

EULOGY FOR PROFESSOR GEORGE WINTERTON

Professor of Constitutional Law, University of Sydney

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12TH NOVEMBER 2008, ST FRANCIS OF ASSISI, PADDINGTON, SYDNEY

We are gathered here today to farewell and celebrate a great man. 'And they shall be as when the standard-bearer falleth,' so say we of the Academy and the Legal Profession. I want to assure the family that all of us, and those of us here in spirit, stand with you and George, shoulder to shoulder, a vast congregation of advocates and witnesses testifying before the world and the courts of the Almighty to the brilliance and goodness of this special man, to a great scholar, lawyer and teacher, dedicated to his calling, leading member of the great constitutional councils of the nation, and most importantly devoted husband and father, a dedicated son and loving brother. The God, who wept at the death of his friend, at the loss of the only son of a widow, cannot but incline His ear to hear us.

I will attempt to celebrate the real George Winterton, not an idealised version.

George Winterton:

- Professor of Constitutional Law, University of Sydney
- Emeritus Professor, University of New South Wales.
- Doctor of Juridical Science, Columbia University.
- Doctor of Laws (*honoris causa*) University of Western Australia (his *alma mater*) from which he had received the university medal as an undergraduate.
- Barrister of the Supreme Courts of New South Wales, Victoria and Western Australia.
- Fulbright Scholar and the holder of numerous other academic prizes and awards.
- Adviser to Governments and leading member of Constitutional Commissions and Conventions.

Slightly nervous at my first meeting with him as his doctoral student, I commenced 'Professor Winterton...' 'Please call me "George",' interrupted the refined voice from the gentle face behind the pile of papers and the other academic flotsam and jetsam on his overcrowded desk. His natural courtesy put me at ease. As soon as he started talking about constitutional law, I knew I had made the right choice in supervisor. When the necessary formalities of the master/student relationship no longer bound us, I began to see the broader George, what his other friends could see, especially 'the gang' at UNSW as he affectionately called them.

Those closest to him know of his wicked sense of humour, even the partiality of his younger years for the odd practical joke, his irreverence, his ability for the wisecrack delivered with a deadpan face: The Sisters of St Joseph have been praying for George constantly at the shrine of Blessed Mary MacKillop since his illness struck some 10 years ago. George was a little bemused, but not ungrateful. Ros announced solemnly to George earlier this year that His Holiness the Pope was going to visit the shrine. 'You know the first thing the Pope is going to ask the Sisters...', said George. 'What's that?' asked Ros earnestly. 'How's George?' came George's reply in perfect German accent. When a friend visited him in his final week wearing a dark, charcoal grey suit, George quipped, 'Don't tell me they've called the undertaker already'.

There were some things which he did not find funny. George was impatient of 'trendiness' for its own sake. He disdained the seekers after the limelight, the pomposity of some in high places, and of the modern day Caesars. 'Those who matter see them for what they really are,' he would say patiently, expressing his concern that ego must never be placed higher than the high ideals of the profession, both academic and legal, we serve. He could be a nuisance to administrators, defying them often with a childlike mischievousness, especially when they sought to impose modern management techniques on the collegiality of the Academy and its ancient standards. He was often the champion of younger colleagues and administrative staff whom he thought had been unfairly treated. He got away with it because every law faculty in the nation wanted to be associated with the name of George Winterton, and, let's face it, because George was George.

In private moments, George was more scathing, although without rancour, lamenting the decline in academic standards and standards in the legal profession, whenever he perceived them. He never acquired a taste for the fruit of post-modernism in legal scholarship, which he would read with incomprehending incredulity. Sloppy scholarship, especially that which had nothing more to commend it than topicality, or was the product of overweening ambition for quick promotion, was anathema. George was not one to hold back when he saw that the Emperor had no clothes, but in his later years he tolerated this with a benign resignation.

You see, we need to locate George more within that academic tradition of Socrates and his disciples, in that tradition where truth mattered, not within that other influence which flows from the Sophists, those teachers of rhetoric for whom power, not truth, was all that mattered and who, for a fee, undertook to train in the arts of persuasion the progeny of wealthy Athenians for a career in politics and the law. Truth mattered to George Winterton, not your truth or mine, but *the* truth. In this he could be very exacting, even when the truth in question was no more than the spelling or pronunciation of a person's name or the chronology of events in an anecdote. That is not to say that George ever said that he had mastered the truth, or imposed it on others. He was not a dogmatic man. But he did believe, seriously, that, in addition to showing compassion to one's fellow human beings, the calling of every person was to seek truth. In this he followed the strict dictates of reason. He eschewed assertion, especially in law, and was not backward in pointing out

that a legal principle was based on faulty reasoning, or that a step had been missed in reaching it, even if in his view the principle was correct. Correct method was as important as the correct answer.

He laboured long over his writings, often to the chagrin of his publishers, making sure that he acknowledged the contribution of all scholars, eminent and not so eminent, to knowledge in the field. Although profoundly individual in his work — he made little use of research assistants, let alone ride on their backs for the sake of the quick publication — he nevertheless regarded scholarship as a collegial activity in which all contributed in dialogue to the advancement of knowledge. He laboured over grammar, the placement of commas and dashes even, not because he was pedantic but because meaning mattered and grammar was critical to that. His prose was economical and masterful, a delight to read. For these reasons, although he published more than most, he may not have published as much as some, but what he published was quality. And when the prolific writings of others will fade as the topicality of their concerns passes away, the writings of George Winterton will abide. The quality of his work was evident from his earliest papers, from the time of his article in the *Law Quarterly Review* in 1976 on parliamentary sovereignty, extraordinary for a young man in his late twenties, to his seminal *Parliament, The Executive and the Governor-General* which remains the leading work on Executive power in Australia.

His scholarship reflected deep and original thought but he was always conscious of the rich legal tradition in which he operated. The Commonwealth Constitution was not for him a document to be dismissed as a ‘horse and buggy’ constitution in the way of those impatient with the democratic hurdles to its amendment, but a document that was born into a common law world, into the broader tradition of Westminster convention, history, custom and usage. Where our own Constitution did not provide assistance in the interpretation of its own provisions, George did not regard this as an opportunity for constitutional lawyers, or judges, simply to insert their own particular take on the matter. This smacked too much of personal philosophical preferences being allowed a free reign in the interpretation of our fundamental law. No, at these moments, the constitutional lawyer was duty-bound to mine the rich vein of our legal inheritance and constitutional history.

This position came to the fore in George’s work on the ‘depth’, as he called it, of the Executive power of the Commonwealth, arguing that reference can and should be made to the common law prerogatives of the Crown to guide us. This might sound strange coming from a republican, but to George the rule of law itself was far more important, and the rule of law, legality, was precious to him. It was for him the bulwark against tyranny, whether the petty tyranny of the ego, or the monstrous tyranny of the criminal dictator. This view carried through in his counsels to the national Constitutional Conventions and was manifested in his draft which formed the basis of the final republican model put to the people for vote in 1999. This commitment to legality informed his view, impressive coming from so committed a republican and one so opposed to the hereditary principle, that because we remain a monarchy in law, we must maintain the usages of

monarchy, including the Royal Coat of Arms and other symbols of the Crown, and not become a republic by stealth. Legality, he insisted, was a precious golden thread which must be maintained in every change which is effected in our constitutional arrangements. No step must be illegitimate for this will come back to haunt us. Whether or not we become a republic — and if we do, George Winterton will be its founding father — the wise counsels of George Winterton must continue to be heeded.

Now, permit me a personal remark, but not entirely personal. I say this on behalf of all those who can share with me the great honour of having sat at the feet of this constitutional law Gamaliel. George Winterton went out of his way for us, especially those of us who were not well-connected, those of us whose very names have counted against us in certain circles, even when not the object of fun, who are not accustomed to the influential word in the right places on our behalf and that breezy path to career success which seemed to come to others. George empathised. I recall that dark time when I had given up completely any hope that I had to an academic career when I suffered a particular setback. I was pretty broken, although too proud to show it, especially as George had infected me with a taste for the academic life. I was resigned to return to legal practice. But George, a sensitive man, could not be fooled, and he was there to pick up the pieces on that day. Despite my protestations that I did not want to endure another application process, he insisted that I apply for an advertised position at Sydney Law School he had seen that very day. I had seen it too, but I had in fact thrown it in the bin. George told me not to be stupid. He told me to retrieve the ad, sit down at my computer and make the application. ‘Forget it, George,’ I said. ‘Do it for me’, he replied. I could not refuse him a favour. I am sure it was his reference which clinched me the job. I was overjoyed when George later joined me at Sydney when he was appointed to the Chair of Constitutional Law. This was not the first nor last time George was there in time of serious need. No fair weather friend was he.

Then there is the other story of the student, the eldest son in a large Catholic family, who was so poor that he had to hock his watch to buy his first law textbook. Doing law by correspondence, he worked as a jackaroo on those large Queensland cattle stations, doing the rounds mending fences by day, sitting in the sheds by the fire at night pouring over his law books while his European and Aboriginal co-workers, bemused, looked on. Managing just to scrape through his law exams, he did not appear to show any signs of brilliance. How could you in such circumstances? That is, not until he came to Sydney and met George when he enrolled in a course run by George open to cross-institutional study. George saw this young man’s ability. By his gentle encouragement and wise counsel, and the mere fact that he cared, this young man began to believe in himself and was accepted to go up to Oxford University where he obtained his doctorate in law, all the while being encouraged, helped and urged on by George. Now a professor of law himself, he is here today, having travelled especially from overseas. These are just two stories from amongst countless others, most of which are probably only known to God. When I was visiting George in his final days at St Vincent’s, I could not help but apply to George, with slight variation, the motto of the Sisters of Charity: *Caritas Christi Urget Nos* (The Love of Christ Urges Us On).

George was the most non-judgmental of men, a virtue which, on this day, will take him far. He always had a word for the least important — in the eyes of the world — people in the room. He took a care not to have slighted anyone. He gave time to his students, even at the expense of his own commitments. Despite what some of us may think, he did suffer fools, well, if not gladly, then at least with courtesy, even those fools who treated him disrespectfully.

Teaching with George was an experience. His constitutional law lectures, were, well, a combination of Beethoven and Mozart, with a little Handel thrown in. Reflecting on my own knowledge while listening to George, I scribbled on my pad the words of Socrates: ‘Εν οἷδα, οὐδέν οἷδα’ (‘One thing I know: I know nothing’). I will forever treasure those Wednesday afternoons in his office, overlooking the courts and Queens Square, after we had both finished our lectures for the week, cup of tea in hand, with George always having at his fingertips Professor Leslie Zines, *The High Court and the Constitution*, ‘The Bible’ as he called it, and the Commonwealth Law Reports opened at the constitutional judgments of Sir Anthony Mason whom he revered. ‘We will have to run that by Geoff’ [Professor Geoffrey Lindell of Adelaide], he would say, when we came across a particularly tricky point. ‘I wonder what HP, [Professor HP Lee of Monash] would think of that?’ ‘Keven and Arthur [Keven Booker and Professor Arthur Glass, his long time colleagues at UNSW] would not be impressed with that argument’. The breadth and depth of his own knowledge, even in other fields of law, was astonishing and he would be forever communicating to me new nuances in the judgments and the principles we were teaching. I could not help but think that few, if any, would have made a better appointment to the High Court of Australia. On one of these afternoons toward the end, he confided in me that he regarded the profession of teacher and scholar as the noblest of all professions. The many sacrifices, the financial sacrifices, we made relative to our full-time practitioner colleagues, were not to be counted against the immensity of our calling and our duty to the young and our duty to knowledge.

Time does not permit me today to mention in addition his extraordinary breadth of knowledge in current affairs, history, art and music. Those of us accustomed to receiving emails from him relating to our particular non-legal interests will know what I mean.

For all this, I have never met a less pompous man. On the first occasion he was invited to the Academic Dinner at St Paul’s College — formal, full academic gown affairs — George told me that he did not own his doctoral gowns, and by all standards, those of Columbia University are quite impressive. While the rest of us turned up in our academic finery, George, probably the most eminent scholar in Hall, turned up unselfconsciously in a plain suit wearing an undergraduate gown which looked the worse for wear and a bit too short for him, borrowed from Women’s College where his daughter Maddy was resident. And George laughed long and hard at the story of the young man who, while being interviewed for a job by a rather pompous senior partner in one of the leading law firms was asked: ‘Are any of your people in law?’ Seeing where the interview was heading, the young man replied: ‘Well, Uncle Jack’s been in the nick for a few months.’

The services of the great religious traditions aside, as shown by George's own choice of music for today, he in fact had an aversion to organised group ceremonies of a particular kind, especially those where reason was absent and emotion was given free reign. He was forever sensitive to the spectre of the Nuremberg rallies. Recently when George was not feeling so well, he had asked me over to Park Pde to spend some time with him and watch a couple of videos on a Sunday evening. We started to watch the episode of the Fall of France in the World at War series. As footage was being shown of the triumphalist march of the Axis forces in Paris along the Champs Elysees to military music, I could see George becoming a little uncomfortable, and then emotional and then very tearful. 'Sorry Peter', he said, 'I am so sorry. The French had a great civilisation, as you know, and I get affected by this. All the misery and suffering that follows on from this . . .', he said. I could not help but think that the little episode I had just witnessed was a sure and certain sign of his own profound renunciation of evil, of Satan and of all his works, and of all his vanities and of all his pomp. 'George Winterton', I thought, 'you are profoundly good, decent, compassionate and gentle man who is on the side of light.'

Because courtesy is of the Muses, it is no wonder that George was touched so deeply by music and poetry. I cannot think of him without music. One of the greatest sadnesses of his last years was the fact that he could not go to concerts because of his bad leg. He had to make do with listening and watching Verdi and his other favourites on DVD, especially as his illness progressed. Ros, I will forever treasure the Sunday nights this past winter in the living room at Park Pde when George asked me over to sit with him while we listened to the music, and while you served us tea and biscuits, fussing over 'darling George', and you sitting at the table pondering over your crossword.

He loved his friends, and there were many, from the 'gang' at UNSW, his friends from Perth, his newer friends at Sydney, his ex-students who kept in touch and others from all parts of Australia and the world. How can I mention you all, but you know who you are. I could not walk down Phillip Street without some ex-student now at the Bar, some senior barrister, some senior justice, asking me: 'Peter, how's George?' I could not enter a lift or walk down a corridor at Sydney Law School, or even sit quietly in my office, without someone, academic or administrative staff, students, librarians or the law school attendants, the night watchman, asking me the same question.

George was forever stoic throughout his long illness. When he did become emotional and tearful, it was never for himself but for you Ros and the children, for his elderly mother having to bury a son. His very deep concern for her never failed and he was forever and to the end a devoted son. George was a very proud father of four wonderful children whom he adored. He was always proud of your achievements and qualities. He confided in me that there were times in the past, when you were much younger, when he felt that that he could not go on, that it was all getting too much for him, but the thought that he would leave you orphaned as young children was intolerable to him and that he would do everything in his power to ensure that he survived long enough to see that you were all well on your

way and independent. Just maybe Mary MacKillop was working after all. Peter, his phone calls to you and Rita made a huge difference in this regard, and the fact that he could talk over his progress with you and your encouragement, were critical to his survival for so long.

Ros, your service to 'darling George' in his final sickness remains an inspiration to us all. The fact that he lasted so long is testament both to your care and to your positive attitude that this thing would not beat you. You went way beyond the call of duty, indeed even beyond the call of love. But then again, love of this kind knows no bounds, no limits and you know Ros it was reciprocated.

George's love was known even to the little children and testimony to it even came from the mouth of babes. As he was falling off to sleep in his little cot, on the eve of George's passing, our two year old Johnny, who loved George, was mumbling to himself: 'Good night George, good night'

The passing of George Winterton has left us all bereft, but not despairing. It has left us grieving but not without hope. To the family I say on behalf of us all, we share your pain, we know your grief, we are with you in your mourning. But this is no dark time. We may not be able to see him any more, like a ship over the horizon, but he is still there, sailing on ahead, to a place where his father Walter has already gone and to which, one day, all flesh must travel.

Reverend Fathers, dear friends, permit me to farewell my friend by adapting just a few of the ancient words of the funeral service of the Greek Church:

'Your death, O Lord, has become for us an ambassador unto immortality, for You are a Good and Merciful God and a Lover of Mankind. Dearest friend George, blessed is the path on which you have set out this day for it is leading you to a place a place of light, where there is no pain, no sorrow, no sighing but only eternal joy.

Αἰώνια σου ἡ μνημη ἀξιομακαρίστε και αειμνηστε ἀδελφε ἡμῶν αἰώνια σου ἡ μνημη.

Everlasting be your memory, dear brother, worthy of blessedness and eternal memory, everlasting be your memory.'

