

The art of conversation for barristers

Anthony Cheshire SC

The general public expects barristers to be great after-dinner speakers and raconteurs. Undoubtedly there are some of our number who could be described in those terms, but the talents of careful analysis, forensic cross-examination and persuasion are not necessarily those that lead to spellbinding conversation. In the same way that we engage in training and self-analysis in relation to our professional skills, perhaps we would benefit from the same process in relation to our social skills. Conversations about legal topics can be dreadfully dull for non-lawyers, but they need not be and they can have significant benefits.

In his *Anthropology from a Pragmatic Point of View*, published at the end of the 18th century, Immanuel Kant stressed the nourishing benefits of regular meals with good food and good conversation. His rules for hosting a good dinner party included that conversation should move through three phases: from narration, involving an exchange of news, to ratiocination with lively discussion and finally, exhausted with all the argument and reasoning, to jesting with wit and laughter. Kant was also of the view that the company should be miscellaneous, drawn from many varieties of life, and that the topics of conversation should be ones in which everyone is interested.

In more recent times, the author and philosopher Alain de Botton has considered the subject in the *Art of Conversation*. He notes that a meal at a dinner party does not occur without at least some planning and that 'improvisation in preparing a meal is unlikely to lead to good outcomes'. Often, however, there is 'no such caution and modesty when it comes to conversation'. Thus, the preparation beforehand, and then the introduction, of a particular topic may involve a degree of artificiality, but it is more likely to lead to an interesting exchange of ideas and a satisfying evening.

These are not new ideas: Plato's *Symposium* (written around 385BCE) portrayed an evening party among close associates and friends that was minutely choreographed and which involved dining and rigorous philosophical debate. Similarly, the salons in 18th century Paris were established and flourished in reaction to the superficiality of the court at Versailles.

Modern day philosopher Theodore Zeldin has introduced an additional level of formality. His Conversation Dinners seat strangers together and provide them with a Conversation Menu from which each chooses a topic in turn.

It is clear, however, that there are some topics of conversation that are best avoided. In an episode of the podcast *This American Life*, journalist Sarah Koenig's wonderfully blunt well-spoken English mother outlined some topics to be avoided: your periods, your diet, your health, how you slept, your dreams, money and, most egregious, how you got there. In her view, these are all boring and nobody cares. She recounted the story of a highly anticipated dinner with Robert Redford on Long Island that he rather ruined: it had taken him two hours to get to the dinner from New York and he pretty much took the same time to recount the twists, turns and tribulations of his journey.

Although I have long told readers on the bar course that stories from their practice are rarely interesting ('...and then the Registrar said...'), 'I have a case where I am trying to use estoppel as a sword and not just a shield...!', 'there was nothing in writing, but there was part performance...' and so on), the fact is that there are many legal topics that are interesting not only to lawyers but also to the public at large.

At dinner with a friend recently, she stopped me at one point and said that she had three legal issues that had been in the press and which she wanted to ask me about. Unsurprisingly, the *Teacher's Pet* podcast and trial was one of them. That case raised many issues, on most of which my friend was keen to hear my views: how could there be a fair trial given all the discussion in the media; how could there be a conviction without a body; why was there not a jury; and does a judge always read out a long judgment? And that was without that old favourite: how could you defend someone you know is guilty?

Consistently with my friend's approach, the very existence and popularity of true crime podcasts and drama demonstrate the insatiable appetite of the public to be informed about legal issues and to engage with them.

When asked about legal matters by a non-lawyer, it can be tempting to act like counsel

giving advice or even worse a judge making a determination. But in the same way as there are different views in the community, so there are differing views in the profession and no one view is necessarily objectively right. Thus, although as lawyers we have an advantage in that we understand the system and so our views may be better informed, ultimately the views of the general public, particularly if provided with our background knowledge, will be equally valid. It is therefore vital that our responses provide the legal knowledge and framework, but are then followed up with that question that so many people seem to find hard to ask: 'what do you think?'. Indeed, sometimes we can become blinkered by our legal approach so that our views do not pass the public sniff test.

Although crime provides the most fertile source of legal discussion with non-lawyers, there are many other issues that raise matters that interest the public, whether it be the Royal Commissions into the banking industry or institutional responses to child sexual abuse, the ongoing licensing of casinos, the fight between the mistress of the late cardboard king, Richard Pratt, and his estate and any number of high profile libel cases (Geoffrey Rush, Rebel Wilson, Ben Roberts-Smith, etc).

Many legal issues also raise moral and ethical considerations. For instance, most members of the public have views on how to deal with transgender issues in sport (such as whether people born as biological males should be permitted to play women's rugby after transitioning), on the tension between religious freedom, discrimination and hate speech (such as raised by the dispute between Israel Folau and Rugby Australia) or on the low conviction rates for sexual offences (and when athletes should be suspended if charged but not yet convicted of an offence).

The purpose of this article is not to suggest how barristers should engage in conversation, although I would commend the benefits of preparing for attending social functions by considering in advance topics of conversation that might be interesting and productive. Rather, it is to encourage the bar to engage proactively with the broader public, particularly on legal issues.

This has several benefits. First, the public is readily interested in legal issues, at least those

with an obvious moral or ethical aspect, and thus introducing such topics is more likely to lead to an interesting and successful social interaction. Secondly, we are in a privileged position and it is important that we demystify and debunk (as much as we can) the idea that we may be out of touch and unapproachable. Thirdly, I see barristers as having a social responsibility to provide information to the public about the legal system and the legal process. We should attempt to explain and to demystify the legal system and the legal process wherever possible. This is particularly so when there are many people who unwillingly become caught up in the legal system, whether through a divorce, a dispute about a relative's estate or suffering a medical mishap or other injury.

Finally, there is a significant potential benefit to equal opportunity and diversity at the bar.

Between school and university, I worked in small town law firms where the lawyers were part of the community and the parents at the local school were from many different backgrounds. Thus, children from less privileged backgrounds were exposed to lawyers, or at least had easy access to them, as part of their community and so could perhaps contemplate a career in the law.

In a bigger city, there can be a tendency for lawyers to congregate and socialise with other lawyers, which may be natural but is not necessarily healthy. Broader friendship groups can tend to be based upon schooling. That may broaden diversity beyond lawyers, but, in Sydney at least, commonly only to those educated at private schools.

So, we now have a legal system where it is relatively easy and common for privately educated children to gain exposure to the legal system, contemplate that they could form part of it and gain a foothold in it. But the same opportunities are rarely available for children at public schools, particularly in less privileged areas.

Of course there are some notable and important exceptions, but I think it is a vital part of the role and responsibility of the bar as members of society to make real efforts to engage with people outside of our privileged background wherever possible. Engaging with diverse members of society, particularly young people contemplating starting out on their careers, about legal issues and seeking out and engaging with their views, can help demystify the law and the legal system and show them that there are real opportunities for all within that system.

I have been judging the Law Society mock trial competition for many years. As part of my feedback at the end of each mock trial, I offer work experience to any students interested. I have had many take up that



invitation. I accept immediately the limitation of these efforts, since it is generally the private schools who have the resources to enter that competition and to progress through the rounds, but at least it is something.

Even a newly qualified barrister has knowledge and experience to offer to the broader community. The bar needs far more outreach and it is not enough simply to wait for the Bar Association to arrange formal programmes – we all have a duty to engage in the community and to offer our services wherever they might provide benefit. By way of example, it is clear from what I have seen that young people are keen to engage with barristers and to do work experience in

chambers; and you would hope that every school doing legal studies would welcome some input from a practising barrister. But we have to take the lead by being more proactive.

Apart from what I regard as our duty, there is an amazing reward. Moving the admission of a young woman whom I judged at a mock trial in a public school many years ago and who took up my offer of a work experience placement in Year 10 was one of the highlights of my professional life. That is not a reason for doing it, but it fortifies my ongoing efforts, such as in writing this article. I hope that it goes down better than the talking-into-a-bucket experience of giving a CPD lecture on Zoom! **BN**