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DEAKIN UNIVERSITY
GRADUATION CEREMONY
9 OCTOBER 2012

COSTA HALL, GEELONG, VICTORIA

The Honourable Michael Kirby AC CMG

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COSTA HALL, GEELONG, VICTORIA
ON THE OCCASION OF THE CONFERAL OF THE
HONORARY DEGREE OF DOCTOR OF LAWS

STEVE JOBS WAS RIGHT!

THE HON. MICHAEL KIRBY AC CMG HON LL.D.*



A DAY OF RENEWAL

This is a day of renewal. It is so for us, for Deakin University and also for Australia.

* Justice of the High Court of Australia (1996-2009); Honorary Adjunct Professor in the Law School of Deakin University.

Here we renew the lives of the graduates and of the University that has helped to nurture and train us. The Americans call this ceremony a Commencement. It is the beginning of a new life of maturity and responsibility. Now the graduates will bring their skills to the benefit of the public, their community and the world.

But it is also a day of renewal for Australia. In Canberra, at this very time, the Great Hall and Number One Court of the High Court of Australia are filling with guests and distinguished citizens to participate in the welcome to Justice Stephen Gageler. He is the 49th Justice of the High Court. Sixteen years ago I was the 41st. In 110 years, fewer than 50 people have enjoyed the privilege, and carried the responsibilities, of being a judge of this nation's highest court. So this is also a significant day for the nation.

DEAKIN THE OUTSIDER

Ordinarily, as a retired Justice, I would make my way back to Garfield Barwick's court building by Lake Burley Griffin. Once again (but only for an hour) I would walk the familiar walk onto the bench into the huge space that is the Number One Court. In the traditions of the law, I would do so in my order of precedence, determined by my rank and the date of my commission. The huge portraits of Sir Samuel Griffith, Sir Edmund Barton and Richard O'Connor, the original three Justices, would look down benignly upon us all. Present with us, in spirit, would be Alfred Deakin, twice Prime Minister and one time Federal Attorney-General. It is after Deakin that this University is named. He regarded his legislation to create the High Court as his finest achievement and there were many¹.

Words of praise will ring out in the High Court (as they will do here). The confidence and assurance of a mainly conservative profession will reaffirm its faith in our constitutional institutions, the rule of law, the incorruptible judicial office holders and the seamless and peaceful transfer of legal power.

¹ "Deakin, Alfred" in *Australian Dictionary of Biography* Vol.8 (1981), 248 at 252. He called it his most "cherished" measure (R. Norris).

Although I would be happy to take my place in Canberra, welcoming the new High Court judge to his seat, I am very glad to be at Deakin University today. Justice Gageler is the first occupant of such a seat who began his acquaintance with the Canberra court building, soon after his graduation day, as a young clerk (associate). He served that great Chief Justice, Sir Anthony Mason. His ascent to high office, along a path that began at Muswellbrook High School in New South Wales, is an inspiration and an encouragement to all Australians. It is a tribute to him, his family and particularly his teachers in public schools. I hope, and expect, that he will never shake off the central values of public school education: egalitarian democracy, secularism, pursuit of excellence and inclusiveness.

Graduates of this University can be particularly proud to receive a degree that carries the famous name of Deakin. Although a successful politician, Deakin was in many ways an outsider. At school he daydreamed and did not excel at games. He wasted time, later leading to activities that many citizens regarded as crazy. He was a spiritualist, a journalist who wrote poetry and he wandered into the law as if by accident.² Few knew the inner Deakin.

On his first election to the Victorian Parliament, Deakin resigned immediately because he was unconvinced that his election had been fair. He then lost the seat; but he returned. He had few intimate friends. Politically, he was a liberal and yet he became an imperial anachronism.³ However, he was always ready to think outside the square. He was the most impressive of the fathers of Australian Federation.

May Deakin's example, including his outsider qualities, be with Justice Gageler and with us all in our lives ahead. As the great American legal philosopher, Martha Nussbaum said at the Melbourne Writers' Festival a month ago, it is outsiders who have learned the way that insiders work. It is outsiders who encourage critical

² Ibid, 249.

³ Ibid, 256.

thinking. They question the unquestionable and help society, including in law and business, to think new thoughts and to dream new dreams. Nussbaum said:⁴

“If you have a Socratic culture, there should be no one who is not able to participate... But you have to have the right kind of schools, which don’t do rote learning, which practise a lot of critical thinking and Socratic questioning. Giving children the sense that you always ought to speak up for what’s right, even if it costs you something. That’s something you can do.”

Martha Nussbaum instanced the unusual American leader Roger Williams, who founded the colony of Rhode Island in order to escape from the Puritans in Massachusetts. He was one of the very few who accepted the right of the Native American tribes to recognition of their ancestral lands. It took centuries for Australians to do this. And when they did, they did it through a great decision of the High Court of Australia in the *Mabo* case.⁵ Through the judicial instrument of law and justice that Deakin had helped to found, as part of our Constitution. Not through the legislatures made up of insiders who could not quite get their minds around such recognition in 150 years of Australian elected democracy.

So let us turn our thoughts today to Canberra. And to the new Justice, and wish him well. I had a dream about missing his ceremony. But when I awoke, it was not the speeches, nor the cases, nor the pomp, nor the ceremony that I remembered in the High Court and regretted missing. No. It was the young graduates, fresh from University. Young graduates, like Stephen Gageler in his time. Graduates full of hope, confidence optimism and idealism. Starting their life’s professional journey. Interacting with me, the judges and with each other: Young men and women from many backgrounds, from different races, religions and viewpoints. Ready to question and to challenge the unspoken assumptions of law and power in our society.

⁴ R. Cassin, “Martha Nussbaum, John Button Oration, Melbourne Writers’ Festival, noted, *Spectrum*, in *Sydney Morning Herald*, 1 September 2012, 28.

⁵ *Mabo v Queensland [No.2]* (1992) 175 CLR 1.

I urge today's graduates to tread that path of questioning and speaking up. If you don't start out that way now, it is unlikely that you will ever find that path hereafter.

STEVE JOBS AND HIS LESSONS

This is a graduation of the Deakin Business School, the School of Management and Marketing, and the Law School. It is appropriate that we should come together for this occasion. Appropriate because, for once, the law has played a constructive and beneficial role, specifically in the activities of corporations that the law regulates. Corporations are the bodies that lie at the very heart of national and global trade⁶. It was the law that helped to invent the corporation. In a profession not always famous for original thinking, it was the separation of the risk taking of entrepreneurship from the investments of the shareholders that provided the capital that built the modern global economy. This legal invention propelled creative genius to produce new ideas, products and services. Later cumbersome laws and individual misuse may have muddied those inventive waters. But the initial concept was brilliant. We must never let go of it.

It is corporations that have given us many of the wonders – and the challenge - of the modern world. It is the ideas of individual human beings in corporations that have produced the dazzling new products to create and fulfil completely new demands. In that process, they have effectively changed the human species and how we live. This is something lawyers and their statutes try constantly to do; but only with limited success.

Amongst the most brilliant of the most recent inventors was Steve Jobs, inventor of the hand held computer and much else. It was Steve Jobs too who gave the best known graduation (or commencement) speech of recent times. Most of today's young people would have read or seen it. For the older brigade, who may not have done so, it carries important messages, relevant to a day like this⁷.

⁶ *New South Wales v The Commonwealth (Work Choices case)* (2006) 229 CLR 1 at 224 [539].

⁷ The full text of Steve Jobs' commencement speech at Stanford University in the United States of America (2005) is available online at http://articles.businessinsider.com/2011-10-06/tech/30249828_1_college-tuition-calligr (accessed 1 September 2012)

When receiving an honorary doctorate from Stanford University in the United States in 2005, Steve Jobs commenced his address by confronting a few demons in his own life. These included his own rejection by his natural unwed mother and by his initial adopting parents (both of whom were lawyers!). He told how he had initially dropped out of college. Then he returned; but got bored. He dropped out again. But he attended calligraphy lectures, sleeping on the floor of friends' rooms and getting one good meal a week from Hare Krishna. Calligraphy was to prove vital for the subsequent typography of the *Macintosh* computer.

Making the most of the chances life serves up is crucial he said. And luck plays a big part. Steve Jobs remained ever on the lookout for new ideas and for ways of turning old ideas into his own and to society's advantage. His other themes related to the importance of love and loss. And constantly picking oneself up, dusting oneself off and starting all over again. He did this even after he was fired from Apple. His last story was about death. In poignant words given force by his own end that followed, exactly a year ago, he reminded us all:

“Your time is limited so don't waste it living someone else's life. Don't be trapped by dogma – which is living the results of other peoples' thinking. Don't let the noise of others' opinions drown out your own inner voice. And most important, have the courage to follow your heart and intuition. They somehow already know what you truly want to become. Everything else is secondary.”

These words belong to each one of us today: the graduating class of 2012. A month ago I attended the fiftieth anniversary of my own first graduation in law at Sydney University in 1962. It was an impressive class. I was there with Murray Gleeson (later my colleague on the High Court) and nearly 20 others who would go on to become judicial officers and take other high posts. Yet I was then, and I knew it, an outsider. I was so because of my sexuality. I did *not* follow my intuition. I did *not* ask enough questions. I was living other people's lives. In the law and in business, that was often what we were expected to do.

In Australia at that time, we did *not* question the denial of Aboriginal native title. We did not question White Australia. We did not question gender discrimination. We *did* not question the criminalisation of, and discrimination against, gay people like myself. Some still do not do so. Many go on living other peoples' lives.

Gradually, I began to question. Lawyers and business leaders must do this constantly. Graduates of Deakin University must question. We must all offer constructive new ideas. We must all be agents of change to build the world we want to know. In the law, especially, that is sometimes hard. And change must usually accommodate itself to stability and predictability. Not every vocation is as susceptible to change as Steve Jobs' technology. Still, every vocation needs the rules of variation that Charles Darwin taught are essential to the survival of all living things⁸.

In the end, Steve Jobs told the graduates at Stanford: "Stay hungry, stay foolish". By this he was saying, keep sharp the cutting edge of your minds. Sometimes do the unexpected. Make a difference. Ask questions. Demand answers. I cannot think of better advice for a graduating class of an Australian University. Come to think of it, I cannot imagine better advice, affectionately tendered, to the new Justice of the High Court of Australia, as he takes his seat in Canberra today.

STAYING HUNGRY: ASKING QUESTIONS

I congratulate the graduates. I thank the parents, partners and friends who eased their path. I applaud the teachers, back to that first teacher in primary school. I praise the University and Australia for getting us all here. And I honour the message of a supreme outsider: Stay hungry. Stay foolish. Ask questions. Insistently. Always.

⁸ Charles Darwin, *The Origin of Species* (1859) reprinted *Great Books of the Western World*, Chicago 1952, in Ch. 5 "Laws of Variation", 65.