

Chapter Eight

The Magical Powers of Judges and University Administrators

Professor James Allan

I arrived in Australia a little over four years ago. I arrived here to work in a university law school. Law schools in Australia are places where the vast preponderance of people vote Labor – if not something further to the left than Labor. And at one of those morally self-indulgent human rights conferences that, in my line of work, I'm obliged to attend from time to time, I soon encountered a rather bizarre Australian practice. This is the practice of starting a talk or speech by observing and repenting of some past supposed misdeed committed by one's forefathers – or, heck, it doesn't even have to be one's own forefathers. It's enough if the misdeeds were those of people you yourself have absolutely no connection to whatsoever.

And here's the nifty bit. This observe-and-repent ritual comes totally without any cost to the speaker. You don't actually have *to do* anything that will atone for what you see as some past wrong. There's no real cost to you at all. Absolutely no one's life needs to be improved or made better. You don't even have to mean what you say. Just start your speech or talk with the perfunctory formulation and you can take your place with the elect – those whose moral sensibilities are so clearly superior (or so they think) to everyone who refuses to play this game.

Heck, some few people – those who appear to believe that uttering a few formulaic words to begin is indeed the doing of God's work – even manage to feel good about themselves. Not a single *other* person's life is improved in any way, though, except for the speaker's fleeting sense of moral sanctimony.

This is all too good to be true for me to miss out on the game. So, please, let me start this talk by acknowledging the traditional members of the Anglican Church, dispossessed of their Book of Common Prayer liturgy, of sane leadership (think Ridley College), and of use of the magnificent Tyndale-inspired King James Bible – to say nothing of their core beliefs.

That important ritual out of the way – and bear in mind that Samuel Griffith's father was a Congregational Minister, which means the Anglicans ought to be a safe target in this crowd – and I'd like to thank the chairman for his very kind introduction. Indeed it was overly kind. I'm in the line of work where the ultimate goal is to write a book or article that people will still be reading in a hundred years. Think of it as an *ersatz* attempt at achieving a poor sort of immortality. And to a remarkable degree the achieving of this seems to be influenced by chance, luck, fate, call it what you will.

The best précis of this that I've heard was given by the American travel writer, now moved back to Britain, Bill Bryson. My wife and I went to hear him in Brisbane a few years back on his book tour for that very good book he wrote, *A Short History of Nearly Everything*. Not his usual fare, but good all the same. And for Bryson, Brisbane was the final stop on a gruelling Australian book-selling tour.

So he decided to tell the audience a few tricks of the trade, read a few passages from various of his books, and then field questions. But it was his first comment to us that is relevant here. Bryson told us that the same sort of questions come up again and again and again. And that an author needs to develop a set of stock replies. For instance, one of the most common questions Bryson gets is this:

“Bill, what do you want people to be saying about you in a hundred years?” To which Bryson always replies: “Isn’t it remarkable that he’s still sexually active”.

I’m much of Bill Bryson’s opinion on that score.

I’m standing up here tonight because of the kind invitation of Julian Leaser. A few months back I was in my office and the phone rang. It was Julian. He greeted me warmly, flattered me to the extent I knew to be on my guard, and then he said, “Jim, we’d like you to give the after dinner talk at this year’s Samuel Griffith conference”.

I was flattered. Julian continued, “Of course, we want you not to be boring, we’re hoping for funny really, not too long, with a fair degree of irreverence thrown in”.

Having sat at my desk in Brisbane listening to this I figured, well, I can give that a shot. But then the kicker came when I asked Julian what he wanted me to speak on. What was the substantive topic he had in mind?

“The Crown”, answered Julian.

I can assure you all that there was a stunned silence on the line. I eventually told Julian I’d call him back the next day. When I did I said to him, “Julian, you can have my attempt at funny and irreverent, or at short and about the Queen, but you’ll need a better man than I to give you funny and irreverent and about the Queen”. Which is why I’m speaking tonight about the Magical Powers of Judges and University Administrators.

Let me begin the substance of my talk by warning you all that this will be an uncharitable talk. I mean that in the sense St. Paul used the word “charity” in his first letter to the Corinthians, where (at the risk of riling up any Anglican Bishops by quoting from the King James Version) Paul says that charity “vaunteth not itself, is not puffed up”.

My talk tonight will be about a certain sort of top judge and university administrator who could never, in the Pauline sense, be described as charitable. Think of the judge who deep down thinks his moral sentiments – his ability to update the Constitution, to keep his finger on the pulse of changing social values and *mores*, to know what is in keeping with the underlying spirit of myriad international treaties, not to mention with an all-encompassing justice and fairness – are (let’s be blunt) superior to anyone else’s. And think of the academic no longer publishing in her chosen field of expertise, preferably one prone to falling victim to every passing fad when it comes to “student centred learning”, “criterion-based marking”, “deep not superficial learning”, and endless more fatuous phrases disguising empty ideas. This academic has opted to move into “university management”, has familiarised herself with the intricacies of Australia’s Soviet-style university managerialist culture, where one size really is made to fit all – and that size flows from the top down, never the other way round.

Think of that sort of judge and university administrator and you’ll have an idea of the object of my uncharitableness tonight.

In fact, there’s a story I need to relate to you of a judge not unlike the one I’ve just described. This judge not only has a Philosopher-King complex, he sees himself as immensely popular – perhaps someone with photos lining his wall showing him and every famous person imaginable. This judge knows everyone. Let’s call him “Miguel”. One day Miguel gets into a cab in Canberra. Of course he knows the cab driver. After a bit the cabbie remarks to Miguel that, although he’s a popular man, he really isn’t as popular as he thinks he is. He doesn’t know everyone. Miguel demurs. A wager is made. And the cab driver bets \$10 that Miguel doesn’t know the Prime Minister. Soon they are being welcomed into Parliament House by Kevin Rudd.

The cab driver asks for another chance, double or nothing. This time he names President Obama. The following week the two men fly into Washington and within the hour Barack Obama is greeting his old friend Miguel. The cab driver is incredulous. He asks for one last bet. Two thousand dollars says Miguel doesn't know the Pope.

Later that week they both fly into Rome, make their way to the Vatican and there before them is a huge crowd. The Pope is up on a balcony. The cab driver asks Miguel how he can prove he knows the Pope. "Give me ten minutes and if I'm not up on the balcony with the Pope, you win". And with that Miguel disappears into the crowd.

Nine minutes later he emerges on the balcony with the Pope. And he looks down to see the cabbie passed out in the crowd. So Miguel rushes back down, makes his way through the throngs, and finds his way to the cabbie. He slaps him around until he regains consciousness. "Are you okay?", asks Miguel.

"Well, I could take it when you knew Rudd. And I could even take it when you knew President Obama. But when the guy behind me just asked, 'Who's that up there with Miguel.....?'"

Likewise, there's the story of a particular Vice Chancellor. Feeling herself to be necessary to the smooth running of one of Australia's leading export industries – that's how she sees her job – and needing to get back from a meeting in Canberra that discussed the latest 5-year plan for her industry, she decided to charter a plane. The only plane available was a small one, and to get it she had to agree to take two other paying customers, a backpacker and an elderly Methodist Minister.

An hour out from their destination the plane started to shake rather violently at 22,000 feet. It was buffeted every which way. And then there was a loud crash, some smoke, and an eerie silence. There was only one pilot for the small plane and he came on over the intercom. He told the three passengers that the engines had died and that there was nothing he could do. The plane, alas, had only three parachutes for the four people in the plane. The pilot said two were back with the passengers and he had the other, which he was taking and using immediately. Then the intercom went dead and the three passengers could see the pilot jump out.

At that moment the Vice Chancellor turned to the other two and she said, "I am an incredibly important person. All sorts of Deputy Vice Chancellors, Pro-Vice Chancellors, Executive Deans, Heads of Schools, Teaching Co-ordinators, myriad consultants and more all report to me. *I am the pinnacle of the knowledge tree*. There are even a few actual academics where I work. And they all need me. I deserve one of the parachutes". And with that, she grabbed a parachute and jumped out of the plane.

At that point the elderly Minister turned to the backpacker and he said, "Son, I've had a long and full life. I've done the best I can with the qualities and attributes given me. And I think it's only right that you take the last parachute. I will go down with the plane".

The backpacker looked at the Minister. "That's very kind of you, sir", said the backpacker. "But the *pinnacle of the knowledge tree* just grabbed my backpack. That means we can each have a parachute".

I trust that I haven't so far conveyed the impression that certain top judges and university administrators might, on occasion, be prone to vaunting and puffing themselves up. Heaven forbid, that's the last thing on my mind.

In fact, a few members of those august callings – or job-skill categories – are so talented, so chock full of ineffable abilities of near mystical proportions, that I think it's fair to say that members of this select fraternity (or sorority, to keep in line with the Politically Correct demands laid down at the

2020 Summit) can be described as possessing magical powers. Yes, ladies and gentlemen, there are a few of them that really do have magical powers, or at least see themselves as possessing them.

Having given that assurance, let me go out on a limb for a minute and offer a few points of substance. Not many, of course, I'm well aware of the dangers of an after dinner speaker saying anything much substantive.

Anyway, we do have a problem with our universities in this country. I am a big fan of the former Howard government on many fronts. But it did nothing to fix the universities, in some ways making things worse. The culture of managerialism is far, far worse than anything I have encountered in teaching at universities in New Zealand, Canada, the US or Hong Kong. And I know the UK isn't nearly as bad as here either. I work in an environment that is a centralist's dream. One-size-fits-all *diktats* come down from on high and specify how many assessments you must give, how you can assess students, how you treat graduate students, how many hurdles they need to pass through each year. We get told we must use "criterion-based marking" – jargon for assuming university students are in primary school and you are holding their work up against a list of points to be ticked-off. Not the cream of the crop, who can come at issues in myriad ways – indeed, two great papers can give near opposite answers – your job being to put them in a rough and ready ranking order. The casual visitor to an Australian university could be mistaken for thinking he was visiting a GM plant (with the same level of profitability as GM has too), what with all the talk of "line management", "core competencies", "non-reductive research" and a list of jargon so long I won't bother you with it.

As I have said before, and will be saying again in a longish piece in the October issue of *Quadrant*, I will be urging my own children not to go to university in Australia. We are lucky enough also to be citizens of Canada and New Zealand, and in my view both those countries offer a better undergraduate university experience.

And what of the judiciary? We are in many ways very, very lucky with our judiciary here in Australia, at least at the top level. Our High Court is a model of interpretive self-restraint compared to my native Canadian Supreme Court. If you took former Justice Michael Kirby – the one who was nearing, what, a 40 per cent rate of dissenting, and who is seen by many as the judge most inclined towards interpreting constitutional documents (and some statutory ones) in the light of his own sense of changing moral values – if you took him and put him on the Canadian Supreme Court he would, in my view, be the most interpretively conservative judge there. So in a sense one can understand his frustrations, when he goes to international conferences and sees his preferred methods of interpretation are moderate by the standards of all of his Canadian colleagues, and many of his British and American ones.

But I see that as us being lucky here. We have a very good High Court.

What will happen if we get a statutory Bill of Rights is another matter. What has happened in the UK is that the judges have said that their statutory Bill of Rights has ushered in (and I quote) "a new legal order". It has allowed them, when reading other statutes, to say that they can now read words in, ignore Parliament's clear intent, do this when there's not even the hint of any ambiguity – pretty much do anything provided the outcome is, in their view, more in keeping with a rights-respecting outcome (the key point being that it is in *their view*). I like to call this Alice-in-Wonderland interpreting, because it was Humpty Dumpty there who liked to say that for him, a word means what he wants it to mean. All of us, I think, will have to make our views known to our MPs when the Attorney-General's Consultation Committee on the Bill of Rights reports back – that's the Committee chaired by the person who was on the record, before being appointed, as being in favour of a statutory Bill of Rights, and it's the Committee with not a single known sceptic as a member. And we all know that with that sort of composition it would be a brave person who bet on anything other than this Consultation Committee recommending some form of statutory Bill of Rights, though possibly a more watered-down one than Victoria's.

Put something like that in place and how our judges decide cases will almost certainly change. They will become the font of rights proclamations in that they – the unelected judges – will be the ones who tell us when our rights have and have not been infringed. All Parliament will have left is the power to say, “Okay then, but we’re going to take away your rights anyway”. And experience shows that that sort of power is never used, not once in 27 years by Canada’s federal Parliament, and not once in nine years by the UK’s.

And once that happens the whole way of interpreting everything else, most importantly the Constitution, will change too. Not immediately, but slowly and over time, bolstered by the many cheerleaders in the legal academy and the special interest groups who know they can’t get their agendas approved of by the majority of their fellow citizens, but who suspect that they may be able to get them past the committee of ex-lawyers that sits as the highest court. Give the judges that sort of power and, as Canada makes so clear, many of them really will start to think they have extra-special moral antennae, more finely attuned moral antennae, heck even a little bit of black magic.

But don’t let me finish tonight on a sour note like that. Instead let me finish on a slightly risqué note. I want to end by recounting the story of the young man from New South Wales who was dating the lovely girl from Victoria. This is the story, I suppose, of the free-trader dating the protectionist. And for some time they go out, gradually growing ever more comfortable in each other’s company, each becoming more and more infatuated with the other. But not before she takes him home to meet her parents will the girl succumb to his charms and allow her honour to be, well, overcome, shall we say.

And finally she sets the date. “Come to Melbourne, darling. Meet my parents for the very first time, have dinner with them and me. And then we can go downtown afterwards and I will be yours, in every way”.

Well, it goes without saying that our young man was quite enticed by the whole prospect, and not just of meeting her parents. He booked his flight to Melbourne, got in a cab to go there, and on the way to meet his girlfriend’s parents it dawned on him that he might be wise to stop at a pharmacy or chemist and pick up some contraceptive protection. So he has the cab stop at a chemist on the way and goes in and asks to buy some condoms. “Six, 9 or 12?”, asks the chemist.

The young man hums and haws for some time but eventually, hoping for the best, buys the dozen, gets back in the cab, stops again for a bottle of wine and some flowers and arrives at the house of his girlfriend’s parents.

On his arrival he is immediately whisked in to eat. And as they all sit down the young man volunteers to say Grace. What follows is the longest, most turgid Grace, touching on the themes ranging from forgiveness to original sin. And when the young man finally finishes Grace, his girlfriend leans over to him and whispers, “Darling, I didn’t know you were so religious”.

And he replies, “Well, I didn’t know your dad was a chemist”.