

ADDRESS AT FUNERAL SERVICE OF
RODERICK PITT MEAGHER
ST MARY'S CATHEDRAL, SYDNEY
11AM, 8 JULY 2011

J D Heydon

Roderick Pitt Meagher was born in Temora on St Patrick's Day 79 years ago. That simple fact at once announces three themes of his later life.

The first is his Irishness. To be called Roderick Meagher and be born on St Patrick's Day – it is not possible to be more Irish than that. From his Irishness flowed the fantastic and mysterious worlds, peopled with half-mythical variations on real figures, he liked to create. Like one of the great eighteenth century Irishmen, Edmund Burke, he believed change was less harmful when it proceeded organically and pragmatically. Like another, Jonathan Swift, he could sometimes be roused to savage indignation.

Secondly, his birthplace and his early upbringing there stamped him forever. Country people then had – and even now still have – a talent for detecting and combating pretence, phoniness and self-congratulation. Roddy came to share that talent, and certainly made it his business to take many people afflicted by these vices down a peg. And his employment of the leg-pull as a style of humour –

2.

once common, now rare – must have been influenced by its frequent use in the bush of his childhood.

The third theme is suggested by his name "Pitt". For he was distantly related by blood to Pitt the Elder, the great Imperial statesman. Like his kinsman, Roddy was a life-long constitutional monarchist and a patriot: no toying with Fenian republicanism for him. He was happy enough with the changing arrangements under which Australia was governed at all stages of his life, though after complete independence came in 1986, he was not pleased with the way some organs of Australian government used it.

Roddy was born into a happy family which in due course became a large one. He was the second child after Peter. He was to be followed by Christopher, Mary Ann and Phillip. His childhood in Temora left many vivid memories. There was, for example, his recollection, slightly telescoping events, of the day in the dreadful month of May 1940 when he walked down to the shops to get the morning papers and learned that the Netherlands had collapsed to the Germans, and then walked down later to get the afternoon papers and learned that Belgium had surrendered.

At the age of nine he was sent to board at that most beautiful of schools, St Ignatius College, Riverview. It was then even more beautiful than it is now. It was not then hemmed by suburbia, but was surrounded by water, green fields and bush. It was much

3.

smaller than now, and it was small compared to its main Sydney rivals. But it was among the best schools, if not the best school, in the country for intellectual training. It was largely staffed by members of the Society of Jesus, who had the ability and the opportunity to identify and develop talent in the ablest pupils. Among the teachers were Father Austin Ryan, whom Roddy regarded as the best Classics master in New South Wales, and Father Frank Dennett, whom he called an excellent historian and litterateur. Under their guidance he became dux of the school in 1949.

In 1950 he went to another beautiful place – St John's College in the University of Sydney. First he spent four years in the Faculty of Arts, then at the apogee of its greatness. He studied English I and II and Classical Archaeology I but he concentrated on Greek and Latin, graduating with First Class Honours in Greek. After a further four years in the Law School, he graduated with First Class Honours and the University Medal. This was an admirable education for the career he was to choose. He served as House President at St John's in 1954-1955, as a member of the Senate of the University of Sydney in the early 1960s, as a Fellow of St John's College from 1960 to 1998, and as a part-time teacher of Roman Law and Equity at the University of Sydney from 1960 for more than four decades. So, to put it mildly, he can be said to have done the University some service.

4.

After extensive foreign travel, and a short time working at Minter Simpson, he was called to the Bar in 1960. He had the good fortune to read with a great common law counsel, Gordon Samuels. In 1963, when the current Selborne Chambers building was opened, he joined a new floor, the Eighth, led by Jack Kenny and supported by the incomparable Bill McMahon as clerk. Its members were capable barristers of varied interests. They included Harold Glass, John Kearney, Tom Reynolds and Peter McInerney. Both Bill and Peter are here today. Roddy took silk in 1974. He served on the Bar Council for six years from 1975, and as President from 1979 to 1981.

In the 1960s he was invited to work on a second edition of the book on trusts written by that great lawyer, Sir Kenneth Jacobs, happily still alive. With co-editors, he produced five editions from 1967 to 1997.

Then in 1975 a signal event occurred: the publication of Meagher, Gummow and Lehane's *Equity: Doctrines and Remedies*. It soon became clear that this was the greatest law book ever published in Australia. Its authors had the irreverence and vitality of youth, as well as the erudition and passion of learned scholars. The work therefore had an immense and sombre power. It was published at a time of troubling tendencies. In England Lord Denning MR and Lord Diplock were in different ways seeking to rationalise equity into insignificance, and the distant but sinister surge of the

restitution tsunami, less predictable but more dangerous, was starting to gather strength. That these troubling tendencies did not prevail in Australia, either in universities or in the courts, and were in some degree resisted elsewhere, is the great historical achievement of Meagher, Gummow and Lehane. It vindicated the separateness of equity as a distinct component in the rule of law.

In 1989 Roddy was appointed to the Court of Appeal of the Supreme Court of New South Wales. An anonymous but trenchant barrister supported the appointment thus: "He's bright. And he's got guts." He remained there for 13 years until reaching the compulsory retirement age of 72 in 2004. He then returned to his old chambers on the Eighth Floor. His advice was of advantage to no small number of clients, and his return gave considerable pleasure to his colleagues. In 2005 he was rightly appointed an Officer of the Order of Australia.

Although for much of his life he had enjoyed excellent health, when his maladies came, they came not as single spies, but in battalions. He was seriously ill in the early 1990s. He had many more troubles after he retired. But he was able to overcome them for one more achievement. Shortly before he became largely housebound, he delivered a memorable lecture on Roman Law to a crowded Bar Common Room.

6.

All though his adult life he had developed a public persona of eccentricity. He assumed Bohemian tastes. He sniffed snuff. He smoked Havanas. He dressed, as Sir Maurice Byers said long ago, as if he were a cross between Oscar Wilde and a Regency buck who had mislaid his valet. Aided by neo-Churchillian speech characteristics, he became famous as a wit. Much of that wit depended on teasing the gullible in words delivered in a throaty, earnest and confidential manner, but experienced observers could always detect the technique by examining the slight bulging and glistening of his eyes. Reports of his sayings and other tales about him spread with lightning speed around the legal profession. His delight in the folly of the human comedy made him the best of companions. There was all summer in a chuckle by Roddy. Indeed he recklessly squandered his talent and his time on friendship. But his wit played to wider audiences. He and A W B Simpson must be accounted the wittiest legal writers in English of the last 50 years. He and Gordon Samuels were the two best after dinner speakers in Australia. He and the Prince of Wales once spoke on the same occasion, and each spent some time expressing his admiration of the other's skills. Roddy's skills were also displayed in his address on the retirement of Sir Garfield Barwick: it stood out against the stereotyped and listless offerings of others as he described the talents of that remarkable man with warmth, enthusiasm and admiration.

7.

To the end of his life he displayed a hostility to the humdrum modern world. Thus late in life he took much pleasure in organising a series of concerts in his home, with numerous intervals in which the finest dishes and beverages were served. He presided over these cultivated events like some Medici Duke or some Venetian nobleman in the age of Vivaldi.

He was and forever will be the most discussed, remarkable and memorable of Phillip Street characters.

Putting the eccentricity on one side, this was a career of distinction. The real personalities of some who have distinguished careers in truth fall below the level their worldly achievements suggest; a few rise above it.

Roddy Meagher was a supreme example of the latter category.

Any attempt to see the real man was obscured by a mask which to some extent he fashioned himself and which to some extent the world forced on him whether he wanted it or not. It is, if not tragic, at least unfortunate that many people took the mask to represent the whole man. As a result, if a single word could sum him up, it would be "misunderstood".

To begin with, some thought him to be a rather indolent barrister, gliding effortlessly and amusingly along, burning up his

8.

intellectual capital without adding to it. No-one who worked with him, or appeared against him, could rationally have thought that for a moment. His forensic technique depended on determination, on striving, and on detailed and thoughtful preparation. You could forgive juniors anything, he would say grimly, as long as they *worked*. He himself would start work early in the morning, stop at 5pm for drinks in Jack Kenny's chambers, and resume work at home. But his forensic work, like his legal writing, was discriminating. He concentrated only on what was crucial and decisive. Advice, both oral and written, was given with briskness and brevity. His notes for use in court, whether for conducting his skilful cross-examinations or his trenchant addresses, would consist of little more than a few cryptic but deadly phrases. Even in his day the tide of documents was rising unconscionably, but he would select the three or four key ones with precision and master them. His penetration of mind, and the compressed lucidity with which he expressed himself, made him one of the very few elite barristers of his generation.

The next popular fallacy concerns his judicial performance. For the most part his judgments were short. But, again, the brevity was based on labour and discrimination. He prepared thoroughly in advance of the hearing in order to understand the position of the parties. He refined his analysis of their positions during oral argument. He finalised his views thereafter, in the light of a lifetime's learning and a lifetime's experience of human folly. Then

the careful planning, writing, chiselling, polishing and shortening of his reasons for judgment took place. His tipstaves will confirm all that. So, if they search their minds and hearts honestly, will those who sat with him. In this country, unlike some others, there are no standard approaches to the judicial task, and, depending on the court's function and the circumstances of each case, more than one method can be effective. He accepted that trial judges might have to write at length as they sifted masses of complex evidence in order to find the facts, although Mr Justice Malcolm McLelland was an outstanding exponent of managing that task within a short compass. He saw that the High Court might sometimes have to devote substantial space to the question whether the law should be developed in a particular way or how the Constitution or some other statute should be expounded. But, like Mr Justice Glass, he conceived his own role, in an intermediate appellate court, as being to decide whether the parties had experienced a fair trial according to law. Close analysis of his judgments will reveal that he fulfilled that role superbly.

Then there is the misconception about his attitude to physical exercise. It is true that sport did not rank high among his interests, but he was not ignorant of it. He once conducted a long conversation about rugby with the only All Black captain ever to win a World Cup, although it is true that his own contributions did not go far beyond sagacious conversational nudges like "Indeed?" and "Then there's the scrum problem." But, despite his large waistline –

for, as was said of King Edward the Seventh, he had a splendid appetite, and never toyed with his food – he did take exercise. He had prodigious physical strength, and walked a lot, especially in the country. He often walked some miles from his farm outside Mittagong to dine with friends at a restaurant in that town. He also went on long walks with his dogs – although in the case of his much loved Alsatian, Didier, this often involved a bit of middle-distance running in an attempt to prevent that excitable creature from adding to its long list of mutilated victims.

Then there are misconceptions about Roddy's manner. Some thought he had an excessively aristocratic air of disdain. Some thought him rude. These perceptions were not sound. In fact he had deep human sympathies – for clients in trouble or friends in distress. He did not care for mobs who gloated in the misfortunes of others. Bill McMahon remembers him saying as he walked past those waiting for the moment when a barrister was to enter the witness box in the proceedings brought to strike him off: "Have you all brought your knitting?" To those who had earned his loyalty, he was deeply loyal. He had an extraordinary range of friends in many circles, often non-intersecting circles. He was extremely generous. He possessed considerable dignity and faultless courtesy. The receipt by him of any hospitality or present immediately stimulated a handwritten letter of thanks, containing no false formality and composed in a fresh and pointed way. He was particularly courteous to a stranger, or a member of a conversational group

being ignored by other members. And he was much loved by young people, particularly small children. They liked to engage in correspondence with him – indeed it has been arriving even since his death.

The brightest light on his true nature is cast by his family life. After 33 years of marriage, which Roddy said were years of "unalloyed bliss", his wife Penny died aged 60 in 1995. This was a massive blow. Roddy always stayed in seclusion on the anniversary of her death. He rightly said of her that she was "by nature, very sympathetic and tender. She was the gentlest person I ever met." Her gentleness sometimes caused her to be distressed by the storms into which controversy led him. He was particularly proud of her artistic skill, and published after her death a fine book illustrating it. As he said, it was work "of an extraordinarily high standard". Just as he loved and was proud of Penny, so he loved Amy, and was proud of her ability, her drive and her professional successes. And in due time he took pleasure in her marriage to Mark and the arrival of his two grandchildren, Orion and Astin.

The final group of misconceptions concern his supposed Toryism, and the style of his wit. He could certainly be cutting. Moderation in criticism was never one of his failings. But on the whole he was good-humoured. He departed from that vein only when deeply provoked by the fake, the foolish or the hypocritical, in whatever mind or creed he detected it. He attacked many persons

and institutions on these grounds in the late 1970s and 1980s – a period which, if one now looks back on it fair-mindedly, was in truth very rich in examples of those flaws.

These complaints about his Toryism and his wit must be put in context. In some ways they are simply false. He was no stuffed shirt. He tolerated many human failings. He approved of the decline in sectarianism since his childhood. He also approved of the decline in Grundyism.

But he was, below the laughing exterior, a deeply serious man. If it was correct in any way to think of him as a clown, as some critics have, he was a tragic clown, creating laughter because without it reality was painful.

He was devoted to the Catholic Church into which he had been born. He admired the rich beauty of its liturgy, its role through the monks in Ireland and Iona in preserving classical civilisation, its lengthy traditions. He loved the old words, and the old forms. He had close friends among the priesthood. Although he affected to disparage those whom he called "schismatics", he was grateful to the Protestant Reformers for one thing – the work of the successors of William Tyndale who produced the Authorised Version of the Bible. Those who sat next to him in church while any version of the Bible but the Authorised Version was read had to experience much guttural grumbling. Every Easter he would reread the Gospel

accounts of the Passion, Crucifixion and Resurrection, and ponder them.

He was a supremely brilliant and civilised man. He was interested in all the arts. He admired the main corpus of English and European literature – but not Dickens, whom he despised for sentimentality. He could talk intelligently of books from many cultures, in numerous disciplines, in several languages. He was just as well-versed in art, having collected and studied paintings and sculptures all his life. He loved classical music; in contrast, when he used the words "Mantovani" or "Khachaturian", his voice dripped with contempt. He followed politics and the day-to-day issues of public debate closely. In his youth he had observed the exchanges between Mr Menzies and Mr Chifley on important political issues, in which opposing but sincerely held ideas were debated intelligently, respectfully and politely.

His acuity caused him to become deeply troubled about the future of the country he loved. He saw terrible threats to the civilisation – general and legal – he admired, and of which he was a supreme example. How was he, with his deep patriotism, to react to the many occasions since his youth when the Menzies-Chifley standard was not met? How was he, who loved beauty, to respond to the ugliness of modern life in all aspects of behaviour? How was he, who admired and had a mastery of language, to deal with its persistent and increasing degradation? How was he, brought up in

the judicial age of Sir Owen Dixon, to cope with a different age? Ionescu said: "To think against one's age is heroism, but to speak against it is folly." He repeatedly showed the heroism and committed the folly. He collected enemies as a result. Yet paradoxically his very achievements in part disproved the evils he feared. The prophet of community doom and of cultural collapse was to a considerable degree living proof that doom had not yet come to the community and that its culture still retained vitality.

A man of vivid, rich, complex and magnificent personality has departed. He was formidable, sensitive to the suffering of others, stoical about his own, and a hater of cant. He had no moral doubt or mental lethargy. He had no fear. He was not insipid or prissy or bloodless. Peter McInerney said that if his life were in danger he would brief Roddy to appear for him. Jack Kenny thought he was the only genius he had had the privilege to know. No-one who knew him could ever forget him. He had honesty of purpose, clarity of mind, probity of character and generosity of spirit. However much he was misunderstood, it was generally and rightly accepted that he was supremely loving to his family.

To that grieving family – Amy, Mark, Orion and Astin, and Peter, Christopher, Mary Ann and Phillip – go our deepest sympathies.