

**LAW SHABBAT DINNER**  
**ADDRESS BY THE HONOURABLE T F BATHURST**  
**CHIEF JUSTICE OF NEW SOUTH WALES**  
**GREAT SYNAGOGUE, SYDNEY**  
**Friday 10 February 2012**

It is my honour to address you tonight. I was also particularly honoured to have been invited to deliver a reading at this evening's service. I want to extend my thanks to the entire congregation for allowing me and the other non-Jewish members of the judiciary and legal profession to worship and celebrate with you, and to Rabbi Lawrence in particular for his truly outstanding address.

Speechmaking is a curious tradition. It is as old as Judaism, and older than the legal profession. At Mount Sinai, Moses received the Oral Law together with the written Torah. The earliest lawyers were actually called "orators" by the ancient Greeks. Style and manner may have changed a great deal since those times, however the basic principles of speechmaking seem constant. Buried in the stacks of the Supreme Court's rare books library, a small volume from the turn of the last century summarises good speechmaking like this: flatter the audience and deprecate the self. Fortunately for me, this will be particularly easy

tonight. You are all extremely attractive. I, on the other hand, attended the first part of this evening wearing a full-bottomed curly wig that was last fashionable in 1795.

Wig aside, I was particularly pleased to receive this invitation because it gave me the opportunity to learn more about the Jewish faith, something I will return to in a moment. In relation to the Jewish community generally, however, I thought I had less to learn. This was not pure arrogance on my part. So many of my friends and associates are respected members of the Jewish legal community that I assumed I had a handle on the larger group to which they belonged. I was surprised and a little embarrassed to learn that I'd underestimated just how exceptional their achievements are.

The Jewish community has been integral to Australian society since the First Fleet. This is not news. We take it for granted that Jewish leadership is present at all levels of society: in government, commerce, the professions, arts and culture. Australian history is not written with a side bar on "notable Jewish figures". Jewish figures form part of our core foundation story; they are woven into it centrally, and are not relegated to the peripheral status of a postscript.

Yet, as a nation, this makes us unusual. We have only the ninth largest Jewish population, both in terms of world numbers and as a proportion of our national population, and yet we are the first, and I believe only, nation outside of Israel to have had a Jewish head of state, chief justice and head of the military.

This participation far exceeds what might be expected from so small a minority group. For this reason, I suspect many assume the Jewish community to be larger than it actually is. In fact less than half of a per cent of the population identifies as Jewish. When considered in proportion, the extent of Jewish leadership and civic participation is truly remarkable.

There are many hypotheses for why such a small community has made so large an impact. That the Jewish people survived persecution on an unimaginable scale offers an answer, but also compounds the original question. What is at the heart of the Jewish community's resilience and consistent civic contribution?

I will not presume to tackle this question. If a single answer is not illusive, it is at least fit for study by rabbis and scholars, and many other men and women much smarter than I. Certainly, it will not be conquered

in after dinner remarks. However, I will suggest that one aspect of the Jewish faith with which I have become recently acquainted has something to do with it. It is something the Jewish faith shares with the Australian Common Law tradition: I am speaking of the essential role played by the community.

The community is fundamental to Jewish life. I understand that for many of the Jewish faith, concern for the wellbeing of the community is second only to concern for the family.

For example, as was just demonstrated, the act of public worship is communal. I understand that it is only done when a minyan, a quorum of ten or more adult men, are present. When the Jewish people are scattered, isolated or diminished, the faithful will always find each other – sometimes travelling great distances – in order to form the sacred number for worship. The resulting community is a source of support for individual members, and ensures continuity of faith and worship throughout the generations.

It is no coincidence that in Australia, and New South Wales in particular, the community is similarly respected. The formative role played by Jewish settlers in Australia not only created a strong and vibrant Jewish

community, but established the precedent for the relationships between majority and minority communities across Australia.

In the Australian Law, the community plays a similarly vital role. It is both observer and participant, but even more fundamentally, the community's welfare is a primary concern of the justice system. Community life is so fundamental to an individual's wellbeing and sense of identity, that removing someone from their community is one of the most serious decisions a judge can take. This is especially so when considering whether to grant or deny bail, because the accused had not yet been proven guilty. To remove someone from his or her community while the presumption of innocence still exists is an exceptional act. It is only done when countervailing considerations, including the wellbeing of that community, outweigh the detriment of removing the accused.

Discussions about the relevance of community in modern Australia cannot be divorced from considerations of multiculturalism. We are now an extremely multicultural nation. However, we differ from other countries with similar demographics in that we have not adopted a "melting pot" approach. We do not seek unity through assimilation. Rather, just as Sydney is a city of neighbourhoods, so Australia is a *nation of multicultural communities*. New South Wales particularly is

said to have “the longest lasting and, arguably, most sophisticated framework for multicultural governance in the world.”<sup>1</sup> It was also the first state in Australia to enshrine the principles of multiculturalism into its laws.

These laws implicitly recognise the symbiotic relationship between the wellbeing of individuals, their community, and the prosperity of the greater nation. An empowered community supports its individual members, who then contribute to the development of the greater nation. The reverse is also true; a community in crisis represents both individual strife and suffering, and a national society either unable or unwilling to work for and with empowered communities. One of the most devastating things that can happen to a community, therefore, short of its annihilation, is disempowerment caused by social exclusion and discrimination.

In an address to the Interfaith Abrahamic Conference on Australian Aboriginal Reconciliation, Justice Stephen Rothman of the Supreme Court of New South Wales, who it so happens very kindly introduced me tonight, spoke of the devastating consequences of social exclusion and discrimination on a community. He cited studies which demonstrated

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<sup>1</sup> Submission of the Minister for Citizenship of the New South Wales Government to the Australian Parliament Joint Standing Committee on Migration.

that “social exclusion causes aggression and significant other anti-social behaviour, decreased willingness to co-operate and obey rules, poorer intellectual performance, more self-destructive acts and short[er]-term focus,” all of which thereby compound exclusion and disempowerment.

Despite our celebration of multiculturalism, most if not all minority Australian communities have faced such discrimination and exclusion at some point, and many have suffered terribly. Racism, anti-Semitism and xenophobia have come from all quarters over the course of our history. Even the current policy of multiculturalism, which is presently being debated, frequently comes under direct attack.

The Australian Parliament Joint Standing Committee on Migration is currently conducting an inquiry into multiculturalism in Australia. It has received almost five hundred submissions, which reveal the great range of views held by Australian communities, government agencies and individuals. It is perhaps unsurprising that submissions from Jewish organisations reveal an approach to multiculturalism, and to the role of the community in particular, that is in keeping with the best of Australian and New South Wales tradition, practice and policy, and is also largely reflected in the Australian legal tradition.

Three principles in particular emerge from these submissions which, I think, help account for the resilience of Jewish faith and communities. They also provide a model for empowerment and multiculturalism across Australia that is consistent with the common law's conception of the community's role and responsibilities. I would like to spend the remainder of my time tonight highlighting them. They are first: the importance of knowledge and education, second: the importance of informed debate, and third: the responsibilities that accompany citizenship.

First, cultural education is essential to combating social exclusion. Such education means not only learning about other cultures, but also learning about one's own heritage and community, and about the overarching Australian values that weave our distinct communities into a united whole.

According to Justice Rothman (Stephen, I am afraid I am quoting you again), cultural education has been essential to Jewish community empowerment in the face of millennia of anti-Semitic discrimination. He says:

“The cultural aspects of Jewish communal life dealt with anti-Semitism by stressing education in both Jewish culture and



‘general learning’. This included a rationale for, and a pride in, being different (but not better or worse). Further, every act of exclusion of Jews was matched by positive reinforcement and inclusion within the Jewish community.”

An individual who lacks knowledge of and pride in his or her community’s culture cannot be part of its empowerment, and correspondingly cannot be empowered by it. Education of one’s own culture is thus a first step.

The second step is to engage in cross-cultural communication. This is particularly important within and around minority and diaspora communities that are established in distinct geographic areas, particularly in urban neighbourhoods. Contrary to popular depiction of such communities as havens of crime, abuse and isolation, most generally provide a safe and supportive starting point for first and second-generation immigrants. They are also centres of community activity and cultural identity for long-established Australian minority members, provide an enriching environment for the broader community, and enable productive and valuable links for Australian businesses and organisations to homeland communities around the world.

However, geographically grouped minority communities can also create a perception of separateness that breeds fear and demonisation; the genesis of racism. This can be combated by encouraging cross-cultural dialogue, welcoming outsiders to observe and participate in celebrations and rituals (this evening is an example of just how enjoyable such opportunities can be), and speaking out when a radical or extreme few misrepresent their opinions or beliefs as those of the whole.

There will of course always be some, who through fear or intolerance, seek to discriminate against and intimidate members of minority communities. In such cases the first step, pride and knowledge of one's own culture, may be the only defence. However, to the extent that it is possible to improve external perceptions of a minority community through cross-cultural exchange, this should be encouraged. The need for cross-cultural education applies all the more to those of us who work as judges and legal representatives.

Finally, education in one's own community and exposure to other cultures should be taught within the overall framework of the Australian cultural values of democracy, justice, equality and respect. These are the principles of responsible citizenship I will return to at the close of this address.

The second principle I want to highlight this evening is familiar to both the Jewish community, and to my profession: the importance of informed debate. Intelligent debate is the natural complement to education as the basis of an empowered community. It is dependent upon a capacity for critical analysis, an environment conducive to the free exchange of ideas, and access to and interest in accurate information.

While preparing for this address I was repeatedly cautioned against assuming there was, on any matter, such a thing as a single “Jewish opinion”. There was of course no risk of me making this mistake. The only thing I could say with any certainty about Jewish attitudes after decades of friendships and acquaintances with those who live a Jewish life, is that they hold a deep respect for the views of others, for considered debate, and for critical thinking.

To borrow from the submission of the Executive Council of Australian Jewry to the Inquiry into Multiculturalism: “adopting a sceptical and analytical approach to all information, especially from online sources, should be so deeply instilled in students that it becomes second nature. Questioning assumptions and seeking and weighing alternative views should become a habit. This would provide a much-needed framework

for giving students [from both recently arrived immigrant families and long-settled minority cultures] an insight into the validity of Enlightenment values and undermine the potential appeal of simplistic, extremist ideologies”.

The Australian social and political environment is generally conducive to the free exchange of ideas. We have a rich history of robust public debate – although its demonstration in the houses of parliament has not always set the most dignified example. “Scumbag”, “hobo”, “blockhead”, “dummy,” and “clown” are some of the kinder insults hurled by just one Australian Prime Minister from the wells of Parliament. The rest of his comments are not fit to be repeated in present company. Outside of parliament, at least, we are described as having a generally relaxed social and political environment, in which the exchange and critique of ideas is encouraged and essential to our governmental, legal and social structures.

Moreover, Australians tend to be an irreverent lot. In my opinion, this should be celebrated. It reflects that critical thinking is an ingrained instinct, and that we have a robust sense of equality and security in the rule of law. Just as no one is above the law, so no one is above a gentle roasting.

Finally, while Australians have access to myriad sources of information, debate is often unnecessarily polarised by those who report selectively and skew information to their own divisive ends. I have said before that members of the legal community have a responsibility to keep debate relevant, accurate, constructive and honest. The same may be said of any community that seeks to empower itself and its members, and to contribute to the strength and unity of the Australian nation.

The third and final principle I wish to highlight tonight, which seems to be shared between the Jewish faith and the Australian legal system, is responsible citizenship. Here I adopt the language of the *Community Relations Commission and Principles of Multiculturalism Act*, which explains that the “expression citizenship is not limited to formal Australian citizenship, but refers to the rights and responsibilities of all people in a multicultural society”.

In their submissions to the Parliamentary Inquiry on Multiculturalism, the Executive Council of Australian Jewry and the Australia/Israel & Jewish Affairs Council both stressed that education about rights and freedoms must also include a conversation about responsibilities. The Australia/Israel & Jewish Affairs Council warned that insufficient

education about “responsibilities – including rule of law, gender and racial equality, due process, respect for others and an understanding of English – [heightens] the risk that [minority communities] will fall into the trap of social exclusion”.

The Australian legal system, too, emphasises responsibilities as well as rights. We each have individual rights and autonomy, but are also responsible for our own decisions. So too are communities responsible to their members, as well as to broader society. While Australia has a developed sense of community, which some may go so far as to call a *right to community*, if such a right resides anywhere it is with the individual. It is also not the only or most important right, but stops at the point at which it becomes harmful to others. Thus the right to community and culture is not a right to discriminate, preach hate or oppress members of your own or other communities. Nor does it come before the rights of individuals to exercise free choice and expression, within the bounds of law.

Fundamentally, the task of both the Australian legal system and the systems of faith that share these values is to balance the rights of individuals with the needs and wellbeing of the community.

For example, Australians do not have an unlimited freedom of speech. We have the freedom to communicate in relation to legitimate political matters, even if the way we do so may be hurtful or distasteful to others. So far, our courts have been able to distinguish between speech that is legitimately for a political end, and that which unfairly infringes upon the rights of others to live free of intimidation, harassment, vilification and discrimination. However, striking the appropriate balance is a constant challenge not only for the courts but for the community generally.

The way we strike this balance at the individual, community, legal and national level, has so far made us one of the most stable and prosperous nations of the world. But we must remain vigilant. The balance must be constantly restructured if it is to remain steady. This is achieved through open dialogue and debate, dedication to reform, cross-cultural communication exchange and celebration. Tonight is a wonderful example.

Thank you again for this invitation, and for the opportunity it has afforded me to become better acquainted with your faith and the remarkable contributions the Jewish community has made to our united Australian society.