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LAW, SOCIETY AND CULTURE AT THE TURN OF THE CENTURY

BY

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Law, Society and Culture at the Turn of the Century

One hundred and thirteen years ago the *Merkara* docked at the Kangaroo Point Immigration Centre. Among the disembarking passengers was James Duhig. His stated occupation was "farm labourer". He and his sisters had travelled from Ireland. The colony into which the passengers disperse is the size of the British Isles and Western Europe. It has 7,400km of coastline[1]. The whole colony has a population of only 75,000 people. Many of its inhabitants were born overseas, mainly in England, Ireland and Scotland.

The colony was just 26 years old, and was rapidly expanding. Its population had recently overtaken South Australia to make it the third most populous in Australia[2].

The Duhig family came here from peasant beginnings, searching, for what James Duhig's biographer describes, as "more favourable conditions". The same James Duhig "labourer" as arrived at the Immigration Depot went on to become one of the most influential Church figures in this country's history. In 1917, he founded this college, with the aim of ensuring religious education: hence the motto, translated, "The Lord is my Light".

Even today this is a country in which the inhabitants are preponderantly the descendants of immigrants and immigrants. Some immigrants to this country longed for their place of origin and failed to make the adaptation that James Duhig did.

Justice William Shand wrote a letter to a friend of his in England, Baron Farrar on the Twenty-eighth day of September 1894. In it, he yearned for the land that he had left behind[3]:

> "I am troubled with a slight return of my old complaint – nostalgia. I catch myself dreaming. Constantly I am landing at Marseillaise ... taking train across the Lombardi plains, wandering about the streets of Paris and eventually submerged in a London fog. Then I take cabs to various stations and watch familiar scenes flying past the windows of the railway carriage, and I see faces come to meet me at the station and I am here, there and everywhere in a perfect state of bliss – till I am roused by the voice of the faithful [Queensland] club servant telling me it is half-past six as he puts down a cup of tea and struggles with my mosquito curtains."

But James Duhig never looked back. He prospered in his new home, travelling overseas to Rome in 1891, where he spent 6 years. He returned to become Curate at Ipswich, later, Bishop of Rockhampton, and, finally, Archbishop of Brisbane in which office he remained for almost 50 years. No one could grow up in Brisbane as I did, in the fifties, unaware of the influence of his Grace. His was a name everyone knew, and few civic or other important occasions were complete without his presence. He was frequently seen on platforms and daises with his friend the Anglican Archbishop, Halse, an old, influential and holy man himself, both examples, well before it became fashionable, of an Ecumenical spirit, not, I regret to say always shared in those times by their respective flocks.

Every time is an important time for every country. We no doubt think that the challenges facing us as we move towards the millenium are uniquely difficult. That is open to serious doubt.

The turn of the last century was a critical time for the fledgling nation. We were weeks, it probably seemed light years, away from what the immigrant people regarded as their true home, and Asia was viewed in a different light from the way we see it and its peoples today.

Then, as now, because the country was comprised of a number of separate colonies with different, if short pasts, there were identifiable differences in outlook. South Australia, for example, had never received convicts; and regarded itself as a "free" colony. Western Australia ceased receiving convicts in 1868, 18 years after New South Wales. Victoria was the great mercantile State. New South Wales was thought by Victorians to be brash and over-ambitious.

In 1891, the journalist Gilbert Parker prepared a comparative description of the major capitals, concluding[4]:

> "Sydney boasts the best houses on the continent; Melbourne the best hotels; Adelaide the best sewage-system, and Brisbane the greatest common sense and liquidity."

How much has changed?

It is difficult for us to imagine what life must have been like in those days. It was in some ways both simpler and more complex.

May I touch upon some aspects of our legal system then and now. There was of course as yet no High Court. All appeals beyond the Colonies were heard in London by the Judicial Committee of the Privy Council. Today those appeals that are permitted to be made from the State Courts are heard by the High Court. There was no Federal Court or Family Court and consequently the legal system was simpler, and, one hopes, more readily comprehensible to the people than perhaps it is today.

Where the law is the subject of discussion in the media and elsewhere now, the focus tends to be upon the Courts and the Judges, with speculation, much of it wild and misconceived, about their backgrounds and philosophies, their ideas, their education, any perceived eccentricities, and upon the question whether, and the extent to which today, unlike, it is said, in days past, judges make the law. Let me immediately set your minds at rest by assuring you that I do not intend to put my toes in those swirling waters.

Instead, I want to say something about the people who do, beyond all doubt, make law in 1998. But to make the point I will return to 1898.

In that year, the Colonial Legislature of Queensland, then comprising two Houses of Parliament passed 21 Public Acts and 6 Private Acts, and there were, in addition, 3 Imperial Acts, all for the government of Queensland.

They dealt with a range of issues, from elections to mining, pastoral leases, marsupial proof fencing, weights and measures, copyright, evidence, juries, succession, the Victoria Bridge, the supply of gas to Cairns and the establishment of the Brisbane Technical College, but still could all be contained in 234 pages of the Statute Books.

In 1900, 28 Public Acts, 7 Local and Personal Acts and 5 Imperial Acts (including the Commonwealth Constitution) comprising 328 pages were published. From, election of members to the Commonwealth Parliament, to the Pacific Ocean cable, the census, defence, education, public health, the public service, sugar experiment stations, a united Presbyterian Church of Australia and the construction of railways and tramways, they dealt with many matters, some of which, following the commencement of Federation, were to become the subject of central government powers.

If you think that was to make a lot of law let me tell you what happened last year in Queensland. By then of course there was only one State House but it still managed to pass 83 Acts of Parliament totaling 5233 pages. One Act alone required more pages than all of the legislation passed in 1898.

Life has become more complex. The legislation dealt with topics as diverse as the Criminal Code, the Criminal Justice Commission and competition policy but one wonders whether so many words, so many phrases, and so many provisos and exceptions were really necessary.

What does this avalanche of legislation mean for the community? Some of what Parliament passes, has a significant impact upon a relatively small section of the community only. Some is ephemeral and designed to deal with or dispose of a particular issue for all time. But the consequences, direct and indirect, of most legislation does have a real relevance to how well we may live and the way in which we try to shape our lives. It is a pity that the legislation which governs them is so verbose, and, it must be said, often opaque.

This weight of legislation is not confined to Queensland. Every State smarts under the same sort of statutory burden. And superimposed upon all of that is Commonwealth legislation. Take the *Income Tax Assessment Act*, first passed in something like its current form in 1936 by the Federal Parliament, amended, soldered up, plugged, expanded, repealed in part, replaced and rebored by successive Parliaments until today its almost inscrutable contents occupy 3410 pages of fine print and contain 624 separate sections full of voluminous sub-sections.

It may come as no surprise to you that Judges, even highly experiences judges, sometimes find it difficult to penetrate the mysteries of the ever expanding statute books. For citizens without legal training and involved in their daily activities the magnitude of the task must be almost beyond comprehension.

Perhaps it is surprising that we do not feel a heavier sense of government intervention than we do. Still we could hardly say today, as D H Lawrence said, in language that a teenager today would appreciate, in his novel "Kangaroo", written in 1922, that in Australia:

> "...there seemed to be no policemen and no authority, the whole thing went by itself, loose and easy."

Attempts are made from time to time to simplify the language and to shorten the length of Acts of Parliament. The statistics that I have given really show that these efforts have not succeeded.

An accessible, transparent and comprehensible system of law is essential for our society, for any society that aspires to the important values,

freedom and fairness. Whether we have this has to be looked at in the wider context of what our society otherwise values and seeks.

Culture is a word today that seems to have several different senses. I use it, for the purposes of this address, in one only of the senses used by the *Shorter Oxford Dictionary*, that is:

> "The training and refinement of mind taste and manners: the condition of being thus trained and refined: the intellectual side of civilization."

In terms of that definition we are both better and worse off at the turn of this century than we were at the turn of the last: better off for being more informed about, and influenced by the universe in which we live, including, the ways and lives of the indigenous people of this country and our neighbours in Asia.

But I suspect that in other ways we are worse off. The language of this country is English but a parent and a grand parent is entitled to question whether that language and its great treasurehouse of literature are being taught today. Literature is not just an assemblage of words and stories. It is a gateway to the world of ideas and other places.

To talk about literature and the need for a familiarity with it today is to risk a charge of elitism. However even that great Australian egalitarian, Henry Lawson foresaw the risk to a society that failed to encourage and reward aspirations towards improvement. In his poem, "*For'ard*", he wrote sarcastically of what the jargon of today would describe as "dumbing down":

"But the curse of class distinctions from our shoulders shall be hurled;
An' the sense of Human Kinship revolutionise the world;
There'll be higher education for the toilin', starvin' clown,
An' the rich and educated shall be educated down."

When I was a boy growing up in Brisbane even very modest houses seemed to possess long books which people actually read. My first encounter with Charles Dickens was in a neighbour's house where I came upon and asked to borrow David Copperfield, to look, so I thought, at the amusing steel engravings by Boz. Little did I think that I would become captivated by the vast untidy gallery of Victorian characters whose joys and reverses became my pleasures and disappointments.

Does this happen today? Do people read the great Victorian and other novels of the past, or is it only when they are sumptuously translated to the small screen as with the Forsyth Saga or the Pallisers that people become acquainted with them? Is there not something narcissistic about a society intensely preoccupied with its own times and its own activities? Or is that too harsh a judgment? At the end of a period of one hundred years during which life expectancy has increased (for men) from 55 to 75 and for women from 59 to 81[5], it might have been thought there was more time, more leisure to absorb what we used to call the Classics as well as the writings of our own times.

The great cultural medium of today is television, still mightier than the print media, mightier yet than the Internet, and bringing into our own living rooms a few seconds' distillation of each complicated set of events as they occur around the world. Television sets the pace. It writes the agenda. It changes our language and our imagery. It shapes our senses of humour. It

tells us what is sad and what should make us happy. It conditions our other responses by telling us what we need, what we should enjoy, how we should vote and what we should consume. And the medium is growing stronger.

The Comedia del Arte replaced the strolling player. Theatre companies replaced the Comedia del Arte. Radio invaded much of the territory of the theatre companies. The cinema marginalised radio and television conquers all. It has perhaps one predator, virtual reality on the internet and that is hardly a prospect to be faced with equanimity.

Nothing is a threat to television and television is a threat to everything. It has certainly damaged literacy. In an essay, 'Teaching More Students for Less Money: the threat to intellectual literacy'[6] Jim Hagan tells how he asked some first year university students in history to explain the meaning of twelve words in a text that had been used in the course for some years: "imperative", "kindred", "concurred", "indelibly", "annals", "extenuating", "aggravating", "corroborating", "commiserating", "indictment", "ordinances", and "deplore". No students scored twelve, the average was nine, and one, whose first and only language was English, scored two.

Television has made acceptable a whole new language which by adopting euphemisms for old evils, veils those very evils themselves. The Central Intelligence Agency of the United States calls blackmail, "biographic leverage" and refers to an assassination as a maximal demotion. In the Gulf War, bombing was described as "servicing the target", war planes as "force packages", buildings as "hard targets", and people as "soft targets". Civilian casualties were no more than collateral damage. No one doubts the power of television, indeed of the mass media as a whole. What we have to fear is not

what they tell us, perhaps not how they tell us, but what they choose to withhold from us.

In an introduction to a number of essays collected in a book *The Great Literacy Debate*, Professor David Myers regretted the passing of aspirations for, and familiarity with literature of the kind which flourished during the nineties of the last century, when people of limited education could quote from Henry Lawson and Banjo Paterson and look forward to the serials of Steel Rudd.

What Allan Bloom wrote in his book, *The Closing of the American Mind*[7], of the culture of that country may not be entirely inappropriately applied to Australia. Instead of literature, he said, there is the electronic media and that media grinds out rock music which gives illusions of shared feelings, bodily contact, and grunted formulas. He continued:

> "People of future civilizations will wonder at this ... and find it as incomprehensible as we do the caste system, witch burning, harems, cannibalism, and gladiatorial contests. It may well be that society's greatest madness seems normal to itself."

It is a mistake however for us to believe that we cannot aspire to cultural achievement in this country or that the aspirations of our artists are different from, or inferior to those of other countries. David Malouf, this State's most distinguished writer, recently wrote a new preface to his superb book, *Johnno*, about Brisbane as my generation knew it. In it, he reveals not only his familiarity with what we were taught was great literature, but also an

awareness of the way in which other writers elsewhere share the same misplaced sense of distance and alienation from great centres of western culture. He wrote:

> "This business of turning to literature as a guide to the passionate life and finding ordinary life, life at home, by comparison thin and inauthentic was a very Australian pastime when I was growing up, and still is, perhaps. But it is not uniquely Australian, it is one of the great themes of a certain kind of writing, this conviction on the part of young men with a taste for reading, that their lives and the very nature of what they feel would be transformed if they could only get from Grenoble or Angouleme to Paris, or from Minneapolis to New York. As for places, cities, even the cities we grew up in, there is a sense in which they only become real to us when they appear in books. By the time I began 'Johnno' I already knew this. The cities we know from books, the London of Dickens, Balzac's Paris, that are so real to our senses that we believe we could find our way in them street by street, are cities of the imagination. They never existed anywhere, but in the mind – first of the writer, then, because he put them there, in the mind of his readers."

The artistic landscape of today is in one respect far different from that of the period during which David Malouf wrote "Johnno". Then there were few literature prizes, subsidies, awards or grants. Comparing the artists of

one generation with those of another can be as arid as saying that Dennis Lillee was a better or a lesser fast bowler than Ray Lindwall, but it is open to question whether the current opportunities have necessarily led to better writing and better art generally.

There has been another recent publication which would suggest that sometimes austerity and the absence of state intervention may not have stifled output and quality. The book is called *Formative Years* and is written by Kathleen Schillam to record, as the author states, a small part of Brisbane's art history. She recounts how four young artists Frank William Smith, Leonard Schillam, Stanley Francis Lymburner, and she in 1935 rented a space in the Victory Chambers, an old building in Adelaide Street near Central Railway Station. The four met there three evenings a week, and on Saturdays, applying themselves to their work with a diligence and discipline in no way diminished by their occasional inability, without the assistance of other artists, to raise the rent, in those depressed times, of ten shillings a week.

The publication of the book marked an exhibition of many of the earlier works of these Brisbane artists held at the Victor Mace Gallery in August this year. There it was possible to see elegant and economical line drawings by Lymburner and Smith, paintings by the same artists of which any of their contemporaries anywhere would have been proud, and innovative bronzes, carvings and sculptures in other media, by Leonard and Kathleen Schillam.

I have mentioned these cultural matters to try to make the point that it is important neither to devalue nor to forget the activities of the people who have made us what we are today, and to remind us that aspects of our cultural life now in the sense in which I have chosen to speak of it today,

although perhaps more diverse than then, is, in some respects no richer or more expansive.

I have said a little about the law of the legislators and the culture of our country as it was then, one hundred years ago, and as it is today. I will now try to draw those threads together in the context of our society on the edge of the 21st Century.

The Eighties of this century were a turbulent and not altogether successful period. It is almost as if that period has dented the confidence of the nation. New laws have had to be devised to cure the problems of the previous decade and to prevent their recurrence. In other ways people may feel that their lives are not improving and that perhaps, unlike their own parents they might now be able to give their children more advantages in life than they enjoyed.

I do not think that we should be faint hearted or pessimistic about our future. As in other places in this address I have looked to the past with a view to trying to foresee the future. Let me return to the Nineties of the last Century.

Overwhelmingly then the great issue was whether, and how the separate colony might federate to establish a new nation. With the advantages of hindsight, that there would be one nation looks like a foregone conclusion. The truth at the time was that there was a great deal of opposition to the federation and to the transfer of powers by the Colonies to a new central government.

I do not intend to debate tonight whether the nineties of this century is an appropriate time for the composition of a new constitution. That is a matter for the politicians, and ultimately the people, not for lawyers and judges. But perhaps I can say this. There is a tendency in some circles to deplore the people's reluctance to change our Constitution. The Australian Constitution has been amended eight times. But the Constitution of the United States, approximately one hundred years older, has been only amended on twenty seven occasions. It is important to remember that Constitutions are strongly entrenched because they are consensual documents. They focus upon the matters upon which we agree and can unite. Perhaps there are still some issues upon which a bare majority might agree but which would still be so potentially divisive if implemented as to be simply not worth that division. For all the criticism that has been levelled at it, the Australian Constitution has proved to be a remarkably flexible and durable document.

Section 51 is the section, which, under a number of different headings, sets out the power of the Commonwealth Government. The founding fathers were very far sighted in the way in which they conferred upon the Commonwealth power over postal, telegraphic, telephonic and other like services. The language is immediately apparently very expansive and wide enough to cover television, and I would think, the Internet, concepts which, in 1901 would have been seen as being at the outer reach only of the imagination of the most imaginative of science fiction writers. The same section gave to the central government, power over astronomical and meteorological observations. The census, legal tender, banking and insurance (other than state banking and insurance) weights and measures, copyright, patents, corporations, divorce, and conciliation and arbitration of interstate disputes were also among the powers which the Colonies and the people of them ultimately entrusted to the Commonwealth Government. It is

because of the far sightedness of the authors of the Constitution that the document contains these powers which appear so obviously apt today but which then must have involved a very great leap of faith indeed.

The world of 1899/1900 was not in many respects a very safe place, and Australia was, at the time of Federation, engaged in a far-off War in South Africa, as unpopular in this country as some of the more recent conflicts in which the nation has been involved. And the Boer War was not the only conflict in which Australians were fighting. Australian troops fought in the Boxer rebellion in China which occurred at about this time. The country was about to become a colonial power by taking over the whole of British New Guinea as it then was. The Eighties and the early Nineties had thrown up other serious problems. A great drought had devastated the country, and a prolonged and extensive strike had turned man against man, and family against family, all of this seriously damaging an economy desperately searching for prosperity, and the people and nation.

But on Federation the country moved to a position of hope, confidence, and prosperity. Now is not a time, as it was not then, for pessimism. Just because the Constitution, politics, and education are not on everyone's lips, in all the cappuccino houses, and all the bars of the country, does not mean that the people are unaware of what is happening and what they want for a better world.

The more things change the more they remain the same. The editor of the *Morning Post* of Cairns railed in the paper of the Third of February 1897, at the country's pre-occupation with sport rather than the Federal Convention of 1897 which had commenced to try to set a new constitution in stone. The editor wrote[8]:

> "The whole of Australia has been so busily engaged in fitting itself for a lunatic asylum over the cricket matches between England and Australia, that it has not found time to remember that last week the third Federal Convention met for another attempt at nation-making. It is here that we join issue with the whole crowd, of sports enthusiasts, who can only think and talk of nothing else but their particular branch."

He then spoke of nearby events with a resonance with those of today. He went on,

> "The Eastern situation may be assuming such a serious aspect as to raise the eyes of the civilised world to be riveted there in anticipation of a tremendous row at any moment, but Australia has got its test matches to consider, and to its way of thinking, cricket matches are of infinitely greater importance than the Eastern question. Time after time have attempts been made to weld the Australasian colonies into one great Federal Dominion, and now the Convention has again met to consider the details of the scheme which is fraught with the greatest interest to every man, woman and child in Australia. How many men in Queensland could intelligently discuss the principles of the important business which the Convention have met to consider? How many men are there who could not sit down by the

hour and relate stories about the cricket teams, their personal tastes and idiosyncrasies?"

"Sport of all kinds is a form of amusement, and directly it becomes a business it should cease to exist, because it then does infinitely more harm than good. When we find the whole nation, which can talk and think of nothing else but cricket, while in our midst epoch-making events are taking place, it is time that cricket was abolished in the best interests of the nation."

Well, cricket has not been abolished. We are looking forward to and talking about the United States Open Tennis Championships and the next Olympic Games. We did get our Federation and we have become a proud nation. Sometimes worries and fears that we hold are no more than monkeys on our backs to be shrugged off, as we learn again to hope and aspire, and essentially, to achieve a better life as our ancestors did, despite all the pessimists and other harbingers of doom.

That is my hope and wish for the next century.

Endnotes

1 Australian Bureau of Statistics, *Queensland Year Book* (1998) p 18.

2 Id p 36.

3 Extracted in Evans et al, *1901 Our Future's Past*, Macmillan (1997) p 36.

4 From an article in *Harper's Weekly*, extracted in Crowley, *Colonial Australia: A documentary history of Australia*, Vol 3, (1980) p 363.

5 Australian Bureau of Statistics, *Year Book Australia* (1998), p 152.

6 In Myers (ed) *The Great Literacy Debate*, Australian Scholarly Publishing (1992) pp 88-93.

7 Simon & Schuster (1987). Cited in Myers (ed) op cit.

8 Extracted in Evans op cit p 242.

I am indebted to Father T P Boland for his biography of James Duhig (1986 University of Queensland Press, St Lucia) which provided a basis for some of the material used in this presentation.