

OFFICIAL



GOVERNMENT HOUSE
SYDNEY

**Centre for Law and Social Justice Launch
2022
The University of Newcastle**

Final

Thursday, 2 June 2022

**The University of Newcastle, Centre for Law and
Social Justice**

SPEECH

1. If you were to ask me for my thoughts on what is meant by ‘social justice’, my simple but untutored answer would be ‘looking after the disadvantaged’. That sentiment, ‘looking after the disadvantaged’, is a lofty one, accepted by many, irrelevant to some and even greeted with scepticism by others, but one which I think is epitomised in the values and vision of the Centre.
2. This sentiment is reflected in the core values of the Newcastle University Centre for Law and Social Justice:
 - Promoting Inclusion
 - Addressing Injustice
 - Supporting a Strong Community
 - Building a Better Justice System
 - Applying Legal Solutions
 - Tackling ‘Wicked’ Problems¹

The Centre’s Mission: ‘to foster a deep commitment to social and ethical practices, to develop solutions to pressing and complex

¹ The University of Newcastle, ‘Centre for Law and Social Justice’, *The University of Newcastle* (Web Page) <<https://www.newcastle.edu.au/research/centre/law-and-social-justice>>.

social justice problems, and to encourage and support multidisciplinary collaboration and innovation.'

3. However, the more fundamental questions are: 'social justice for whom and by whom and how is social justice achieved'? My answer to these questions is drawn from my experience on the Bench and the judicial office whereby a judge attests to 'do right to all manner of people after the laws and usages of the [land], without fear or favour, affection or ill-will'.
4. This requires that people be treated in accordance with the law regardless of who they are and what are their circumstances. In some respects, the judicial oath is the closest that the practice and application of the law comes to any conception of social justice: it embodies the rule of law. If we deviate from that, we have deviated from a fundamental tenet of a free and fair society.
5. In speaking of a free and fair society, I speak of a society where nobody is above the law.² I speak of fairness in a legal sense: institutionally enshrined, involving the dispassionate application of law, both as a matter of procedure and as a

² See, eg, the work of A. V. Dicey.

matter of substance. Social Justice, on the other hand, looks at the capacity for people to function in our society. Equity and resource allocation are necessary integers if social justice is to be achieved.

6. We can trace the origins of social justice back to Ancient Greece. Plato in *The Republic* equated the meaning of 'justice' with a sense of wellbeing.³ Justice and social justice were linked, connected to a sense of harmony in society.⁴ However, in the aristocratic society of ancient Greece, Plato's 'justice' did not include equality of all citizens. Rather, his conception of justice involved the preservation of the existing social order⁵ of which women and slaves were not relevant participants. They were 'the other'.
7. Changes through the period of Enlightenment and the American Declaration of Independence shifted the notion of social justice to one of fairness and equality.
8. This notion of fairness and equality remains central to the work of modern political philosophers. John Rawls says that

³ Michael Reisch, 'Defining Social Justice in a Socially Unjust World' (2002) 83(4) *Families in Society* 343, 343.

⁴ Ibid.

⁵ Ibid.

‘justice’ involves ‘fairness’ in ‘a society of free citizens holding equal basic rights and cooperating within an egalitarian economic system’.⁶

9. To place modern social justice in the context of Australia: the State remains the principal agency of distributive reform through taxation, pensions and other social services; we have universal access to education and health care; and subject to restrictions imposed during the pandemic, we have freedom of movement, association and speech and a right to full participation in the democratic process.
10. Economically Australia is one of the wealthiest countries in the world.⁷ But this I suggest needs closer analysis.
11. A recent report by the Australian Council of Social Service and the UNSW Social Policy Research Centre reveals a vast inequality in income and wealth in Australian households. The highest 20% of households have an average income 6 times the income of the lowest 20%. When it comes to wealth,

⁶ Stanford University, *The Stanford Encyclopedia of Philosophy* (at 1 June 2022) “John Rawls”: In *A Theory of Justice*, Rawls wrote, ‘Undeserved inequalities call for redress; and since inequalities of birth and natural endowment are undeserved, these inequalities are to be somehow compensated for’.

⁷ Alex Turner-Cohen, ‘Australian adults wealthiest in the world, new global report finds’, *news.com.au* (online, 23 June 2021) <[6](https://www.news.com.au/finance/money/wealth/australian-adults-wealthiest-in-the-world-new-global-report-finds/news-story/8fffdc6a9185064a153dde4f57e0b508#:~:text=Australian%20adults%20are%20the%20wealthiest,Suisse's%20annual%20Global%20Wealth%20Report.>.”>.</p></div><div data-bbox=)

the highest 20% have 90 times the wealth of the lowest 20%.⁸ The highest 10% of households by wealth owns almost half (46%) of all wealth, the “middle wealth group” own 38%, leaving the lowest 60% with just 16% of all wealth.⁹

12. Having identified the location of wealth in our society, it is a truism to observe that the wealthy don't need access to the services we associate with social justice. However, there is a huge number of people in Australia who are falling through the cracks. This brings me to the concept of access to justice as an important aspect of social justice and leads me to ask whether there is a fundamental flaw in the distributive concept of social justice, or, has it simply become dysfunctional or outmoded? Why is access to justice still such a significant issue?

13. 45% of Legal Aid NSW's expenditure goes to the provision of 'criminal law services'. Approximately 18% were provided to Aboriginal and Torres Strait Islander people. A

⁸ Penny Dorsch, 'New report shows who is most impacted by inequality in Australia', ACOSS (Web Page, 18 December 2020) <<https://povertyandinequality.acoss.org.au/inequality/new-report-shows-who-is-most-impacted-by-inequality-in-australia/>>.

⁹ Ibid.

third of legal aid clientele is female.¹⁰ It doesn't take much analysis to recognise that funding cuts further marginalise the already marginalised members of our community.

14. The concentration of funding in criminal law matters was probably an unintended fallout from the 1992 High Court decision in *Dietrich v The Queen*.¹¹ Charged with serious heroin importation and other drug related offences, Dietrich was refused Legal Aid and was unrepresented at trial. On appeal against conviction, the High Court held that, although there was no right to legal representation at Government expense, there was a fundamental common law right to a fair trial. The Court considered that depending on the circumstances, the absence of legal representation could result in an accused person not having a fair trial.

15. The 2019-20 NSW State Budget cut funding to Legal Aid NSW by \$10 million. The Law Council of Australia warned that chronic underfunding of legal aid was undermining the criminal justice system in NSW. This was in response to a high-profile murder trial which was 'derailed' because legal

¹⁰ See Legal Aid New South Wales, *Annual Report 2019-2020* (Annual Report, November 2020): see <https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0003/42546/201116_2020_LANSW_Annual_Report_WEB.pdf>.

¹¹ (1992) 177 CLR 292.

aid rates were so low that suitable barristers could not be found to take on the ‘lengthy and complex’ murder trial.¹²

16. Perhaps as a result of the progressive funding cuts to Legal Aid, we have seen an increase in self-represented litigants. This has caused former Deputy Chief Justice of the Family Court, John Faulks, to remark, ‘there are three things that can be done in relation to self-represented litigants: one is to get them lawyers, the second is to make them lawyers and the third is to change the system.’¹³

17. Former Justice Geoffrey Davies, of the Supreme Court of Queensland and judge of appeal has remarked that he believes ‘that the question of how to cope with [the plight of the unrepresented litigant] is the greatest single challenge for the civil justice system at the present time’.¹⁴

18. A welcome change in the 2021-2022 Budget in NSW has seen social justice funding become a priority, with funds also allocated to support frontline domestic and sexual violence

¹² Christopher Knaus, ‘Lawyers warn legal aid at breaking point after NSW murder trial derailed’, *The Guardian* (online, 12 July 2019) <<https://www.theguardian.com/australia-news/2019/jul/12/lawyers-warn-legal-aid-at-breaking-point-after-nsw-trial-derailed>>.

¹³ The Honourable J. Faulks, ‘Self-represented litigants: tackling the challenge’, paper presented at the Managing People in Court Conference, National Judicial College of Australia and the Australian National University (February 2013, Revised 2021).

¹⁴ Ibid, citing G. Davis, ‘The reality of civil justice reform: why we must abandon the essential elements of our system’ (2003) 12(2) *Journal of Judicial Administration* 155, 168.

services across NSW.’¹⁵ As educated people, we are extraordinarily privileged. It is not a privilege of money per se. But education is a key to a reasonable standard of living and living a life which is worth living. Not everyone will achieve the same level of education and there will always be discrepancies in earning power. What there should never be is any discrepancy in the fairness with which people are treated in society. That is why social justice should be at the heart of your legal philosophy.

¹⁵ The Law Society of New South Wales, ‘Law and Justice Funding in NSW Budget Will Have Lasting Impact’, *The Law Society of New South Wales* (Web Page) <<https://www.lawsociety.com.au/law-and-justice-funding-nsw-budget-will-have-lasting-impact>>.