

Address to the Silks Gala Dinner 2020

Greetings and congratulations my eminent colleagues.

As has been observed, we have joined a 400-year old tradition that started with Sir Frances Bacon QC in 1597, who as a Barrister in the Court of the Kings Bench and Exchequer, persuaded Queen Elizabeth I to appoint him “Queen’s Counsel Extraordinary”, which gave him precedence over other barristers and the then dominant serjeants-at-law who had exclusive right of appearance in the Court of Common Pleas.¹

Perhaps what is less discussed is that Sir Francis Bacon held many stations in life. He was a

- scientific genius, who developed the modern scientific method of research, including inductive reasoning
- a member of the clergy,
- a lawyer,
- a Silk,
- an Attorney General.
- He was also a bankrupt,
- And a confessed fraudster who in mitigation for his 23 separate corruption charges, labelled himself a “broken reed...in need of mercy,”
- then a prison inmate.

He was a true trailblazer, including proving that nobody is above the law, and that the rule of law eventually visits all who forget this, regardless of their office or station in life.

After Sir Francis Bacon’s death in 1626, the practice eventually emerged of the Sovereign issuing letters patent to the most eminent of the barristers granting the rank of Silk.

Originally appointed to represent the Attorney-General and Solicitor-General as the 1st and 2nd law officers, hence the title Queens Counsel,² up until the early part of the 20th century Silks were exclusive to the Crown and still required dispensation to appear against the Crown.³

As a Director of Public Prosecutions, I am naturally attracted to such a convention.

However, considering the briefing fees, I expect treasury may take some convincing.

¹ <https://en.wikipedia.org/wiki/Serjeant-at-law>

² Ibid.

³ Halsbury’s Laws of England, 4th ed., vol 3(l) para 433. See ‘Learned in the Law’ in note 1 at pg. 10. See also Gleeson CJ’s address in note 2.

The primary significance of the office was that it constituted a group of barristers recognised by the Sovereign as being of sufficient eminence to represent the Crown's interests.⁴

The practice of new Silks taking their bows before the courts as we did this afternoon, has not changed in 400 years.

It is where we announce our newly conferred eminence before the highest judges in the land, who with a polite nod, are possibly reminded of the words of American comedian Emo Philips who once said –

"I used to think the brain was the most wonderful organ in the body-

Then I realised who was telling me this".

Despite its long, complex evolution, the significance of the institution of Silk has not diminished, and the values it embodies remain just as important today as at any time in history.⁵

Being labelled Silk must weigh heavy upon our shoulders. We must carry the burden of being labelled learned by, at all times, displaying learned qualities.

We set the standards of skill.

Of integrity.

Of honesty.

In us, the independence of our role must be on display every day.

Our diligence must be worthy of our new standing.

We must be worthy beacons, because those in our profession today and those who will join our profession in the coming decades will wish to emulate us, and the standards we set.

We must remain humble, as arrogance is inconsistent with eminence.

We must never allow ourselves to become broken reeds, in need of mercy; we must be sturdy trees that reliably provide protection and draw eyes skyward.

Although we must keep an eye on our traditions, we are responsible for ensuring our profession grows and evolves to be fairer for all Australians, not just the privileged with the resources to afford quality representation. Particularly first Australians, who it should be remembered that, apart from two original Constitutional provisions expressly denying rights afforded everyone else,⁶ are totally absent from the very DNA of our Constitution and are currently amongst the most imprisoned and disadvantaged people on the face of the planet.

⁴ See 'Learned in the Law' in note 1 at pg. 10. See also Gleeson CJ's address in note 2.

⁵ http://www.hcourt.gov.au/assets/publications/speeches/former-justices/mchughj/mchughj_31jan05.html

⁶ Sections 51(26), 127 (repealed?)

We must think anew, and given I have this rarest of opportunities – please allow me to conclude with my own reflections on this issue.

The basic order in our lives is not enjoyed by everyone. I grew up in a place SBS labelled “Struggle Street”, the poverty- stricken Public Housing estate of Mt Druitt in Sydney’s outer Western Suburbs. To a mother who was the victim of chronic domestic violence and a mentally ill father, who just did not fit into society. I knew universities existed, but other than our local GP, none of my family actually knew anyone who had attended one.

Having lost several of my siblings to the metabolites of marginalisation, I dropped out of school at 15 and left home. A few years later, my father wandered alone into bushland and took his own life. He felt he wasn’t welcome in this world, so he left.

I am the answer to the question – what if things had been different for them.

I have lived a life absolutely driven by the deafening silence of my family’s absence, such that one generation on, I now find myself standing in this amazing place, before you amazing people - our nations legal elite, as a representative of the most eminent of this most distinguished profession, that has given me so much.

I have been rewarded with a seismic shift in the entire trajectory of my family line. The gallery watching our bows today included my youngest daughter, who is the child of two university graduates, on the cusp of becoming a second-generation lawyer, both conscious we were sitting in a place that would be absolutely alien to any of our previous generations.

This speaks as loud as anything to the benefits of opportunity and inclusiveness that I have experienced during my two decades in this profession, that must continue to be a hallmark of a just, modern-day legal profession.

In my experience, indicators such as the particular school or university entrance score it produced, do not measure academic potential, rather opportunity and absence of distraction. Although academically I managed to acquire multiple university degrees in economics and law, when I first entered legal practice my frequent distraction and early departure from formal schooling still left me with significant literacy and numeracy deficits, particularly in the areas of spelling and grammar. Whilst comfortable on my feet before juries and appeal courts, I was frequently embarrassed by the basic spelling and grammatical errors that regularly appeared in my written work.

I quickly discovered that grammar and punctuation are important when one needs to distinguish a Highschool Teacher from a High Schoolteacher - or submitting on whether a legal system should be just, quick and cheap – or just – quick and cheap.

Whilst true that some attempted to embarrass me as a young lawyer with an already healthy dose of imposter syndrome, I recall many senior practitioners and even judicial officers showing great understanding, even assisting me with coping strategies, often sharing their own experiences of conquered challenges, and I am confident that this room is full of conquered challenges worth sharing.

This genuine understanding and support made the success in my latter years possible and demonstrated that the functional deficits frequently experienced by many disadvantaged and minorities can be overcome and are not necessarily indicators of potential.

This must be our aspiration. As a profession, must ensure that all genders, LGBTQI people, racial and religious minorities, refugees, people with disabilities - and even a scared kid, sleeping in a park at societies margins, can aspire to reach its heights, and change the future for themselves and their future generations.

As Silks we are now leaders of our profession, and as such, we must be visionaries. We must build a profession that not only embraces but celebrates diversity in all its forms. A profession that prides itself on its ability to not just represent the disadvantaged and socially marginalised, but one that builds bridges for their inclusion within the profession itself.

A profession defined by its leaders' ability to dismantle social barriers, to draw people with a rich and diverse range of histories and experiences, such that the make-up of the very profession itself is commensurate with those most impacted by its functions.

But in the words of most lawyers at some stage of their career, that is tomorrow's problem.

Tonight, let us just be present, in the here and the now, and savour this moment with the people responsible for getting us here.

So, I finish with a simple thank you to those who have inspired us - and supported us and continue to do so throughout our journeys. Thankyou to those here with us tonight, thank you to those back in our home states, and thank you to those who are no longer with us, yet remain forever present in our lives.

Shane Drumgold SC

3 February 2020