.

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This warning is balanced by two important habits of thought that may lend confidence to the legal profession in relation to its members venturing into the political arena. (Not that the profession should be encouraged to preen – among its many splendid achievements, is its unsurpassed talent for self-congratulation.)

The first is the definitive way we claim to mark off the territory that lawyers should not be required to contest or adjudicate, as lawyers. It still goes by the label 'political questions' in US

Bret Walker SC, 'Lawyers and politics: the 2016 Hal Wootten Lecture'

Constitutional practice. It stems from the prescient cunning of the late 18th century Jay Supreme Court. These were no political know-nothings, those early US judges: they were congressmen, ministers, ambassadors from time to time, and intriguers in between. In this tradition, the courts continue – rightly in my view – to disclaim institutional competence to adjudicate matters of raw policy or realpolitik, such as foreign relations. This seeming modesty is essential, I think, to the cogency of lawyers' insistence that the discipline and doctrines we espouse are essentially non-partisan. I turn later to the expediency, in a social sense, of this cardinal value of disinterestedness.

At this point, we can see that one effect, or maybe purpose, of lawyers' ceding obviously partisan contests to elected politicians and unprofessional pundits is that lawyers and courts thereby get clearer water to decide, as lawyers, intensely political issues. From my practice, I would instance successful challenges to special laws for organised criminals, regulation of political donations and the executive funding of religion in schools. It helps, I think, for those Constitutional cases to have been argued and decided in an atmosphere devoid of party political labels or populist attachments. I do not recall any public discussion in relation to the *Totani*, *Unions NSW* or *Williams* litigation fastening on the supposed voting preferences or ideological bents of the judges or counsel. Nor, I hasten to say, would such information, even if accurate, have been at all predictive of our actual conduct in arguing or deciding those cases.

The second factor that may help to overcome lawyers' natural diffidence to put themselves forward is (seriously now) displayed in a few High Court utterances that I found and find quite inspiring. They are calm and clear statements of a principled approach to social conflict, especially about the power of the state and the rights and dignity of individuals in face of it. I appreciate that these dicta describe decision-making at the apex of our judicature, in the High Court. But all of us participating in the administration of justice should feel imbued with the same ideal that these judges have advanced.

In *Fardon* (in 2004), Gleeson CJ disposed of an argument against the judiciary deciding whether certain criminals should be detained after serving their sentences by noting, with typically effective understatement, the professional commitment to independence and impartiality that would more likely enhance than detract from the respect that such fraught decisions desirably attract. The real test of that respectability is whether respect is felt by those who nonetheless disagree with the particular outcome of a case.

The fact of, and eloquent argument in, the dissent of Hayne J in *Thomas v Mowbray* (in 2007), a later decision on a related

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question concerning counter-terrorist control orders, caused me real pause in my consideration of such laws in my role as the first independent national security legislation monitor. His Honour's excoriation, politely it goes without saying, of vague standards with inherently contestable social content is an example of the first habit of thought I have described, in action.

Interestingly if mysteriously, these opposite judicial conclusions about the suitability of courts to address these latter day political questions turn on reasoning – clear, firm and contrary – that conveys, I think, the important message that society is well served by judges taking pains to justify their acceptance or rejection of the various poisoned chalices that governments of all colours seek to press on them.

*Thomas v Mowbray*, as it happens, contains one of the most felicitous and evocative phrases, for me, in the CLR's. It is not witty or dismissive. It does not propound any axiom. Rather, Gummow and Crennan JJ wrote of the plan laid out in the Constitution for the development of a free and confident society. They proceeded to measure the validity of control orders against that value. Their words, calm and clear, are statements by consummate lawyers, if I may say so, of a profoundly political position. Political but, because articulated in legal reasoning, decidedly not party aligned, partisan or a passing fashion. And note the word 'development', meaning this is not a state of affairs where we are trapped in the amber of Constitutional pre-history: the freedom involves escaping the tyranny of the generation of Constitutional founders and looks forward to appropriately gradual change and altered appreciation of the content of the perennial value.

My last High Court anthology piece is the somewhat disparate reasons severally by Gleeson CJ, Gummow J and Kirby J in *Al-Kateb* (in 2004), dissenting against the validity of the detention of unauthorized migrants indefinitely and potentially forever. I think these reasons are compelling, but the law of numbers, counting to four out of seven, says I must be wrong. Black letter technique dominates all three judgements – so much the better. But they all essentially use the premise that disturbingly harsh laws require commensurately plain enactment. This is a bias in the best and political sense against statutory infringements of personal liberty. I respectfully suggest that Gleeson CJ's

**Bret Walker SC**, 'Lawyers and politics: the 2016 Hal Wootten Lecture'

exposition of that principle of legality, in *Al-Kateb*, is currently the most important dissent in the CLR. I have several times lectured on this case for a UN programme to aid the reconstruction of Iraqi civil society to an audience of Iraqi government lawyers. Their disappointment when I finished by revealing how the other four judgements decided that case, that I had used to explain to them our concept of the rule of law, was instructive if lowering for an Australian lawyer. It was also of no comfort whatever to the unfortunate appellant.

My last commendation of a member of the High Court in relation to lawyers and politics is to urge students, at least, to study Murray Gleeson's Boyer Lectures. Their analysis, synthesis and defence with respect to the administration of justice are unmissable. They are all the more profoundly political for being, stylistically, models of disinterested exposition.

Speaking of disinterestedness, as I said I would, I confess a weakness born of my father's relish for 18th century English. It left me believing I understood the endangered distinction (and great difference) between 'disinterested' and 'uninterested'. I soon learned, from 1992 onwards when first drafting the Barristers' Rules, adjusting them and then promoting their eventual national adoption, that the word 'disinterested' could leave some readers and listeners affronted by a proposal to require lawyers to be bored, unconcerned or lazy. I tried to explain by a tag to the effect that we all want disinterested lawyers but none of us wants uninterested lawyers.

My linguistic out-of-touchness aside, that project with The New South Wales Bar Association, the Australian Bar Association and the Law Council of Australia showed me the seriously political quality of professional governance including of, for and by lawyers. Rejection of the guild approach, that had been easily if sometimes unfairly called a conspiracy against the public, proceeded rapidly to near completion by the end of last century. (I know I have just made an arguable political comment.) In that political arena, I felt the pressing influence of a sceptical Graeme Samuel at the National Competition Council and the dogged Professor Fels and his colleagues at the Trade Practices Commission and Australian Competition and Consumer Commission. We were engaged in overt policy work, and so much the better.

Lawyers may dislike but cannot avoid taking part in the political dealings with governments at the elected and bureaucratic levels concerning the rights, privileges and obligations of our profession. Its accountability, institutionally, by discipline and ethically, is from beginning to end a truly political exercise. The very unpleasant episode Ruth McColl and I had as presidents of the bar in relation to tax-evading colleagues was obviously

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A measure of self-governance might be a good thing for all professions and a wide range of specialized or skilled occupations. But the spirit of the times is stridently against self-regulation, and I see no prospect of unwinding the imposed external policing of standards to guard the public. Anyhow, I do not think external public interest regulation has harmed the quality of the legal profession.

On the other hand, the political science, so to speak, of legal profession governance does involve an aspect not present, say, for doctors or electricians. Lawyers are in a real sense part of the process of government. The title 'officers of court' and the traditions of the bar in its relations with the judiciary are reminders that lawyers are not users of the legal system; we are an integral part of it and indispensable to its operation. Judges are not the only ministers of justice: litigators and counsel are not unnecessary occasional visitors to the process, as for example one may view lobbyists in relation to the legislative arm of government.

The hallmark of the judicial arm of government is impartiality of decision including independence from executive dictation. These are, by historical consensus, at the heart of the rule of law. As actors in that process, it is therefore desirable that lawyers maintain their own independence. A measure of self-governance, albeit mixed as it is at present, is a good thing for the profession which is called on to assist in holding the executive government to account in legal proceedings.

The independence of lawyers is by no means a licence to practise free of restraint or rules. The politics of the legal profession that I have taken part in threw up some suggestive clashes over ethics. I think and hope the suggestion is of something we might call progress. About 25 years ago, I thought commonsense

**Bret Walker SC**, 'Lawyers and politics: the 2016 Hal Wootten Lecture'

decency supported a Bar rule that extended the duty not to mislead a court to a duty not to mislead anyone by expressions of purported opinions. This was the radical notion that if I signed a document headed 'Opinion' or 'Advice' it had better be just that. To my chagrin, there was vigorous if brief dissent requiring a close vote in the Bar Council to overcome it. The opposing argument included a perceived need to permit the kind of benefit some clients undoubtedly liked to obtain, of so-called opinions that were made to measure, that were for sale and that suited. If there is one vital lesson that lawyers should take from the different culture of electoral politics, it is that speaking falsely or with forked tongue would betray the learned independence that is our defining contribution to the administration of justice and thus to government.

Some of us are given opportunities to contribute in more focussed and explicit ways to government and policy formation. I have been asked to help on topics really quite apart from the run of legal practice, such as a better ferry service for Sydney, improved safety in hospitals, post-mortem practices and use of human tissue, probity requirements for gambling establishments and the administration of landholdings within national parks.

Colleagues have between them undertaken a wider range of reports for government by commissions of inquiry, royal commissions and the like. I will return to the possibility that the detachment that is part of lawyers' disinterestedness, as well as our supposed and related skills in fact finding and the giving of reasons for decisions, provide a continuing justification for society to call on lawyers to engage in this form of political action.

At the risk of revealing for instance a cramped legalism or other personal defect in the way I carried out my functions, let me briefly recall some aspects of the approach I took when from 2011–2014 I was the independent national security legislation monitor (INSLM). Please do not hear these comments as self-praise, but forgive my subjectivity. The role requires reporting through the prime minister to the houses of parliament on the efficacy, appropriateness and necessity of Australia's counter-terrorism laws. I think such a task is unique.

The legislation creating the role expressly provided for the monitor to assess whether the laws and their implementation were in accordance with Australia's international obligations, which calls up public international law for the constant attention of the monitor. The matter of a law's efficacy, appropriateness and necessity is preternaturally political. Not even a Constitutional lawyer can pretend that our Chapter III tools of trade can render reports of the INSLM a form of

lawyering as such. Rather, and I believe from my understanding of the genesis and evolution of the idea for the office, the role ideally takes the skills and inclinations of a lawyer, jumps him or her out of the legal track (or rut) and inserts the monitor into the balances of legality, expediency and logistics, that is all the political trade-offs, which are themselves at the heart of parliamentary and cabinet deliberations.

For a start, I pity any non-lawyer trying to read let alone schematically understand Australia's counter-terrorism laws. I have often described them as sophisticated and prolix to the point of showing legislation to be Australia's favourite national pastime. The international law includes the UN Charter, the ICCPR and a cascade of Security Council resolutions in the aftermath of 9/11. The foreign relations setting includes wars in Afghanistan, Iraq and bordering zones of malignancy. I do not believe that this political task could be well performed by a person who had to pretend to be a lawyer, who became a self-taught lawyer, who had never practised law or who subcontracted the lawyering to someone not appointed to the office of monitor. For this and other manifest reasons, I applaud the willingness of Roger Gyles to add this office to his formidable record of public service.

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The more I stress the political character of the INSLM, the more important become the attributes and safeguards wisely enacted in its constating statute. There is, for the three-year term of appointment, the equivalent of Act of Settlement security of tenure as for judges. There are powers to compel evidence and information as ample as a royal commission, with the extension of that reach to restricted material by reason of security clearance. There is the protection of privilege at all stages of hearing and reporting.

The tenure in particular is necessary for the requisite independence of the monitor who may report that counter-terrorism laws are not what their parliamentary promoters boasted. Laws that are bereft of any empirical foundation to predict their capacity to prevent any atrocity, laws that go beyond

Bret Walker SC, 'Lawyers and politics: the 2016 Hal Wootten Lecture'

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Constitutional or treaty restrictions, laws that only complicate or multiply the undergrowth of criminal offences where murder is the cardinal target. I am so sure of this critical independence for the INSLM that one of my last recommendations was to remove the present provision permitting one renewal of a term of office. The likely distance not to say frostiness that an adverse report on a government's counter-terrorism laws would engender makes it most problematic for the monitor to have any prospect let alone hope of being re-appointed, especially if he or she wanted to be. I therefore suggested extending the three-year maximum somewhat, while also recognizing that move may rather cruel the market of practitioners willing to take on the job.

The express intention of the INSLM statute is for the monitor's reports to assist the government and the houses of parliament in their respective considerations of Australia's legislative efforts to counter terrorism. Thus I chose to make recommendations for the repeal, amendment or enactment of legislation for various reasons. Some of those recommendations have been acted on, although none promptly so. Some of the implied acceptance of my reasoning by acting in accordance with a recommendation has been acknowledged by government, but not by any means always. This is not a matter of grave complaint, more a grumble. In any event it is no bad thing for a lawyer to be spared deference in such dealings. These are, after all, political matters where a lawyer is trying to help, not matters of state being decided by a lawyer, thank goodness.

The elephant in the room in considering counter-terrorism is the fading hegemony of the United States of America, on several fronts. The hasty enactment of their first legislative response to 9/11 managed to include a special effort to achieve the fatuous titling of the statute in order to produce the initialised acronym USA PATRIOT. A sour element that would confuse criminal law with the laws of war, and that would compromise the defence of liberty by detractions from it, has continued to dominate a political arena in which American example displays a decidedly mixed quality.

As my esteemed counter-terrorism colleague, this school's Professor George Williams, can corroborate, scholarship and advocacy, principle and policy, in the Australian debate about, and practice of, counter-terrorism through legislation has heavy echoes of the contending camps in the USA. One spectacular

clash of those camps arose because of the use of torture, actual, alleged or mooted. By and large, to my observation, the military lawyers in the US stoutly resisted weakening the standards in question. No doubt their concern for consistency with international law governing the conduct of war and warlike activities informed their approach.

On the other side, scandalously illustrated by so-called opinions written for the [Bush] Administration by John Yoo and Jay Bybee, some lawyers sought to justify outrageous practices said to enhance, as the disgusting parlance has it, the interrogation of terrorist suspects. The opinions were not in themselves of sufficient legal calibre to deserve the dignity of professional critique, but their political resonance was loud and dangerous.

It was a credit to lawyers in the USA, the UK and this country that serious and eloquent demolitions were made of these infamous memos. I am not the only lawyer with experience in counter-terrorism to regret that efforts to discipline the authors for professional shortcomings did not proceed under the Obama Administration.

The nature of my practice before I became the monitor had involved only fleeting and narrow recourse to international law. I probably read in the area more for interest than for work. As George Williams knows, all that changed when the Security Council began issuing Chapter VII resolutions under the UN Charter compelling Australia and the other members of the United Nations to have and to enforce effective counter-terrorist régimes. Those of us in the field simply had to catch up with our colleagues in the rarified world of public international law.

Personally, this was not quite as splendid as pushing through the wardrobe into Narnia, but there was a similar feeling of strange familiarity and familiar strangeness. I soon found that there was long trench warfare in the USA between proponents of international order and security through law and sceptics who saw nothing more compelling than armed force. Lawyers past and present in the American academy and in American government have shown themselves for nearly a century to be the heavy hitters in this intellectual stoush, on both sides.

In essence, I think this is a question we Australian lawyers should also care about. It does not matter that for most of us and for most of the time our clients, our cases or our problems

Bret Walker SC, 'Lawyers and politics: the 2016 Hal Wootten Lecture'

at work will not involve any concern with international law. What I hope will matter for the profession is an abiding engagement in favour of the rule of law, and the inclusion of international law as part of that tremendous value. It simply will not do to emulate the faux tough-guy pose that sneers at the term 'international law' as a manifest oxymoron. The obvious, indeed elementary, fact that international law is deficient in its enforcement is a challenge for it and the peoples who benefit from it, rather than a refutation of its reality.

I am reminded of an interesting discussion with an official of the Chinese legal bureaucracy when I visited Beijing as president of the Law Council. We were told of ongoing efforts to improve the quality and discipline of the subordinate courts below the supreme organs that sit in the administrative centre of that vast city, itself just one in a vast country. The efforts were described by one official as demonstrably less effective literally the further one went as a matter of distance, even within Beijing itself, from the seat of the supreme organs of justice. (I wonder whether such frankness, especially with Western foreigners, would now be regarded as a criminal offence – quite seriously, in light of the news this morning about colleagues in China in terrible trouble.) The point of my recollection is that it would not be true or sensible to say that those laws in China did not exist because their enforcement was scarcely effective. That situation called for more strenuous effort and professional commitment.

Why not the same for the more worthy project of international law including its concern with the prohibition of aggressive war, punishment of war crimes and crimes against humanity, the protection of human rights, the promotion of social and economic rights and the principled resolution of such wicked problems as irregular migration of people trying to save or better themselves and their families?

Reflection on the mixed signals about lawyers and politics coming to us across the Pacific must also mention a significant difference about which it is hard not to sound smug. The routine party-political labelling of lawyers, especially when judicial appointment is mooted and always after they become important judges, in the US is not something I would like ever to see in this country. I am glad to say that it strikes me as strange, as an Australian advocate bound within reason to accept briefs regardless of my personal views, for such fuss and wonder as there was about Messrs Boies and Olson appearing together in the equality of marriage case. It was thought a marvel for them to work together as advocates in the Supreme Court, after they had opposed each other in *Bush v Gore*. I would like to think that forensic dream teams in this country would never be regarded as remarkable because their members

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had previously appeared against each, let alone were known to have different political or ideological allegiances.

I appreciate that a view can be seriously advanced that it is better that we know the political allegiances of judges and candidates for judicial appointment, rather than it being a secret or information confined to a cosy inner circle. I profoundly disagree. If analysis of voting records in the US Supreme Court showed merely coincidental alignment of outcome and red or blue colours, perhaps I might change my opinion. But it does not. By contrast, even Professor Williams in his periodical analyses of our High Court could not show any such pattern, and I guess he would regard the enquiry as presently too trivial to justify even a modest ARC grant.

There could not be a more open and attached allegiance to a political party than to have once stood as its candidate in a parliamentary election and to have held high office in its organization. That was true, in relation to the Liberal Party, of Robert French at the time of his judicial appointments. His judicial appointments were made by Labor governments. I know nothing about how the chief justice has cast his votes, although I infer that he voted for himself when he stood for election. I do not think the Australian community cares how he has voted and how his colleagues have voted. Judges are required to vote, and are assured of a secret ballot, like the rest of us. And for the sake of democracy, every elector's holding of political opinions could only be a good thing.

The admonition over the millennia of which the most famous delivery was by Pericles in his funeral oration for the Athenian war dead, that citizens must not be uninterested in politics, surely dispels any notion that disinterested lawyers should either not have or, worse, pretend not to have any interest as voting citizens in politics. In my dreams, I see ranks of attorneys-general nodding in sage agreement with the eminently reasonable proposition I have just ventured.

In my dreams. A fly in the ointment of the superiority we are tempted to feel about our system of judicial appointment compared to the systems our American colleagues suffer is, I am afraid, a perception not easily dispelled. It is that if a lawyer were to entertain hopes of judicial appointment, he or she ought not take part in, or publish opinions about, matters of political concern to the government of the day, unless the conduct

**Bret Walker SC**, 'Lawyers and politics: the 2016 Hal Wootten Lecture'

and views would please those who compile names and advise ministers on suitability for appointment. I stress this is a matter of perception, and not demonstrably a matter of historical decision-making. But that is because insufficient information is known outside particular government circles about matters that may either validate or falsify the perception. It means, I fear, that some of the best contributions by lawyers in politics may not be available to society. It is an honourable ambition to become a judge and a prudent course to act on the perception. There are not enough of us who feel an anti-vocation against judicial appointment, to assure the community that nothing much is being missed if my fears are well founded.

The contribution that would most be missed were knowledgeable and leading lawyers to be muted in, say, debate about proposed legislation is their championing of the rule of law. Emphatically, the executive government cannot be left as the only or most powerful voice in favour of the rule of law or observance of individual liberties, let alone human rights. What lawyers can do in this realm of political discourse, in exercising the Constitutionally protected political communication vital for good government, is to push back against executive proposals and legislative schemes that need justification because they entrench on liberties, restrict rights and cramp the rule of law. Or arguably so.

By push back, I certainly do not mean reflex nay-saying of a kind that many of us are sick and tired of in parliamentary politics – opposition for its own sake in the hope of adventitious stumbles by the other side. Far from it. I mean the lawyers' way of testing a proposal by understanding the arguments that can be marshalled for and against it. Like the scientific method with which it is intellectually cognate, this lawyerly testing of a proposal is best done by examining the weight that can be pushed back against the arguments in favour of the proposal.

I know that the adversarial or accusatorial nature of civil and criminal justice respectively is disapproved by those who superficially prefer co-operative models of consensus. One of the unfavourable stereotypes of lawyers by those who praise parliamentary politics by comparison, is that lawyers fight to get a win and politicians, at least the good ones, have discussions to craft an acceptable solution. This overlooks the importance of lawyers being disinterested in the adversarial litigation

they conduct: one's best efforts must be made regardless of personal opinion let alone approval of the client's case. That disinterestedness focuses the systemic attention of lawyers on the merits or otherwise of arguments for and against the point in question. It is a habit of thought that more readily permits principle, as opposed to personal preference, to take its proper place as the foundation of social decision-making. I think that habit of thought would be sorely missed if it were to disappear from political argument about important laws.

That reminds me of a case I argued 34 years ago, in the Equity Division of the Supreme Court, before Wootten J. My client had been committed for criminal trial on charges involving misappropriation of company funds, and meantime the liquidator sought civil remedies to compel my client to provide information about the company's affairs. I relied on a supposed requirement that civil cases await the outcome of criminal cases, broadly for reasons that do not need elaboration. The argument concerned the so-called rule in *Smith v Selwyn*, one of those legal jokes because it was not a rule and it was not really to be found in *Smith v Selwyn*. I put some teeth-gritting arguments, and lost. The civil proceedings could continue. I doubt that this was because of arguments on the part of either party.

It was, as I still remember my abashed reading of Hal's reasons, that he had himself analysed and justified soundly on principle the approach by which his judicial discretion should be exercised in favour of the civil proceedings going on. That was a decision in an area of law involving important human rights possessed by those accused of crime. The dispassionate and principled approach by the judge was an example I have remembered.\*

I need not catalogue the passionate and also principled engagements and achievements of this evening's eponym. Higher education, indigenous issues, environmental protection and displaced persons are nonetheless matters in which I wish to praise Hal Wootten because he has been, and is, in them a real exemplar of my hopes for lawyers and politics.

\* My recollection of *McMahon v Gould* (1982) 7 ACLR 202 was wrong as presented in the speech, and is here corrected, thanks to Hal Wootten's own superior recall.