

Obituary

PROFESSOR JOSEPH GABRIEL STARKE QC

The sixth General Editor of this Journal, Professor J G Starke QC, died in Canberra in March 2006. He was 94 years of age. He edited the Journal for 18 years, between 1974 and 1992. He was succeeded by the present General Editor, Mr Justice Young.

Born in Perth, Western Australia, Joe Starke attended the Perth Modern School where his contemporaries included H C Coombs, later a leading federal public servant and Paul Hasluck, later Governor-General. He was among the first students to attend the Law School of the University of Western Australia. He had wanted to study mathematics and science, disciplines in which he excelled at school. However, his father, a businessman of Russian origin, insisted that he study law. He proved a brilliant student. He was elected Rhodes Scholar for Western Australia in 1932. At Oxford University he won the BCL degree with first class honours and the Vinerian Law Scholarship.

In 1934 Starke visited Geneva while recuperating from an illness. There he became acquainted with the League of Nations as it was entering its most troubled phase. He worked in the legal section of the Secretariat of the League between 1935 and 1940. At his death, he was the last surviving member of the Secretariat. His later writings on the League recaptured the hopes, excitement and ultimate tragedy of that body. But his service for it inspired in him a deep commitment to international law which was to be of great benefit in the sometimes parochial legal community of Australia.

In 1939 Starke was called to the English Bar by the Inner Temple in London. He returned to Australia in 1940 and immediately joined the New South Wales Bar in Sydney. He was admitted to the Victorian Bar in 1943 and to the Australian Capital Territory Bar in 1971. His Sydney chambers were found in University Chambers in the old Law School building in Phillip Street, Sydney. On his arrival in Sydney, he was directed by this Journal's first General Editor, Mr (later Sir) Bernard Sugerman to the Dean of Law, Professor Sir John Peden. The Challis Professor of International Law, Professor A H Charteris, had just died. Peden offered the young Mr Starke a temporary lectureship to teach the subject, drawing on his work in the League Secretariat and for the International Labour Organisation. The salary helped to supplement his first meagre income at the Bar.

Starke saw war service with the Australian Army and the RAAF, principally working on cipher problems. He later contributed to the design of a compensation plan for Australian prisoners of war, ill-treated during their captivity.

When the Second World War finished, his career at the Bar picked up. In 1961 he was appointed a Queen's Counsel. He argued a number of cases in the High Court, often with the young William Deane as his junior. He became well known as a contributor to newspapers, ABC broadcasts and lecturing students at the Sydney Law School. In 1961 he became a resident of Canberra. He was appointed a Senior Fellow in the Research School of Social Sciences at the Australian National University. He also lectured undergraduates in the Law Faculty. He severed his formal links with the ANU in 1976. However, he left behind a lasting legacy in the *Australian Yearbook of International Law*, which he founded in 1965 and which is still published.

Joe Starke became a visitor to a number of international institutes, including the Max-Planck Institute of International Law in Heidelberg and the International Institute of Humanitarian Law in San Remo, both of which appointed him a professor. His principal interest remained international law. This was reflected in his succinct and authoritative text, *An Introduction to International Law*. It has remained a standard work, going through many editions.

His chief interest outside the field of international law was the law of contract. For many years he worked on a restatement of that law. He regarded it as absurd that citizens, business and the legal profession did not have a comprehensive statute on contract law. He understood that international law and global commerce made the development of a statute, or at least of a compact restatement, of the law of contract in Australia an urgent task. He wrote articles in this Journal on that aspiration. For many years he was joint editor of the Australian edition of Cheshire and Fifoot's *Law of Contract*. An important text of lasting value was his *The Law of Assignments and Choses in Action in Australia*.

(1971). He also wrote on aspects of psychiatry, publishing in 1973, the book, *The Validity of Psychoanalysis*.

When appointed editor of this Journal in 1974, Professor Starke set about improving its accessibility and format. He abolished the dull grey paper covers and introduced a more modern layout, with columns, more white space, footnotes and marginal comments. Occasionally, he even permitted a photograph to appear. He accepted heavy personal obligations, writing the "Current Topics" column as well as countless commentaries on important Australian and English cases. Recently, I had reason to read his remarks critical of the reasons of Justice Michael Heselham in the Supreme Court of New South Wales in one of the cases concerning a dispute over the will establishing the Archibald Prize for portraiture. The judge had concluded that a "portrait", as contemplated by the will, had to be painted from life. On that ground he effectively disqualified an entry by John Bloomfield who had first been awarded the prize. It had been painted from a photograph. In firm but respectful terms, Starke rejected the ruling (see (1984) 58 ALJ 52). He revealed then, and on many occasions, his commitment to diversity, artistic freedom and human rights more generally. His opinions were rarely understated.

In the 1970s and 1980s he served as a consultant in several projects of the Australian Law Reform Commission. He was a great supporter of its work. He helped to establish it by contributing frequent articles in this Journal about its program and its reports. He was greatly valued in the Commission: (see [1979] *Reform* 72).

His work as editor spanned a long interval, so far second only to the service of Sir Bernard Sugerman. He would have remained editor but for an illness that struck him on the eve of his 80th birthday. For a detailed note on his career, written at the time of that retirement, see (1992) 66 ALJ 111. His retirement from legal writing was virtually immediate. Yet he remained in contact with the many friends he had made as a barrister, teacher and editor. He lived quietly in Canberra with his wife Irma who, with their daughter Sanchia and their grandson Aaron, survive him.

Joe Starke had his foibles. He could be quirky, querulous and prickly in personal dealings. He was most severe on the authors of submissions sent to this Journal for publication of which he disapproved. Some of these would be returned with the summary rebuke: "unsuitable". One book review was sent back to a senior judge, rejected as "obviously defamatory". Various complaints were made about his repeated emphasis on international law. Yet it may have been that emphasis that led to the growing impact of that body of law on High Court reasoning, most evident in *Mabo v Queensland* [No 2] (1992) 175 CLR 1 at 42; 66 ALJR 488 at 422. When, for a time, he took over the additional task of writing headnotes for the *Australian Law Journal Reports*, there were many professional complaints that they were too long. For all that, objective observers could not but value and honour his enormous energy, his modernity and his broad interests in every branch of the law.

With such a career, Starke was unsurprisingly a proud man. Unfortunately, proper honours did not come his way. He was offered recognition in the Order of Australia. However, he rejected the offer as being at a level that he considered inappropriate to his contributions. Sadly, no second offer appears to have been made. This is a tragedy because the work of an intellectual, like Joe Starke, is ultimately measured in its impact upon the minds and thoughts of thousands of Australian judges and lawyers over many decades.

Just for his service in editing this Journal, he deserved significant public acknowledgment. His memorial must now be found chiefly in his lively promotion of a distinct Australian approach to the law – a goal, in his view, that could be achieved in harmony with an embrace of international law as the way of the legal future. Generations of lawyers who have drawn on his books, articles and commentaries may not have known him personally, yet they are beneficiaries of his remarkable experience, intellect and energy. In the end, he probably realised that this was an honour more lasting than civic recognition. But a bit more civic recognition would not have gone astray. Australia needs to treasure, more than it does, lawyers like Joe Starke. Long-term readers of this Journal, who have lived and worked with the Journal during his editorship, will surely agree.

Michael Kirby

Justice of the High Court of Australia