

## **REDMOND BARRY LECTURE**

**22 AUGUST 2016**

### **Victorian Optimism: Does it Persist Today?**

#### **Introductory: The Text**

1. I want to say right at the beginning, I am not going to speak against optimism. It must be conceded, however, that, at present, optimism is not a universal condition of mind.
2. In Salzburg, Austria, on 30 July 2016 there was held the world premiere of an oratorio entitled “Halleluja – Oratorium Balbulum”. The libretto was written in Hungarian by Peter Esterhazy, a family name well known in middle Europe. The music was composed by an Hungarian composer, Péter Eötvös. The oratorio was performed by the Wiener Philharmoniker, conducted by Daniel Harding, with the Hungarian Radio Choir. There was a narrator, an angel and a prophet. The audience of three thousand in the Grosses Festspielhaus were mainly Austrian and German, comfortably situated or rich, willing to pay EUR220 a seat for a Friday night concert. Balbulus, by the way, was a medieval monk and religious

poet who had a stutter and who is properly known as Notker of St Gall, the great Benedictine abbey which is in modern Switzerland.

3. The oratorio begins with the chorus asking “Who are we?” The prophet stammers “if time exists, then the future exists too.” The narrator says “in the beginning was the Word, the beginning of the gospel according to St John, ... Logos, logos, logos indeed, but that does not count here”. The chorus sings “the prophets stutter, the angels mutter”. And thus the oratorio about Europe proceeds “Where are we, what are we doing?” “What do we want?” The oratorio has the explicit purpose to depict the modern era of Europe. And what is that? As the oratorio says: “Existence without hope. We have no more future ... Nothing remains for us, not even despair anymore. There is no progress ... So reassuring that really everything has an end. That is a long term optimism of our oratorio”. By the way, the librettist, Esterhazy, died a few weeks before the premiere performance.
4. I have quoted the very words of the oratorio in English translation. I was in the audience. The audience were very enthusiastic about the oratorio. It touched them and their lives. It was art illuminating life as they perceived it. This is very long prologue, the purpose of which is to provide my text for this evening.

## **Barry: The Man**

5. The written invitation to this evening identifies Redmond Barry as a champion of colonial liberalism, a democrat and an optimist. I have thought quite a bit about Barry in preparing notes for this evening and it is not so clear to me that he possessed the qualities with which he is commonly endowed.
  
6. What then do we know of Redmond Barry? In 1972, Peter Ryan wrote a short life of Barry entitled “Redmond Barry, A Colonial Life 1813 – 1880”. It was republished in 1980 by Melbourne University Press to mark the centenary of Barry’s death. Ann Galbally wrote a more substantial account of Barry’s life, published by Melbourne University Press in 1995, entitled “Redmond Barry, An Anglo-Irish Australian”. I referred to both Peter Ryan and Ann Galbally in preparing notes for this evening and I am indebted to them. There are other papers and published speeches about Barry and he is mentioned, sometimes at length, in biographies (for instance, of La Trobe and Georgiana McRae) and histories (for instance, of the University of Melbourne).

7. The appendices to Ann Galbally's work reveal relatively little written by Barry himself. Barry was a great "speechifier" and rarely missed an opportunity to deliver a public address. Thus, there are the texts of a few lectures to Mechanics Institutes upon subjects as diverse as architecture, sculpture and painting, music and poetry and the art of agriculture. There are addresses upon the opening of circuit courts in Portland, Maryborough and Ararat. There are also records of addresses at the inauguration of the University of Melbourne on Friday 13 April 1855, on the opening of the Queen's Reading Room at the Melbourne Public Library on 24 May 1865 and the opening of the School of Mines in Ballarat. These were important public events at which one may expect what was said would have been carefully composed to reflect the dignity of the occasion.
8. Barry caused to be prepared a "Vocabulary of Dialects spoken by Aboriginal Natives of Australia". He also prepared biographical charts of Italian painters and a catalogue of "casts, busts and reliefs, etc held by the Melbourne Public Library in its museum of art." This library holds many of Barry's private papers, portions of which are also held in the Mitchell Library and library of the Supreme Court of Victoria.

9. Barry was formed in an Ireland that no longer exists. Even before the religious and cultural schism which sundered England from the faith and culture of Europe, Ireland had been subject to a measure of English control after the Norman invasions in the latter part of the 12<sup>th</sup> Century. One has the impression that the control of Ireland by England was limited to those parts of Ireland which were not “beyond the Pale”, that is the district around Dublin. Elizabethan and Cromwellian oppression of Ireland led to the creation of an Anglo-Irish protestant Ascendency into which, in the early 19<sup>th</sup> century, Redmond Barry was born. I conceive that Ascendency to have been stony soil, not readily conducive to the formation of a sound, humane character. The Ascendency existed apart from the religion and culture of the Irish people, who were mainly impoverished peasantry and whom the Ascendency believed were given to superstitious, popish, religious practices and disloyalty to the throne of England. There were two societies, the native society hostile to the Ascendency which reciprocated with disdain for the Irish, their religion, language and culture.
10. Barry was accepted as an undergraduate at Trinity College, Dublin in 1833 where he spent three years, studying the classics and English Literature.

- 11.** After Trinity College, Barry read for the Bar in London in Lincoln's Inn, eating his dinners for six terms (which was half what was required to gain admission to the English Bar), thus qualifying for admission to the King's Inns in Dublin, to which he was formally admitted in 1838. The programme of education for the Bar was apt to leave the candidate without any knowledge of the law, except that which he gleaned by observing the proceedings of the courts, participating in a few moot court hearings and by whatever private study he was moved to undertake. Training for the Bar undertaken by Barry emphasised the procedural and pragmatic other than knowledge of legal principle.
- 12.** In early 1838, Barry's father fell ill. In May 1838, after suffering two harrowing amputations, the General died. Barry was left without substantial means. Like young Englishman had long done, Barry looked to the colonies for a career and advancement. He broke with the society of his birth and patrimony to make his way in another world in which advancement would depend more upon personal energy and exertion than upon birth and connexion. In April 1839, Barry set sail from Olde England, with his books and a draft for a £1,000, on the Calcutta, bound for New South Wales. He did not return to England for 23 years. By then he was a Judge of

the Supreme Court of Victoria and a leading citizen of what, in the meantime, had become one of the great cities of the British Empire.

- 13.** During the voyage of 127 days, Barry engaged upon a scandalous liaison with a Mrs Scott, a fellow passenger, with her husband, on the Calcutta. It appears that the reverberations of the relationship with Mrs Scott was a primary cause of Barry's inability, after admission to practise at the Bar of New South Wales, to secure paid work in Sydney. Thus, Barry departed Sydney. He voyaged to Melbourne arriving on 13 November 1839, a day which for the rest of his life he celebrated as a special anniversary, the beginning of the new life.
- 14.** The next year or so was lean for a barrister in Melbourne. There was no resident judge until April 1841, when Mr Justice Willis was sent to Melbourne to preside over sittings of the Supreme Court of New South Wales in the Port Philip district. (I add as an aside that the Supreme Court of Victoria has chosen to say that this year, 2016, is the 175<sup>th</sup> Anniversary of the Supreme Court of Victoria. Of course, it is no such thing because Willis was sitting as a judge of the Supreme Court of New South Wales in the Port Phillip District of New South Wales.) Willis was eccentric and given to ungovernable rages. After he was "amoved" in 1843, there were other resident

judges in Melbourne until 1851, when the Colony of Victoria was proclaimed and the Supreme Court of Victoria established with Sir William à Beckett as first Chief Justice. Meanwhile, Barry secured the position, in 1843, as Commissioner of the Court of Requests, a sort of court of petty sessions to deal with minor civil disputes. His legal career flourished. When the Colony of Victoria was created he became its first solicitor general. In January 1852, a second Supreme Court judgeship was created and Barry was elevated to the Bench. He was the first puisne judge of the Supreme Court of Victoria. When a third judge was appointed in 1852, he became Senior Puisne Judge, a position he held for the rest of his life.

- 15.** Barry had also become involved in a broad variety of societies and associations. Peter Ryan lists the Philosophical Institute, the Philharmonic Society, the Horticultural Society, the Melbourne Hospital, the Melbourne Club (of which he was thrice President), the Polo Society and many more. Barry led a fulfilling professional and social life as a leading citizen and a handsome bachelor, very particular about his appearance.



- 16.** There are a few other things I should mention which give some idea of the man. Barry fought a duel with a fellow member of the Melbourne Club, one Peter Snodgrass, but no blood was spilt. To fight a duel, is an impetuous act, at least for an ambitious lawyer.
- 17.** Barry was vain about his appearance. He gave grand dinner parties for which he dressed in the Regency manner: knee breeches, long white stockings and black shoes with silver buckles. He lived in considerable style of the full extent of his means, and perhaps a little beyond at times. He caused his portrait to be placed in the Library among the portraits of colonial governors on the strength of having been an acting governor for a fortnight while the governor of the day was on leave.
- 18.** In 1846, Barry met Mrs Louisa Barrow, whose maiden name was Murphy. She had one child by her marriage to Barrow and four more children with Barry, born between 1847 and 1859. Barry and Mrs Barrow never married but it seems, as Peter Ryan avers, they were a close and loving couple who nonetheless lived apart. For many years Barry lived in his city residence at the corner of Rathdowne and Pelham Streets, opposite the Carlton gardens and near the splendid Italianate Church of the Sacred Heart on the

opposite corner of Pelham Street. Mrs Barrow lived across the gardens in Brunswick Street, Fitzroy.

- 19.** Barry was a very hard worker both in the discharge of his judicial duties and off the bench. He was not an intellectual judge. The law reports are not adorned with judgments reflecting his learning. He got through the business of the Court with expedition, perhaps sometimes a trifle too quickly for justice to be done. Nonetheless, he was interested in legal education, the establishment of a first rate Supreme Court Library and the construction of the fine Law Courts that stand in William Street between Little Bourke Street and Lonsdale Street.
- 20.** Peter Ryan disputes that Barry was a harsh judge. I am not so sure. It seems to me, even allowing for different standards of 150 years ago, when sentences were often severe, that Barry does seem to have been harsh. Let me give two instances to support this view. John Price, Inspector-General of Convicts was a feared man, the model for Frere in Marcus Clarke's "For the Term of His Natural Life". Fifteen men were charged with his murder at Williamstown. They were tried in groups. At the first trial of three prisoners, Barry denied the accused legal representation, a considerable disadvantage especially because at this time an accused could not

give evidence at his own trial. The three prisoners were convicted, with the jury making a strong recommendation for mercy for one of the three, Smith, who had no direct hand in the murder. Barry sentenced all three to be hanged. At the next two trials, five of the six prisoners were acquitted on Saturday 18 April 1857, the verdicts being delivered at 10 minutes to midnight! The next Monday three more accused were tried. Barry again instructed the jury that, if any accused was involved in carrying out a common purpose with those who attacked Price, he was guilty of murder. On Monday, all three were convicted, but in the case of one of them, Branigan, the jury made a strong recommendation for mercy because he had not struck a blow against Price. Barry sentenced all three to be hanged. The final trial was of four accused. Three were found guilty. Barry sentenced them to be hanged. One hundred years later Mr Justice John Vincent Barry of the Supreme Court of Victoria said of the Price murder trials that they had little to do with justice and were “a public demonstration of the authorities’ determination to exact vengeance to instil fear by a dreadful example of retribution”. It is hard to disagree with that judgement. Barry’s treatment of Ellen Kelly is the second example to which I wish to refer. Ellen Kelly was aged 45 when she was tried: a widow with a family of 10 who had remarried a young American lodger by the name of

King who then deserted her and their young baby. She was charged with aiding and abetting an attempt to murder. A constable Fitzpatrick had attempted to arrest her 17 year old son, Dan, on a charge of horse stealing. He had ridden alone, without an arrest warrant, to the Kelly farm and had attempted to take the boy. A fracas developed in which he was wounded in the wrist. The police returned and arrested Mrs Kelly with her baby. After a month in prison she was granted bail by the local Magistrate. She stood trial before Barry in October 1878. He had previously, a decade earlier, sentenced her uncle, Jim Quinn to death for an arson attempt. In any event, Ellen Kelly was found guilty in the same month that she was forced to forfeit her selection for arrears of rent. Barry imposed a very stiff sentence upon the mother (and one may add the baby) of three years of hard labour. The treatment of Ellen Kelly was harsh, as even senior police officials, who were friendly with Barry, commented at the time.

- 21.** There are two other features of Barry's behaviour which I will mention again in other contexts. Barry set his face against the admission of women to the University of Melbourne. He also did his best to rid the Public Library of novels. Both curious positions for a liberal optimist, I think.

## Now for Colonial Optimism

22. I take it that the title of the lecture encourages me to attempt an answer to the question whether the example of Barry's life has any and, if so, what relevance to our society in 2016. Let me turn first to Barry's actions as a judge. I have said he was hard working, but not learned. I think the balance of the evidence is Barry was a harsh judge, some might say a "hanging judge", perhaps especially in dealing with the Catholic Irish. I do not suggest that Barry was an anti-Catholic bigot. He enjoyed the company of Father Geogahan, the first Catholic priest in Melbourne and, by way of contrast, Barry was unsympathetic to Bishop Perry, the first Anglican Bishop of Melbourne, who was a narrow-minded low churchman.

Nonetheless, it is probable that Barry's experience of Ireland made him unduly conscious of the importance of preserving social order by application of the full weight of the criminal law against any miscreant. It would be improbable if Barry had as a model of the society he wished for in Victoria something different from the pre Victorian England and Ireland from which he came. The likes of the Kellys would have enlivened his atavistic fears (perhaps not fully understood by himself) that unless the law was invoked with the utmost rigour social disorder would ensue.

**23.** The objects or purposes of punishment by the law are matters which are much debated. With Sir Owen Dixon, I believe the function of the law (including criminal law) is to keep the foundations of society steady. If Barry had been asked what he saw as the function of the criminal law, I believe he would likely have answered along the lines “to preserve law and order”. I doubt his harsh punishments were based on animus against any section of society or had their origins in any sadistic inclination. As I have said, he was brought up in the privileged part of society which was divided between the Ascendency and the native oppressed wherein a strict and harsh enforcement of the law was necessary to preserve law and order.

**24.** In Barry’s time there was lawlessness associated with a frontier society, but, perhaps with one exception, no general violent disaffection with the civil order nor any attempt to overthrow entirely lawful authority. The exception is the Eureka Rebellion. Barry tried thirteen prisoners for high treason. Every prosecution failed. All were acquitted. Barry seems to have been unperturbed by those acquittals in the trials over which he presided. Perhaps he gained some satisfaction from the failure of the prosecutions so zealously undertaken by his friend, but rival, Stawell, who as Crown

Prosecutor almost certainly erred in attempting to establish the capital crime of high treason. If that be so, Stawell later enjoyed the satisfaction of beating Barry to the office of Chief Justice.

- 25.** The balance of the evidence establishes, I believe, that, in his time, Barry was regarded as a harsh enforcer of the law. I have mentioned the Price juries, the police officers who commented on Ellen Kelly's sentence, to hard labour with her three year old infant. The juries would not convict the Eureka rebels.
- 26.** That brings me to today. In Australia, in the lifetime of those born shortly after the second world war, we have enjoyed an era of peace and social tranquillity. There has been no occasion for the enactment of tough laws or the imposition of harsh penalties. At least until recently. Fears about terrorism have changed the attitudes of many towards enforcement of the law.
- 27.** The protection of life, of property and of liberty is an object of any ordered society based upon these decent values which support the right of every person to lead the life he or she chooses without impinging upon the same right of each other person. It is difficult, perhaps impossible, to uphold that ideal of freedom if any more than an insignificant part of the society is prepared, by any means,

without constraint, to disrupt that social order. Then there arises the risk that the enactment of ever more intrusive laws and their manner of enforcement will begin to undermine the very rights and liberties which it is the function of the law to support. One cannot know whether Barry would have approached today's problems with harsher laws and harsher enforcement. But I suspect he would have done so. Barry was inclined to see harsh enforcement of the law as a solution for any disruption of social order. The criminal law does not palliate disaffection and antisocial behaviour which mostly has its origins in serious inequality of opportunity and outcome. The criminal law is a mechanism for imposing a measure of order and security, not for removing the causes of disaffection and disorder, which almost always have their origins in a sense of alienation and exclusion from those workings of the society which affect the availability of opportunity for advancement and the achievement of a fair share of the benefits of prosperity. Barry was not an optimist about the behaviour of his fellow citizens. If he were then he would not have had an inclination to harsh punishment, including the imposition of the death penalty. I do not know how many men and women Barry sentenced to be hanged. There were scores, at least. There is no sign that condemning a man to death caused Barry the least agitation of mind. There is no tincture of optimism in the death



penalty, only the worst barbarity, the denial to another of life. We are rid of the death penalty. But are we committed to a society founded upon that justice which has its source in a belief in the intrinsic worth of every human being? Are we committed to a society in which the basal value is responsibility for our neighbours, that is everyone who might be affected by our acts, which has its source in the sure and certain knowledge that with every advantage we gain from living in a just society comes the corresponding duty to uphold that basal value? I am not convinced that Barry was an optimist. I think rather he was a pessimist about his fellow citizens and he fell into the error of seeing the harsh enforcement of the criminal law as a necessary and potent mechanism for securing social order. I am optimistic we can be wiser and better today, as we must be, if we are to preserve a just, secure and peaceful society.

### **Barry's Institutions**

28. Barry's greatest achievements were his role in the founding of the University of Melbourne and the public library, museum and art gallery.

**29.** Barry understood the importance to society of strong institutions.

The conduct of his professional life was a recognition of the importance of the institutions concerned with making and upholding of the law: parliament and the courts. He also believed in the value of social institutions such as institutions of higher learning and cultural and scientific museums. In this he was a man of his times. What was remarkable is that he dedicated his energies to the establishment of those institutions in a small frontier society far from the European centres of learning and culture.

**30.** Institutions of the kind that Barry founded and supported are the skeleton of society about which activities which provide for the enhancement of life of the citizens of the society are organised. In recent decades, confidence in, and respect for, those institutions has declined. Many people feel free to criticize trenchantly, and worse, simply to ignore institutions regarded as beyond any reproach in other times. Undoubtedly, now as compared to Barry's times, more people are better informed and the sources of knowledge are ubiquitous in modern society. It may be that some institutions have not been sufficiently responsive to changed conditions of the communities they serve. It may be that some institutions have been distracted from the fulfilment for their true

functions by pursuit of irrelevant or false objectives. Generally, the decline in respect for institutions is a symptom of loss of confidence that those institutions can provide the benefits they promise, or at least the benefits expected of them. The oratorio from which I quoted expresses a complete lack of confidence in society to provide its citizens with opportunities for satisfaction in life. I have no doubt that Australian society is much more confident and optimistic than Europe of the oratorio. Is that because we are still striving to create a fair society, to strengthen our institutions of learning and of arts and culture, as compared with societies where there is a loss of confidence in the cultural and religious basis of the society and of its institutions? I think my answer is "Yes". Australia has been a successful nation in the last generation or two. It has provided for its citizens, and millions of newcomers, the opportunity for fulfilment in life in a country which is prosperous, tolerant, free and egalitarian. But are Australians as confident, or as optimistic, as they were a generation or two generations ago? An answer to that question will be crucially affected by individual experience. But in giving that answer many would point to a failure of our elected representatives to lead and inspire. But then we choose our elected representatives. It is vital that they understand we want a society where there is a strong consensus to pursue common social

objectives of freedom, tolerance and equality of opportunity and outcome.

- 31.** Can I return to Barry. What if he had prevailed for, say, a generation more than he did on the subject whether women should be admitted to the University of Melbourne? No one can justify opposition to the admission of women to university. No one could sustain the contention that his opposition to the admission of women was a triumph of optimism (Victorian or otherwise) or liberalism. Barry's opposition was based upon a frame of mind and a political philosophy which is pessimistic and illiberal. Barry was an opponent of social change. He was a fearful personality who opposed equality of opportunity of self-fulfilment for women in respects in which he wished to encourage the same opportunities for men. And what is the lesson in this for today? I assert again the intrinsic value of each person, born equal. It is the moral obligation of every citizen to assert and promote that equality, with all its consequences, even those adverse to individual self-interest. Such a society is likely to be happy and productive, because it is secure, prosperous, free and tolerant.

32. May I drive in another nail? Would the State Library of Victoria have been a stronger institution, more respected and esteemed in our City, if Barry's campaign against novels (or perhaps more accurately, contemporary fiction) in the collection of the library had prevailed? Was his distaste for novels or at least their availability in the public library (principally, it seems, because they corrupted the lower classes) the product of optimism and liberalism? Of course not, to the contrary! Again Barry's position had, as is basis, a mistrust of his fellow citizens, or the majority of them. A fearful, not merely cautious, mind and personality is revealed by that mistrust of the ordinary citizen. He feared that they would be corrupted and misled into moral laxity by reading contemporary fiction, works of imagination. What one asks, did he think this form of corruption or moral laxity would take? Might the readers want more from life than their lives then offered? It is notable that Barry did not deny himself novels or what was then euphemistically called "exotic literature", now pornography. An ironic footnote to Barry's animus against the novel arises from his encounter with Anthony Trollope, then, and still I believe, the most celebrated English novelist of his time, who on his visit to Victoria (and the Library), argued against the President's hostility to the novel in a lecture entitled "Modern Fiction as a Rational Amusement". Trollope later wrote "John Caldigate",

an account of a man who came to Victoria, made his fortune and returned to England to live a life of respectability, only to have his irregular life in the Colony haunt him. John Caldigate is, I believe, recognisable in various respects as Redmond Barry.

### **Science and Technology**

33. The most important cause of social change of any kind is scientific and technological advancement. There is only one aspect of technology that I want to mention this evening. That is the technology of digital communication. The mechanisms for storing and disseminating information of 2016 are vastly different from what they were in Redmond Barry's day. The social effects are pervasive. Barry in his relationship with Mrs Barrow flouted the social conventions of the age of Queen Victoria. The element of personal privacy which Barry enjoyed in his relationship with Eliza Barrow no longer exists. Anyone of prominence is subjected to a large degree of scrutiny. When a person wishes to engage in public life through parliament or in other fields privacy is almost completely lost. The privacy of Barry's age has disappeared. What would Barry have said of it? I think he would have deplored it because evidently he believed that a person can play a role in changing society for the better without his private life and the private life of

those who are close to him being subjected to scrutiny which is irrelevant to the activities by which the person advances the interests of society. This may be a matter upon which reasonable folk may differ.

- 34.** What would Barry have thought of the University of Melbourne today? What would he have thought of the State Library? Surely he would have been rightly proud of the institutions he founded. They persist and are highly esteemed. They have well and truly advanced the objectives for which they exist. The University of Melbourne, the Library and its offspring, the National Gallery of Victoria and the Museum of Victoria, are great engines of economic prosperity for Victoria. One cannot know how Barry would have grappled with challenges that libraries face. (Perhaps I should say the opportunities that libraries face.) One thing is clear that the primary repository of information in our society is no longer books and the library is not the first or main place one would go to find information or knowledge. We use a computer or mobile phone.
- 35.** Where do I get to in answering the question posed by the lecture title? I have called Barry cruel, pessimistic, fearful, hypocritical, vain and impetuous. Barry's social views and political philosophies have little, if any, importance for Australian society in 2016. But an

energetic devotion to the advancement of institutions which promote education, scientific knowledge and access to the arts is as important today as it was 150 years ago. There is another way in which Barry's life is a model for Australia today. Like millions of migrants to Australia, he left his home and sought and found opportunities for fulfilment in his new world. He never hankered to return to what he left. He never wished to make some money so he could return to cut a figure on the stage he left. He found his fulfilment in Victoria. We recognise that his fortune was the prosperity of the institutions he founded and guided. He did not spend a great part of his life in the building of his university and his library. He fulfilled his life in doing so. Now that is a model for our time.