

ZELMAN COWEN: SOME PERSONAL REFLECTIONS

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I was asked to write a personal note on Sir Zelman Cowen and gladly accepted the invitation. I have found the task a little more difficult than I thought it would be. There is much to say about him. He was a man of considerable significance. His many public roles, contributions to social welfare and accomplishments have been written and talked about often and will be spoken about and analysed for many years to come. There is little for me to add on this front. He was a colossus who strode across our social landscape. I experienced and enjoyed him as the man this had made him. He had lived a life of what he liked to call *a good man*. It was a favourite phrase of his when he evinced approval of someone's contributions to society.

My first encounter with Professor Cowen came about when I was a lowly law student and he a high-flying dean. I had been a part-time Bachelor of Arts/Bachelor of Laws student for four years and was desperate (emotionally and, more importantly, financially) to make the fifth year my last. To do so I would have to complete nine subjects. I needed permission. The administrators, abiding by rational rules, denied my plea to enrol in that many subjects. Rather naively, I asked Professor Cowen to intervene. In what I came to know to be one of his more amazing attributes, he made time for me and listened, although he could have avoided me as, my own long experience of academic institutions tells me, most deans would have. He gave me permission. These were my first insights into his character. People, individuals, came first. Rules were guidelines, not blinkers. He cared about the people whose paths he crossed.

I passed my examinations and did well enough to be asked to sit for the honours examinations, which were offered to those who qualified and had reasonable success. I had not spoken with him since my original interview. As far as I knew, he had forgotten the whole thing, a small incident in a busy life where much more serious problems had to be confronted daily. When my results were posted, he made a point to seek me out. He was at least as delighted as I was and not just because his hunch had worked out but because I, one of his students, had done well. This generosity of spirit was not a one-off experience for me.

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A few years later, after I had begun work at the University of Melbourne, Professor Cowen called several tutors together and told us that we should pursue graduate students overseas and that he would help us find the right place. In my case, he thought that the University of Chicago would be the best fit. When I wrote, that school told me that it had filled its spots. Upon being given the bad news, he fired off a note to Chicago's law school. A couple of weeks later, I was giving a class when Professor Cowen burst in, waving a yellow scrap of paper, a telegram from the University of Chicago. 'We have got it!' he shouted triumphantly to the bemusement of the students. Undoubtedly, he was pleased by this evidence of his influence but his dash into my class said it was much more than that. His joy for me was palpable, he cared about people.

He cared about people who studied law. I was made aware of this very early on in my stint as a tutor. When I took up my post, Professor Harold Ford was the dean. Ford was reserved, even aloof. Although he was very good at making us all smile because he was good at puns, in his dealings with his colleagues, certainly with his junior colleagues, he kept us at arms' length. Professor Ford showed no particular interest in what we were doing, as long as we did our job to the satisfaction of the more senior teachers who told us what to do in the subjects we taught for them. We called him *Professor Ford* and he addressed us as *Mr Glasbeek* or *Miss Jones*. He was polite, *comme il faut*, but not engaged. The law school was a rather sterile place for me. All that changed when, near the end of my first year, Professor Cowen returned from leave to resume his decanal duties. He called me and, I believe, all the other tutors in and talked to us about our academic aspirations. I was to call him *Zelman* (something I was not able to do for several years) and he made it his task to whisk past the cubby-hole that served as my study every few days. He would pick up whatever I was working on and it would be back on my desk the next morning, marked-up in alarming blue, pointing to elisions, inelegance and the like. After the genteel Ford period, we were in the midst of a hurricane. Today, his approach to vulnerable and insecure tutors would be considered paternalistic, at best, bullying, at worst. In truth, it was neither, certainly not the latter. To this day, I remain grateful for his eagerness to help me and my cohort be better.

After a little while, he had formed the opinion that I needed to be more analytically rigorous. He arranged for me to produce two case notes for the *Australian Law Journal* every month. This meant I had to find at least six cases that I thought might be of some interest to the journal, compose a few paragraphs that set out the salient facts and my opinion as to what was intriguing about the decision. I found it burdensome. The discipline it was imposing on me was invaluable. This, of course, had been his goal. He wanted me, and everyone who was to be a lawyer, to be a good technician.

To him, this was the first basic step we had to take to be serious contributors to the law. This was important because the law, the study and practice of law, was, and remained his driving passion.

He loved the intricacies of legal argumentation, the nuanced drawing of distinctions, the synthesising of cases. His lively intelligence enjoyed the pyrotechnics of legal analysis. His many writings in evidence law exhibited his abilities as a fine legal technician. He revelled in the refinements so often resented by the public as unworldly pedantry. In class, when teaching private international law, he would walk from one end of a long lectern where he positioned *Ruritania*, a mythical country, and stood there while he made the best case possible for its claim that its very strange law should apply to the issues before a court. Having convinced us all, he would walk to the other end where we found New South Wales making its case. His ability to make both cases completely plausible to us revealed not only the uncertainty and flexibility of the law, features he was at pains to make us understand, but also his ability to split hairs in a legally meaningful way. He did not disrespect the law because it was uncertain and malleable. He believed that, while clever people could make sophisticated arguments about the state of the law, there were parameters, there were boundaries that could not be crossed. In short, he was a believer that the law and its institutions had a core set of values and norms and, while there was, as there should be, a great deal of elasticity as to how to give rein to those values and norms, they had to be respected.

He was not a materialist, one of those who thought the law should respond primarily to economic and pragmatic needs. Rather he espoused the beliefs of liberal philosophy, of civil and political liberties for one and all. He thought the law was the repository and a guardian of those beliefs. Indeed, his most passionate (and, in my view, his best) work as a legal scholar is to be found in his publications and public lectures on civil liberties. He admonished courts for forgetting their true task by readings which led to the inhibition of the freedoms of expression and thought, values he sincerely thought could never be abandoned by our legal system, no matter how technically defensible an argument that had such an impact might be. Long after he had retired, he expressed his puzzlement about legal strains of scholarship such as law and economics that placed so much emphasis on the rational calculating individual, instead of the compassionate, altruistic one, the one he firmly thought should be the primary concern of the law. He loved the potential of the law and its institutions to civilise us, to create a society in which tolerance and respect for one and all would flourish. This explained, to me, some of his preferences and decisions. His enthusiasm for the law made that part of his career spent as a law teacher and scholar very precious to him. Talking and writing about the law, training students,

debating with colleagues, hob-nobbing with judges and legislators, all this was not just professionally satisfying to him, but politically and psychologically fulfilling. He told me on several occasions that his time at the University of Melbourne Law School was the best portion of his very successful life. It is hard for me to remember an occasion when, after he had lost touch with the Law School's daily doings, he would not ask me how the school was going. Did it still have some 'good' people? Was it still turning out 'good' people?

I am sanguine that his concern that the law should play a part in improving life, in civilising our society, made him take on some of his many public roles. For instance, his participation in the Australian Press Council was, so I gathered from our chats, of interest to him because the balance between having a commercially successful press and a responsibility to telling the truth and let people have a chance to tell their truth, was a delicate one to attain. He felt that, as a well-informed devotee of liberal legal values and norms crafted over the centuries, he might be able to contribute. His acceptance of the role as a Governor-General, of course, allowed him to feel that his profound commitment to Australia's constituting legal institutions would be useful. Undoubtedly, he was very flattered and pleased to be offered the post, not least because he would be emulating one of his heroes, Sir Isaac Isaacs, the first Jew to be appointed to the post, and about whom he had penned a riveting book. More significant to him was that, at the time of his appointment, an institution that had played a pivotal part in our constitutional framework required burnishing (following Sir John Kerr's time in office). It had to be shown that it was an institution that still could serve the stabilising purpose for which it had been designed, provided that the appointee behaved as a 'good' man.

Behind the scenes, he stood ready to provide advice if asked. He was an excellent public speaker. He was charming and he and his wife, Anna, Lady Cowen, made wonderful hosts, presenters and representatives of Australia. They travelled tirelessly, celebrating people and their events. They returned dignity to the office, no small feat given the perceptible sentiment for rejection of the Governor-General position because, in large part, it had been so degraded. This brings out two quite different facets of his multi-faceted persona.

Everyone knows that when the issue of republicanism became a live political one when he publicly stated that he would support the drive for Australia to be a republic. It demonstrated one of his capacities that made him so special to me. He served loyally as a Governor-General because that was what the proper operation and maintenance of his cherished legal system required. Unquestionably, even then, he thought it sensible to think about a change – but such a change should come after debate and pursuant to an accepted legal process. In the meanwhile, it was a duty,

his duty, to make the law and its institutions work as well as it could to help it maintain (what he considered) a civilised society. This goal imbued his every thought. The second facet of his nature that emerged from his spell as The Queen's representative was that, while I secretly believed that he liked a lot of the pomp and formality of the many functions, dinners and formal occasions over which he had to preside, he never lost his sense of self, his sense of being a man like any other. He told the story of how one of the nicer things that happened to him while in office was that, now he was a *someone*, he had been invited into the locker rooms of the St Kilda Football Club. He and Lady Cowen had been long-suffering supporters. The climax of the story was that he, Sir Zelman Cowen, the Governor-General of Australia, was able to meet a truly great man, one of his heroes, Daryl Baldock. A red letter day for a modest man.

As an individual he remained grounded. Although he knew the makers and shakers, in Australia and in good many other countries, he never became unmoored. He was loyal to the people he grew up with, he saw and remembered them. Much of that had to do with his sense of being Jewish, not so much in a religious sense as in a cultural one. He was an ever-present figure in Melbourne's small, but tightly bound, Jewish community's affairs. As noted, he had time for everyone and everything that interested him – a lot of disparate things did.

He loved classical music, attended as many performances as he could, right up to the end of his life. He gave generously. As a scholar, books, especially biographies and histories, were a passion. These Renaissance-like interests were some of the things which made afternoon teas and dinners at the Cowens gracious and joyful affairs, almost salon-like. Conversations took us all over the place. Lady Cowen and Sir Zelman could easily have dominated those encounters, but both were too courteous. They cleverly inveigled everyone at the table – and it usually was a diverse group – to offer opinions. He was always curious. Early in the piece, it seemed to me that he was playing devil's advocate, beguiling his guests into participation but I soon realised that this was not the case. He was truly stimulated by what other people thought about public events, people or books or music. I do believe that this characteristic is one of the reasons he accomplished so much. Respect for other views and people came naturally to him. So did grace.

One evening, only four years before he died, the Cowens were to be our dinner guests. Sir Zelman had a fall when he got out of the car and hit his head on the footpath. Paramedics were called. Luckily, after some anxious moments, it was decided that he did not need any further medical attention. Both he and Lady Cowen insisted that they would come in for dinner – they were not going to be the reason for upsetting our plans. During the dinner, they adroitly steered us all away from

making the mishap the centre of attention. Perhaps some would see this as a kind of bravado. I know it was not. It was the instinctive reaction of two people who really cared about how their actions affected others, both important and unimportant ones.

To use his favourite language, Sir Zelman was a good man, a very good man. To use my language, he was not only a fine contributor to scholarly and public life, he was a *mensh*, a real *mensh*.