

THE NEW SOUTH WALES INSTITUTE OF TECHNOLOGY

THURSDAY 18 MAY 1978, 2.30 P.M.

OCCASIONAL ADDRESS BY

THE HON. MR. JUSTICE M.D. KIRBY

CHAIRMAN OF THE AUSTRALIAN LAW REFORM COMMISSION

AT A GRADUATION CEREMONY OF THE INSTITUTE

TECHNOLOGY AND THE LAW

May 1978

THE NEW SOUTH WALES INSTITUTE OF TECHNOLOGY

THURSDAY 18 MAY 1978, 2.30 P.M.

OCCASIONAL ADDRESS BY

THE HON. MR. JUSTICE M.D. KIRBY

CHAIRMAN OF THE AUSTRALIAN LAW REFORM COMMISSION

AT A GRADUATION CEREMONY OF THE INSTITUTE

TECHNOLOGY AND THE LAW

INTRODUCTION AND CONGRATULATIONS TO GRADUATES

Mr. Chancellor, Mr. President, Members of the Council,
Members of the Institute, 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 in the doing.

The first is to express a proper sense of the honour which it undoubtedly is to be invited by this Institute to take part in an occasion such as this. Citizens of Sydney and of this State and beyond have watched with pride the development of this building. The Institute is not another orthodox organ of tertiary education. It is an alternative in the field of higher education, with a conscious emphasis upon the relevance of its work to today's society and the need to combine scholarly activity with practical utility. As I shall shortly demonstrate, these are motives not unkn

to law reformers. Part of the genius of our legal system has been its adaptability to the practical exigencies of the time. One of the obligations of law reform is to render the law, developed so often in previous centuries, so that it will be relevant to the community of today. The motive force which initiated the experiment of this Institute in 1965 was to provide tertiary education of a vocational nature that would meet the demands of industry and society and the rapid changes in technology. These are demands which the law, no less than the physical sciences, must acknowledge and accommodate. I shall return to this theme.

CHAIRMAN OF THE AUSTRALIAN LAW REFORM COMMISSION

My second task is to remind you of the significance of this occasion. We gather here today in a ceremony which is at least as old as the Christian era. We place before the international community of educated 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 of today have acquired discipline and a measure of wisdom. They are sent forth by the Institute to the community with the commendation of their degrees. They join the international community of tested scholars.

The precise form of this 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. Although the Institute and most of our education system today is truly secular, the influence of the church upon our culture can still be clearly seen here today. The occasion is one on which we don colourful robes and, as in church, march poorly to magnificent music. The intimate and important part of the ceremony is now over. You must now hear the sermon and, as in church, will be sent away without an opportunity to question or answer back.

There are some who might see this address as the last despairing effort of the Institute to impart a modicum of wisdom

before sending you all out to the rude world. I entertain no such ambitions. As a fellow of Sydney University Senate, I sat through a great number of ceremonies such as this : about fifty of them all told. I attended a number of them in my own right. I sat in the well of the hall trapped, captive for a quarter of an hour, to the thoughts of a fellow member of the educated community. On each of these fifty occasions, an invited guest had his say. It is a sobering thought to me as I stand here before you, that I cannot recall a single word spoken by that parade of distinguished, learned, scholarly dignitaries. I do not deceive myself that this address will turn the tide.

I have expressed appreciation for the honour of the invitation to address you. I have reminded you of the historical context into which this ceremony must be placed, in order to glean its significance. My third task is to congratulate the new graduates. Inevitably I feel a sense of community with them. There is no escaping it. This is a watershed in the life of the new members of this Institute. It is a time when at least one period of concentrated study is over. It is therefore a time when you are permitted a moment of self congratulation.

I am not so far removed from your position to have forgotten the rigours that are imposed upon those who pursue tertiary education today. When nostalgia sets in, it may seem an idyllic time. But in many ways life in higher education has become more difficult today. 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. What began at a local kindergarten many years ago and progressed through the long haul of education, reaches a natural culmination in this ceremony, here and now. It is not the end of the process of learning. But it is surely reasonable to pause for a moment on the journey of education and to reflect, with proper pride, upon hard won achievement.

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 in this ceremony. This is an occasion for shared pride. That is why we involve the families and friends of graduates in the community of scholars in ceremonies such as this. 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. I also extend thanks to those who helped them on the way that led here. The community is proud of the graduates. But it is also grateful to those who supported them.

A NEW AGE OF REFORM

I have now discharged my primary tasks. Were I to stop here, I would achieve a record of some sort for Occasional Speakers in functions such as this. I will resist the temptation, for I would then be sending you away only with the feeling of self satisfaction. That would never do. Though many of you may be at the end of the formal line of your education, you stand at the threshold of your active participation in the Australian community. What a waste it would be, of your education and training, of the special gifts you have earned and secured, symbolised by these events today, if you stopped learning, concentrated all your efforts upon selfish advancement and forgot the responsibilities which are placed by higher education upon those citizens who have enjoyed the privileges of it.

The country and particularly the community of this State, will be looking to you for leadership in the generation of ideas. It will be you who will be expected to nudge society along towards improvement, reform and renewal.

Let us be frank, there was a day when lawyers had as little as possible to do with physical scientists and technologists. The very words "the physical sciences," or "technology" evoked a mental image of something rough unintellectual, unrefined. No doubt scientists and technologists had their mental image of lawyers and other such bureaucrats. Doubtless they took one look at their dusty files, red tape, the black robes they still wear in mourning for the death of Queen Anne and the 17th century periwigs and contrasted, with certain smugness, the beauty, logic, symmetry and purity of scientific and technological studies.

Three weeks ago the Chief Justice of Victoria, in an important address, suggested that the better the lawyer was, the less likely it was that he would promote extensive or substantial reforms of the law. This was not because he was uninterested in law reform but because reform was "fraught with difficulties and dangers".

This counsel of caution is well given if it makes the point that "reform" means something more than mere change. To reform the law or to reform society, it is not enough to achieve change. The change must be for the better.

Uncomfortably for lawyers, and the law, great forces are at work in our society which render the piecemeal, slow and part-time, cautious approach to reform inappropriate for today's society. The forces to which I refer are symbolised here today. In the past twenty five years we have seen remarkable developments in education levels of our country. At the beginning of that time fewer than four thousand people graduated annually from universities. That figure is now twenty five thousand. In the same time there have developed eighty three colleges of advanced education of which this Institute is the largest in New South Wales. In addition to the forces of education which raise the demands of the community upon its legal system and expectations of its justice and rationality, there is another force at work which renders the slow and comfortable modifications of the past unacceptable in today's society. This force is science and technology.

Bronowski had a warning for all of us, not least lawyers, judges and law reformers :

"The world today is made, it is powered by science; and for any man to abdicate an interest in science is to walk with open eyes towards slavery".

The impact of science and technology upon the law requires a new dynamic in reviewing, modernising and simplifying the law. One of the vehicles devised by Parliaments to achieve this new dynamic are the Law Reform Commissions. The Commission of this State, the oldest statutory law commission in the country, is presided over by the Honourable Mr. Justice Wootten, a member of the Council of this Institute. As you have heard, I am the Chairman of the national Law Reform Commission of the Commonwealth. The tasks that are before us at the moment symbolise in a vivid way the inevitable coalescence of the humanities and technology in ordering today's society.

Interested in law reform but because reform was "in the air" with One major project for example involves the design of new laws necessary to advance and protect privacy in Australia. The development of computing at the staggering pace that we have seen in the past fifteen years presents the law with multiple challenges which cannot be patched up by a bandaid or two administered by busy lawyers at the fag end of the day. Computer fraud and theft, the patent and copyright implications of computing, the privacy of personal records held in computers are only some of the problems that will require wide-ranging review of the law and, ultimately, its reform.

Likewise in a task which we completed last year, we had to examine the implications for the law of the development of ventilators which keep artificially "alive" those people mortally injured and who will, on the removal of support machinery, immediately die. Are such people in truth already "dead"? not, what is the responsibility in law of those who terminate their support?

One of the reasons for seeking out a new uniform law of defamation in this country is the simultaneous transmission of news across State borders which renders the maintenance of eight different systems of defamation law a blight on free speech

in our society. Broadcasting and television, the fast aeroplane and telefacsimile all render outdated and inconvenient the present legal arrangements in this country on publication law.

The use of modern breathalyzers to put at rest battles of impressionistic evidence point the way to the future. Proposals made by the Law Reform Commission for the tape recording of confessions made to police, the videotaping of identification parades, the use of telephone superintendence by judges and magistrates of urgent police decisions and so on all have common themes. Some may see them as dangerous innovations and substantial modifications of the law. We see them as the endeavour to bring the legal system face to face with the challenges and opportunities which technology presents. Of course, lawyers can ignore these challenges and opportunities and content themselves with minor adjustments here and there, merely tinkering with the legal machinery. It is my view that this will not be possible in the future. Nor would it be desirable. The dazzling advances of science and technology, some of which will spring from the minds of graduates of this Institute, will demand major review and reform of the law.

It is for that reason that I am delighted to see the establishment, within the Institute, of a Faculty of Law. Needless to say the Faculty members have already shown themselves keenly interested in the reform of the law and of the interdisciplinary contact which this Institute will provide for lawyers of the last quarter of the twentieth century and beyond.

CONCLUSION

The isolation and self congratulation of the professions will give way to interdisciplinary dialogue, including in the framing of the law. In designing the Australian society of the future, technologists and scientists cannot develop their skills washing their hands of the social and ethical consequences of the work they do. Were they to do this, they would deliver us all to the authoritarian state. But lawyers must also lift their sights from self contented preoccupation with the past. They must play their part in renewi

the legal system, identifying and correcting its faults, never contenting themselves with injustice or irrelevance, adapting the legal system to the challenges and opportunities of technology.

The gift of education which you have received at the hands of this Institute requires you to spare a thought, even on this happy occasion, to these questions. May you be worthy of the education you have received here and conscious of the responsibility it imposes upon you to give the lead, beyond your professional pursuits, in renewing our society.

and the obligations of the law. We see them as the... with the... these lawyers can meet these challenges and opportunities... with minor adjustments here and there... it is by law that... in the future... advances in science and technology... which will spring from the minds of graduates of this...