

INTRODUCTION

Continuity of institutions in an era of rapid and revolutionary change is one of the fundamental messages underpinning the public speeches of the Hon James Jacob Spigelman AC, the current Chief Justice of New South Wales. This book contains a selection of forty-two speeches, delivered during his first ten years in office, which traverse all major areas of the Supreme Court's administration and jurisdiction.

Speeches provide an opportunity for advocacy and persuasion about issues of wider aspirational significance than is typically available through written judgments. In political terms, speeches can serve the powerful purpose of building a consensus in support of ideas beyond the confines of individual cases; whilst in organisational terms, speeches by a leader can play a vital role in focusing and reinforcing the organisation's values and culture.

A golden thread which runs through the speeches of Spigelman CJ has been his belief in the need to rearticulate the central role of law and legal institutions in the Australian government compact. In doing so he has emphasised core systemic values of fairness, respect for institutions, personal responsibility, rationality in decision-making and purposeful citizenship, all of which act as a defence against contemporary fashions of economic rationalism and populist fads that would otherwise undermine the rule of law in our community.

History plays a critical role in the Chief Justice's explanations about the working of our legal system. Where in one speech he marvels at the fact that the overwhelming majority of Australians obey the law, in another he attributes our social stability to the 800 year old tradition of the common law and adversarial system. Fundamental principles, such as protection against abuse of public and private power, are therefore explained as representing a form of wisdom, derived from pragmatic origins, which are deeply embedded in our legal institutions.

This sense of history, and his prior involvement as a champion of indigenous rights during his student days, led to one of his most important symbolic contributions as Chief Justice. This occurred at a ceremonial sitting of the Court, which he held in 1999 to mark its 175th anniversary. As part of the occasion, not only were speeches delivered by a present and former Prime Minister on behalf of the solicitors and barristers respectively, but he also invited, for the first time in an Australian Court, a representative of the Aboriginal people to deliver a Welcome to Country speech.

His understanding of economic principle, his experience working in the executive government at the highest levels and his interest in reading are also reflected in the speeches. Thus, for example, he has frequently cited contemporary economic theories such as the developing field of

institutional economics, as well as quoting from authors ranging from Plato to Lewis Carroll and Ralph Waldo Emerson, to make his point.

The speeches in this book, therefore, provide a systematic explanation and exposure of principle across the sweep of the legal and judicial landscape. It is a true reflection of the breadth of a Chief Justice's responsibilities, as the head of the judiciary in New South Wales, that he can speak with equal measure of authority on issues ranging from sentencing principles in criminal law, tort law reform and what he has termed the 'integrity system' of institutions designed to ensure that government representatives and authorities remain faithful to their roles.

It is important to remember that the context for these speeches, as audience members would have been well aware, was the rapid pace of change during his decade in office. Spigelman CJ spoke on a number of occasions about the opportunities these changes provided for law and lawyers. On the positive side, globalisation presaged a new level of international judicial collegiality, and new technology, particularly video-conferencing, promised to make it easier for lawyers to balance the demands of work and family life. Yet, on the other hand, these developments also exposed the parochialism of national legal systems in dealing with cross-border disputes, and he lamented the loss of civility in society in a key address to lawyers at the Opening of Law Term Dinner in 2006.

The power of these speeches depends not only on his position as Chief Justice and the logical development of his arguments from first principles – the *ethos* and the *logos* in Aristotelian terms – but also upon his incisive and irreverent wit. There are many examples of absurdity and overreaching in the law to which he has referred, including a claim lodged in the United States on behalf of an oak tree for damages after a motor vehicle crash, or the case about whether a liquidator had received sufficient notice of his own resignation after the letter that he had written to himself got lost in the post. Ambiguity and the meaning of words is also singled out for special treatment.

This book comprises nine broad chapters, commencing with Spigelman CJ's swearing-in speech in the first chapter. Chapters II – VII concern legal and judicial topics, namely the Rule of Law, Judicial Administration, the Legal Profession, Criminal Justice, Civil Justice and Public Law. The final two chapters contain speeches dealing with wider issues, respectively entitled Engagement and Historical Reflection. A brief synopsis of the individual speeches appears at the start of each chapter, with endnotes, legal tables, an index and some brief biographical details appearing at the end of the book.

The speeches in this book include only those delivered on formal occasions. Entire speeches rather than extracts have been included, with preference being given to analytical rather than descriptive speeches. This

has meant that parts of the speeches could well have been placed in other chapters, however I chose not to fracture them. Some minor editing to remove duplication has occurred, as well as minor formatting changes to ensure consistency of presentation. The full text of all 147 speeches delivered by the Chief Justice during this period is available on the Supreme Court website, and a complete list of those speeches can be found in the tables at the end of the book.

My interest in producing this book arose as a result of hearing Spigelman CJ's Australia Day Address earlier this year, in which he delivered a fresh and compelling analysis of Australia's only military coup, the so-called 'Rum Rebellion' in 1808. This led to the thought that a book of his speeches would allow the extensive range of ideas which he has enunciated over the past decade, through the spoken rather than the written medium, to be collect and preserved.

As one of the editors of a book of judgments collected and delivered between 1828 and 1844 by Sir James Dowling, the second Chief Justice of New South Wales,¹ I have noted a number of striking parallels between the ideas articulated by the two Chief Justices. This is particularly true of their belief in the importance of public opinion as providing the bedrock of support for the legitimate exercise of judicial power in our society. The similarity of their views, spanning almost two centuries, provides powerful support for Spigelman CJ's argument about the historical continuity of our institutions.

This book would not have been possible without the assistance and support of the Chief Justice, for which I am particularly grateful. There are a number of other people who I also wish to acknowledge for their significant contributions to the preparation, research, typesetting, formatting and proofreading of this work, including Amy Castle, Kotaro Nakamura, Alana McKaysmith BA, LLB (Hons), George Blades BA, LLB (Hons) and Jane Taylor BA (Hons).

In the speeches which follow, Spigelman CJ argues why it is important to conceive of our courts and legal institutions as serving the public, in which the rights and obligations of citizens are recognised and enforced. This is a wholly different discourse from that which sees the courts as a publicly funded dispute resolution service for consumers that is susceptible to market-based measures of accountability and analysis. For the lawyer and historian in a post-modern world seeking to combine the parts into a coherent whole, speech and language matter.

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