

## ADDRESS FOR BERNARD BROWN DINNER 17 OCTOBER 2013

It is a tremendous but daunting honour to have been asked by Bernard to serve as an *hors d'oeuvre* to his splendid repast which will shortly follow.

In 1965 when I arrived at Auckland University and the Law School, it was a case of “walk right in” – no pesky law intermediates or minimum grades then. The first courses on the LLB menu were Legal Method and Legal History. From the course descriptions, boredom beckoned for each, and was rapidly achieved in the case of Legal Method.

In those days Legal Method aimed to inculcate an ability to distinguish between the *ratio decidendi* of a case and its *obiter dicta* – preferably across five separate judgments of the House of Lords - and an understanding of the law of precedent, aka *stare decisis*. Legal History, as prescribed, appeared to require not just law Latin, but also law French, and a smattering of Anglo Saxon besides.

The venue for Legal History was the Garden Lecture Theatre. The lecturer turned out to be a somewhat dishevelled Englishman, who gave the impression of having spent much of the night before in revelry of uncertain character. The first lecture took us immediately back to English medieval times, and the advent of the King’s Peace, or the rule of law as we would now call it.

It emerged that the King’s Peace first began to flourish at Westminster in the City of London, whence it grew in vigour, extending onward through the towns, the villages, the counties, the shires and hundreds, along the highways, and down the leafy lanes of England. As the King’s Peace penetrated further and further, it slowly began to dawn on Bernard’s largely male student audience (for of course, it was he) that they

were in fact listening to a sustained flight of phallic imagery, and that maybe Legal History would not be so boring after all. And so it proved.

In Bernard's hands, Legal History was a fascinating but sometimes salaciously skewed topic. The County of Middlesex – known for its writs and pleas – somehow emerged as in a state of gender identity confusion. An obscure species of local court in some English counties, at which the assent of those foregathered was signified by a clash of arms - the Wapentake - became a form of “legalised robbery with violence”.

The various legal fictions were a source of boundless amusement. Early forms of trial (by battle, by ordeal, by “wager of law”) were a rich fund of embroidered whimsy. Then there was the claiming of “benefit of clergy”, requiring flawless recitation of the “neck verse”. In Bernard's hands, rather than being a fast track to trial by the ecclesiastical courts - thereby evading secular punishment namely execution - “benefit of clergy” turned out to be an interesting perquisite of your average priest's live-in housekeeping arrangements.

Without a beat being missed, or an eyebrow lifted, Bernard's stock-in-trade innuendo informed and entertained us. Indeed, while Bernard to my knowledge never lectured on defamation law, had he done so, he would have made the very topic of **innuendo** sound like a distinctly unwholesome parlour game.

With Bernard on the podium, you definitely got *double* the *entendre* for your student course fees.

Bernard's affectionate treatment of these legal curiosities and the various nooks, crannies, and by-ways of the early common law was, in the end, for me highly influential. It turned out that the lateral pathways and thinking he opened up were

every bit worth exploring, as the linear topics of Richard Sutton's Legal Method lectures.

Bernard's own legal interests, mentioned if at all with characteristic modesty, have turned out to be ahead of their time. His 1969 publication, "Fashion of Law in New Guinea", can be said to have anticipated universal recognition of the importance of designer clothing in the law – this, years before the advent of Justice Winkelmann.

In those easy-going days, the Grand Hotel was a few steps down the road from the Law School, and Grafton Gully, pre-motorway, a plethora of student flats. No one socialised and partied with the students of the day more chummily and graciously, indeed often more beerily and leerily, than Bernard. Invariably, one would be regaled by Bernard with some old or new hilarious but self-deprecating account of befallen adventure, if not outright misfortune.

Bernard claimed, for example, to have shared a work table at primary school with the Krays twins, Ronnie and Reggie – later notorious for their extreme violence – Ronald and Reginald having been evacuated during the London Blitz to Bernard's Suffolk village. Being bullied and tortured by the fledgling Krays is said by Bernard to have sparked his later interest in criminology.

I cannot help but be reminded by that story of the Monty Python skit on the Krays/"Piranha Brothers":

"I've been told that Dinsdale Piranha nailed your head to the floor?

No, no, never, never. He was a smashing bloke, he used to give his mother flowers and that. He was like a brother to me.

But the Police have film of him actually nailing your head to the floor.

Yeh, well, he did that. He was a cruel man, but fair."

Bernard would tell you that his career as a law teacher was a direct consequence of his having conducted, as an RAF Legal Services Officer in Singapore, 32 defences at Courts Martial, resulting in 32 convictions. (In truth, Bernard left Singapore after becoming unpopular with the then regime, on account of his opposition to that country's Preservation of Public Safety Ordinances, providing for indefinite detention without trial and excluding habeas corpus. Sounds depressingly familiar...)

Bernard also claimed to have made the Guinness Book of Records when, playing soccer for Leeds University in 1956 against Manchester City Reserves, he scored all four goals in a 2 : 2 draw – this feat including two “own goals”, and all scored in the same net!

In yet another account, Bernard's mother long outlived his father, to age 99. She was, at age 95, the world's oldest Girl Guide, known according to Bernard as “Lone Grey” (full name presumably, “Lone Grey-Brown”?).

Were these marvellous anecdotes at least occasionally apocryphal? One never quite knew, and it would have been churlish to ask. But undoubtedly Bernard would have done well to have collected and published these tales under the title “Apocryphilia”, to be gleefully marketed as merely sounding like a serious criminal offence.

What is undoubtedly not apocryphal is the very high regard in which Bernard has always been held as a law teacher. Bernard received special mention in the autobiography of mercurial former Prime Minister David Lange, whose Master of Laws degree Bernard supervised:

“My Supervisor for the criminal papers was the wonderful Bernard Brown. There was something dashing and intriguing about Bernard. He was funny, he wrote poetry. He had an edge to him which made him unlikely ever to be dean

of the Law School. He had a fascination with the forms of the law and its language, and the gift of sharing his enthusiasm. I owe a lot of my academic achievement that year to Bernard's scholarship and wisdom."

For so many of us, Bernard is not only the inspiring teacher and memorable character from one's Law School days. He also has the happy knack of being, over the ensuing years, a constant welcome presence, regularly bumped into at Legal Research Foundation seminars, around the Law School, or about town - a "movable fixture", as Bernard might put it.

Bernard brings to any chance encounter his unique blend of "hail fellow, well met"; bonhomie; and aroha. (That was a completely unforgivable linguistic ménage-a-trois, for which I can only apologise.) Bernard will always take the time for a bit of a chat, perhaps the latest anecdote. Invariably, an encounter with Bernard makes one feel special, and the gladder for the privilege of knowing him. Tonight, we collectively celebrate that privilege.