

2784

MONASH UNIVERSITY

BLACKWOOD HALL, CLAYTON CAMPUS

19 MAY 2015

MONASH LAW: FIFTY YEARS ON

The Hon. Michael Kirby AC CMG

MONASH UNIVERSITY

BLACKWOOD HALL, CLAYTON CAMPUS

19 MAY 2015

MONASH LAW: FIFTY YEARS ON

The Hon. Michael Kirby AC CMG (Hon.LLD Monash)



*PRESENT AT THE CREATION*

It is a great honour for me to receive the degree of Doctor of Laws *honoris causa* of Monash University. I thank the University, the Council,

the Chancellor, the Dean of Law and Law School for making me a member of the University and including me in this occasion.

I congratulate the University for including in this ceremony an interval of music – a quartet from the Sir Zelman Cowen School of Music. I first heard this done, by Sir Zelman himself, when Vice-Chancellor of the University of Queensland. It is rare in graduation ceremonies. But it is magical. In the midst of much activity, symbolising so much effort, we pause – almost in silence – to gather our thoughts, assisted by the mystical power of music.

I am specially grateful to receive my degree with the latest cohort of law graduates of Monash Law School. Theirs will be the responsibility to carry forward, in this still new century, the great principles of the law: Peace and security at home and abroad. Universal human rights for all. Justice. Constant reform and renewal. Open mindedness. No discrimination on the grounds of stereotypes, particularly where based on indelible features of nature.

I first came to Monash University virtually at the beginning. The University was founded in 1958, the year that I began my legal studies at the University of Sydney. Monash Law School was created in 1964, when Professor David Derham became its first Dean.<sup>1</sup> In 1965, exactly 50 years ago, I came to the Clayton campus for the first time. I was participating in the August Council meeting of the National Union of Australian University Students (NUAUS). We were accommodated in a newly built student college, lonely in the then empty fields of this

---

<sup>1</sup> See P. Yule and F. Woodhouse, *Pericleans, Plumbers and Practitioners – The first Fifty Years of the Monash University Law School* (Monash University, Clayton, 2014), 11

campus. Truly, there was little else to mark the University beyond the R.G. Menzies Building. What would I have thought if I had been told that, 50 years later, I would be returning for this ceremony?

I must confess that when the State of Victoria decided to name its second university after Sir John Monash, a soldier, I thought that this was strange. I could not recall another university named after a soldier. Had search engines been available in those days, I would have discovered, suitably enough, that Atatürk Üniversitesi in Erzurum, Turkey, had been created a year before in 1957. However, it is rare. Yet, as I was to discover, Monash (and indeed Atatürk) were mighty individuals, not just soldiers.

### *LESSONS FROM MONASH*

Last year I received the Monash Medal in Melbourne, given annually by Melbourne Rotary to uphold the three principles of life attributed to Sir John Monash: Leadership. Integrity. Service. The medal is always announced close to the celebration, at the Shrine of Remembrance of the battles on the Western Front of France at Hamel on 4 July 1918 and Amiens on 8 August 1918. That was the time when all five Australian divisions scattered the enemy lines and began a momentum that, 3 months later, resulted in the Armistice and the end of the Great War.<sup>2</sup> We still remember those days.

Monash, a civilian engineer, was highly defensive of the lives of his soldiers. He embraced instinctively the new technologies of tanks and aircraft. He thought outside the square. He was meticulous in planning.

---

<sup>2</sup> A. Blankfield, *Who was this Man called "Monash"*, 91-100.

Above all, he was successful. He was knighted in the field of battle by King George V, the first time that had happened, in British military chronicles, for more than 200 years. He, and the Australian forces, helped to end the stalemate and the shocking loss of life and of limb and of mind of the First War. Yet its outcome was still to give birth to the Second War and to all the horrors of the 20<sup>th</sup> Century we now know of.

On this very day, as we meet here for this happy and peaceful occasion, a century ago, Monash was at Gallipoli in the Dardanelles. He and the ANZAC Corps were striving desperately to fulfil the dream of opening a second front that would, if it had succeeded, have saved 3 years of war: gaining the breakthrough from the deadly stalemate of trench warfare. How surprised he would have been if he had known that – a century on from all the noise and bloodshed – we could be here, thinking of him and those with him. Today, a century ago, Monash, the civilian engineer, was facing Atatürk, a brilliant General and later the first secular leader of Turkey. Like Atatürk in Turkey, Monash went on to become the most honoured citizen of his country.

To mark the ANZAC centenary, Monash University has just erected a fine statue on this campus. It shows Monash in the civilian clothes, to which he quickly returned. This is symbolic of the principle that this country is governed by citizens who make its laws. In times of greatest peril, citizens are called to military service. But then most of them return to the barracks and civilian life. They do not interfere in our constitutional ways. This is amongst the highest laws of our Constitution. Judges and lawyers must ever enforce it.<sup>3</sup>

---

<sup>3</sup> *White v Director of Military Prosecutions* (2007) 231 CLR 570 at 630 [165]; cf *Haskins v The Commonwealth* (2011) 244 CLR 22.

All of us, after this ceremony, should look at Monash's statue. We should consider the man whose career was almost terminated by anti-Semitism at the time. We should think of his application of high intelligence to enormous problems. Just as Australia can come to honour a military campaign that failed in its objective; so we can honour a citizen soldier who hated war, cherished his troops; and helped to end, for a time, the titanic struggle of nations and values.

I was wrong, all those years ago, in doubting the aptness of Monash's name for a great university. We, who are graduates of this place, should remember what that name stands for: Leadership. Integrity. Service. Values imperative for all graduates. Especially for law graduates facing the lives ahead of them.

### *AN END TO INJUSTICE*

As we know, the Armistice of 1918 did not achieve a lasting peace in the World. The Second World War was ended with the *Charter* of the United Nations of 1945 and the *Universal Declaration of Human Rights* of 1948. But also with the sights of the Holocaust and the mushroom clouds of atomic bombs. The two instruments that launched the United Nations were drafted by Anglo-American lawyers. They propound the ways to build peace and security as the alternative to war.<sup>4</sup>

When Monash University and its Law School were created 50 years ago, Australia fell far short of compliance with universal human rights:

---

<sup>4</sup> Travers McLeod, *Rule of Law in War*, OUP, Melbourne, 2015.

- \* Women were subordinate in the law in many ways. Even now there are glass ceilings in corporations, in the law and in life, although progress has been made.
- \* Aboriginal Australians were then denied many rights. Thanks to the imaginative lawyering of Ron Castan QC and others, later honoured by this University, the *Mabo Case* took us on a journey towards justice that the Castan Centre continues to promote and expand.
- \* White Australia was still in place 50 years ago. Its legal underpinnings were challenged by lawyers and others as we sought to build a truly multi-cultural society; and
- \* Gays were still being locked up. Even today LGBTI citizens here and abroad are second class citizens when it comes to legal rights. Monash University challenges these injustices too: including through the Centre for Public Health and Human Rights named after me, represented here today by Associate professor Bebe Loff, and the Kaleidoscope Human Rights Foundation whose president, Associate Professor Paula Gerber, read the undergraduate and post graduate citations today.

### *CONTINUING INJUSTICE?*

Looking back on those days 50 years ago, I have to admit that we, the lawyers and law students of those times, were not questioning enough. I was not questioning enough.<sup>5</sup> The complacency of those times obliges us, the graduates of 2015, to ask a puzzling question: What are the

---

<sup>5</sup> M.D. Kirby “The Graduating Class of Sydney Law School 1962 – Talented, Lucky, Unquestioning” (2012) 36 *Australian Bar Review* 189 at 200.

legal wrongs in today's society that we do not question enough or perhaps do not even see? Are they:

- \* The way our profession of law prices access to justice and the rule of law beyond the pocket of most ordinary people?
- \* The way law sometimes diverts those seeking asylum in Australia to most inhospitable places like Cambodia, Manus Island or Nauru?
- \* The way intellectual property law effectively allows corporations to charge different prices for life-saving healthcare: risking the lives of the poor who cannot pay the patent license fees?<sup>6</sup>
- \* The failure of the law to respond effectively to the challenges of global warming and the changes to our biosphere?
- \* The way, through criminal law, that we deal with people who are dependent on, or use drugs? And even execute them in some countries by firing squad?
- \* The predicament of parents with children with rare diseases who need expensive therapies just to survive?
- \* The low, and even declining, investment in institutional law reform? Overseas foreign aid? Funding for legal aid at home?
- \* The way law tolerates stress, bullying and depression amongst its own?
- \* The pitiful way we sometimes address the issues of suicide amongst young lawyers: especially those suffering from clinical depression?
- \* Or perhaps, the inadequate way we fail to protect the welfare of animals that feel love, pain, fear, as we do?

---

<sup>6</sup> United Nations UNDP, Global Commission on HIV and the Law, *Risks, Rights & Health*, New York, UN, 2012, 76-87.



Of one thing we can be sure. The challenges to our moral senses are not disappearing in the current age. Law is not just another occupation. To lawyers there is given a direct and essential role in the design and application of the law. Hence a special responsibility for the laws they help to implement.

Lawyers should always be questioners. They should always remember Charles Darwin's rule of variation. To survive, as a living organism, law must build into itself the ever present mechanisms of change, evolution and improvement. Monash Law School, from the beginning, has aimed to build a different culture and a new ethic. It has not always succeeded.<sup>7</sup> But its graduates know from day one that they march under a different and non-complacent banner. Now, I am proud to be one of them: a proud graduate of Monash Law.

### *CONGRATULATIONS AND SUCCESS*

To all my fellow graduates today, I extend good wishes for success and happiness. To their parents, partners, grandparents, friends and supporters, I offer thanks and congratulations. To the teachers at school and at university who brought us to this day, I offer sincere acknowledgment.

We will go forth from today committed to the secrets of success that John Monash shared with us. Love and respect for fellow human

---

<sup>7</sup> Professor Stephen Parker, who became Dean in 1998, was critical of suggested failings. See Yule and Woodhouse, above n.1 at 299 – 301. Those times have changed under Deans Arie Freiberg and Bryan Horrigan.

beings. Refusal to go along with the old ways of doing things, just because they are old. Embrace of new technology to enhance our prospects of success. Meticulous planning and sharp concentration on the problems at hand that can sometimes seem overwhelming. But we can overcome. And we all should feel a love and gratitude to this University that, in little more than 50 years has joined the world league so that we can be proud of it.

For what we have received, and what we will continue to receive by our degrees from this University, may we all be made truly thankful.