JUSTICE BARAGWANATH: A STUDENT'S TRIBUTE

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I. INTRODUCTION

The readings required of students at law school can become a chore. One loses count of the formulaic statements of precedent and strained formalistic distinctions. Judgments tend to merge together in even the most assiduous of students' memories, so that often by the time a law test arrives all that is remembered is a blur of facts, case names, and dates – the residue of a few months' teaching of the common law.

However there are some glimmers of hope for the student worn out of such reading, and they often appear in the form of judges' names on the page. As the student is exposed to more and more cases, some judges' names, Denning LJ, Lord Steyn, Thomas J, begin to gather particular meaning. The student attaches to these judges a certain legal identity. The student comes to look forward to finding a judgment with one of these names across the top of it: an articulate dissent by Elias CJ, or a stinging rebuke of other judges by Kirby J. In short, these judges make reading cases interesting, even fun.

Sir David Baragwanath, who retired in 2010 from the Court of Appeal after fifteen years on the bench and was made a Knight Companion of the New Zealand Order of Merit in the 2011 New Year's Honours List, was one such judge. Whether his judgments were met in class by applause or criticism depended on the lecturer's own jurisprudential leanings, but his work always sparked discussion.

This short article aims to pick out just a few of the legacies that Justice Baragwanath has bequeathed to the law in New Zealand. It does not claim to be an exhaustive assessment of Justice Baragwanath's fifty year contribution to this country's legal system. It does not traverse his extensive work as counsel, in high-profile cases such as *Frazer v Walker*[1] and the *Lands* case,[2] only mentioning this part of his career briefly; nor does it offer an evaluation of his time as Law Commissioner. Rather, something much more modest is attempted: an account of some of the impressions Justice Baragwanath has left on the legal landscape, perceived from the viewpoint of a student about to enter the legal profession. This account draws primarily from Justice Baragwanath's judgments, although his extra-judicial writings are used to bolster the themes that are discussed. His legacies are unlikely to be quickly forgotten, given Justice Baragwanath's stature and his ongoing public prominence as an Appeal Judge for the Special Tribunal for Lebanon. However, lest they are not given the notice they deserve, this article hopes to act as a reminder that Justice Baragwanath has initiated a dialogue in many fields of law about the future path of the

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1 *Frazer v Walker* [1967] 1 AC 569 (PC).

2 *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA).

law, and the principles that ought to guide lawmakers on that path. The article hopes to continue the conversation that Justice Baragwanath has started.

II. Protecting Social and Economic Rights Through the Common Law

The New Zealand Bill of Rights Act 1990 gives prominence to civil and political rights in New Zealand law. The Bill of Rights was modelled on the International Covenant on Civil and Political Rights (the ICCPR), and its focus is on the canon of traditional rights: for instance, the right to a fair trial, freedom of expression, and freedom of religion. However, the progress on civil and political rights in New Zealand (which has been gradual, if not spectacular) has not always been matched by a commitment to social and economic rights, rights such as the right to education, the right to housing, and the right to healthcare. Unfortunately, debate in New Zealand on the issue of whether social and economic rights should be protected in an equivalent way to civil and political rights has tended to be shallow.

It is this gap that Justice Baragwanath has sought to fill in a number of his judgments and extra-judicial speeches. Justice Baragwanath has underscored that social and economic rights are far more meaningful to many than the more 'legal' rights found in the Bill of Rights, and has attempted to give social and economic rights more recognition in the law. He has done this in a deft and creative manner, suggesting that the common law can be reinterpreted to give effect to these basic principles.

One of the major judgments written by Justice Baragwanath for the Court of Appeal, *Te Mata Properties Ltd v Hastings District Council*,[3] exemplified this resourceful approach to the common law on the issue of social and economic rights. In that judgment the reference was to the right to housing. In explaining why the *Hamlin* line of cases (seemingly anomalously) allowed recovery in negligence for pure economic loss,[4] Justice Baragwanath noted "the special and distinctive value of the home in any society as giving effect to *the basic right to shelter*".[5] Later in the judgment Justice Baragwanath characteristically fused international law and quintessential British common law history in fortifying this claim to a common law right to housing, writing:[6]

> The right to housing is identified in art 25 of the Universal Declaration of Human Rights and art 11 of the International Covenant on Economic, Social and Cultural Rights to each of which New Zealand is a party. The right to shelter is bound up with those of autonomy and dignity expressed in the adage "an Englishman's home is his castle", echoing Sir Edward Coke's dictum in *Semayne's Case* (1604) 5 Co Rep 91a, 77 ER 194: "the house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose".

However, it was not just late in his judicial career that Justice Baragwanath advocated for a common law of social and economic protections. In *Daniels v Attorney-General*,[7] while sitting in the High Court, Justice Baragwanath accepted argument by counsel that a reference to the "right to free primary and secondary education" in s 3 of the Education Act 1993 (along with a reference to

3 *Te Mata Properties Ltd v Hastings District Council* [2008] NZCA 446, [2009] 1 NZLR 460 [*Te Mata*].

4 See, for instance, *Hamlin v Invercargill City Council* [1996] 1 NZLR 513 (PC).

5 *Te Mata*, above n 3, at [36] (emphasis added). A similar point is made by Justice Baragwanath about the "habitation interest" in his judgment in *North Shore City Council v Body Corporate 188529* [2010] NZCA 64, [2010] NZLR 486 [*Sunset Terraces*] at [25]. The Supreme Court recently affirmed this judgment on appeal: *North Shore City Council v Body Corporate 188529* [2010] NZSC 158, (2011) 9 NZBLC 103, 139.

6 Ibid, at [57].

7 *Daniels v Attorney-General* HC Auckland M1615-SW99, 3 April 2002.

the "same rights" for all under s 8) could be used as a hook to justify more substantive protection of education rights, in that case for students with special educational needs. Drawing on policy guidelines, Justice Baragwanath suggested that the right to education might require an education system that is "regular and systematic" and "not clearly unsuitable" to children's needs.[8] Justice Baragwanath deepened this analysis with reference to principles of equality under international law.[9] To the claim that such issues are inherently political and too entangled in policy for judicial determination, Justice Baragwanath said that the reference to rights in the legislation authorised such a determination.[10] Justice Baragwanath refused to empty the right to education of "legally enforceable content" purely out of fears of non-justiciability.[11]

There is no doubt that this decision was far-reaching and contentious. Indeed, the advancement of a substantive right to education proved too much for the Court of Appeal, which overturned the decision.[12] The Court of Appeal, in a unanimous judgment delivered by Keith J, rejected any "freestanding general right to education".[13] Nonetheless, while Justice Baragwanath's decision thus cannot be accepted as the current law of New Zealand, it illuminates much about his judicial philosophy: his willingness to draw on sources from at home and abroad, and boldness in developing the common law. The same impressions can be garnered from reading his judgment in *Taito v Chief Executive, Department of Labour*[14] where he suggested a right to family life emerging out of case law and international jurisprudence, but also had this judgment overruled by the Court of Appeal.[15]

As with many other issues that Justice Baragwanath has canvassed in his judgments, the issue of social and economic rights has been teased out further in his extra-judicial writings. In a 2006 speech on the distinctiveness of New Zealand law, Justice Baragwanath turned to international law figures once again in pressing the point that social and economic rights are worthy of the law's attention. "The President of the International Court of Justice, Dame Rosalyn Higgins, has warned," noted Justice Baragwanath, "against drawing a sharp line between civil and political rights, seen as true law, and economic, cultural and social rights which have long been regarded as moral pieties."[16] He went on to note the special importance of these rights to Māori in New Zealand. More recently, in one of the lectures he delivered at New Zealand Law Schools in his final days as a judge in New Zealand, he summarised these rights as being fundamentally concerned with "dignity and decency", an alliterative epithet that beautifully captured the aspirations at the core of the struggle for the enforcement of social and economic rights.[17]

8 Ibid, at [77].

9 Ibid, at [92]–[94].

10 Ibid, at [95].

11 Ibid, at [137]. For further discussion of this case, see EJ Ryan "Failing the System? Enforcing the Right to Education in New Zealand" (2004) 35 VUWLR 735.

12 *Attorney-General v Daniels* [2003] 2 NZLR 742 (CA).

13 Ibid, at [83].

14 *Taito v Chief Executive, Department of Labour* HC Auckland CIV2004-485-1987, 23 September 2004.

15 *Chief Executive of Department of Labour v Taito* (2006) 8 HRNZ 71 (CA).

16 The Hon Justice Baragwanath "What is Distinctive About New Zealand Law and the New Zealand Way of Doing Law? New Zealand Law and Māori" (Address to the Law Commission's 20th Anniversary Seminar, Wellington, 25 August 2006) ["New Zealand Law and Māori"], online at Speeches and Papers – Courts of New Zealand <courtsofnz.govt.nz/from/speeches-and-papers>.

17 The Hon Justice Baragwanath "Can We Globalise the Law?" (Speech delivered to Auckland University Faculty of Law, Auckland, 4 August 2010).

In this area Justice Baragwanath has left an indelible mark on the law. He has created some traction for future legislative change on social and economic rights, but he has also illustrated vividly the lesson taught by Lord Atkin in his judgment in *Donoghue v Stevenson,*[18] that there is much scope for the common law to be moulded and reshaped in a more promising direction, if one commits to learning the law diligently, harvesting norms from quite diverse sources, and breathing life into those norms in fresh contexts. That is a lesson that gives comfort, an alternative perspective and hope to young lawyers that may be tempted from time to time to disregard the common law as a conservative and regressive body of principles.

III. Giving Strength to the Treaty of Waitangi

In much of Justice Baragwanath's extra-judicial writing he has demonstrated a deep respect for Māori culture and ways of life, referring often to the high rates of Māori participation in the New Zealand army.[19] This respect is perhaps a consequence of his work as counsel for iwi, for instance in the *Lands* case, before his time as a judge. In a 2005 keynote address to the New Zealand police, he recounted one experience as counsel amongst iwi, speaking movingly of feeling "outrage[d] … [about] the expropriation of the commercial fishing resources around the Aupouri Peninsula", and abruptly losing weight due to the shock of viewing such an impoverished community.[20] (In such passages one catches a glimpse of Justice Baragwanath's innate sense of right and wrong – the intuitive sense of justice that would later guide him as a judge.)

Out of this embedded respect for Māoridom, Justice Baragwanath has also offered fresh and constructive ways of conceptualising the Treaty of Waitangi in New Zealand society. Throughout his extra-judicial writing, he has artfully viewed the Treaty as a way of bringing New Zealand together. The Treaty, he said in his police address, "must be seen as an historical event with constitutional consequences and a vision for the future, not as a fetter or a crutch".[21] Justice Baragwanath has built this unifying vision of the Treaty by viewing Article 3 of the Treaty as a guarantee of rights for Māori, understanding Article 1 (conventionally) as affirmation of the Crown's right to govern, and seeing the Treaty as a whole as an expression of the rule of law. As Justice Baragwanath noted in his 2007 Harkness Henry lecture, the Treaty is "an icon of where New Zealand comes from".[22] It is not an irritating source of litigation, or a source of division, but a part of New Zealand's unique legal and historical framework that is to be treasured and cultivated. (This concern with cultivating a New Zealand jurisprudence preoccupied Justice Baragwanath through much of his extra-judicial writing.)

Justice Baragwanath has had occasion to comment briefly on the Treaty in cases. It is often said that the Treaty has no legal status until it is incorporated into New Zealand, but it is interesting to ponder whether Justice Baragwanath's comments might be read as incorporating the Treaty into the law in this way. In *Refugee Council of New Zealand Inc v Attorney-General*,[23] he described the Treaty as "another international treaty", a claim that perhaps supports a different

18 *Donoghue v Stevenson* [1932] AC 562.

19 Baragwanath "New Zealand Law and Maori", above n 16, at 24.

20 The Hon Justice Baragwanath "Overview: The Treaty and the Police" (Keynote Address to the Police Management Development Conference, Nelson, 8–10 November 2005).

21 Ibid, at 7.

22 The Hon Justice David Baragwanath "The Evolution of Treaty Jurisprudence" (2007) 15 Wai L Rev at 10.

23 *Refugee Council of New Zealand v Attorney-General* [2002] NZAR 717 at [38] (HC).

status for the Treaty in law. Most recently, in *Attorney-General v Mair*,[24] Justice Baragwanath reproduced the entire text of the Treaty in his Court of Appeal judgment. Whether any of these references can be considered "incorporation" of the Treaty is debatable, but Justice Baragwanath has perhaps created more room for that argument. He may have laid the foundations for those aiming in the future to fortify the Treaty's status within New Zealand's constitution.

As with his approach to questions of social and economic rights, Justice Baragwanath has not shied away from controversy when discussing Treaty-related matters. In at least one extra-judicial speech he has compared the Foreshore and Seabed Act 2004 to a racially discriminatory policy in South Africa struck down by the South African Constitutional Court in the *Alexkor*[25] decision. It would be no surprise if that comment ruffled the feathers of some, but others may think that it is justified for judges to speak out on issues on which they have some expertise. Indeed, it could perhaps be the most impressive mark of Justice Baragwanath's moral courage that he was willing to stand out from the crowd, and speak on an issue surrounded by misinformation and misconceptions.

IV. Morality in the Commercial World

A third theme running through much of Justice Baragwanath's work is an insistence on the moral underpinnings of much of private law. This focus on morality has both a jurisprudential and a substantive dimension. Jurisprudentially, Justice Baragwanath's reference to morality indicated his honest view that in reaching conclusions, moral intuitions are never far from a judge's decision-making calculus. Substantively, Justice Baragwanath's mention of moral concerns reflected his desire to hold those subject to private law to the moral standards lying beneath positive law.

The ability to observe the moral flavour of seemingly mechanical legal tests is most evident in Justice Baragwanath's recent decisions. In *North Shore City Council v Body Corporate 188529*,[26] Justice Baragwanath offered an extended rumination on the need for concerns of morality to act as a check on the market, noting:

> … The argument based on "economic" arguments is demolished by the 1991 Act's lamentable lesson of what happens if the market is left untrammelled by law. The underlying neo-liberal theory has been influenced by one part of Adam Smith's economic theories without regard to the important social and moral context on which *The Wealth of Nations* of 1776 was premised. It is set out in his 1759 essay *The Theory of Moral Sentiments* …

Similarly, in *O'Hagan v Body Corporate 189855*,[27] Justice Baragwanath addressed the moral judgment embedded in evaluating contributory negligence. While not ruling definitively on how contributory negligence should be assessed, Justice Baragwanath commented that a test of "moral blameworthiness" is appropriate, given that contributory negligence is essentially concerned with the extent to which the behaviour of an individual departs from ordinary expectations of that behaviour.[28] In the judgment in *Air New Zealand Ltd v Wellington International Airport Ltd*,[29]

24 *Attorney-General v Mair* [2009] NZCA 625 at [124]–[126].

25 Baragwanath "Treaty Jurisprudence", above n 22, at 4. The South African decision was cited there as: *Alexkor Ltd and the Government of the Republic of South Africa v Richtersveld Community* CCT 19/03, 2003.

26 *Sunset Terraces*, above n 5, at [55].

27 *O'Hagan v Body Corporate 189855* [2010] NZCA 65, [2010] NZLR 445.

28 Ibid, at [67].

29 *Air New Zealand Ltd v Wellington International Airport Ltd* [2009] NZCA 259, [2009] 3 NZLR 713.

Justice Baragwanath used moral reasoning to justify his dissenting judgment arguing for the availability of judicial review in commercial contexts. Speaking in broad terms, he noted that the "law will intervene against one who abuses a position of authority and acts unreasonably to inhibit another's legitimate activity".[30]

This focus on the need for moral behaviour in a commercial context has long been a concern for Justice Baragwanath. In a lecture given by Justice Baragwanath in 1987 when he was still a practitioner, he criticised Oliver Wendell Holmes for asserting that "[m]oral predilections must not be allowed to influence our minds in settling legal distinctions."[31] For Justice Baragwanath, then as now, moral predilections do not in practice just influence judicial minds in settling legal distinctions: they should influence judicial minds. Moral reasoning enriches judicial decision-making, argued Justice Baragwanath in the 1987 lecture, and supports the ability of the courts to perform its primary functions: encouraging desirable behaviour; facilitating private arrangements between individuals; distributing (and redistributing) goods and services; and settling unregulated disputes.[32]

This claim that morality is entangled in adjudication and law as a whole may be jarring to those enmeshed in the positivist paradigm that retains its hold over New Zealand law schools.[33] Nonetheless Justice Baragwanath's view provides a powerful counter to this prevailing narrative, and gives support to those who believe that the law should be grounded in a principled philosophical framework. Justice Baragwanath's emphasis on the need for morality in the commercial context also resonates in light of recent claims by economists and political philosophers that the free market that governs much of the commercial world has become drained of values and ethics.[34] His approach to questions of morality provides the start of a solution to this crisis of values in the suggestion that the law can partly fill this moral gap by supplementing public discourse with moral reasoning.

V. Broadening the Scope of the Law

The three points noted thus far have all concentrated on commonalities of content across Justice Baragwanath's judgments and extra-judicial speeches. However, it would be remiss, even in a modest account of Justice Baragwanath's legacy, to say nothing of the style of his judgments. At a time when interdisciplinary approaches are often called for, but rarely practised, Justice Baragwanath's judgments and speeches evidenced a way of looking at the world that integrates insight from other branches of knowledge. New Zealand has been blessed with judges with this polymath capacity: other judges, sitting or recently, that have had similar abilities include Sir Kenneth Keith (now a Judge of the International Court of Justice) and Justice Hammond of the Court of Appeal (appointed President of the Law Commission in 2010). Justice Baragwanath matched these

30 Ibid, at [159].

31 David Baragwanath "The Dynamics of the Common Law" (1987) 6 Otago LR 355.

32 Ibid, at 358. Justice Baragwanath further advanced the view that morality plays an important role in adjudication in a lecture on morality and tax avoidance to the AUT University Law School in 2010: David Baragwanath "Commerce, Morality and Law: The Role of the Academy" (Address to the AUT University, Auckland, 13 February 2010).

33 Of course, the positivist paradigm does not exclude a role for morality in judicial reasoning, but it certainly (in most iterations) leaves morality at the margins of the law.

34 See, for instance, Michael Sandel's 2009 Reith Lectures, entitled "A New Citizenship". These are available online at <www.bbc.co.uk>. See also the related discussion in: Amartya Sen *On Ethics and Economics* (Blackwell, Oxford, 1987).

polymaths in the sheer breadth and peculiarity of his sources. His approach has expanded the conception of what might constitute a source of law, and in so doing enriched the common law as a whole.

He has been diverse in the sources that he cites from the humanities, drawing upon political philosophy, economics, and history (amongst other disciplines) to enhance his judgments. In *Ding v Minister of Immigration*,[35] Justice Baragwanath did not just canvas decisions about the children of alien overstayers from six jurisdictions (alongside a comprehensive survey of relevant New Zealand authorities), he also quoted judiciously from the sociologist TH Marshall on the issue of citizenship[36] and referred to the work of Rousseau,[37] seamlessly integrating these comments with analysis of case law going back to *Calvin's Case*.[38] In *Sunset Terraces*,[39] in discussing the right to housing, he referred to Abraham Maslow's "Hierarchy of Needs", and embellished the point within a New Zealand context by making reference to James Belich's most recent history, *Replenishing the Earth*,[40] as well as a housing workshop held at the New Zealand Reserve Bank.[41]

Justice Baragwanath has also reached outside of these disciplines one might associate loosely with the law, to the (usually) far-off sites of literature and religion. This is especially prominent in his extra-judicial work. Lewis Carroll's work is clearly a favourite, as Justice Baragwanath has cited *Alice in Wonderland* across several articles, most notably in rendering vivid his feelings when first representing iwi as counsel.[42] He also quoted Genesis 4:15 in his particularly perceptive 2006 address to the New Zealand Law Commission's twentieth anniversary seminar on the distinctiveness of New Zealand law.[43]

In addition to being unique in turning outside the legal profession to gather insight, Justice Baragwanath has been especially penetrative in turning inwards and uncovering sources in the margin of the law in an effort to expand the common conception of what can constitute a source of law. He has made a persistent effort to illuminate the work of academics, often underscoring the fact that many high-profile legal scholars are New Zealanders. (Campbell McLachlan and Michael Taggart receive special attention in Justice Baragwanath's writing.) He has also raised the profile of international law, citing numerous treaties and conventions in the *Ding* judgment[44] and the more recent *X v Refugee Status Appeals Authority*,[45] while drawing on insights from foreign jurisdictions (notably France and South Africa, discussed often to make points about the liability of the state in public law[46] and anti-discrimination law,[47] respectively). Lastly, he has returned

35 *Ding v Minister of Immigration* (2006) 25 FRNZ 568 (HC).

36 Ibid, at [228].

37 Ibid, at [232].

38 *Calvin's Case* (1609) 7 Co Rep 1, discussed at [2].

39 *Sunset Terraces*, above n 5.

40 James Belich *Replenishing the Earth: The Settler Revolution and the Rise of the Anglo-World, 1783-1939* (Oxford University Press, Oxford, 2009).

41 *Sunset Terraces*, above n 5, at [55].

42 Baragwanath "The Treaty and the Police", above n 20, at 1.

43 Baragwanath "New Zealand Law and Maori", above n 16, at 21.

44 *Ding*, above n 35, at [123]–[142].

45 *X v Refugee Status Appeals Authority* [2009] NZCA 488, [2010] 2 NZLR 73 at [208].

46 Baragwanath "New Zealand Law and Maori", above n 16, at 15.

47 See, for instance, David Baragwanath "The Magna Carta and the New Zealand Constitution" (Address to English Speaking Union, 29 June 2008) ["The Magna Carta and the New Zealand Constitution"] <courtsofnz.govt.nz/from/speeches-and-papers> at 16.

further into history than most to mine the treasures that might be found in historical case law: *Calvin's Case* is one judgment that Justice Baragwanath seems to have regarded as paramount in articulating the relationship between State and citizen, given the number of times he referred to this case, judicially and extra-judicially.[48]

In using this multitude of sources, Justice Baragwanath, seemingly paradoxically, revealed both his erudition and his humility. The range of references obviously highlights his enormous intellect, one that has stayed in touch with contemporary developments. However, it shows, too, that Justice Baragwanath was willing to defer to experts in other fields, and was eager to search for meaning in a variety of texts. It reflects the fact that Justice Baragwanath sought always to give effect to his vision of the law as a force that reaches out into the community, and draws on community values to give it its enduring power. We might use his own words to make this point, spoken at an address to the English Speaking Union in 2008:[49]

> The law and the constitution are the right not of lawyers and judges but of the whole community, whose lives are not static but dynamic; not simple but complex; and not identical but various.

In seeking to give effect to the ideal of interdisciplinarity, Justice Baragwanath has gone some way towards acknowledging the dynamic, complex, various make-up of the community at large. He has also demonstrated to students that law, far from requiring only narrow, inward-looking study, is sometimes at its best when it looks outwards to glean insight from other branches of knowledge.

VI. Conclusion

There are likely some who disagree with the foregoing assessment of Justice Baragwanath's legacy. Given his tendency to be creative and adventurous, certain commentators might view his judicial philosophy as overly activist or his legal method as too unorthodox. No doubt not all will agree that the Treaty of Waitangi, as well as social and economic rights, ought to be advanced through the common law, but almost all would agree on two things. First, most would accept that Justice Baragwanath was a principled judge: a judge who grounded his reasons in robust philosophical premises, and always strived to be transparent about these premises. Critics may quibble over the content of these premises, but few would suggest that Justice Baragwanath had no such principles. Second, many would agree that he is a man of great integrity. It would be fair to say that the values of "dignity and decency", which Justice Baragwanath has suggested lie at the core of parts of the common law, also underpin his own character.

There may be some, too, that say that the analysis above collapses ultimately into hagiography. This is unfair. The assessment has not purported to be a balanced evaluation of Justice Baragwanath's merits and shortcomings as a judge. What has been attempted is a sketch of his legacy from an unabashed admirer, and while Justice Baragwanath may have had foibles, it is suggested (albeit from the biased perspective of that unabashed admirer) that those foibles will be submerged in his larger legacy.

Sir David Baragwanath widened the horizons of the law as a judge, and expanded in students' minds the possibility of what can be achieved in the law, and through the law. He had a vision of the law, in the same vein as the visions developed by Lord Cooke and Justice Woodhouse: a

48 See, for instance, *Ding*, above n 35, at [2].

49 Baragwanath "The Magna Carta and the New Zealand Constitution", above n 47, at 11.

sense of how the law fits into the rest of society. Within this context, he never allowed formalistic doctrine or technical arguments to impede what he viewed as his primary duty as a judge: to state the law uncompromisingly, and to hold individuals to those standards. He also strove, persistently, to seek justice for vulnerable or disadvantaged groups – refugees and indigenous people being just two such groups – while still offering balanced and objective adjudication. For these reasons, he will join the list of illustrious judges (which includes Learned Hand in the United States of America context, as well as Sedley LJ presently of the English Court of Appeal) who had great influence, even while never being appointed to their country's highest court. He will also join another list: the list of judges who offered markers to students for where the law might go in the future, and inspired students to see the law as something more than just a catalogue of precedents and formulas – as something greater, more dignified, more fundamentally decent.