



FEDERAL COURT OF AUSTRALIA

“The Immortal Memory”
A speech in support of a toast to Robert Burns
delivered at the
St Andrew’s Society of Scotland (Queensland) Burns Supper
Glasgow Room, United Service Club
Brisbane
Friday, 22 January 2016

The Honourable Justice Logan RFD
A Judge of the Federal Court of Australia¹

In Centenary Place, Brisbane, in the inner-city block bounded by Wickham, Ann and Gotha Streets, is to be found a statue of the Scottish bard, Robert Burns.

Our Brisbane statue is one of eight statues or busts in Australia which stand as memorials to Burns. There are four Burns statues in New Zealand, nine in Canada, 16 in the United States of America and one in England (in London). Scotland itself has 20 statues or other memorials to Burns.²

That there are so many outside Scotland is eloquent proof of the enduring wisdom of a medieval French proverb, “Rats, lice and Scotsmen: you find them the whole world over”.³ The *genus rattus* also commended itself to an observer

¹ Also a judge of the Supreme and National Courts of Papua New Guinea. The views expressed in this speech are personal, not those of either those Australian or Papua New Guinea courts or governments.

² Wikipedia Entry, List of Robert Burns memorials:

https://en.wikipedia.org/wiki/List_of_Robert_Burns_memorials Accessed, 18 January 2016.

³ David Armitage, The Scottish Diaspora in Jenny Wormald (Ed), *Scotland A History*, Oxford University Press 2005 (Wormald), p 273.

of Highlanders on the Victorian goldfields in the 1850s, “Poor as rats at home, they are as rapacious as rats abroad”.⁴

Perhaps unsurprisingly, given this goldfields observation, of those eight Australian memorials to Burns, one is located at Bendigo and another at Ballarat.

A proposal for a Brisbane statue memorialising Robert Burns originated in 1888 when the President of the Burns Club, Alderman Galloway, contacted the President of the Queensland Scottish Association, Sir Thomas McIlwraith, to suggest their organisations combine forces and funds to commission such a statue. It was not until 1929 that the Brisbane Caledonian Society and the Burns Club were able to commission such a statue, which was installed in Centenary Place on a pedestal provided by the Council.

Centenary Place was designed to complement the Holy Name Cathedral site. That explains why, in accordance with tradition, the Burns statue faces away from what was to be the site of a church (in that instance, a cathedral church for the Roman Catholic branch of the Christian faith but the tradition is non-sectarian).⁵ Though the foundations and crypt were constructed, the cathedral itself was never built. But as the developer of the apartment complex on the former cathedral site was “Devine”, Burns, I suspect, would still have been both amused by and fully approved of his placement.

Our Burns statue, like many around the world, depicts him leaning on a plough. That depiction tells us much not only about Burns himself but also, I suggest, about Scots generally, be we resident in Scotland or members of the Scottish diaspora, and why we have chosen to promote and perpetuate his memory.

⁴ Ibid.

⁵ Queensland Heritage Register, Centenary Place, 602442, 85 Wickham Street, Fortitude Valley: <https://environment.ehp.qld.gov.au/heritage-register/detail/?id=602442> Accessed, 18 January 2016.

Robert Burns was born on 25 January 1759, at Alloway in Ayrshire, so it is its convenient proximity to the 257th anniversary of his birthday which dictates the date of this supper. He died on 21 July 1796 at Dumfries.

The plough alludes to Burns' rural origins. Burns' father was a working gardener from south of Stonehaven in Kincardineshire.⁶ In his youth, Burns laboured at the plough on family farms at Mount Oliphant and on Lochlea.⁷ He would later, with his brother Gilbert, rent and work the farm of Mossgiel near Mauchline.⁸ That venture proved unsuccessful, not because they were bad farmers but because they had insufficient capital to work it economically.⁹

How did a person of such humble origins come to have such a command of language?

The answer is that Burns was not without formal education. This is why.

In 1696, the Scottish Parliament passed an Education Act ("An Act for Settling Schools", c 1696). This legislation established a school in every parish in Scotland which did not already have one. It required a parish to supply "a commodious house for a school" and a salary for a teacher. That legislation reflected a triumph of Presbyterian values. A feature of John Knox's original, 1560, Book of Discipline had been a call for a national education system. This call had first been taken up by the Scottish Parliament in 1640. The 1696 Act renewed that call and made provision for its enforcement. An imperative in the legislative goal of universal education was that each child, irrespective of gender, should be able to read the Holy Scripture.¹⁰

⁶ James Blake (Ed), *Poems and Songs of Robert Burns*, Collins, 1960 Reprint (Blake), p 2.

⁷ Ibid. Burns' father died on the farm at Lochlea, "prematurely worn out and exhausted" when Burns was 24 years of age.

⁸ Ibid.

⁹ Ibid.

¹⁰ Arthur Herman, *How the Scots invented the Modern World*, Three Rivers Press, New York, 2001 (Herman), pp 22-23.

Burns' father is said to have been a "hard working man with high ideals about human worth and conduct".¹¹ Scots Presbyterianism given legislative voice provided the imperative for universal access to basic education. Burns' father ensured that his son, Robert availed himself of the opportunity thus presented. In this fashion, Robert Burns as a child was well grounded in "the three Rs", as well as basic principles of Presbyterian theology.¹²

In the 17th century, King Charles I endeavoured to break Scots Presbyterianism by enforcing, via his bishops, worship in accordance with an Anglican Book of Common Prayer. Notoriously, on Sunday, 23 July 1637, the Dean of St Giles in Edinburgh commenced to conduct the morning service in accordance with the rituals of this book. He was met with abuse from the men and women of the congregation. Insults and stools were hurled. They walked out. Over the next several months, riots followed to the extent that the Bishop of Edinburgh had to flee for his life.

It was this resistance which saw a gathering of Presbyterian clergy, nobles and commoners in the last week of February 1638 to sign a National Covenant. In form, that covenant was a declaration of adherence to Presbyterian theology, of the Christian faith as interpreted by John Knox; in substance, it was an assertion by the Scottish people that change to that faith by an assertion of royal prerogative, as opposed to their General Assembly and their parliament was unacceptable and would be resisted by force if need be. In November that year, the General Assembly in Glasgow declared war on "the kingdom of Satan and antichrist", a reference to King Charles and his bishops. War indeed did follow, the Bishops' War. A popularly raised Scottish army defeated that of King Charles. This war preceded and encouraged the conflict between the English parliament and King Charles as to his asserted right to govern and raise taxes

¹¹ Blake, p 2.

¹² Ibid.

without the sanction of parliament. In that conflict also, it was government by parliament, not royal prerogative, which proved triumphant.¹³

The origins of our current constitutional arrangements, of a constitutional monarchy and parliamentary democracy lie in these 17th century conflicts.

We see in Robert Burns' great poem, *A Man's A Man For A' That*, innate intelligence and an understanding, reflecting Presbyterian values, able to be given eloquent expression by literacy, of the worth of the individual being measured by good character, honesty and hard work, not accident of birth. These excerpts highlight that.

*Is there for honest poverty
That hings his head, an' a' that;
The coward slave - we pass him by,
We dare be poor for a' that!
For a' that, an' a' that,
Our toils obscure an' a' that,
The rank is but the guinea's stamp,
The man's the gowd for a' that.*

*What though on hamely fare we dine,
Wear hoddin grey, an' a' that?
Gie fools their silks, and knaves their wine,
A man's a man for a' that.
For a' that, an' a' that,
Their tinsel show, an' a' that,*

¹³ Herman, pp 20-21.

*The honest man, tho' e'er sae poor,
Is king o' men for a' that.*

Burns' eloquence is a paradigm for the liberation and stimulation of innate intelligence offered by access to education and availing of that access. The values which he here espouses, radical for their time, are now conventional in the English speaking world.

There developed in eighteenth century Scotland a reading public. This was most evident in the Lowlands, for the success in practice of the Education Acts was stronger there than in the Highlands.¹⁴ The demand for literature was not confined to religious texts or to the wealthy. What could not be purchased could be borrowed. By 1750, every town of any size in Scotland had a lending library. The records of these libraries disclose loans of books to bakers, blacksmiths, farmers, stonemasons, dyer's apprentices, quarriers, tailors and household servants.¹⁵ By the end of the eighteenth century, Scotland had achieved literacy levels that were not achieved in England until the 1880s.¹⁶

General literacy meant that Burns wrote not just about the society of which he was a member but for that society.

Burns' poem, *Address to Edinburgh*, written in 1786, contains this stanza:

*Here Wealth still swells the golden tide,
As busy Trade his labours plies;
There Architecture's noble pride
Bids elegance and splendour rise:
Here Justice, from her native skies,*

¹⁴ Herman, p 23.

¹⁵ Ibid.

¹⁶ Ibid.

*High wields her balance and her rod;
There Learning, with his eagle eyes,
Seeks Science in her coy abode.*

What Burns is describing in his references to the Arts and Sciences (including law – “Justice”) is the then contemporary flourishing of learning in all its disciplines, occasioned by general education, which has come to be called the Age of Scottish Enlightenment. It is by reference to this flourishing that the American academic, Professor Arthur Herman, who is not a Scot, in his work, *How the Scots invented the Modern World*, argues persuasively for the accuracy of his chosen title.

By the end of the eighteenth century, a gifted child had much greater opportunity in Scotland than in England to progress to tertiary education and, via that, achieve prosperity even wealth. It was then a feature of the Scottish universities that, in addition to a fixed salary, lecturers were usually paid fees by their students. Merit was rewarded. Richard Sher, Distinguished Professor of History at the New Jersey Institute of Technology and Chair of that institution’s Federated History Department has observed of this, “The effect was to raise the standard of competition for Scottish chairs and to guard against the English tendency to treat professorships as sinecures.”¹⁷ Compared with their Scottish counterparts, those who then taught in the English universities at Oxford and Cambridge were lacklustre.

A love of education and the opportunities for advancement it confers was then and remains a hallmark of the Scots, both in Scotland and abroad. It would be idle to say it is any longer an exclusive trait but it is one of our enduring traits.

¹⁷ Richard Sher, *Scotland Transformed: The Eighteenth Century*, in Wormald at p 205.

A celebration of its results is evident not just in Professor Herman's work but in Elspeth Wills' (who is a Scot) book, *Scottish Firsts, A Celebration of Innovation and Achievement*.¹⁸ Some of the many firsts she records are better known than others.

Most are aware that the world's first operating telephone was the product of the practical research of a Scottish immigrant to the United States, Alexander Graham Bell. The company he founded, Bell Telephone Company, now A. T. & T. and its research arm, Bell Labs, has produced 11 Nobel Prize winners and given us the transistor, the laser and packet switching.¹⁹

Less well known, though the name is an obvious clue, is that the Glasgow Coma Scale is Scots in origin,²⁰ described in 1974 by Graham Teasdale and Bryan Jennett, professors of neurosurgery at the University of Glasgow's Institute of Neurological Sciences at the city's Southern General Hospital, in an article in *The Lancet*.²¹ That scale offers a practical way to describe the level of consciousness of patients with an acute brain injury.

I pondered for a time why it was that Glasgow stimulated such research. Then I recalled accounts passed to me by a Glaswegian, my father of another Glaswegian's, my grandfather's attendances at Hampden Park to watch The Old Firm, Rangers versus Celtic, football matches, of the groundsmen at the gates directing one left or right, depending on whether one was wearing blue or green and of the hazards which awaited those who ignored such directions. Last decade, my son returned to his ancestral roots and attended such a game. He tells me those hazards remain. So the explanation may be that those hazards

¹⁸ Mainstream Publishing, Edinburgh and London, 2002 (Wills).

¹⁹ Wills, p 232.

²⁰ Wills, p 50.

²¹ *Assessment of coma and impaired consciousness. A practical scale*. Lancet 1974; 2:81-4. For further detail, see The Glasgow Structured Approach to Assessment of the Glasgow Coma Scale: <http://glasgowcomascale.org/what-is-gcs/> Accessed, 19 January 2016.

have presented the Southern General Hospital's Neurological Department with plenty of subjects for study.

Another Scottish first is the birth control clinic. The first was opened in London by the family planning pioneer, Marie Stopes, who was born in Edinburgh²² and later there attended the St George's School for Girls. If that were not enough, it was the distinguished Scottish obstetrician, Sir Dugald Baird who campaigned for "freedom from the tyranny of excessive fertility" to become the fifth human right, to take its place with freedom of speech and worship and freedom from want and fear.²³

Robert Burns would have approved of family planning and of this campaign, for he had a sincere love of the lassies and they of him. He wrote this to a friend, Alexander Cunningham, on 24 January 1789, the day before his own thirtieth birthday:

*I myself can affirm, both from bachelor and wedlock experience, that Love is the Alpha and the Omega of human enjoyment. All the pleasures, all the happiness of my humble Compeers, flow immediately from this delicious source. It is the spark of celestial fire which lights up the wintry hut of Poverty, and makes the cheerless mansion, warm, comfortable and gay.*²⁴

Burns' first child was born out of wedlock, the product of his illicit relationship with Elizabeth Paton, a servant girl. For this he was fined and stood next to her at the cutty stool, enduring the censure of the church in 1784-85 at Tarbolton Kirk. It is that event and his lack of repentance which is recalled in the following stanzas of his poem, *On Fornication*:

²² Wills, p 50 and Ruth Hall. *Passionate Crusader*. Harcourt, Brace, Jovanovich, 1977, p 28.

²³ Ibid.

²⁴ Scotland.org website, Burns love poems - Burns & the lassies: <http://www.scotland.org/features/burns-love-poems--poetry-by-robert-burns/?gclid=CIqw99rqtMoCFQGbvQodcHMIRQ> (Burns & the lassies) Accessed, 19 January 2016.

*Before the Congregation wide
 I pass'd the muster fairly,
 My handsome Betsey by my side,
 We gat our ditty rarely;
 But my downcast eye by chance did spy
 What made my lips to water,
 Those limbs so clean where I, between,
 Commenc'd a Fornicator.*

*With rueful face and signs of grace
 I pay'd the buttock-hire,
 The night was dark and thro' the park
 I could not but convoy her;
 A parting kiss, what could I less,
 My vows began to scatter,
 My Betsey fell-lal de dal lal lal,
 I am a Fornicator.²⁵*

Burns' wife, Jean Armour, bore him nine children in 10 years, the last born on the day of the bard's funeral.²⁶

Even in its heyday, the power of the Kirk was neither pervasive nor complete. Burns' licentiousness may have been exceptional in degree but the notion of the

²⁵ Caledonian Mercury, The 'cutty stool', fornication and Robert Burns:
<http://caledonianmercury.com/2010/12/30/the-cutty-stool-fornication-and-robert-burns/0012914> Accessed
 19 January 2016.

²⁶ Burns & the lassies, supra.

Scot as dour and humourless has always been a myth. As T M Devine observes in *The Scottish Nation*:

*... co-existing with the puritanism of the sessions and their elders, a rich bawdy tradition flourished which was not only found among the upper social classes but was also an important part of the popular culture of tenants, cottars and servants, as is shown vividly in some of the songs of Robert Burns. Occasions such as New Year and Shrove Tuesday before Lent offered plentiful opportunities for heavy drinking and hougmagandie (fornication) which provoked a stream of angry but apparently ineffectual denunciations from the Kirk.*²⁷

It is not happenstance that a feature of a Burns supper is the Toast to the Lassies. The Presbyterian values of advancement by merit and education as a pathway to that advancement have endured, but so has Hogmanay.

Burns is also recalled for his authorship of the lyrics of *Scots Wha Hae*, a song notably used by the self-styled Scottish Nationalist Party as their party song and to close their annual conference.²⁸

Though in the form of a supposed address by Robert the Bruce to his army before Bannockburn, *Scots Wha Hae* was very much a product of its times. It was written by Burns in 1793 at the time of the trial, conviction and sentencing for sedition of the radical Scottish lawyer and alleged Jacobin sympathiser, Thomas Muir.²⁹ The reference in the lyrics to taking up freedom's sword is a covert reference by Burns to Muir's stance. Great Britain had earlier that year declared war on France, then under the control of Jacobin revolutionaries. The ideals of that revolution, which Muir found attractive, degenerated first into the

²⁷ Allen Lane The Penguin Press, 1999 (Devine), p 88.

²⁸ Jonathan Green, *Scottish Miscellany: Everything You Always Wanted to Know About Scotland the Brave*.

²⁹ The Burns Encyclopedia website, entry in respect of Muir, Thomas (1765-98): <http://www.robertburns.org/encyclopedia/MuirThomas1765-98.659.shtml> Accessed, 19 January 2016 and Devine, pp 207-208.

Reign of Terror and then into military dictatorship under Napoleon. It is fortunate for all of us that this was ultimately put to an end in 1815 at the Battle of Waterloo by a coalition army in which British troops, notably including Scottish infantry regiments and The Royal Scots Greys, played a major part.

Burns was much taken with William Wallace. He wrote, “The story of Wallace poured a Scottish prejudice in my veins which will boil along there until the flood-gates of life shut in eternal rest.”³⁰ Yet the Wallace Burns knew was that described by the 15th century bard, “Blind Harry” in his epic, *The Wallace*.³¹ And Harry was writing for a popular audience not much taken with the then Scottish monarch, King James III, who was conducting an unpopular policy of rapprochement with England. As Magnus Magnusson observes of this epic in his *Scotland: The Story of a Nation*:

*Blind Harry’s The Wallace is violent, gory, nationalistic and profoundly xenophobic – a sustained and bitter polemic against the English ...*³²

Though supposedly based on a Latin book written shortly after Wallace’s death by his boyhood friend and personal chaplain, Master John Blair, most academic scholars do not believe such a book ever existed.³³ *The Wallace* is more likely just a collation of traditional stories and designed to appeal to a then contemporary audience.³⁴ By the way, it is Blind Harry’s version of events that provided the inspiration for the screenplay upon which the film, *Braveheart* was based.³⁵

For much of *The Wallace*, Robert the Bruce is a prisoner, not an active patriot. Wallace is unquestionably a significant Scottish patriot but it was Robert the

³⁰ Cited in Professor Sally Mapstone, Professor of Older Scots Literature, Faculty of Education and Fellow of St Hilda's College, University of Oxford, *Scotland's Stories* (Mapstone), Wormald, p 315.

³¹ Ibid.

³² Harper Collins Publishers, 2000 (Magnusson), p 130.

³³ Ibid.

³⁴ Ibid.

³⁵ Magnusson, p 131; Mapstone in Wormald, p 315.

Bruce, not the by then long-dead Wallace, who led the Scots to victory in the Battle of Bannockburn on 24 June 1314. It was that battle which was pivotal in the confirmation and continuation of Scotland as an independent kingdom under King Robert and his successors and that independence which dictated not our subjugation but that the English were forced finally to compromise with us and to settle for Union.

There is, therefore, nothing unique about the arrogation of a popular bard of the past for contemporary political ends. Burns himself did that in his time with Blind Harry. *Plus ça change, plus c'est la même chose.*

Without the triumph at the Bannock Burn, there would have been no Scottish parliament to guarantee by legislation access to the benefits of education. It was a feature of the subsequent Union that the Presbyterian values which had promoted that access were for Scotland expressly preserved³⁶ and with that the demand for the education system the benefits of which are evident in the liberating of Burns' spirit and soul in his poems and songs.

So, when I look at our statue of Robert Burns leaning on the plough, I see a manifestation of the principle of judging a person's worth by their character and deeds, not by hereditary entitlement and of the benefit of access to education, unrestricted by class or creed, as a means of promoting merit and fulfilling potential. I see in that man a triumph of these values, which values endure in our society and which we should be unapologetic in defending.

For these reasons, let us drink to the memory of Robert Burns.

© J. A. Logan 2016, Moral Right of Author asserted. Non-exclusive publication licence granted to the Society of St Andrew of Scotland (Qld) Limited.

³⁶ *Union with England Act 1707* (Scotland) (1707, c. 7), introductory part: <http://www.legislation.gov.uk/aosp/1707/7/introduction>; Accessed, 21 January 2016.

