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EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY
DINNER IN HONOUR OF JUSTICE KIRBY GIVEN BY
HIS EXCELLENCY THE AMBASSADOR OF THE FEDERAL REPUBLIC
OF GERMANY AND MRS WILHELM FABRICIUS
CANBERRA, 3 NOVEMBER 1983

OUR GERMAN CONNECTION

November 1983

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The Hon Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission

THE EXPLORERS

It is a special privilege to be the guest of a country that is a firm friend of Australia in the home of an Ambassador of high distinction and in the presence of so many good friends.

In a week I depart to attend, as part of the Australian Delegation, the General Conference of UNESCO, meeting in Paris. The contribution of the Ambassador as Permanent Delegate of the Federal Republic of Germany to UNESCO in 1977 and as member of the Executive Board of that organisation is well known to many Australians.

I will be joining Australia's Permanent Representative at UNESCO, the Honourable Gough Whitlam, AC, QC — a man who a few short weeks ago also sat at this table. Everyone who knows the former Prime Minister will know of his great attention to detail, especially historical detail. It is of history and of our German connection that I want to speak. It is a story worth celebrating. Yet, for one reason or another, it is a story insufficiently known and told in Australia.

Sitting at this table are three judicial colleagues for whom I have the highest respect and affection. They are Federal judges. They symbolise the national character of the Australian Federal judiciary. They come to their Federal posts from all parts of this continental country. At present all three serve in Canberra. But they serve the whole Commonwealth.

It is interesting to remind ourselves of the German links with the three cities from which they originate. They are proud links and should be remembered by us:

Justice Lionel Murphy is, like myself, a son of Sydney. The modern history of that metropolis began with the voyage of exploration by Captain James Cook RN. It is little known that on the Endeavour were two German-speaking crew members. The first Governor of New South Wales, Captain Arthur Phillip, had a great deal of German blood on his father's side. It was perhaps just as well. Phillip faced enormous tasks of organisation and control of the rustic colony. It required the German qualities of perseverance, organisation and sheer hard work to establish and control the convict settlement. In Sydney recently, the Premier, Mr Wran, unveiled a remembrance of Phillips' links with Germany. Phillips' great qualities have been insufficiently recognised in Australian history. Perhaps the Bicentenary will provide a new focus upon his skills and direct new attention to his links with Germany.

In Phillips' First Fleet also came Augustus Theodore Henry Alt. He had been appointed in 1787 as Surveyor of Lands in the new colony. On his arrival at Sydney Cove he became an Australian pioneer. Though he had been born in Germany in 1731, of noble German lineage, Alt served the British Crown for most of his adult life. But nowhere was his service more important than in the infant settlement in Sydney. He it was that developed the Tank Stream and planned the excavation of the sandstone bed that provided the water for the Sydney colony for the first 30 years of its existence. He it was that planned the road to Parramatta which still meanders along much of its original track. He designed many of the buildings of the colony's second city. He lived in Parramatta where he was universally known as 'The Baron', in recognition of his origins. He was Baron of Hesse Cassel. In May this year, the Chief Justice of New South Wales, Sir Laurence Street, joined in the tribute paid to Alt at his grave in the Anglican cemetery at Parramatta. A plaque was unveiled in his memory. Subsequently at a reception at Old Government House, Parramatta, the Chief Justice offered a handsome tribute to Alt and his contribution to the early life of Sydney, its surroundings and the pioneering days of Australia.

Alt was not alone. The first astronomer of the new colony was Christian Rumker, who arrived in Sydney in 1824. The botanists Amalie Dietrich and von Muller contributed notably to the study of the unique flora of the new continent. In fact, the German community soon flourished in Sydney. As elsewhere in the county, it became second only in number and importance to the colonists deriving their origins from the British Isles. In 1873, at a time of great German pride, German churches and a German Club were established in Sydney. The links of Sydney to Germany expanded as the Second Empire brought German trade and inventiveness to the four corners of the world.

Sir Gerard Brennan, when I first met him, hailed from Brisbane in Queensland. This city too has many German links. Perhaps the best known is that with the famous explorer Ludwig Leichhardt. Today it is known that a suburb of Sydney is named in honour of this dedicated pioneer of Australia. A species of the barramundi fish is named after him. And every Australian school child learns of his remarkable and courageous efforts to open up the new continent by exploration and discovery. In 1842, Leichhardt ventured north from Sydney to the infant colony at Moreton Bay. In 1846, he commenced the unsuccessful endeavour to cross the Darling Downs and to make his way south west across the continent. For this endeavour and for the discoveries on the way which he fully and methodically reported, he was honoured and rightly celebrated. In 1848 from the town that is now called Roma in Queensland, he wrote his last letter. Leichhardt died in the exploration of Australia. His remains were never found. But his perseverance, courage and systematic dedication to the task he had set himself stands as reminders of fine German qualities of which he was an exemplar and which he brought to Australia.

Sir Richard Blackburn came originally from Adelaide. Everyone knows of the connection between South Australia and the free German settlers. South Australia was established in 1836 with the arrival of the first free settlers from Britain. Within two years there arrived in Adelaide a vessel bearing the first German settlers in South Australia. They came at the invitation of the British colonists. Pastor August Kavel brought his determined and enterprising group of parishioners from Brandenburg with the hope of achieving a new life of economic promise and religious freedom in the great southern continent. Every Australian who has visited South Australia knows of the German townships scattered through the wine-growing district. In the 19th century, the English and German-speaking colonists lived side by side in a true example of multiculturalism. There was no endeavour to suppress the natural and proper pride of the German free settlers in their origins, their language, their culture and their history. Only when the jingoism of the First World War arrived, did these qualities suffer under the pressure of assimilationist policies of the time. Perhaps it is significant that South Australia has always had a strong reformist streak. Even under governments nominally conservative, South Australia has always been in the vanguard of social reform and imaginative legislative policy. I ascribe this phenomenon, in part at least, to the free thinking, independent German settlers who contributed so much to the early South Australian colony. In 1966, South Australia was the first State of Australia to enact an Anti Discrimination Act. It began a movement in law reform, the full impact of which we have not yet seen.

THE LAW

The links with Germany and with people of German blood and people who spoke the German tongue has also been strong in the Australian law. Augustus Alt was, in 1788, made a Justice of the Peace for the new Sydney colony. He participated with Judge Advocate Collins in the work of the Court of Petty Sessions in Sydney. He was also appointed a member of a Commission for the trial of pirates caught on the coast of New South Wales and he was made a member of the Vice Admiralty Court where he probably administered imperial laws that still operate in Australia. This situation may be changed now that the Attorney-General has referred the subject of Admiralty law and jurisdiction to the Law Reform Commission. In law reform, we never rush things.

The Australian Bench today has a number of judges with German blood. Sir Gerard Brennan's maternal grandfather was a German from Hamburg. Justice Howard Zelling of the Supreme Court of South Australia is proud to trace his origins to Germany. He is Chairman of the South Australian Law Reform Committee. He constantly reminds his law reform colleagues of the need to look beyond the common law of England and to search for lessons in the law of Germany. There are doubtless other judges who could be named. Justice Stephen Strauss of the Family Court of Australia is one Federal judge whose name springs readily to mind.

Of all the visitors we have had at Australian legal conventions in recent years, the most interesting, at least in my view, was Professor Dr Zeidler, Deputy President of the Supreme Constitutional Court of the Federal Republic of Germany. Dr Zeidler brought to this country an excellent knowledge of the common law systems of law and a subtle ability to call to attention the needs for reform. I will never forget the dramatic moment at the Hobart Legal Convention where he talked of the adversary system and the system of judicial inquiry followed in Germany. 'Of course, yours is a Rolls Royce system', he said. 'In comparison our German system of law is but a lowly Volkswagen. But how many can afford the Rolls Royce? And how many could afford a Volkswagen?' This telling question, which goes to the heart of much of the move for law reform in Australia today, caused a deathly hush to fall upon the assembled Australian lawyers. It is a question which is still being asked.

At a time when the Attorney-General of Australia is foreshadowing important reforms that will expand the obligation of Australian courts to look to broad statements of human rights, I have no doubt that, with increasing urgency, they will be looking for instruction to the Federal Republic of Germany where the courts have had more than 30 years' experience in tackling definition and enforcement of constitutional guarantees of fundamental rights.

The present Ambassador to Australia is himself a lawyer, the son of a lawyer and the father of a lawyer. He understands the need for reform of the law if the law is to serve a community in a time of unprecedented change.

Dr Fabricius has earned the admiration and appreciation of Australians in all walks of life. I well remember an address he delivered to the Australian National Commission for UNESCO on his period of service with that organisation. He left his Australian audience spellbound with his happy combination of intellect, humour and sound judgment. I sit with him as a member of the Council of the Australian Opera, chaired by the past Governor-General of Australia, Sir Zelman Cowen. So far as I am aware, he is the only non-Australian national invited to participate. This is not only a recognition of the marvellous generosity of the Federal Republic of Germany in support of the Australian Opera as a contribution to the Australian Bicentenary celebrations. It is also a recognition of his personal contribution to Australian cultural life. During his tour of duty there has been a notable increase in the attention in Australia to the wealth of German culture. The Goethe Institute is now much more prominent, calling to widespread notice the wealth of German ideas.

We are fortunate to have in this country so distinguished a representative of so distinguished a nation. It is, as I have shown briefly, a nation with many links with Australia — past and present. More than 300 000 Australians trace their origins to German-speaking countries. According to the last Census, more than 110 000 people in Australia were born in Germany. The German language is therefore one of the national languages spoken here in Australia by many of our people. The continuing impact of the German language, of German culture and German ideas, is assured by the abiding presence in our midst of so many people who trace their origins to Germany.

We are fortunate to meet together in this home, in the delightful presence of Frau Fabricius and as friends of Wilhelm Fabricius and of each other. May the friendship between Australia and the Federal Republic of Germany flourish!

Notes

Department of Immigration, Profile, 81. 1981 Census data on persons born in Germany.

A Grassby, 'The German Contribution to Australia', Address at the First National Conference on German Culture and Civilisation, The Goethe Institute, 1979.

L W Street, Address at Reception, Old Government House, Parramatta Constitution Day of the Federal Republic of Germany, 24 May 1983, mimeo.

L W Street, Address, Unveiling of Plaque in memory of Augustus Alt, Australia's first Surveyor-General. St John Anglican Cemetery, Parramatta, 24 May 1983, mimeo.

J Vondra, German-speaking Settlers in Australia, Cavalier, 1981.

Participants

H.E. The Ambassador of the Federal Republic of Germany and Mrs Fabricius

H.E. The Ambassador of the Republic of Korea and Mrs Kim

Hon Justice L K Murphy and Mrs Murphy

Hon Sir Gerard Brennan KBE and Lady Brennan

Hon Sir Richard Blackburn OBE C St J and Lady Blackburn

Hon Justice M D Kirby CMG

Mr Patrick Brazil and Mrs Brazil

Sir Richard Kingsland CBE DFC and Lady Kingsland

Mr G A Brennan and Mrs Brennan

Professor Ralph Slatyer AO and Mrs Slatyer

Dr Kurt Stockl

Mr Rodney Barnett and Mrs Barnett

Mr Ian Nicol and Mrs Nicol

Mr Chris Fabricius