

AUSTRALIAN BAR REVIEW

OBITUARY

THE RIGHT HON. SIR ZELMAN COWEN  
AK GCMG, GCVO, KSTJ, DCL, QC

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The Hon. Michael Kirby AC CMG

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The Rt. Hon. Sir Zelman Cowen, AK, GCMG, GCVO, QC

A distinguished legal academic and past Governor-General of Australia, died in Melbourne on 8 December 2011, aged 92.

Zelman Cowen was born in Melbourne on 7 October 1919, the day of the death of Alfred Deakin. He sometimes suggested that this provided a personal link for him to the establishment of the Australian Commonwealth. He was the only son of Bernard Cohen and his wife Sara. He was named after his paternal grandfather, Solomon, who used the Yiddish form of that name, Zelman. A few years after his birth, his father adopted the family name of Cowen.

After a time at a local school, Cowen won a scholarship to Scotch College, Melbourne, where he graduated Dux in 1935. On his graduation from the Law School of University of Melbourne, he won the Supreme Court Prize as the top student. He was then elected to a Rhodes scholarship but deferred this, on the advent of war, and enlisted in the RAN. He was serving in Darwin in 1942 at the time of the Japanese attacks. Later he joined General Douglas McArthur's staff in Brisbane and eventually witnessed the end of hostilities in the Pacific.

In 1945, Cowen was admitted to Oxford University, accompanied by his wife, under a dispensation allowed to Rhodes Scholars because of the

war. Earlier that year he had married, Anna Wittner, with whom he was to have four children. They became a partnership of intellect, culture and wit, Anna sometimes softening the ego that was a feature, probably inevitable, of such a brilliant man.

Having won the Vinerian Scholarship at Oxford as the top graduate with the degree in civil law, he was recruited by Oriel College as a lecturer. There he wrote his doctoral thesis, a biography of Sir Isaac Isaacs. Isaacs, also Jewish, was a hero of Cowen's. He had served on the High Court of Australia, including as Chief Justice, and became the first native born Governor-General of Australia, reportedly over royal objections.

In 1950, Cowen returned to the University of Melbourne and to the chair of public law. Soon after his return, he took up the post of Dean of Law. Creatively, he began broadcasting news commentaries, mostly on legal topics. These included the attempts of the Menzies Government in 1950-51 to dissolve the Australian Communist Party.

From 1967 to 1970, Cowen served in Armidale as the Vice-Chancellor of the University of New England. However, he was quickly invited to accept the post of Vice-Chancellor at the University of Queensland and he returned to Brisbane for that purpose. This was a period of student unrest occasioned by the Vietnam War and authoritarian features of the government of Sir Joh Bjelke-Petersen. Cowen continued throughout this time to broadcast and to lecture widely on subjects of national and international concern. In 1969, he delivered the ABC Boyer Lectures on the erosion of privacy (*The Private Man*). These lectures were to prove influential in alerting the Australian community to the issues presented to society by new technology and by the need for law reform to keep pace.

It was at this time that he became seen as a 'safe pair of hands' for many national bodies. He became Chairman of the Australian Vice-Chancellors' Committee in 1977. Between 1976 and 1977 he served as a part-time Commissioner of the Australian Law Reform Commission. This was where he became involved with the present writer in several issues of law reform: including the ALRC reports on privacy and human tissue transplantation.

In the midst of this busy life, Prime Minister Malcolm Fraser called Sir Zelman and Lady Cowen to accept their greatest challenge. This was to replace Sir John Kerr on his retirement from the office of Governor General of Australia. The latter's dismissal of the Whitlam Government in November 1975 had caused a constitutional disturbance. Even those who accepted the existence of the power to act as Sir John Kerr did, questioned the way the power had been exercised. Cowen faced a very large challenge to restore respect to the office and to bring calm to the nation. Adopting a phrase used by Nehru in India, he described his function as offering "a touch of healing". This phrase was later to become the title for his collected vice regal speeches, which the writer helped to edit.

Having served five years as Governor-General, Cowen retired to general acclaim. He departed from Australia, returning to his old college Oriel at Oxford as Provost and served there between 1982 and 1990. Whilst at Oriel in 1983, he assumed the part time post of Chairman of the Press Council of Great Britain. His only relevant background was his writing on, and interest in, privacy and public affairs. He was to prove a stalwart defender of voluntary self control by the media, as distinct from

enforceable legal control. He enjoyed success in the new role, largely because he was charming and an outsider. He returned to Australia in 1990. Soon afterwards, he was diagnosed as suffering from Parkinson's disease. This notwithstanding, with the support of Lady Cowen, he continued a busy life almost to the end.

When, in the 1990, the controversy of whether Australia should become a republic was raised by Prime Minister Paul Keating, leading eventually to a referendum in 1999, Cowen was at first silent. However, later he threw his support behind the notion, a step that other past and present holders of vice regal office refrained from taking. Throughout his life, Cowen was intellectually engaged with the issues of the times. For him, the republic was simply the latest of these. He was realistic enough to accept that an appointment (as distinct from election) of a President was unlikely to be accepted by the Australian electors. Although favouring the current constitutional arrangement for appointment, he thought an elected presidency was a price worth paying. Some constitutional monarchists were critical of this intervention in the controversy.

In 2006, Cowen's copiously illustrated memoir, *A Public Life*, was launched. It demonstrated what had long been obvious. Zelman Cowen was a scholar of sparkling brilliance. But he lived in the real world, engaged with its problems. He was fascinated by its technologies and communicated its controversies to the professions and the public alike.

The foregoing outline of his extraordinary career omits many details of areas of service, including with overseas universities, legal publications, sporting bodies, musical institutions, civil society associations, learned

academies, as well as trusts, foundations and institutions in Israel with which he became associated.

Cowen received every civil honour on offer in Australia in his lifetime and some from overseas. Twenty honorary degrees and countless honorary fellowships were conferred on him. He loved this recognition. But he always remained approachable, intrigued by what he could learn from a conversation, realistic and basically quiet and democratic in demeanour and attitude. He did Australia a great service in rebuilding respect for the constitutional office of Governor-General. Like every other person in leadership positions in Australia he had his critics, for tall poppies have not been popular since convict days. In a large national field of poppies, his was amongst the tallest. But he never forgot that he was a scholar made good and an academician with his heart remaining always in the humanities, the law and their civilizing mission.

Michael Kirby

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