

INTERNATIONAL UNION OF LAWYERS

29TH CONGRESS NEW YORK CITY 31 AUGUST 1981

OPENING SESSION: HALL OF THE GENERAL ASSEMBLY  
OF THE UNITED NATIONS ORGANISATION

LAWYERS AND CHANGE

The Hon. Mr. Justice M.D. Kirby  
Chairman of the Australian Law Reform Commission

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ENGLISH SPEAKING LAWYERS

It may be appropriate that a Judge was chosen to speak at this opening ceremony on behalf of lawyers of the English speaking world. The law of the English speaking countries has been profoundly influenced over centuries, by the Judges. Our poet Tennyson described the historical process as 'freedom' gained 'from precedent to precedent'.<sup>1</sup>

Although its origins owed much to the Norman Kings and their determination to develop a single, coherent authority of law, the common law was neither renewed by Roman law nor was it transformed by post-Napoleonic codification. To this day, the Judge remains the centrepiece of the system of law observed in most English speaking countries. He declares the law. But he also develops and adapts it to changing times. The original concept of the judge of the common law tradition was one of a law reformer: his duty was to adapt old precedents to bring justice to new situations.

For all that, the organisers took something of a risk in inviting a Judge to speak at the opening ceremony. Judges are not used to being brief. Nor are they accustomed to being stopped even by so large a body of practitioners as this. Recently a Judge of my acquaintance, in Australia, addressed an opening ceremony such as this. What should have been 10 minutes became half an hour, fifty minutes, an hour and a half: two hours later he was still going strong. And then he stopped.

'Goodness gracious! I am sorry. I didn't realise the time. But you see I did not bring my watch and there is no clock in this hall.'

From the back of the hall came the acid comment of a humble attorney:

'There's a calendar on the wall behind you!'

Well, there is a calendar on the wall behind all lawyers today. It reminds us of the rapid changes that are occurring in our times and of their challenge to the law and to societies such as ours. Some of these challenges for our profession and for our countries will be discussed in the next few days in this Congress. It is especially relevant that we should meet in this Hall which reminds us of the major effort of our time to bring humanity together under a peaceful regime of mutual respect. It is in this Hall and in this building that we must hope there can be drafted a new international legal order just as the Norman Kings, out of the ashes of the Conquest, substituted the authority of a single system of courts for the factious, uncertain rules of the Barons. Just as later this authority was transplanted with telling effect in India, in Africa, in Australia, in Canada and in the United States, so we must hope that we are seeing now the earliest phase of a similar but even more profound historical movement towards international respect for the Rule of Law and for the peaceful resolution of disputes.

#### ENGLISH SPEAKING LAW REFORM

The special feature of the legal systems of the English speaking world over the past decade has been the development of permanent institutions for the reform and renewal of the law. Whether it is in Nigeria or Fiji, Canada or Zimbabwe, India or Australia, the many jurisdictions of the common law world have established law reforming bodies to help law makers cope with the pressures of change. In the nature of things, law making institutions tend to move slowly and tend to speak to each generation in the language and of the values of previous generations. Nelson Rockefeller, once Governor of this great State of New York put it well in a report to the President of the United States. He said that the 'time cushion' within which legal institutions could once adapt to change had disappeared in our generation. The result is a challenge for lawyers and for the law. In most English speaking countries, this challenge is being taken up by the permanent law reforming agencies.

We see in the program of this Congress the forces which are promoting change. The growth of government and the power of administration in all of our countries will come under scrutiny. So will the difficulties of legislating for large corporations. The changing moral values and social attitudes will be examined in connection with our profession. Above all, the Standing Commission on Law and Technology will address the greatest dynamic of our time: the impact on society and its laws of science and technology.

Whether it is nuclear fission, the biological developments that permit test tube babies and surrogate mothers, or the micro chip with its pervasive impact on society, each of these scientific developments will require of lawyers a capacity to adapt and a willingness to be at least as innovative as the scientists. These are hard times for lawyers. We tend to be those who, at school, were strong in poetry but rather weak in mathematics. Yet ours is the era of the mathematician and the scientist. If we ignore their developments, we do so at a great risk for respect of the law and for the relevance of its institutions.

The technology can bring hope. Future retrieval of legal data will make lawyers more efficient and possibly provide access to the law to many more citizens. The technology of aviation promotes not only Congresses such as this, but the international businesses whose legal problems will be examined in a number of the general working sessions. In retaliation for the onslaught of Franglais, a French Minister recently coined the term 'computications': computers linked by telecommunication, chattering away to each other on different sides of the world. These linkages will speed the pressure for international law. International co-operation amongst lawyers is no longer an excuse for a pleasant conference. It is no longer an exotic topic of the academics. It is becoming a practical matter, of much more urgent necessity, carried along by the chariot of science.

#### THE VAGABONDING LOVE OF CHANGE

Because Australia is such a long way from just about everywhere else, the pressure of new technology to link humanity more closely together has special significance to us. A Congress such as this, in which we can meet professional colleagues and share common problems, is also specially important. Some claim that Australians only just manage to be part of the English speaking world. But the very distance of my country emphasises world wide scatter of people who speak the English tongue.

We, in Australia, always feel a special link with the United States. The impetus for the European settlement of the Australian continent arose out of the American Revolution. In fact, our country began as a kind of by-product of the English criminal justice system: when it became necessary to find another place in which to dispose of the English convict criminal classes. It is just as well to remember that more convicts remained behind in English jails than were ever exported to the United States or Australia. But no more of that.

Another link we feel with Americans arises from the way our two countries were developed and from the profound influence which the American Constitution had on our founding fathers.

An Australia poet, who, like me, was a Sydney lawyer, A.B. Patterson wrote of our origins:

'But all our roads are new and strange  
And through our blood there runs,  
The vagabonding love of change  
That drove us westward of the range  
And westward of the sun.'<sup>2</sup>

The vagabonding love of change is something lawyers everywhere must learn to cope with. Ours is a time of change. We do well in this Congress and in this Great Hall to reflect upon the question whether we lawyers are equipped for change and whether we can embrace the 'vagabonding love' of it.

FOOTNOTES

1. A. Tennyson, 'You asked me why'.
2. A.B. 'Banjo' Patterson, 'Old Australian Ways'.