

THE UNIVERSITY OF SYDNEY

SIR ZELMAN COWEN AS LAWYER

The Hon. Mr. Justice M.D. Kirby  
Chairman of the Australian Law Reform Commission

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Sir Zelman Cowen is undoubtedly one of the most distinguished lawyers Australia has produced. He was brilliant as a scholar, dramatic and inspirational as a law teacher, successful and sought after as a legal adviser and practising barrister, a communicator on legal themes to the whole Australian community, a writer of rigorous legal texts and an active participant in the reform and improvement of our legal order. Before he turned the great part of his enormous energies and talents to University government, he was acknowledged to be in the very front rank of Australia's legal intellects. Equally at home in the mastery of the law's technical details and the appreciation of its philosophy and purpose, his unique national contribution as a legal scholar has been his unstinting endeavour over 30 years to discuss in a thoroughly open and challenging way the great issues which face our society and its laws. Here is no cloistered scholar content with personal satisfaction but a thoroughly modern pedagogue whose instruction, from the first, went far beyond the law school classroom.

Sir Zelman's Career

The basic events of Sir Zelman's career are well known and need little elaboration. After a distinguished record as an undergraduate in Arts, History, Political Science and Law at Melbourne University he was elected Rhodes Scholar but

had to postpone his period in Oxford whilst he performed War service. After the War he spent five years at Oxford, the first two as a student and later as a don. This time was followed by a short period at the University of Chicago Law School where he was attracted by the enthusiasms of American law teaching. He returned to a Chair of Law at Melbourne University and because Sir George Paton had been appointed Vice Chancellor he became Dean of Law at the age of 32. Until 1966 he led the Melbourne Law School during a period of busy expansion. He took time off to teach law at Chicago, Harvard and other United States law schools and to advise on the establishment of legal education in Ghana, Hong Kong and the British West Indies. In 1967 he turned to University government first as Vice Chancellor of the University of New England and later of the University of Queensland. He combined these busy tasks and Chairmanship of the Australian Vice-Chancellors' Committee with many public activities, including from 1976 until the announcement of his appointment as Governor-General, as a part-time Commissioner of the Australian Law Reform Commission.

#### Sir Zelman and Legal Education

This brief description of his career gives little hint of the variety and scope of his interests. Under his leadership the Melbourne Law School not only grew in size but experimented with new subjects and new methods of teaching. Sir Zelman was deeply affected by the skilled communicators in American legal education and was determined to endeavour to introduce these skills in Australian law teaching. He held the strong view that a law teacher was better equipped to instruct in the intensely practical discipline of the law if he had an experience in law practice and if he kept close links with the practising profession. In 1976 he repeated these views at a national conference on Legal Education organised by the Law Council of Australia. Throughout his life he has sought to narrow the gap between the practising profession and law teachers. In part, he has done this by his own example, in accepting briefs as counsel in a number of leading constitutional and other cases. His special combination of

practising and teaching of the law was acknowledged by his appointment as one of Her Majesty's Counsel.

#### Sir Zelman as Innovator

Australia has produced many distinguished and interesting legal scholars. The unique quality of Sir Zelman's career has been in its variety, the breadth of his interests both within and outside the law and his willingness to innovate. At the University of Melbourne he took an active part in adult education programmes and continued this interest when he moved to the Universities of New England and Queensland. He introduced the study of Asian legal systems at the Melbourne Law School. He has always been interested in the impact of science and technology on the law. A whole generation of Australians grew up to his radio commentaries and broadcasts, most of them about themes relevant to the law and its institutions. He was certainly one of the first Australian lawyers to master the new means of communication of ideas : radio and television.

#### Sir Zelman as Rigorous Legal Scholar

But it would be wrong to assume that these administrative and public activities were done to the exclusion of his scholarly work as a legal author. He is one of the most important writers of legal texts in this country. His seminal work, Federal Jurisdiction in Australia, recently published in its second edition is still the basic text on that difficult area of constitutional law. He is co-author of important texts on the law of evidence, matrimonial causes and private international law. He wrote a substantial introduction to the second edition of Dr. Evatt's famous book, The King and his Dominion Governors. His concern with individual rights and the rule of law are evident in his books, The Private Man (based on the ABC Boyer Lectures 1969) and Individual Liberty and the Law (based on his Tagore Lectures in India in 1975). He has written with feeling and skill of the lives of at least three great Australian judges : Sir Isaac Isaacs, Sir John Latham and Sir John Barry. It is a happy coincidence that the author of the scholarly biography of

Sir Isaac Isaacs, first Australian Governor-General, should now himself reside at Yarralumla.

Sir Zelman and the Reform of the Law

It was perhaps inevitable that Sir Zelman, a lawyer concerned with the state of the law and able to communicate his concern to the community, should be invited to join the Australian Law Reform Commission as a part-time Commissioner in 1976. The Commission had a project on the protection of privacy, a subject about which he had alerted the Australian community in his Boyer Lectures. The Commission was engaged in the consideration of a typically modern problem for the law : the issues raised by the transplantation of organs and tissues. With his usual prescience, Sir Zelman had written of these problems many years before. In the Law Reform Commission, he took an active and vigorous part, amidst so many other duties, in addressing some of the most challenging issues that are facing our legal system. The Commission's role to advise the lawmakers on the review, modernisation and simplification of federal laws was one entirely in keeping with Sir Zelman's sympathies and life's work.

Sir Zelman as Civilised Man

The public record of Sir Zelman Cowen's career does not give the full picture of the man, as those who are privileged to know him. He is above all a civilised Australian. He was, until taking up his present office, for many years a Director of the Australian Opera. He remains a regular and enthusiastic participant in the cultural activities of our country. His patronage of the arts is in no sense a formal thing.

He also has a delightful sense of humour which, with his charm of manner and grace of expression, sets him aside from many public figures. In a recent address at the opening of a new tertiary college in Toowoomba, Queensland, he commented on his long association with the law. He did so in terms that are delightfully typical:

I was committed from earliest infancy, even ante-natally, by my mother, to the practice of the law. It has been told of me that as a very small boy I would say that my name was "Casey"; because my mother had taught me that I was Zelman Cowen, K.C. I have always wanted to believe that, though in the event, long afterwards, I became a Q.C.

In a university, it is natural that we should celebrate Sir Zelman Cowen's contribution to the life of the universities of this country. But it is also right that we should pause and reflect upon his contribution to the law : a distinguished product of our law schools, a Rhodes scholar trained in the law, a Professor of Law and Dean leading a great law school through a time of change, a communicator as a law teacher and in the public forum, a rigorous scholar and writer upon legal themes, a practitioner equally at home at the Bar Table as at the University rostrum and a Federal Commissioner of Law Reform devoting time to the modernisation and improvement of the legal system. Equally sensitive to the history of the law and to the need for it to adapt to the requirements of the poor, the underprivileged and the inarticulate, he is the very best that the legal profession of Australia can produce and lawyers throughout the country are rightly proud that he is one of them.

#### REFERENCES

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