

Eulogy for Francis Xavier Costigan QC

Frank Brennan April 21, 2009

Like many of you here, I was privileged to read at the Melbourne Bar. I recall my first meeting with the Chairman, Francis Xavier Costigan QC. I wanted to do my reading during university vacation time while pursuing my theological studies. Entering Frank's chambers, I was greeted by one who was completely at home at the Bar.

I had entered his intellectual warren, the sanctuary of his conscience. He considered my request while casually drawing on his cigarette. For a moment I had a sense that my future was in the same balance as the spent ash on the precarious end of that cigarette.

He smiled gently and with that characteristic glint in the eye surmised that the problem though unique was not insuperable. He seemed to take some delight in paving the way for a Jesuit to come to the Bar, though briefly. He was, after all, a proud alumnus of St Patrick's College, which to Frank's abiding displeasure is now the carpark for this Cathedral.

Some time later, I asked my friend Colin McDonald if I could squat in his chambers. Colin approached the Chairman who expressed gratitude for receiving notification from such junior counsel. Frank said, 'I had heard that you and the Reverend Brennan were thinking of co-habiting. Though it is not the usual practice, in fact a sinful practice usually frowned upon, I would be required to act only on receipt of a complaint. I can't imagine any member of the Bar lodging a complaint in such circumstances.'

To everything there is a season and a time to every purpose under heaven (Ecclesiastes 3:1). He was a Chairman who knew, respected and always lived by the rules and mores of the Bar, while maintaining the common touch, common sense, and a wise perspective on the purpose and limits of rules and law — and always with a deft touch of humour.

Some years later Colin, who had moved to Darwin being a regular at the Roma Bar run by Frank's brother Paul, was attending a legal conference in Bali. Frank was there too. Over a drink, Colin reflected that he was exhausted and broke after some years working in Aboriginal legal aid. Frank having just completed his royal commission drew on his cigarette and said, 'I know exactly how you feel, though mind you I am not broke.'

They circumnavigated Bali philosophising about the social utility of the law. This was the first of many overseas escapades by Frank in his post commission days.

Last Thursday evening, I dined with Frank's family — Ruth and the children. We went to one of Frank's favourite Italian restaurants. As his son Joseph said, 'It was one of Dad's favourite haunts and a place where both sides of Melbourne's criminal fraternity would dine. It's also a good place to talk.'

They spoke of Frank's love of travel which took root after that Bali trip. He developed a liking for the pointy end of the plane, and in later life his enjoyment was found as much in the planning as in the execution of the trip. *So I realise that all we can do is to be happy and do the best we can while we are still alive. All of us should eat and drink and enjoy what we have worked for. It is God's gift (Ecclesiastes 3:9).*

Recalling Frank's favourite wines and dishes, we painted a picture of a man who was at home with his family and close friends, at the Bar, and in his Church (or at least the human face of that Church in its service of the poor and marginalised).

Back in the 70s as a senior barrister, Frank would tell his juniors how important it was to have empathy with the client for whom court was a novel, confronting experience. In the evenings, he would meet the parade of his children's new friends entering the family home. He once opined, 'I should get a mantle piece'. From the mantle piece, he thought he would be better positioned to quiz his children's new boyfriends and girlfriends.

He was one of those fathers who related easily to his children's friends, while finding expressions of love to his own children more difficult. His adult children are now agreed, 'We would create the vulnerability in him.' In later years they appreciated his capacity to convey unconditional love without ever saying it — especially when there was a chance meeting at a bookshop or a planned rendezvous at the football: 'You feel it but don't hear it.'

Treat everyone with equal kindness; never be condescending but make real friends with the poor. Do not allow yourself to become self-satisfied. Never repay evil with evil but let everyone see that you are interested only in the highest ideals. Do all you can to live at peace with everyone (Romans 12:16–18).

Some of the most important things in life are not in the brief, and are thus more difficult for the barrister to express. Frank's love for his children was infectious. Just ask his grandchildren about the love they receive from their own parents.

His commitment to social justice was a daily aspect of his life especially once the Berlin Wall fell and he met Ruth — all on the one day. He once opined that he had a robust intelligence, as distinct from a fine one. He would have enjoyed the irony that it requires a fine intelligence to draw such a distinction.

Last week I was at a training day for all the staff of Jesuit Social Services. Frank had served on the board for years. Chief Executive Julie Edwards told the staff that Frank was a man of such moral authority that you would not even need to speak to him. You need only ask yourself, 'What would Frank do? What would Frank say?'

He was never judgmental; he could see all sides of any issue. The non-lawyer Ruth was once concerned that she talked too much in legal company. The ever charming Frank replied, 'You talk so well, it doesn't matter.'

Happy the gentle; they shall have the earth for their heritage. Happy those who hunger and thirst for what is right; they shall be satisfied. Happy the pure in heart; they shall see God. Happy the peacemakers; they shall be called sons and daughters of God (Matthew 5:4,6–8).

On Holy Saturday night, Frank's twin brother Michael had phoned me to say that Frank had only hours to live. I was performing the Easter ceremonies at Eden and Pambula. With delight, Michael recalled that Frank, Kate and the kids often holidayed there in the old days. Michael and I were consoled that Frank could be called to mind over the Easter fire that night at Eden and in the prayers in the small Pambula Church on Easter morning.

My penultimate word is to his beloved grandchildren. Grandchildren: as you know, he loved you all even though he often called you names. He was a great tease. When corrected by his own children (your parents), he became fond of saying in a teasing way, 'Of course I am not allowed to tease'.

He was an extravagant grandfather and you will miss him greatly. He would want you to know that you gave him so much particularly in his last years of illness. Just a week ago, Michael's first grandchild Luka arrived. Frank told his twin, 'This little boy is going to give you so much joy.'

You, his own grandchildren aged from one to 19 years were his joy. You older grandchildren have been surprised to read the newspapers in recent days. You didn't know that your indulgent, extravagant, teasing grandfather had achieved so much for the good of others and for the betterment of law and justice in our society. Neither did you know that some very powerful people took a dim view of him.

Carry his non-judgmental commitment to a fair and just society for all with you all your days. Never forget his gentle smile and the glint in his eye. Whatever is said about you, remain true to your principles, your friends, your loved ones, and the professions you serve. *Bless those who persecute you; never curse them, bless them. Rejoice with those who rejoice and be sad with those in sorrow* (Romans 12:14).

When Frank was being wheeled in for surgery on his brain tumour, he completed reading the morning newspapers and then waved to his own children, 'See ya!' He wanted everyone to be protected from his illness and to get on with their own lives.

When we leave this Cathedral where Frank, Michael, and Margaret were confirmed together by Archbishop Mannix in 1942, let's go committed afresh to family, friendship, the rule of law, and justice especially for those on the margins of our church, society and nation.

Let's carry the eternal image of Frank's smile, the glint in the eye, together with that precarious ash on the end of the cigarette. May he rest in peace, taken up in the hope and peace of resurrection this Easter. *How happy are the poor in spirit; theirs is the kingdom of heaven* (Matthew 5:3).

The above text is from Fr Frank Brennan's eulogy for Francis Xavier Costigan QC at St Patrick's Cathedral, 20th April 2009.