

FRANK WALKER EULOGY

Unfortunately, Sir Humphrey Appleby made "courageous" a term of disparagement. But Attorneys General must be courageous. They must act independently in the discharge of their functions as First Law Officer. Those duties must be performed without regard to personal or political considerations, with regard only to the maintenance of the law and the Rule of Law. That takes courage, particularly if Cabinet or cabinet colleagues have another agenda. Frank was a courageous Attorney General and, because he was courageous, he was a good Attorney General. It is not appropriate even on this occasion when we gather to mark Frank's death and to record his contribution to the law, to politics and to society, to give examples of his courage as First Law Officer of New South Wales. It is, however, appropriate that I state that, to my certain knowledge, Frank's actions as First Law Officer were not always welcomed by his Cabinet colleagues and, on that account, were sometimes to his own political detriment.

Courageous, charming, cheerful – unfailingly cheerful in the face of opposition, adversity and, even, tragedy. That is how I will remember Frank Walker whom I met as a fellow part-time student at Sydney University Law School. It was the sixties when idealism ruled. In many respects, idealism ruled Frank all his life – idealism tempered with a health dose of cynical larrikinism. Frank did not believe that all were equal before and under the law; he believed they should be and, what is more, that all should be equally entitled to the law's protection. He believed that all were to be presumed innocent until proven guilty and, moreover, that, until then, they must be treated as innocent. As Attorney General, he did much that still endures to give effect to these ideals. I mention, in no particular order, the establishment of the Legal Services Commission for the provision of legal aid with funding secured by interest on solicitors' trust accounts; the expansion of the office of the Public Defender; the establishment of Community Justice Centres; the reform of the Bail Act so that there was a presumption in favour of bail other than in cases of armed robbery, and something that is probably now forgotten, The Children's Equality of Status Act eliminating discrimination on the basis of illegitimacy of birth – a bizarre expression that has now all but disappeared from modern parlance.

"Equality" - a concept that is difficult of definition and of application, but you know when it is not there. From a very early age, Frank knew it was not there for Aboriginal Australians. Much has been written in recent days of Frank's role in formulating the Keating Government's response to the Mabo decision, putting Native Title rights on a national and legislative footing. Earlier, in 1981, he had secured legislative native title rights in New South Wales, backed up by fund consisting of 15% of Land Tax for 15 years so that Land Councils could buy back aboriginal lands. It was a bold and imaginative stroke, lasting testimony to Frank's political genius and his commitment to the betterment of our disadvantaged fellow citizens.

Although Frank's ministerial responsibilities did not extend to women's affairs, he was acutely conscious of the disadvantages that women suffered within the criminal justice system. Although I think the phrase "battered wife syndrome" had not then been coined or, if it had, had not made its way into common speech, Frank introduced practical measures to ensure that such women were not further victimised by the criminal justice system: the repeal of the mandatory life sentence for murder, reform of the law of provocation and, eventually, ensuring that prosecutors were provided with proper psychiatric evidence and not simply that of the so-called "Government Psychiatrist". He reformed the law of rape by introducing categories of sexual assault and introduced restrictions on the cross-examination of rape victims. These reforms were met with resistance from the judiciary, resistance that was every bit as sustained and disrespectful of the rule of law as was the resistance of the police to his repeal of the Summary Offences Act and its replacement with the Offences in Public Places Act which defined "offensive behaviour" by reference to objective standards rather than the subjective feelings of individual police officers.

Somewhat better received than his reforms with respect to sexual offences, were Frank's efforts to improve the status of women in the legal profession. He introduced quotas for the briefing of women barristers by the State Crown Solicitor; he appointed women as prosecutors, public defenders, magistrates and judges, a number of whom are still in office.

If I were to stop here, you might conclude that Frank was a soft-centred leftie committed to improving the lot of the disadvantaged. He was that. But he was more than that. Apart from hotchpotch, which he claimed never to have understood and, moreover, to have abolished for that very reason, Frank was a sound lawyer with a good grasp of legal principle and an ability to absorb the detail of complex legal issues and proposals. He was an energetic participant in the Standing Committee of Attorneys General where he argued for uniform and national laws on issues that he considered should not be left to individual States. These issues included artificial insemination by donors and in vitro fertilisation. He argued, forcefully but unsuccessfully for uniform defamation laws; he was, however, successful in his campaign for a uniform company law and for co-operative arrangements for the investigation of offences under that law. Indeed, as Attorney General and Minister for Corporate Affairs, Frank initiated several important company investigations, thereby securing for himself a number of additional and dangerous enemies whom he could well do without.

Frank's work in SCAG revealed him to be anything but a parochial States Rightist. He had a national view on many issues and was prepared to work with persons from the opposite side of politics to secure a national response to issues of national importance. Thus, he worked with the then Federal Minister for Business Affairs, Mr John Howard, to bring about uniform company laws, and with other members of the Fraser Government to give effect to the Treaty on the Law of the Sea. Unlike many other State Attorneys General of that era, he took a realistic view of the Commonwealth's constitutional powers, urging the Commonwealth to utilise those

powers, amongst other things, to sever the residual constitutional links that prevented the States from abolishing Privy Council Appeals and legislating contrary to a number of Imperial laws still then in force in the “colonies”. Although those links were not finally severed until Frank had ceased to be Attorney General, his earlier work and enthusiastic support for the project contributed very significantly to the legislation that eventually secured the constitutional position of the States as members of a federal and independent sovereign nation, rather than as British colonies.

The legal talents that Frank revealed in his work with the Standing Committee of Attorneys General served him well in his later career as a judge, including as a judge of the District Court of New South Wales. In many respects, it was hard to imagine Frank, the larrikin activist, settling into the rather conventional and constrained life of a judge. But he did so with distinction: his judgments were sound and his instinctive compassion for people in difficulty ensured that the justice was done in accordance with law.

On occasion such as this, we tend to console ourselves with statements such as “he had a good life “ or “a good innings”. The cricketing metaphor is apt, but only in the sense that Frank put a lot of runs on the board and it took an awful lot to bowl him out. But I don’t think Frank had a good life. In fact, I think he had an awful life: he was pursued by vicious rumours in his political life and his personal life was dogged by tragedy and ill health. But I am very, very sure that a lot of people have had and that many others will have a much better life than otherwise because of Frank Walker QC and MP.

M. Gaudron

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