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SIR ZELMAN COWEN – FORTUNE'S CHILD

Arnold Bloch Leibler,
Melbourne
14 October 2009

On the occasion of Sir Zelman Cowen's 90th birthday

ARNOLD BLOCH LEIBLER, MELBOURNE

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The Hon. Michael Kirby AC CMG*

Sir Zelman and Lady Cowen, Sir Ninian and Lady Stephen, Mr. Mark Leibler (our gracious host); members of the judiciary; Chancellor of the University of Melbourne, the Hon. Alex Chernov AO QC and representatives of other universities. Fellow citizens.

FORTUNE’S CHILD

I have been reading an excellent biography of a fine judge and scholar, Thomas Buergenthal. Written in his mother tongue, it was titled *Ein Glückskind*. In the long delayed English-language version, it has been styled *A Lucky Child*¹.

It is at once engrossing, terrifying and instructive. It tells the story of how the young Thomas, now a judge of the International Court of Justice, spent his early years in Germany and Czechoslovakia. How his family, at first, escaped the on-coming Nazi terror by the insistent demands of his mother, relying on a German driver’s licence to pretend to German nationality. How they entered into Poland but were all too soon transported to Auschwitz concentration camp. How chance mistakes and luck saved the young Thomas from becoming an immediate victim

* Justice of the High Court of Australia (1996-2009); Chairman of the Australian Law Reform Commission (1975-84).

¹ Thomas Buergenthal *A Lucky Child*, Profile Books, 2009, 28.

of the mass murders. How, as the end of the war approached, he was sent on the Death March from Auschwitz to Sachsenhausen Concentration Camp, near Berlin. How he was liberated and later reunited with his mother, his father having perished with millions of others. How he felt during his post-war education in Germany. How he left that country in 1951 for a new life in the United States of America. How he won important academic and judicial posts in the Americas. And how he was eventually elected by the General Assembly to the World Court.

Thinking of his life, and the combination of chances that took him from his most unpromising beginnings to his office of such distinction, I reflected on the words of Alfred Deakin, one of the founders of the Commonwealth of Australia. He said that it required a combination of miracles to bring about the establishment of the Commonwealth of Australia in the face of the many impediments in its path.

As many will know, Sir Zelman Cowen was born on the very day that Alfred Deakin died, 7 October 1919. In a mystical way, Zelman has often said that he thought that part of Deakin's spirit entered into his body at the moment of his birth. A bit like the succession to the role of Dalai Lama. Although, it is unlikely that a Jewish adherent could be permitted to think such a thought for long, Zelman, with his devotion to the Commonwealth and absorption in the complex notions of federal jurisdiction was, in many ways, a most worthy successor to the great Deakin. Who are we to know whether some transmogrification of spirits happened on that October day, just after the end of the Great War?

My thesis is that Sir Zelman too was born a fortunate child. The description is derived from what a fortune teller told Thomas Buerghenthal's mother when, full of fear, she consulted the visionary to see if her son would survive the fast approaching dangers in 1939. In Zelman's case, the perils of life were not so alarming. He was certainly exposed to danger and great courage was called on. But it took a combination of miracles to bring him to his great offices and to the affection in which he is held by his fellow citizens. Especially the Jewish community who rightly look on him as a great son. And particularly us, his friends, who have collected to celebrate the ninetieth anniversary of his birth.

Any one of you could with distinction have proposed this toast. It has fallen to me. So I want to suggest seven public virtues that stand out in Zelman's life and seven private virtues, known to us his friends. These virtues will be displayed like the twin arms of a menorah. I will recount my collections of candles. No doubt, each one of you could add more. But my collection will suffice to support the toast.

Zelman's private virtues have shone through since his earliest days. But like Pericles of old, he believed that the citizen, in a much blessed country like Australia, should perform public duties and then return to the privacy and modesty of citizenship. This he has done, and it is as a citizen that he is in our midst. Let me suggest the public virtues for your consideration.

PUBLIC VIRTUES

University leadership: Zelman's first vocation was as a great teacher. He taught and led the famous Law School of the University of

Melbourne. It is one of the two great law schools of this country. Prudence always dictates that I should never name the other.

So many famous lawyers of Australia were taught by him and remember him affectionately as their mentor. However, he was never narrow in his loyalties. At its foundation, he took a supportive and leadership role in the creation of the Monash Law School. And he would be very proud of its achievements. Later, he took a part in the establishment of the Griffith University Law School, another splendid seat of learning. In recent years, he lent his name to the Law School at the Victoria University in Melbourne. I take the opportunity of this occasion in Melbourne to mourn the passing of John Harber Phillips, late Chief Justice and provost of the Sir Zelman Cowen Centre in Victoria University. And to honour the Deans of the other law schools with which Zelman associated himself.

Zelman Cowen opted to leave Melbourne to become the Vice-Chancellor of the University of New England. This was a notable appointment. But for chance, he might have seen out his days of professional service in leafy Armidale. Instead, he was recruited to serve in the University of Queensland. It was there that I first met him in a graduation ceremony marked by a special civilisation: a musical interlude for reflection and spiritual enrichment. Zelman was a great servant of Australian universities.

Law reform: While still Vice-Chancellor of the University of Queensland, Zelman agreed to serve with me in the Australian Law Reform Commission. And so he did between 1976 and 1977. What exciting days they were. Two of our projects had grown out of his own

academic interests. One of them, for the protection of privacy, led on to the federal *Privacy Act* and resulted in my own introduction to international activities of committees of the OECD. The other concerned bioethics, specifically human tissue transplants. Zelman had written on this topic. He once let me into his intellectual secret. He urged me to read American law reviews, which, he said, would put me ten years ahead of most Australian lawyers. I took his advice.

In our work together in the Australian Law Reform Commission, we rejoiced in a growing friendship and in the intellectual challenges with which we struggled together.

Governor-General: In 1977, Zelman was appointed by the Queen to be Governor-General of the Commonwealth of Australia. He held the office until 1982. It was a fragile moment in our history. It is not, I think, too political to say that the action of Sir John Kerr in failing to deal candidly with Prime Minister Gough Whitlam, damaged the nation's institutions and upset many citizens, not all of them supporters of Mr. Whitlam. Candour and transparency had been the hallmarks of the modern Crown. The challenge for Zelman was to restore faith and trust in the institution of Governor-General.

This he did by devoted attention to community outreach in every part of the nation. I later had the privilege to become aware of the details of his heroic efforts. I was co-editor of his vice-regal speeches: *A Touch of Healing* (1986). I know that at the end of his service, he was greatly moved by the impromptu speech made by Gough Whitlam at his farewell dinner, lauding his impeccable service as Governor-General. His

appointment was an inspired choice by Malcolm Fraser. It was one of many important gifts that Mr. Fraser made to the nation.

United Kingdom: Australian lawyers take rich gifts from the lawyers of the United Kingdom and many never repay the favour. But Zelman, when he quit the office of Governor-General, took up the post of Provost of Oriel College, Oxford, and actually became a Pro-Vice-Chancellor of that great university from 1988 to 1990. He also served as chairman of the British Press Council between 1983 and 1988. He gave generously of his integrity and affection for the British people. He demonstrated the universal character of his service and he won further friends and admirers far from home.

Order of Australia: When he returned to Australia, he assumed many appropriate national functions, including in the Order of Australia, the Australia Britain Society and the Australian National Academy of Music. Honorary fellowships came thick and fast. There is no Australian citizen who has been so honoured by the academic community with degrees and appointments of distinction. The scholars of Australia recognised him as their doyen. But so did civil society organisations, to which he was always a friend.

Media and communication: His outreach to the media was not confined to the Press Council in Britain. In Australia, he was one of the first legal scholars who used the radio to explain complex questions of law in language that ordinary citizens could understand. His *Boyer Lectures* on privacy set the gold standard and led on to legal enquiries and reforms that are continuing to this day. He was not a reclusive scholar. He delighted in debating controversial subjects in public. In the

Australian Law Reform Commission, we embraced the same principles of transparency and media engagement. I drew on Zelman's experience and it was for the good of a vibrant democracy in Australia.

The Jewish Museum: Zelman Cowen has always been proud of his Jewish heritage, taught to him by his parents Bernard and Sara. He has many appointments and honours from universities in Israel. He has always maintained a close engagement with the Jewish community in Melbourne and Australia.

In recent weeks, the Jewish Museum of Australia resolved to name a gallery after him to record permanently in that splendid institution, his long connection with them and with the people of his ethnicity. Dr. Helen Light of that Museum is here to support the purpose of this luncheon. It is important that the Museum should always maintain its precious exhibitions and include in them stories similar that of Thomas Buergenthal and stories of which we can be proud in Australia, like that of Zelman Cowen.

But what of the private virtues? This brings me to seven candles on the other branch of my menorah.

PRIVATE VIRTUES

Mixed pride and humility: It would be astonishing if Zelman Cowen were not properly proud of the high attainments he has made in his long life. We share with him that pride. We know that he seized every opportunity and went the extra mile.

But with Zelman's pride was an engaged modesty. In his autobiographical memoirs, *A Public Life* (2006), Zelman Cowen describes the modest semi-detached home in Melbourne in which he first grew up. It was named "Emoh Ruo". I thought that title was only used in jest. But it was the name of Zelman's first parental residence.

A most endearing feature of that era was his total lack of guile or mean spiritedness. He won a scholarship to Geelong Grammar School. But I suggest that he never lost the common touch. He was bright. But he never forgot that such gifts are not universal. And they are given for a purpose.

Civilisation: In private discourse, Zelman is a great conversationalist. He is a man of ideas. He embraces joyfully the rational side of the human spirit. He is an example of a person engaged with the ideas of his time. So he was with federal jurisdiction. So he was with privacy. So he became with law reform and with the operation of the wider institutions of Australia.

Yet his interests stretch far beyond. Music is a great passion. I asked him if he had sporting prowess that I could refer to, in order to ensure a portrayal of a rounded life. I knew that in his youth he was reputedly a dangerous tennis player. But the achievement of which he boasted most energetically was that, for a time, he held the number one ticket of the St. Kilda Football Club. Whatever that means.

Loving nature: Zelman has a loving nature which he has shared with many of us, his friends. His long and happy marriage with Lady Cowen, his wife Anna, became a great blessing to the people of

Australia, especially following his appointment as Governor-General. His devotion to his family and to his friends is a feature of his personality. In his upbringing, he must have been surrounded by love because he never had difficulty in expressing it.

Courage: As a small boy at Geelong Grammar, Zelman recounts in his memoirs how he was driven to write an essay called *Pogrom*. In the 1930s, it told the story of the great sufferings already being heaped upon the Jewish people. Zelman felt a need to share these stories with his Australian school friends, teachers and community. In this respect, I have learned from him. It is easy to keep quiet and to offend nobody. But it is important that perceptions of wrongs should be shared with others so that they too can reflect upon one's own insights. In my own life, I now rarely miss an opportunity to remind my audience of the great wrongs that have been done to sexual minorities, including in Australia. This obliges the audience to ponder on the topic, even briefly. And to endeavour to see the world for a time through different spectacles. So it was with Zelman's schoolboy essay. So it has been many times since.

During the Second World War Zelman saw active service in the Royal Australian Navy. During his years at the University of Queensland, he sometimes had to confront the autocratic regime of Sir Joh Bjelke-Petersen. Taking the office of Governor-General at the time he did required courage. It was a time of challenge and upset. Zelman embraced the opportunity with vigour and determination.

Now, with the advance of Parkinson's Disease, of which he talked most openly in his autobiography, Zelman Cowen confronts us all with his latest challenge. As everyone who converses with him knows, his mind

is sharp and his memory clear. But he cannot hide the difficulties of Parkinson's and does not try. And Lady Cowen's devoted care and support are a marvellous example of human love at work.

Intellectual: One of the miracles of Zelman's appointment as Governor-General is that it involved the elevation of an intellectual to the position of the Queen's representative in Australia. To put it bluntly, Zelman was what the tabloids would call an "egghead". But this meant he was a fine communicator and teacher. He respected and engaged with his many audiences. He was never boring. Often, appointments to Government House have fallen to soldiers and retired politicians. Saving the present Governor-General and the Governor of New South Wales, it has not been common for intellectuals to be promoted to vice-regal office in Australia. It seems unlikely that, if the office had been elected, such a person would win through. This gives another reason for adhering to our present practices. Zelman's intellectual approach was exactly what was needed when he took up office at Yarralumla at such a difficult time.

Humour: In his many public speeches, and, still more in private conversation, Zelman Cowen showed his love of humour. His face have often borne witness to merry twinkling and a *bon mot* well-remembered. Mind you, his humour could sometimes be seriously complex. One story stuck in my mind because it involved a play on the nursery rhyme "Hickory. Dickory. Dock". Zelman's story involved a daiquiri and was so complicated that only a brilliant mind and excellent memory could remember its nuances. Without coming a cropper at the punch line. His humour was verbal and intellectual. Yet it was enthusiastic and willingly shared with friends and audiences.

Luck: Finally, like Thomas Buergenthal, Zelman Cowen enjoyed the private virtue of good fortune. He needed luck to make the journey from Emoh Ruo to Government House, Canberra. But make it he did. And the good fortune that attended him on his journey was also Australia's good fortune. Above all, it was good fortune for us his friends, colleagues and admirers.

A GREAT PERFORMER

Coming here today to Melbourne from Sydney, on the plane, in an idle moment, I glanced at the *Daily Telegraph*². It is not, I imagine, a journal that is on the high compulsory reading list of many of Zelman Cowen's intimates. One story caught my attention. It concerned the American popular singer, the "indestructible" Liza Minnelli.

As I looked at the fine photograph of this still striking woman, I could see some strange parallels between the life of our hero and Liza:

- * Her career too goes back a long way, since she sang with Frank Sinatra, so many years back;
- * Like Frank Sinatra's song says, she has had a few regrets. Which human being does not? But she has stayed the course and is still performing;
- * Not only is she performing. She is still packing them in. Her upcoming concert at the Sydney Opera House is a sell-out. They have had to put on an extra concert at the Entertainment Centre to cope with the demand. This reminded me that the dinner addressed by the Prime Minister and given by Mr. and Mrs.

² Alex Lalak, "Liza With a Big Zee for Zeal", *Daily Telegraph* (Sydney), 14 October 2009, p9.

Gandel earlier this month was a sell-out. This occasion had to be added to make space for us;

- * The news story recounted that in 2000, Liza was diagnosed with viral encephalitis. Her doctors told her that this would keep her in a wheelchair for the rest of her life and prevent her having much contact. Told this news, Liza said, according to the reporter: ‘Nah, they’re wrong. I made a decision’. So she stayed engaged. Just as Zelman has done. Just as he does today; and
- * Liza, like Zelman, has won many awards. True, hers are not the same kind of awards. But they are attractive and special enough. An Oscar. A Golden Globe. An Emmy. And four Tony Awards. Despite these many prizes, the reporter described Minnelli as “humble”.

So what was the secret of this gifted and talented performer? Liza Minelli declared that she always wanted to “keep learning”:

“I’m curious and you don’t think about yourself when you’re curious. Keep learning. There’s always something you don’t know”.

Out of the mouth of this other public performer come words of wisdom for us. And they are apt for Sir Zelman Cowen. You see, he has always remained curious. He is interested in people, in society, in history and in ideas. He has been generous enough to share his interests and his discoveries with all of us: his friends and fellow citizens.

I complete my menorah. All the candles are lit and in place. In the centre is a life of richness and of human curiosity that is an inspiration and a challenge to us all.

I propose the toast of felicitations to the Right Honourable Sir Zelman Cowen on his ninetieth birthday – Fortune's child!