

415

VICTORIA COLLEGE OF ADVANCED EDUCATION  
GRADUATION CEREMONY, SATURDAY 21 MAY 1983  
ROBERT BLACKWOOD HALL, MONASH UNIVERSITY, MELBOURNE

THE CRIMES COMMISSION AND OVERLOADING THE CRIMINAL LAW

May 1983

VICTORIA COLLEGE OF ADVANCED EDUCATION

GRADUATION CEREMONY, SATURDAY 21 MAY 1983

ROBERT BLACKWOOD HALL, MONASH UNIVERSITY, MELBOURNE

THE CRIMES COMMISSION AND OVERLOADING THE CRIMINAL LAW

The Hon Mr Justice M D Kirby CMG  
Chairman of the Australian Law Reform Commission  
Deputy Chancellor of the University of Newcastle

CONGRATULATIONS TO GRADUANDS

For some of you, this will be the only graduation address you will ever endure. Some will go on to post-graduate work. You will then have to put up with a second offering. Graduation addresses are, I am afraid, part and parcel of functions of this kind. In the nature of my job, I have to do a few of them. I have such a collection that no doubt some day they will become a proper subject of a PhD thesis. I believe that there are some graduation speakers who travel around the country armed with but one speech. And whether it is Townsville or Perth, out come the same tired old observations. You may not think much of what I am about to say. But at least it has been written for you, and you alone. But there is nothing that anyone can do to resist the graduation speaker. The academics in their finery are far too serious and dignified to walk out or interrupt if they disagree. For once academic disputation is momentarily silenced. Parents and friends would never dream of embarrassing the graduands by shouting the speaker down when he says something foolish. And as for the graduands themselves, they have a healthy cynicism about the graduation speaker. He is somebody forced on them by tradition. And education in Australia has plenty of traditions, which we just accept and rarely tarry to question.

You can take some consolation from the fact that I have had to listen to more graduation addresses than ever I have given. For five years I was a Fellow of the Senate of Sydney University. For five years I have sat on the stage as a Member of the Council of the University of Newcastle. In those ten years of service, I would have heard, I suppose, at least 50 graduation addresses. Fifty ceremonies such as this I have attended. Fifty times an Occasional Speaker rose in his place to address the assembled throng.

It is a sobering thought, as I stand before you tonight, that I cannot call to mind a single utterance of the 50 distinguished speakers. Not one item of distilled wisdom. No aphorisms. Not a single jest or pearl. People in my position do well to bear in mind the transiency of occasional addresses.

Nevertheless, there are four things that I have to do at the outset:

- \* The first is to express a proper sense of the honour which it is to be invited to take part in such a happy occasion. Here, the exams, the essays and tests are momentarily forgotten -- things of the past.
- \* Secondly, I should remind you of the significance of graduation ceremonies. They trace their form to the Medieval Church and to the laying on of hands : by which authority is transmitted from one generation of leaders to the next. Let us pause for a moment and reflect upon the seamless continuity of education. It is such a venerable, worthy and indispensable attribute of civilisation.
- \* Thirdly, I must congratulate the graduates. When you look back on your education it may seem an idyllic time. But tertiary education in Australia today has become more difficult. There are rules against failure to be circumvented. There are special burdens on part-time students. There is competition. There is uncertainty in the market-place. There are entirely new courses. These pressures and burdens have doubtless taken a toll. Tonight, the graduate is permitted a fleeting moment of uncomplicated self-congratulation.
- \* Fourthly, I have to acknowledge all those who have helped. The family, parents, friends, husbands and wives, children and colleagues have all played their part. The formal, structured education which began in the local kindergarten ends for most of the graduates here tonight. Only the school of hard knocks lies ahead.

On behalf of the community, I congratulate the graduates. I thank those who have helped them to reach their achievement.

#### THE PROBLEM OF CRIME

Having discharged my primary obligations, I could now sit down. But this would then be the shortest graduation address since ancient times. So I shall restrain the impulse. The time has come for me to say something of 'general significance'. The only requirement is that I have to be pretty brief in doing so : no more than ten minutes. Squeezing significance into ten minutes is not a gift that comes easily to a lawyer.

I suppose the legal story that captured the headlines more than any others during the week was the paper delivered by Mr Douglas Meagher QC to the meeting in Perth of the Congress of the Australian and New Zealand Association for the Advancement of Science (ANZAAS). Mr Meagher, you will recall, is leading Counsel for the Costigan Royal Commission. That Royal Commission is investigating the activities of the Federated Ship Painters' and Dockers' Union. In the course of its investigations, it has uncovered tax avoidance, breaches of the law and worse, evidence of organised crime in Australia. Mr Meagher took the opportunity of the rustic circumstances on the banks of the Swan River and the bemused attention of hundreds of scientists, engineers and technocrats, to lay before them certain evidence that has been turned up on organised crime. The Royal Commission has been most innovative in installing computers. These help the hard-pressed lawyers and investigators to sift through thousands of documents. They help to analyse chronologies, inconsistencies, the whereabouts of people, changes of name and so on. But the computers also help to link information in ways that it would take years, possibly generations, of ordinary investigators and manual systems to do. At the investigation phase, science is truly brought to the aid of the law. In his document, Mr Meagher concludes dramatically:

At present, organised crime is unchecked. It is out of control. In the taxation area it has now been assaulted. In other areas, the assault, if at all, is a mere flea bite. Its control in Australia is one of the challenges of this decade.

Whilst not being able exhaustively to catalogue every type of criminal activity, Mr Meagher listed the kinds of things that are occurring:

- \* a major crime organisation dominates the pornography market in Australia
- \* a major crime organisation dominates the prostitution industry
- \* Australian girls are being duped to join prostitution rackets in Asia and the Pacific
- \* attempts have been made to 'fix' football matches or at least winning margins in matches
- \* Telecom employees have been corrupted to instal batteries of telephones to service SP bookmaking operations
- \* gaming squads have been corrupted and have helped to protect SP bookmakers
- \* TAB accounts have been used to launder money from organised crime
- \* the introduction of TAB and licensed betting shops has probably not diminished the size of SP bookmaking operations.

The lesson Mr Meagher draws from this catalogue of problems, and others, is that a National Crimes Commission should be appointed. The laws should be changed and police forces should be upgraded. These views were reinforced by a number of commentators, including the Chief Commissioner of Victoria Police, Mr S I Miller. Mr Miller condemned those lawyers who were opposing reforms on theoretical grounds. But he reserved his special ire for those lawyers who were making money out of the defence of organised crime : presumably by appearing for those accused and interrupting their swift passage to punishment by defending them in the courts and relying on the law of the land in the process.

Yesterday came reports of Mr Justice Moffitt's paper to ANZAAS estimating that organised crime has probably doubled in Australia in the past ten years. Yet another paper delivered to the ANZAAS Congress by Profesor Duncan Chappell, formerly a Member of the Law Reform Commission, pointed to the symptoms of the erosion of police responsibilities. Chappell referred to the loss of police power by:

- \* the establishment of special investigators for the sophisticated work of corporate crime;
- \* the proposed establishment of the National Crimes Commission; and
- \* the repeated tendency in Australia to resort to Royal Commissions to investigate and examine matters that once would have been within the police domain. At the moment, we have at least seven such inquiries current in Australia — three Royal Commissions having been announced in the past fortnight. Some unkind commentators have even suggested that we are even seeing a 'lawyer-led' economic recovery.

#### THE CRIMES COMMISSION AND LAW REFORM

If you take the time to look at the reports of all of these papers, you would undoubtedly come away with concern. Some of the attentions of organised crime are undoubtedly being paid to old-fashioned criminal activities such as theft and arson. Others involve manipulation of new transactions, such as rackets in credit cards, tax fraud and so-called 'loan sharking'.

But perhaps the most startling thing is the concentration of so much organised crime in the area of so-called 'vice' crimes : prostitution, pornography, gambling and drugs. These are also sometimes called 'victimless crimes'. Now, I know that there are many who contest the lack of a victim. With prostitution, the prostitute may be a victim. She may be a victim of her life and of her circumstances. With gambling, other members of the family may suffer when the breadwinner becomes addicted. With pornography, some people, particularly young people, may be misused.

Rather than talk of 'victimless crimes', I should prefer to talk of crimes where there is no complaining victim. The prostitute will not complain, for this is her life. The customer will not complain, at least to authority. The SP bookie and the gambler, the secret casino and the pub two-up will not complain. The shopkeeper, the photographer and others involved in pornography will not complain. With some drugs, such as marijuana, the users will not complain. Indeed a very great number of the people who pursue these 'leisure' activities do not regard them as morally wrong. They regard the harassment of the criminal law as unjust -- just part and parcel of the risks of life : the obstacle course that must be run for the fulfilment of this or that pleasure.

As a society, we should reflect upon causes of crime, not just symptoms. We should ask why it is that Australians are so passionate about gambling. We should ask why massage parlours and escort agencies do such a very good business. We should ask why increasing numbers of young people especially turn to drugs. Is it not interesting to remember that Aldous Huxley predicted 50 years ago the development of a drug, 'less dangerous than alcohol', which would keep the general population in a happy stupour, taking their minds off the hopelessness of their situation?

The establishment of a National Crimes Commission is a matter of high public policy. Legislation to permit its establishment was passed by the last Federal Parliament. The Prime Minister announced on Thursday that he expected the Government would proceed with appointing such a Commission in 1984. The details are still under review. Obviously, Mr Meagher's paper to ANZAAS has provoked calls for the Government to proceed with the National Crimes Commission idea. The media seems universally favourable. Much public comment is favourable. In these circumstances it might seem to be something of a 'killjoy' of me to suggest a few cautious reservations:

The first thing I would say is that before we set out to catch all criminals we must make sure that we get a clear view of what is really criminal conduct. Most of the criminal statutes of Australia can trace their ancestry to the common law of England. Many of them have not been significantly reviewed this century. Some of them are overburdened with antique offences, such as burning of the Queen's ships enticing away females under 21 and setting fire to stacks of peat! Many of them reflect views of morality that are not now commonly held. One suspects that a significant reason for the growth of organised crime in Australia is the failure of our legislatures to attend to the reform of the criminal law. In the distance between what the criminal law says and what the community regards as wrong, lies the opportunity for organised crime. Here is where prostitution, pornography and gambling, marijuana and so on flourish. If large numbers of otherwise perfectly respectable citizens feel there is nothing significantly wrong in pursuing these activities, they will not be effectively restrained by

the criminal law. On the contrary, the intermittent, chance operation of the criminal law will simply provide the opportunities and incentive for the criminal element to flourish. It is very difficult, so it seems, to stop Australians gambling. You and I may think gambling the very definition of boredom. But it is a distinct and eradicable feature of Australian life. Laws may try to stamp it out, with the full rigour of the criminal justice system. But they simply tend to catch in their net bemused and surprised citizens. Many even get a shock when they find that they have broken the law. An example of this was the recent raid on the Sydney home of a well known jockey who was playing a card game at his home with friends. He was charged with a criminal offence. Most members of the Australian community would regard this use of the criminal law and of police as surprising, even perhaps wrong. The attempt to use the criminal law to enforce perceptions of morality which are not now held with general community consensus, tends to undermine respect for the law. It breeds cynicism on the parts of good citizens. It opens up the opportunities for corruption of officials. It is the very festering ground of organised crime.

Accordingly, as a law reformer, when I read Mr Meagher's paper, it struck me as vital that Australians should pay attention to the causes of the organised crime disclosed by him. We should also pay attention to the overload of the criminal law. We should ask ourselves whether we cannot remove some of the opportunities which result in organised crime. Let us by all means attack organised crime. But let us also attack it at its source by paying attention to the causes and not just the symptoms. Quite the wrong way to attack organised crime would be to catch up in computers, raids, phone taps and enhanced police powers and activities, the large numbers of otherwise good and decent citizens whose present activities may be criminal, but would not generally be regarded as wrong.

And secondly, we must be cautious of over-enthusiasm. If we had cameras at every intersection we could doubtless pick up a whole lot of jaywalkers. If we had extensive phone taps, we could discover many gamblers and SP bookies. If we had a spy in every street, we could soon flush out the prostitutes and their patrons. If we went back to the censorship of the 60s, we could soon clean up the pornography. The point is that Crimes Commissioners, with all their computers and powers, ultimately serve the society of the citizens we have. These are citizens with many foibles and curious ways. In Menken's phrase, they seem to be citizens unaccountably and annoyingly bent on having a good time. The criminal justice system, already overburdened, could simply not cope if Crimes Commissioners armed with computers and phone taps, hidden cameras and informers, really set out to 'clean Australia up'.

In short, in tackling the problems of organised crime, it seems to me we must tackle the conditions in which organised crime flourishes. That is a prescription for law enforcement. But it is also a prescription for extensive law reform.

Mr Hawke has said that the Crimes Commission will be established in 1984. George Orwell, in his book Nineteen Eighty Four, had a few warnings for us. Describing the way tyranny was perfected by 1984, he wrote:

By comparison with that existing today, all the tyrannies of the past were half-hearted and inefficient ... The invention of print ... made it easier to manipulate public opinion, and the film and radio carried the process further. With the development of television, and the technical advance which made it possible to receive and transmit simultaneously on the same instrument, private life came to an end. Every citizen, or at least every citizen important enough to be worth watching, could be kept, for 24 hours a day, under the eyes of the police and in the sound of official propoganda, with all other channels of communication closed. The possibility of enforcing not only complete obedience to the will of the State, but complete uniformity of opinion on all subjects, now existed for the first time.

Orwell, Nineteen Eighty Four, 211.

It is my hope that if we move towards a National Crimes Commission, we will not abandon the relaxed, civilised society, nor the legal system we have inherited from Britain. That system strikes a very special relationship between authority and the individual. Organised crime is a new problem. But it must be tackled in ways consistent with our traditions.

These are all concerns which should be in the mind of the graduates as they leave this hall tonight. They are in the vanguard of the generation that will lead Australia into the 21st century. As teachers they will mould the minds of the nation in the years to come. It is important that they should be concerned, as citizens, with the problem of crime in Australia. But it is equally important that they should defend the causes of tolerance and reform. The precious gift of education requires of them, nothing less.