

# Race and the Bar

By Samuel Pararajasingham

Recent years have witnessed a number of active steps being taken by the New South Wales Bar Association to address the issue of gender diversity at the Bar. Implicit in these steps has been an acknowledgment of the perception, at least, that the Bar is possessed of a homogeneity in its culture that does not reflect the diversity of the communities we serve and society more broadly.

Equally deserving of attention and analysis is the significance of racial or cultural diversity at the Bar. *While* few would disagree with that sentiment, on one view it raises more questions than it answers. Is cultural diversity to be understood as restricted to non-European diversity? What can be said about the unique experience of intersectionality between gender and race at the Bar? How has the majority at the Bar approached the issue of cultural diversity over time? Has bemusement hardened into grudging acceptance? And what are those factors which compel the majority to acknowledge racial or cultural diversity? Pragmatism in the face of a numerically strong minority? A favourable political climate? The force of the personality of the individual and the extent to which he or she asserts his or her cultural difference?

These are the types of questions which must precede and inform any discussion about racial and cultural diversity at the Bar. This article attempts to briefly raise some of the broader race and cultural diversity concerns in society and how they might spark further discussion related to life at the Bar.

A rarity in modern times is overt racism. And the same must be said about overt racism at the Bar. The experience of Nimal Wikramanayake QC, referred to as a 'nig-nog' in public by a junior member of the Victorian Bar in the 1970s serves as a reminder of the kind of explicit racism that some minorities have previously experienced. A perhaps subtler form of racism is the routine and, on occasion, careless mispronunciation of surnames by judicial officers. In 2019 there can be no excuse for this. Here the comments of former footballer and cultural icon Craig Foster are apposite, 'If you can't get someone's name right it means you have no regard, you haven't done the work, you haven't tried.' Here Foster was referring to the backlash his co-presenter, Lucy Zelic, received for her correct pronunciation of surnames during the 2018 soccer World Cup. The point



is well made and of equal application in the present context.

Moving beyond surface racism, leading racial theorist Professor Derrick Bell, the first tenured African-American professor at law at Harvard Law School, once described the deprivation of nepotism as one of the defining features of the cultural minority experience. In fact, Professor Bell attributed racial nepotism ahead of racial animus as the singular greatest challenge of the diversity movement. Unpacking this idea, the absence of institutional connections, be they political, social or professional, continue to be a hallmark of the first-generation migrant experience at the Bar. That is not to say that every other minority or indeed every member of the ethnic majority necessarily enjoys the benefits of deep institutional connections; plainly that is not the case. However, it must be acknowledged that an inevitable feature of being a member of a cultural minority is the absence of those deep roots.

Accepting that proposition, as a consequence it might be argued that cultural minorities do not tend to enjoy the benefits of racial nepotism, missing out on opportunities and prospects, not because of any racial enmity but perhaps merely because of a preference that subconsciously compels the cultural majority to prefer that which they know and have always and only known. This phenomenon might have some application to the life at the Bar, particularly when it comes to the issue of briefing ethnically diverse counsel.

Delving deeper still, an interesting question arises as to the space inhabited by cultural minorities in society and at the Bar. Social commentators such as Waleed Aly and others have observed the at times uneasy position minorities occupy and the complications in their reception by the majority. The position can be perhaps described this way: there is a sense in Australia that cultural minorities are permitted

to participate in this great democracy on strict terms and, generally speaking, in conformity with a widely understood yet ultimately reductive view of their position within society. As long as the particular minority group embraces that assignation they too can participate in this democracy and enjoy its benefits.

Closely considered, this is really an observation about the sorts of restrictions and fetters that operate on any cultural minority and has at least two consequences. First, any deviation by a member of the minority from the fixed view is often characterised severely, hypocritically so. Think of the public reaction to Adam Goodes' Indigenous war dance where in a brief moment, exhibiting a powerful and threatening image of himself, Goodes went from a wholesome and palatable representative of his culture to a figure, considered by some to be odious and subject to unjustifiably extreme vitriol.

Second, and relatedly, this prevailing view stifles the expression and reception of individuality within the minority group. Membership to the cultural majority means being possessed of a blank canvas on which individual traits and idiosyncrasies are highlighted and proudly on display. The majority is typically afforded the full gamut of personalities and behaviours. The same cannot necessarily be said about membership of a cultural minority where the reductive view can mean that subtle differences in character are overlooked, mischaracterised or met with indifference. These considerations may have some application to life at the Bar for those belonging to minority cultural groups; the fetters or restrictions described above may operate as limiting factors in interactions with the Bench, for example.

Beyond a few instances of overt discrimination, the significance of racial and cultural diversity at the Bar has been largely unconsidered to date. It is an area not without its complications and there may be a place for the Bar to promote and foster cultural diversity in the years to come, which is part of the work being done by the Diversity and Equality Committee. A good starting point is an informed and frank discussion about the issues between all stakeholders that moves beyond surface racism and examines the complex ways in which race and culture intersect with life in society, and at the Bar.