

SYDNEY UNIVERSITY

14 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

LAW AND SOCIETY IN A PERIOD OF CHANGE

Hon Justice M D Kirby

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INTRODUCTION AND CONGRATULATIONS TO GRADUATES

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

On an occasion such as this, a speaker is obliged by tradition to do certain things. 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 distinguished university to take part in this happy occasion. There are few obligations of public office more pleasurable, than to be invited to return to one's *alma mater*. It is a special pleasure for me to be invited to return to a ceremony at which degrees in one of my old Faculties are conferred. It is inevitable and proper that I should feel a sense of community with all of the graduates of this university, but particularly with those who have trod the same paths as I did, not so long ago.

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 society 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. It does not seem so very long ago that I was sitting in the same position, wearing the same colours, 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 on this platform as a Fellow of the Senate. In that time, I attended at least 30 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 today, 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, a group of social scientists such as this; 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.

SOME REASONS FOR REFORM

I am often asked by anxious fellow citizens, particularly by those older than me: why is there so much talk of reform? Why is everything changing? Why is it changing so rapidly? Is all this change really necessary? Is it good for us?

There is no doubt that change is uncomfortable. However, it is my view that many in our society do not fully understand the radical developments that have occurred in Australia, particularly in the last decade or two. Sometimes when you are living through events, the very proximity to them obscures a proper perception of what is going on.

All of us are familiar, in a general way, with the changes that have occurred in education in our lifetime. Since 1950, the number of universities in Australia has doubled. Furthermore, we now have over 80 Colleges of Advanced Education. The number of tertiary students has increased eight times over since the Queen commenced her reign. Listen to the figures. In 1950 there were 4,500 graduates of universities in Australia. Last year the figure was closer to 25,000. At the beginning of this interval, for every person who ascended this stage to receive a Bachelor's Degree, there were 1,000 people in the Australian workforce. Nowadays, the figure is closer to one in 300. Today, about one in every thirty five members of the workforce hold a university degree. When we pause to think back to the beginning of the process of education: the infants' class at the local school, one of the class was destined to mount this stage. That is the privilege the graduate enjoys.

These figures are themselves remarkable. However, they represent only the beginning of wisdom.

Twice the number of students are now still at school at the age of 16 than was the case a generation ago. Within the past ten years, the percentage of girls receiving education beyond 16 years has doubled. This revolution in education standards in the Australian community will have enormous implications for the workforce, manpower policy, the trade union

movement and job satisfaction. The point I want to make for present purposes is that a society in which education has exploded to this degree cannot be governed by laws and by the machinery of law designed for the English village society of times gone by.

Everywhere you look, authority relationships are changing. Even when I was at law school, we talked of "master and servant" relationships. How old-fashioned that expression seems today. No relationship is exempt from change: creditor and debtor, producer and consumer, management and staff, school and student, police and accused, government and citizen.

When one considers the widespread, deeply entrenched changes in community education, literacy and perception of the world, it is scarcely likely that the old, comfortable way of ordering society can survive unchanged. Rationality and fairness according to contemporary standards are demanded. Nothing less will do.

SCIENCE AND TECHNOLOGY

There are of course other forces at work which impose even more urgent obligations to keep our legal system abreast of changing circumstances and values. In all of the matters that come before the Law Reform Commission, we must confront not only the radical alteration in Australian society but other changes promoted by science and technology.

Take the task we received to devise new law to govern criminal investigation in the modern age. A Bill based on the Commission's report is presently before the Federal Parliament. It proposes laws which recognise both the changes in our society and the developments of technology upon which the law currently turns its back.

Increased, widespread literacy is recognised by the obligations that are imposed to accompany the oral warnings that must be given to suspects with a brief, simple, written statement of the citizen's rights when he finds himself in a

predicament with the police. The Bill also introduces provisions to encourage use of tape recording of confessional evidence to police, the photography of identification parades and the use of telephones to allow judicial officers to superintend police conduct.

Will it be good enough in Australia to do things as Robert Peel did in 1830 London? Given the enormous advances in our society which I have mentioned, is it not necessary to ensure that all our laws, including those governing criminal investigation, should catch up with the advances of science? Those who would 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. 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 which the Law Reform Commission has 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.

INTERDISCIPLINARY CONTACT

I have mentioned only two of the phenomena which promote the need for change and two of the tasks upon which the national Law Commission is embarked. Of course, I do not have to convince a group of economists that society is changing and that institutions and laws must keep pace with the change. You are mercifully free of isolation and self-congratulation : diseases that can sometimes afflict the lawyer. I believe that these defects are now giving way to an interdisciplinary dialogue with other professions, including in the framing of laws. Such developments are 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, including social scientists, cannot develop their skills, washing their hands of the social and ethical implications of their work. If they do so, they will deliver us all to the authoritarian state.

But lawyers must equally lift their sights from self-satisfied preoccupation with the past and play their part in constantly renewing the legal system : identifying and correcting its fault, measuring it against the changes in society (which economists can help to identify) and adapting our laws to the great challenges of science and technology which impose themselves on all of us.

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