

THE HON T F BATHURST AC
CHIEF JUSTICE OF NEW SOUTH WALES
GREAT SYNAGOGUE SERVICE
OPENING OF LAW TERM RECEPTION REMARKS
WEDNESDAY 6 FEBRUARY 2019

1. I would like to begin by respectfully acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their Elders, past, present and emerging. We cannot forget their long stewardship of this country and especially the land upon which we walk today.
2. As always, I was delighted to have the opportunity to attend this service at the Great Synagogue to mark the opening of the Law Term. I extend my thanks to Rabbi Dr Benjamin Elton for inviting us, on behalf of the judges of the Supreme Court and all the members of the legal profession who are in attendance tonight, for accommodating us and organising tonight's service. It presents a wonderful opportunity to come together and share a meal, to talk about what the coming year might hold, and to learn more about the Jewish faith.
3. Our tradition of marking the commencement of each new Law Term with religious services is an ancient one. Its origins lie in the much closer union between church and state which used to exist in late medieval England than is now present in modern Australia. However, in those earlier times, there was little tolerance for the diversity in religious practice which is a feature of our society today. For most of English history, there was only one official "church", and one's commitment to the "correct" faith was often a matter of life and death.
4. It is uncomfortable to dwell on the extent of the persecution and prejudices of earlier times, and which continued, in some cases, well into the 20th century. Those of the Jewish faith know only too well the

horrors of this persecution. We should indeed be thankful that those days are long past, at least in this country. However, sometimes, it is necessary to remind ourselves of what has happened in the past can serve as a guide to avoiding making the same mistakes in the future. Regrettably, as a society, we forget these things too often, and prejudice and persecution still exist. We must always be ready to call these out when they occur and ensure that we accommodate the diversity in religious belief which is a hallmark of Australian society.

5. It is for this reason that services like this one are important. They are an opportunity to recognise the ongoing contributions which the members of each of the major faiths within Australia make to the administration of justice in this country. Whatever religious belief a person may hold, they are able to and entitled to enter the legal profession and help defend the rights of others and uphold the rule of law, and a large number of them do so with distinction. Their simultaneous commitment to both their faith and upholding the rule of law is a testament to the way in which religion can strengthen the practice of law in modern Australia.
6. In particular, I would like to acknowledge the enormous contribution which the Jewish community and Jewish lawyers have made to Australian society and its legal system. One of the great lawyers of the 20th century, Sir Isaac Isaacs, Chief Justice and later Governor-General of Australia, played an instrumental role in forming the shape of our *Constitution*, and especially in the inclusion of section 116, which, broadly speaking, ensures that our system of government remains secular and committed to upholding the freedom of belief of all religious communities in Australia.
7. The proud tradition of Jewish lawyers contributing to public life continues to this day, and includes my predecessor as Chief Justice, Jim Spigelman, and many other judges from the Supreme, District and Local Courts, as well as the legal practitioners who argue cases before them and represent their clients. Each of them has their own story about their life in the law and the contributions they have made to the administration of justice in this state, and this deserves to be celebrated.

Unfortunately, I do not think I can do justice to each of their stories here – doing so would take far too long, and would no doubt distract from the real reason many of you have decided to stay back after the service tonight: the excellent catering.

8. However, it is not only lawyers or public figures who contribute to upholding the rule of law. Our society could scarcely function if this were the case. Maintaining the rule of law also depends upon the actions of those who do not practise the law, and who might not even have any contact with the legal system. This is because, in modern Australia, the rule of law is more than just about what happens in a courtroom or about what kind of laws are passed in Parliament, although both of these are important. The rule of law is also about how each society respects the rights and equality of each person in their everyday life, and as such, is something in which we all participate, collectively.
9. A couple of weeks ago, Rabbi Elton delivered a sermon about the contemporary relevance of Australia Day.¹ It should come as no surprise to people for me to say that this is a fraught topic in public debate at the moment, about which people hold strong views. I do not intend to enter this debate. But I think that what Rabbi Elton said is an excellent example of how each one of us can play a role in upholding the rule of law, whether one is a member of the legal profession or not.
10. He explained that, although Australia Day has a different resonance for Indigenous Australians and people of European descent, it had unavoidably tied our futures together from that point in 1788 onwards. While this could not eradicate the undeniably tragic and terrible consequences which that date had for Indigenous Australians, he noted that it did mean that we must now work together to create “a shared commitment to a better Australian future, for the benefit of all of its people” and to “eradicate discrimination, inequalities in health, education

¹ See the text of the sermon at Rabbi Dr Benjamin Elton, ‘Sermon for Australia Day 2019’ <<https://www.greatsynagogue.org.au/rabbiscorner.html>>.

and opportunities, to acknowledge the stories and struggles of others and establish an atmosphere of mutual respect”.

11. It seems to me that, whatever your views on the merits of changing the date of Australia Day, it is not possible to really disagree. I would wholeheartedly agree with Rabbi Elton that we each have a role to play in combating the inequalities and discrimination which other people, including Indigenous Australians, have suffered. Each of us can contribute to upholding the rule of law in our society by helping to address these historic injustices when we encounter them in our everyday lives. Hopefully, in time, we will reach a point where we can truly say that our society treats every person with the dignity and respect which they deserves.
12. As members of the Jewish community, whether lawyers or non-lawyers, you have always supported policies which aim to treat each person with respect and understanding. I have referred in the past to the positions of the NSW Jewish Board of Deputies and the Great Synagogue itself on a variety of issues which they have treated with sensitivity and respect, including racism, the LGBT community, and refugees.² I have no doubt that this support will be ongoing and that the Jewish community in Australia will continue to show how a diversity of religious belief can strengthen Australian society into the future.
13. On that hopeful note, I wish you all the best for the coming year and once again thank all those involved for arranging the service tonight.

² See the different policies contained at Jewish Board of Deputies, ‘Our Policies’ <<https://www.nswjbd.org/Our-Policies-/default.aspx>>.