

50th Anniversary Celebration of the Victorian Labor Lawyers Society

15 June 2024

Jill, its truly lovely to be part of this celebration. I want to acknowledge my predecessors and successors. I'd also like to thank Maurice Blackburn (Jacob and John), Holding Redlich and Justice Mary Gaudron for the role they played – not just in my development – but in the development of the whole movement too.

Gareth has given us the history of Labor Lawyers and as Mark is deep in progressing today's complex issues and will no doubt reflect on them – I intend to step sideways a little – to reflect on law as part of our progressive social policy agenda and the role Labor Lawyers can play in that agenda.

The call is to use the law to help people,

- to be on the side of those being treated unfairly,
- to be creative within the law and develop its application more broadly
- to be prepared to disrupt your own practice for better client outcomes
- and to use our voices and insights to change the law too.

Let's think about asbestos - think how crucial unions and plaintiff law firms were in chasing down compensation for those harmed by asbestos, but also in stopping the use of the harmful product, holding businesses to account in class actions, helping shape exposure standards and improve workplace laws, establish dust diseases tribunals, reform company director liability and much more. Decades on this same knowledge is being used to push for protection from the dangers of silica. The health risks are sadly as old as the hills but new risks have emerged in changing employment settings and in the use of a new manufactured product. It often falls to you, and unions, and their members, to make sure the lessons of history are not forgotten – that established legal principles are used, modernised and where necessary expanded.

Being inquisitive and staying close to the lives of a broad cross section of community will keep you in touch with the new risks too. Even in industrial settings where some harms are long standing, we need to look much more closely – are we seeing the warning signs and listening properly to women about risks to them in our workplaces or how they are exposed on social media?

How do we challenge ourselves to better see, hear, respect and advocate for women of colour, women in precarious jobs, women isolated in their homes – we must be very alive to their experiences to ensure our progressive mission includes solutions to real life problems, not just those that are limited to a lawyer's own social network.

Asbestosis and silicosis are diseases caused by harmful product used squarely in an industrial setting. Our Plain Packaging laws were also dealing with health harms, but of a consumer product. The plain packaging tobacco laws were proposed with knowledge of the tactics used previously by tobacco companies when they tried every trick in the book to argue against bans on tobacco sponsorship in sport and later in advertising. The tactics were spread across the law, politics and media. We had learned from history and from global experiences which enabled us to be very well prepared for these broad attacks. We were extremely consumer focussed (particularly emphasising religiously the impact on children) and needed to be creative, and reformist, in the law we shaped - but the law more broadly was also crucial in defending our approach. Constitutional law, intellectual property law, bilateral and multi-lateral trade disputes – it was coming at us from every legal direction, and we were successful in defending them all.

As an aside, you might be interested that the more traditional constitutional and public law experts in the Commonwealth were not at all convinced that the key health risks from tobacco use (and the core reason for our government introducing the law) should form any of the background to our defence to the High Court action brought against us by the big tobacco companies. As Health

Minister, I was on the receiving end of a few patronising “with the greatest of respect, Minister” comments against my suggestions about the framing of the case. Tellingly, this all changed the instant of became the AG, to the extreme mortification of the lawyers, exposed for their unwitting sexism. From this rocky start, they did quickly prove to be truly excellent, top class professionals and agreed (as is also evident from the decision) that the well-established harm to consumers from using tobacco was a central underpinning of our grounds to legislate in this area. It wasn’t “just” a technical constitutional question. Context always matters.

It was an important reminder that even the most professional, talented lawyers, have to stay alert to the risk of becoming too insular, finding it hard to see how their work fits within a broader debate and context.

Now, governments, lawyers and NGOs like the Cancer Council, are using those experiences against big tobacco companies to try and tackle vaping. The use of vapes exploded during COVID, and we’re seeing the same arguments played out yet again with this new product and a new generation of potential customers. And there are chewable tobacco products (and pouches you put in your mouth so you can get your nicotine hit while you sleep) that have just reached Australia.

All this is to say that most battles are unlikely to be isolated, and they are rarely conclusively won. You will play a part in these continuing cases. We must be alert to ongoing risks and new risks, or those that simply morph into the next challenge. We must use all the heft and experience of the law and, of our predecessors, to keep working hard so consumers, workers and communities can be better protected.

So, an occasion like tonight is a chance to understand and reflect on the importance of the Labor Lawyers in developing skills and keeping collective knowledge alive – knowledge about offensive and defensive tactics. The know-how is part of your muscle memory that may develop in one area but can be used to tackle any new challenge.

Those two industrial and health examples have clear links – between past legal disputes and threats of new ones, but there are many other injustices that need attention. The relationship with the law will perhaps be harder to identify but, in my opinion, it is part of your job, our job, to actively look for those future problems.

The ongoing success of Labor Lawyers in having a meaningful role in society will depend on a concerted effort to be curious, to be open-minded, to more actively seek voices you do not routinely hear and to form deep connections and understanding of the widest cross section of community and understand the pressures in their lives.

Doing a great job for your client is core to you job as a lawyer. But doing a great job for your client only makes you a lawyer, what extra will make you a Labor lawyer?

What broader field will you play in, what issues will you tackle? It is not looking far into the future to ask how the law will evolve to tackle the mental health harm being caused by social media to young people, especially to a large cohort of young women. We already have climate related test cases and class actions, what other broader change will come from this global warming and a global energy transition? Or perhaps the change will be in the way you practice – welcoming the clever use of AI to reduce costs and help the law become truly accessible and affordable. What things are you thinking about beyond your time sheets?

When I finished my role as an Associate at the High Court, to Justice Mary Gaudron, in the early 90s it was tradition to say goodbye privately to each judge (in order of seniority!) and receive a little career pep talk – most associates were going to the bar to further their stellar careers towards becoming professors or judges themselves – and I was going to be an industrial officer at the NUW. Their shock was almost universal, my judge joking that I had nearly caused a constitutional crisis by provoking several heart attacks on the one day. But I never for one second regretted that decision, because those three years gave me the widest and deepest insight in to so many people’s working lives – whether older country women on a production line at Uncle Tobys up in Wagunyah, the

Macedonian migrants at Safcol cannery in Yarraville or chatting with forklift drivers in Sunshine. The insight made me a better lawyer and a much better politician than I would've been without this experience.

And it forced me to always be alive to what is and isn't working across the community ...so, obviously, in 2024, that means we must talk about housing.

Property laws, inheritance laws, and tenancy laws must surely be part of the housing crisis discussion? But so far its mostly been about supply and cost. What role could Labor Lawyers play in broadening a longer term debate, perhaps including the inequity between generations?

Surely the unequal distribution of wealth in our country – that has grown so dramatically in recent years – will have to be tackled differently, and soon?

The shortage of housing supply is turbo charging awareness of this issue, but the chasm between those with resources to buy a home, or with parents to help, or who can inherit this privilege, and those who can't, is becoming insurmountable.

This may seem distant from some legal debates you are currently having – but property ownership and inheritance laws have been central to almost every big civil rights movement, and many revolutions, of the modern time – freedom from slavery, permitting inter-racial marriage and the right to own property for black Americans, reforming marriage laws so women not only ceased to be chattels, but were able to vote and own property in their own right. Our own Family Law Act establishing no fault divorce was only introduced in the 70s – this is pretty recent history.

Oddly, it made me think of Jane Austen and *Pride and Prejudice* – our familiarity with the injustices of property law and wills and entails to women in her era. But if Jane Austen were writing today, providing her piercing social commentary – where would she aim her pen? Surely her sympathies would be with those upright, wage slaves working 5 days a week, paying heavy taxes as they earn their income, contrasted with a colourful storyline of an unworthy wealthy, lazy landowner living in the generous grounds of their great great great grandfather....

Perhaps we can imagine this as an intriguing period drama, but is it a sustainable position long term in a modern Australia?

Did you know that, in terms of income “*the top 20% of households have nearly 6 times the income of the lowest 20 %*”? But when we look at wealth, rather than income, the divide is even more staggering. The “*Average wealth of highest 20% is 90 times the wealth of the lowest 20%.*”¹ There is fertile ground here for Jane Austen to target.

A reckoning with colonialism and sexism, and the power it has exerted over others, surely cannot continue to ignore the power bestowed by wealth?

Civil society needs to grapple with this and similar ideas through research and advocacy, to help our community and leaders see how we could fairly, and over time, reduce this inequity. We will need to build a base of ideas and interest to enable governments to act – they can't be expected to pursue difficult issues in a barren or feral media environment.

It is time for us to think cleverly about how to adjust and realign **the generational division of wealth in Australia**. If we don't find the impact point – we risk being very distant from a lot of the community's pressing worries. Division and diversion can create roadblocks to positive change. So can the politics of envy.

Have you heard the accusation that inner city elites are only interested in promoting “luxury beliefs”, a term coined to describe attitudes that operate as status symbols for the rich, but that in practice are costly for the poor? The theory goes, that “*in the past, the upper-middle class displayed their wealth via luxury goods such as fur coats, today they signal their status with luxury beliefs.*”

¹ UNSW Social Policy Research Centre and ACOSS, *Inequality in Australia 2020* ((\$3.2 million of \$36,000)

Conservatives use this to paint social justice advocates or progressive lawyers into a tight frame that is out of touch with ordinary people, flaunting views that only they can “afford” to have. “Climate change? Too expensive; Criminal law reforms? Too dangerous; Gender Equity? Not while the economy is tight or if the husband is out of work...” etc etc

So, where does this all lead?

We must be careful not to let our primary conversations be shifted away from discussion about what we are really trying to achieve, who we are trying to help, what the main game is.

As a Labor person and a staunch collectivist, I worry about letting ourselves be pushed into drier debates only about our profession, our institutions, and our human rights. I fear that the movements of the extreme right have been quite successful over the last decade in neutering discussion about the civic and community impact of the broad human rights agenda.

The purpose and potency of our broad agenda of decency and fairness, has been substantially weakened by the focus on highly atomised and piecemeal issues. These are often far more easily mocked, ignored or tagged as elite or luxury views.

This is bad for progressives – and it’s a particularly tricky for progressive lawyers.

We’re used to being on the side of modernisation for the modernisation yet we find ourselves needing to defend the basic rule of law and our courts. We need only look to America where it is the Republicans, the conservatives, the traditional defenders of the establishment, who are now trashing those precise institutions, criticising courts and judges and legal processes.

Its uncomfortable to spend all our time defending our institutions of democracy and rule of law, when we also want to advocate for improvements, to help moderate institutional power when used unfairly against those who are the weakest.

We don’t want to be the insiders that are self serving, or an elite that are out of touch, but many of the tools we can use to bring about peaceful, productive change in our society are under threat.

So it is no easy job. But it is the job of labor lawyers.

It cannot be shaped by the needs of the profession, rather it must be shaped by the community that we serve.

This is a restless and relentless pursuit.

A challenge I have the luxury to issue, as a former AG, and a former Labor Lawyer is

- learn from history, but don’t be bound by it
- protect our institutions, but don’t be overawed by them – and
- always keep your eye on the main game, the people you are trying to help.