

LA TROBE UNIVERSITY

11 MAY 1977

OCCASIONAL ADDRESS BY THE HONOURABLE JUSTICE M D KIRBY  
CHAIRMAN OF THE AUSTRALIAN LAW REFORM COMMISSION  
AT A CEREMONY OF CONFERRING OF DEGREES

INTERDISCIPLINARY LAW REFORM

Hon Justice M D Kirby

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INTRODUCTION AND CONGRATULATIONS TO GRADUATES

Mr. Chancellor, Vice-Chancellor, Members of the Council,  
Members of the University, ladies and gentlemen.

There are certain things that have to be done by the occasional speaker at a ceremony such as this. Because they have to be done makes them no less pleasurable.

The first is to express a proper sense of the honour which it undoubtedly is to be invited by this vital university to take part in such an occasion as this. For a mere New South Welshman it is a special honour which is not lost on me.

The second thing to be done is to remind ourselves of the significance of the occasion. We gather here today in a ceremony at least as old as the Christian era, to place before the international community of scholars, new recruits who have earned their laurels by a period of dedicated application to the study of knowledge. Inescapably, in that study, the graduates have acquired discipline and a measure of wisdom. They are sent forth by the university to the community, with the commendation of their degrees. They join the international community of tested scholars. The precise form of the ceremony traces its origin to the medieval church and the laying on of hands: by which authority was transmitted

from one generation to the next. On an occasion such as this, it is important to pause and reflect upon the continuity of scholarship.

Thirdly, it falls to me to congratulate the new graduates. Inevitably, I feel a sense of community with them. It does not seem so very long ago that I was sitting in a like position to them, listening to an occasional address and wondering what the future held in store. There is no escaping it. This is a watershed in the life of the new members of this university. It is a time when at least one period of concentrated study is over. It is therefore a time when the scholar is permitted a modicum of self-congratulation.

I am not so far removed from your position to have forgotten the rigours that are imposed upon those who pursue a university education today. When nostalgia sets in, it all seems an idyllic time. But in many ways university life has become more difficult today. There are quotas to be met. There are restrictions to be overcome. There are rules against failure to be circumvented. Always there is competition to be faced. All of these have doubtless taken their toll, in one way or another, upon the young men and women who sit in this hall today.

In most cases, the burden has not been borne singly. The family, parents, friends, husbands and wives, children and colleagues have all played their part. They have helped to share the burden. The reward is here today. This is an occasion for proper, shared pride. That is why we involve the families and friends of the graduates in the community of scholars in this ceremony. It is a recognition of the contributions they have made to the achievement that is signalled by this occasion.

On behalf of the community and on my own behalf I extend congratulations to the graduates and thanks to those who helped them on the path to this culmination of their study. The community is proud of the graduates. But it is also grateful to those who supported them.

#### A NEW AGE OF REFORM

Having discharged my primary tasks, it is now my function to say something of general significance. The only requirement is that I must be brief in the process. For five years I sat as a Member of the Senate of Sydney University and attended in that time at least thirty ceremonies such as this. Thirty times, an occasional speaker rose in his place to address the assembled university. It is a sobering thought as I stand here before you tonight, that I cannot call to mind a single utterance : not one item of distilled wisdom; no aphorisms; not a single jest of any of the thirty occasional speakers. Cicero told the Romans that he preferred tongue-tied knowledge to ignorant loquacity. People in my position do well to observe his maxim.

As you have heard, I am the Chairman of the national Law Reform Commission. The task of the Commission is to reform, modernise and simplify the laws of the Commonwealth of Australia. "Reform" does not necessarily mean change. Indeed, it implies some degree of conservation. To "reform" presupposes the preservation of that which is being reformed : saving it and adapting it to new circumstances.

Every informed citizen, but especially, I imagine, the behavioural scientists amongst you, will know that the law is in the throes of a major period of reform. It has been called "a crisis". It is certainly a period of instability and disruption. It is an uncomfortable time; but it will not simply go away.

#### LAW Vs. SCIENCE AND TECHNOLOGY

Nowadays, it is the obligation primarily of Parliaments to keep the legal system abreast of changing circumstances and values. One of the new instruments, developed especially in the last decade, to assist Parliaments in accommodating the law to change, is the Law Reform Commission.

In all of the matters that come before us we must confront rapid change, including change promoted by science and technology.

Take the task we received to devise a new law to govern criminal investigation. A Bill based on the Commission's report is presently before the Federal Parliament. It has attracted the ire of every Police Commissioner in the country. But most of the criticism is directed at the attempt to bring the benefits of science and technology into the sensitive relationships between police and the citizen. Why should we continue to do things as Robert Peel did in 1830 London? Why should the criminal investigation procedure not catch up with the advances of science?

We proposed, for example, statutory provisions to encourage the use of tape recording of confessional evidence by police. President Nixon found how devastating and damning tape recording can be. So will other criminals.

We proposed the photography of identification parades, the use of telephones to allow judicial officers to superintend police bail decisions, the issue of warrants and so on.

Those who attempt to preserve antique procedures in such an important area of the citizen's relationship with authority, do nothing but bring the law into disrepute and contempt. The Attorney-General was surely right when he said, introducing the Bill,

"Resistance to the use of methods [of science and technology] that can fairly end controversy are bound, in the end, to fail".

Take also the task we have to devise new protection for the individual's privacy in the Commonwealth's sphere. The Australian community is alerted to the need to protect privacy as an attribute of the autonomy of the individual in at least a few personal and spiritual concerns, if necessary in defiance of the pressures of modern society. In the past generation, a scientific and technological explosion has produced sense-enhancing devices and the computing resource, all of which promise major effects on the lives of the graduates leaving this hall today. Changes will occur not only in the relationships between

individuals. They will affect the knowledge which government and business enterprises can rapidly assemble about each of us. The areas of seclusion will be eroded, fairly rapidly, unless we are prepared to put a value on privacy. In 1950 there were sixty instruments worth the name "computer" in the whole world. By 1984, it is predicted that there will be one hundred thousand computers in Australia alone. They can operate at one thousand times the speed and one hundredth the cost of computers fifteen years ago. Data can be retrieved from the computer's memory at the rate of forty million characters a second.

How does the law cope with changes of this revolutionary magnitude? Paul Tillich, one of the renowned theologians of our time, described law as "the attempt to impose what belonged to a special time, on all times". By its nature, the law tends to deal in absolutes. It rests upon "the search for certainty" and predictability. It addresses its audience at one time, in the terms of values which are stated for all times. Uncomfortably for the law, times change : never more than at the present.

Another task before the Law Reform Commission illustrates the same problem. How should the law adjust itself to the age of human tissue and organ transplantation? Here, medical science and surgical techniques render the law of assault and battery irrelevant or positively obstructive. The legal definition of death in terms of circulation of the blood, important in the practical operation of transplantation, is likewise outmoded by modern ventilators and other means of artificial respiration. Rapid developments in immunology are just around the corner. Within the foreseeable future, it will be perfectly possible to develop a human foetus artificially and to promote genetic planning of a highly selective kind. Should questions such as this be left to the narrow group of scientists and experts who, with all good will, may be blinded by technical advances from seeing the social implications of what they are doing? Such questions are complex, sensitive and to some even hurtful. Some members of the medical profession would seek to keep the law out of these questions. But issues

of life and death, of human dignity and respect, are too important for the law to forfeit its role as educator and guardian. Law reform bodies can help the law to find its proper role.

#### INTERDISCIPLINARY CONTACT

I have mentioned only three of the matters that are before my Commission. They demonstrate the obligation now cast upon the lawyer, to put aside lawyers' introspection and to relate the law to the dazzling changes that are taking place in science. In all of the tasks before the Commission, we have secured the appointment by the Attorney-General of a full range of consultants. In the Privacy Reference, the Law Commissioners sit down as equals with computer scientists, sociologists and psychologists. In the Transplant Reference, we bring together round the same table medical practitioners, paramedicals, theologians and philosophers. Interdisciplinary contact is a bracing experience, but a necessary one if laws relevant for the 21st century are to be drawn.

Isolation and self-congratulation by lawyers of the next generation will give way to an interdisciplinary dialogue with other professions, in the framing of laws. These are developments forced upon judges and other lawyers by an age of rapid change in which the law itself and the rule of law are under question. In designing the Australian society of the future, scientists cannot develop their skills, washing their hands of the social and ethical consequences of their work. If they do so, they will deliver us all to the authoritarian state. But lawyers must lift their sights from self-satisfied preoccupation with the past and play their part in constantly renewing the legal system, identifying and correcting its faults and adapting it to the great challenges of science and technology.

The gift of education which you have received at the hands of this university requires you all to spare a thought, even on this happy occasion, to these vital questions.