



NATIONAL GOALS AND DIRECTIONS  
SYDNEY DINNER, TUESDAY 15 MARCH 1988  
Parliament House

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The Hon Justice Michael Kirby CMG\*

WHAT SHALL I RENDER?

We, a group of citizens, meet to reflect upon our national goals and directions. This dinner is one of many similar functions in all parts of the country. But it is most important because it is held in the oldest of our representative institutions, not far from where the modern history of our country began, 200 years ago.

Not long after Governor Phillip raised the Union flag, the Reverend Richard Johnson, the Anglican priest who had accompanied the First Fleet, offered the first Christian service in the new colony. He did so in the presence of virtually the whole of the company of convicts and prisoners alike. It is well known that he took as his text the passage from Psalm 116, verses 12 and 13:-

"What shall I render unto the Lord for all his benefits towards me?"

I shall take the cup of salvation and shall call upon the name of the Lord."

To some of the motley band listening to that sermon it must have seemed an unusual text to choose. Those who were prisoners might not have so readily perceived the benefits received from the Lord. Yet all had survived the long journey to an unknown continent where they found a temperate climate and were to find many blessings.

We too should count our blessings, two hundred years on:

- \* We have the law administered by independent judges in the courts, long established. And yet, because of the frequent failure of reform, some of the laws work an injustice. And, despite enhanced legal aid in recent years, many citizens cannot afford to assert and enforce their rights. For the very rich and very poor access to the courts is more of a reality than for citizens of middle Australia.
- \* We live in a world in which global war has been avoided for an unprecedented respite. Our national government has taken innovative steps to further the cause of disarmament. And yet we exist on the edge of a nuclear precipice that threatens all civilization with an annihilating catastrophe. And those who advocate a sense of urgency about our predicament are all too often denounced as "fellow travellers" or "woolly headed do-gooders".
- \* We have a constitution which is old by the standards of the world. It is stable and speaks with the authority of

continuity. And yet, because of the failure of so many referenda, Australia has been described by Professor Sawyer as "constitutionally speaking, the frozen continent". For constitutional change we have had to rely upon the uncertain probability of judges adapting the language of the text, sometimes beyond the wildest dreams and expectations of the Founding Fathers of the Commonwealth.

- \* We have parliamentary democracy and free and honest elections such as are enjoyed in only a small minority of the countries of the earth. And yet we see increasingly the loss of power of Parliament. And sometimes we see the disinclination of our elected representatives to look into the future, beyond the ephemeral opinions demonstrated in those polls.
- \* We have great institutions of learning - universities, colleges and schools and high standards of literacy. And yet by the statistics of the OECD in Paris, we have one of the lowest educational retention rates of any developed country in the western world.
- \* We have cathedrals and churches throughout this continent and the Christian and other religions messages have been preached continuously for 200 years. And yet, typically, our churches are often empty. According to Professor Hans Mol, Australia is the most secular nation on earth. Certainly, the census reveals a steady drift to agnosticism. 11% so declared themselves in the last census. And a further 11% declined to answer the

question on religion. The majority's true religion often appears to be secularism and the quest for wealth and pleasure. In the great mass of Australian society there appears to be a lack of reflection on the very purposes of life and on things spiritual. The hirdy-girdy of acquisitiveness is promoted at every turn.

- \* We have a generally orderly society, living together in general harmony and peace. And yet we see much evidence of serious social break down - of drugs, of short term relationships, of guns and of drunkenness, unemployment and despair amongst the young.
  - \* We enjoy a high standard of living by comparison to most countries. And yet we have slipped back significantly from our place at the beginning of the century at the top of the list. And Professor Henderson teaches that more than a million of our fellow Australians live below the poverty line.
  - \* We have abundant agricultural and mineral wealth. And yet we have all too often neglected our environment which frequently suffers erosion and despoilation and we have often failed to plan for the future or to show compassion for stock animals bred in vast forbidding lands of uncertain pastures. Cruelty to animals can extend beyond the beloved domestic cat and dog. All sentient things can feel pain - including sheep and cattle. Yet the very mention of this truism can raise the temperature of certain vested interests.
  - \* We have a generally free press and a media willing to
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criticise the government and opposition of the day. And yet, increasingly, our media are taken over in giant battles between wealthy proprietors. The number of our news outlets declines. Yesterday two more established journals closed. And we see the media outlets in our country in the possession of three or four groups who are thereby assured of an enormous and quite unprecedented influence in the moulding of public opinion and the establishment of public values. In an age where technology provides the opportunity for such diversity of information, the Australian concentration of ownership and control of it is an astonishing paradox.

- \* We have free enterprise and business and industry which is working in a climate of decreasing regulation. And yet by world standards we invest a very low proportion in research and development. We produce relatively few engineers and scientists. In a recent OECD report we were described as "well out of step" with other wealthy countries in R and D. And for too long we have hidden behind tariff barriers and other forms of protection, the price of which we are now collectively paying.
- \* We are a multicultural society of amazing diversity. In such a short time people from so many lands have come to Australia and settled here. No longer do we attempt to assimilate them, suppressing all elements of difference in the rich tapestry of culture which they bring to Australia. Multiculturalism is the accepted philosophy of the major political parties. And yet, if we visit the

outreaches of our large cities it is not hard to find evidence of discrimination and race hatred. And if we look at the positions of leadership and responsibility, it is rare to see a black or Asian face. The Anglo Celtic ascendancy prevails, virtually unaltered.

\* We have institutions for the reform of the law and the improvement of society. And yet, all too often such bodies are used by governments of all persuasions to postpone and not to assist in decision making. All too often their reports are pigeon holed and action upon them is neglected.

\* We have had no civil war and virtually two centuries of peace in Australia. And yet our troops have fought in many foreign wars, some of which seriously divided our people. And local tranquillity is not unalloyed. In the view of some, a great injustice has been done to the indigenous people of Australia which it is now the purpose of an important national movement to redress and correct.

There is no doubt that the many blessings we have received warrant a positive reflection in the Bicentenary year upon the text chosen by Richard Johnson. Our society doubtless has many defects. But there have also been many benefits.

#### ABORIGINAL BICENTENARY

It is impossible to reflect upon this time in Australia's history without mentioning our relationship with the Aboriginal people of Australia. I know that some commentators claim that they have had a "gutful" of the consideration of this issue.

Perhaps they even speak for a majority. But that does not make their reaction right.

It was inevitable that the Bicentenary should be more than parties and tall ships. That was why, when the Australian Bicentennial Authority invited me to prepare an essay for its journal, I chose to do so on two themes which seemed to me to be vitally important. The first was our relationship with the Aboriginal people. The second was our relationship with Britain. These are the two themes which necessarily spring to mind from the event of the 26th of January 1788.

You can imagine my surprise when the Australian Bicentennial Authority rejected the publication of my essay claiming that it was too controversial. The attempt of some to keep the Bicentenary on the level of fireworks and parties was bound to fail. It is one of the blessings of the society that has been established in the 200 years since 1788, that the endeavour to suppress opinions such as mine failed dismally. My essay was published in numerous places, including in the popular press throughout the country.

Every Australian who reflects upon the state of Aboriginal Australia and the events of the last 200 years will find cause for concern and for action.

\* Unlike other possessions of the Crown, no treaty was made with the Aboriginal people to guarantee their land rights and to provide for the protection of their culture. The result of this, together with the impact of alcohol and much indifference (not to say many positive acts of murder) has been a great assault upon the cultural



heritage of the original inhabitants of this land.

- \* As is well known, the levels of imprisonment of Aboriginals in Australian jails is shockingly high. They have 16 times the level of imprisonment in proportion to their population than have other members of the Australian population.
- \* The numbers of deaths of Aboriginal prisoners in custody has become an issue of such concern that a Royal Commission has been established to inquire into its causes. Already it is clear that they are very complex.
- \* The health problems of Aboriginals are still a cause of basic concern. Tracoma, a preventable disease, is prevalent amongst the Aboriginal people in many parts of Australia. Malnutrition, lack of hygiene associated with poor housing and now the danger of the spread of AIDS present a major public health challenge to a generally prosperous nation.
- \* Although there have been advances in education, the number of Aboriginal graduates in our country can be counted on the fingers of two hands. The Aboriginals in key positions of responsibility and power are fewer still.

There have, of course, been many improvements in recent years and under governments of differing political persuasions. But a very great deal remains to be done and every thinking Australian should be aware of the ethical imperative to translate pious words into reformative action. In the eye of immortality, 200 years is but nothing. Yet it is

time enough to make mighty achievements and still to do serious wrongs. The Prince of Wales in his address at Sydney Cove on 26 January 1988 declared:-

"A country free enough to examine its own conscience is a land worth living in, a nation to be envied."

We should turn the Bicentenary into an examination of our collective conscience. Nothing less will do.

#### RENEWAL OF PARLIAMENTARY DEMOCRACY.

As I have said, we are privileged to meet here in the mother of the Australian Parliaments. We do so on the eve of an election in which we, the People, have the privilege to choose our government. We meet in the presence of representatives of the major political parties who vie for our confidence. Parliament, for all its faults, is the palladium of the people. It is where many of our problems and defects can be addressed - and a few of them solved.

Parliament remains the great centrepiece of our democracy. But its power has rapidly declined in recent years and I see no sign that the tide is turning. Unless reforms are introduced, it is likely that the influence of parliaments in Australia will continue to erode in the century ahead. And that would be a tragedy for democratic values in our country.

The features of the decline of our Parliament are well documented. Power has been lost to the Executive Government. Increasingly in the past ten years even the Executive Government has lost power to the Prime Minister or Premier. The media often encourages this by the personalization and trivialisation of issues, often apparently to provide news in the form of entertainment.

Parliamentary power has also been lost to the bureaucracy. The complexity of modern government has resulted in conferring more and wide discretions on an ever-increasing army of administrators. Lately, there has also been the loss of power to the judiciary. Judges continue to play an expanding role in our country: Royal Commissioners; Commissioners of Special Inquiry, Human Rights Commissioners, Chairpersons of the Grants Commission, Legal Aid Council, Administrative Appeal Tribunals, even the National Crime Authority and Judicial Commission. In a country where there is so much to do and so many other people doing it, it is a sadness that parliamentary backbenchers who have devoted such energy to political life, are not better utilised.

There is a Catch-22 in this. If trivia, loyalty and responding to division bells become the chief virtues of the backbench paragon, people of originality and ideas will look upon the parliamentary life with distaste. That attitude will only be reinforced by the daily reports of personal denigration, the loss of personal and family privacy and the other thankless burdens and calumny we tend to heap on our political representatives.

There are many practical reasons which I recognise for the diversion of power from the elected assembly to the Cabinet, the bureaucracy and the judiciary:-

- \* Parliament tends to be slow-moving whereas the other organs of government can often react with relative speed;
- \* Some modern issues are specially complex or technical and more suitable for expert resolution;

- \* Parties in government, especially after years in Opposition, are all too often determined to play the game as it had been played against them;
- \* Sometimes, when given opportunities, Parliament fails to deliver the goods.

The Law Reform Commissions - Federal and State - have observed a significant instance of the failure of Parliament to respond to opportunities in the area of law reform. For years, the Commissions have been reporting to Parliament on important suggestions for law reform made by judges, official reports, academics, media and citizens. These suggestions have been collected as an appendix to their Annual Reports. Yet no parliamentary mechanism has been established in Federal or State Parliaments to consider them - rejecting those undeserving of support; but stimulating the bureaucracy to action on those considered worthy of attention. Instead, the suggestions, like so many copies of Annual Reports, are discarded. Their fate is the parliamentary garbage collection. We should surely do better than this.

If the Parliament were still a vibrant and active institution, relevant to a responsive democracy, I would have expected an institutional solution. Why ought there not to be permanent parliamentary committees on law reform? Why should the removal of injustice and the reform of the law be shrugged off or left to the bureaucracy? In short, why should members of Parliament, who go to so much trouble to get elected, accept such a passive role? Receiving, scrutinising, investigating

and deciding upon proposals for legislative reform, to stimulate the Executive, would be a worthy function for the modern politician. Instead, many backbenchers are content to be a postbox for constituent complaints. And even here they are being replaced by the Ombudsman and new administrative tribunals. The backbencher in the Australian Parliaments is losing the traditional role but has not yet found a modern relevant function.

Well, what can be done to improve our system of government in Parliament? The list is long - but I would certainly include:-

- \* a major review of parliamentary committees, especially to provide more detailed scrutiny of the quantity and quality of legislation;
- \* establishment of more parliamentary committees to investigate and report on neglected areas of economic, social and legal concerns;
- \* an increase in the number of sitting days of Australia's Parliaments, which by world standards are very low;
- \* revision of the end-of-session scurry which results in legislation made at sittings into the early morning hours;
- \* simplification of parliamentary divisions;
- \* overhaul of many parliamentary procedures which owe more to tradition than modern rational conduct;
- \* introduction of televising of parliamentary procedures;
- \* preparation by Parliament itself of regular news and analysis for presentation to the community through the modern media;

- \* reform by Parliament of its privileges and improvements of procedures for dealing with citizen complaints of abuse of parliamentary privilege by members;
- \* provision of better research facilities and more staff to parliamentarians;
- \* higher pay for fewer politicians - raised in quality and standing but reduced in number by a rationalisation of the levels of government and the size and number of our legislative bodies. By world standards we have more serving politicians per head than any other country. We need more quality than quantity.

There are many other reforms that could be introduced. If, as seems possible, the incoming Parliament in New South Wales will have some new blood, it may perhaps be hoped that some changes, at least, will be introduced.

True democrats must work to restore Parliament. That means defining modern, relevant and worthy functions for the parliamentarian of the future. Never forget that the politicians we elect in 1988 may still be serving us in the 21st Century. Times are changing. Let us hope for the sake of our democracy that our representative institutions change quickly enough.

#### CONCLUSION.

So that is where we stand on the Ides of March 1988. Many blessings to celebrate. Many defaults to cure. A great wrong to the Aboriginal people which it is our duty, as civilised people claiming spiritual values, urgently to

redress. An enduring challenge to our Parliamentary democracy which must be renewed and fashioned to meet the challenge before us.

Caesar neglected the warnings of the Ides of March. We should all remember what happened to him.

- \* President of the Court of Appeal. Formerly Chairman of the Law Reform Commission. Chancellor of Macquarie University. The views stated are personal views only.