

Chapter 6

Rhetoric in Law – A Case for Optimism?

*The Hon Justice Michael Kirby AC, CMG**

There is throughout these speeches a real nostalgia for the simplicity and nobility that the orator sees in former ages and a vigorous attempt to inculcate into the audience attitudes and values of earlier generations. One could call this the “myth of the golden age” ... and the orator sees his major responsibility as being a call to action, an exhortation to his audience to put into effect the noble attitudes that they have inherited from their ancestors.

Cecil W Wooten, *Cicero’s Phillipics and their Demosthenic Model: The Rhetoric of Crisis*¹

A pessimistic moment

Eloquent persuaders

There are several vocations in which eloquent persuasion is essential. Religious preachers, academic teachers, politicians, participants in civil society organisations, real estate agents, talkback radio hosts and other media personalities come to mind. However, for day to day concentration over long hours on the difficult task of persuading others to accept arguments, the legal advocate is a most important disciple at this altar.

While other occupations spend part of their time endeavouring to persuade, for the advocate this is usually the main or only reason of professional existence. There will be long hours of preparation; tedious labour over pleadings; precise study of statutes and decisions; interviewing witnesses; engaging in often tedious social events, and ongoing legal

* Justice of the High Court of Australia. This chapter grew out of an oral commentary on the delivery of the paper by the Hon Michael H McHugh AC QC, “The Rise (and Fall?) of the Barrister Class” which now forms the preceding chapter (hereafter McHugh).

¹ (Chapel Hill and London: University of North Carolina Press, 1983) at 170, referring to the speeches of Demosthenes and the Cicero’s *Phillipics*.

This is a preview. Not all pages are shown.