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RIGHTS AND WRONGS

FOREWORD

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Foreword

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When I received the manuscript of this worthwhile book, my mind went back to the days, ten years ago, when I first became interested in the teaching of legal studies in the schools of New South Wales. To stimulate the memory, I extracted the speech which I delivered to the Australasian Commercial and Economic Teachers' Association at its conference in Canberra on 31 August 1979. At that time, I was still the Chairman of the Australian Law Reform Commission. Indeed, I was half-way through my nine year term. Raising the community's consciousness about the law, legal policy and the choices to be made in the reform of the law was a major aspect of that office, as I conceived it. Stumping the country from one conference-room to another was the counterpoint to scholarly work on the technical reform of the law and pouring over legal texts. I lost count of how many chicken legs I consumed in the service of law reform.

I can still remember the lecture-room in which I delivered my address in Canberra. It was a kind of science laboratory and the smell of chalk and of blackboards was everywhere. For many of the teachers, I was the first real

live judge they had met. Certainly, I was the first they had ever questioned. Alas, I fear I did not meet their stereotyped image of a crusty judge, weighed down with years and with the cares of office. But that was ten years ago.

If the law moves at a languid pace, the educational establishment is not much better. Ten years have passed. Half a generation of school students have passed through the educational system since we began calling for the teaching of legal studies in schools in this State. The ways of curriculum reform are wondrous slow.

It is not as if the arguments for the reform were unconvincing. On the contrary, they were as powerful in 1979 as they are, now, that the new curriculum has at last been adopted. The teaching of legal studies in schools was already well advanced in Victoria a decade ago. There were then some 14 000 Year 11 students in approximately 250 secondary schools studying it. Only English, a compulsory subject, and biology and Australian history outranked the subject as an option of choice. It was gradually being introduced in South Australia, Western Australian and the Territories. In Tasmania, where it was also later introduced, the whole idea had been condemned in Parliament by Mr G A Pearsall (later Deputy Premier of Tasmania). He saw legal studies in schools as giving way to "all sorts of trouble":

"People get themselves into major contractual dangers with a basic insight into the law. They will walk about thinking they know sufficient about the law and do things themselves."

But this was not what the proponents of Legal Studies had in mind at all. The High School Education Law Project (with the fetching acronym HELP) initiated by the Law Foundation of New South Wales did not favour the study of particular areas of substantive law. Instead, it aimed at giving a "legal dimension" to subjects already being taught. No doubt it was this debate about the level of the introduction of legal studies, and the degree of detail in which it should be taught (together with the training of teachers) that held up its introduction for ten long years.

The central theme of the course is stated in the curriculum to be "the inter-relationship between the concepts of justice, law and society". The attention to continuity and change and the adoption of an historical approach is entirely appropriate. Our legal system is itself the product of adaptation and development for 200 years in this country; and for 600 years before that in Britain.

I confess now, as I did to that busy conference ten years ago, that my objective in promoting the study of the law in schools was fundamentally political. If the law is seen as the lawyers' business - the concern of judges and a few other people rushing around in black robes, horsehair wigs or three-piece suits - it is easy to convince oneself that there is nothing one can do about injustice. Such burdens, like "the law's delay" must just be shrugged off and accepted. The whole point of my decade in the Law Reform Commission was to establish the fact that we are all

responsible for the system of law we live under. Out of a knowledge of the basic rules of the law will come a sense of involvement in it and a feeling of obligation to right wrongs. Such wrongs do not generally occur because of the passage of wicked laws by Parliament or the development of such laws by judges. Usually, injustice arises because the circumstances in which an old law was made have changed or because the law books are silent on a new problem. This is where law reform comes in. We must inculcate in our society an insistence upon the constant updating, simplification and reform of the laws we live by. A community in which a sizeable number of citizens have some exposure to the law's institutions, procedures and basic rules may be a community which is more sensitive to the righting of wrongs and more insistent that its representatives in Parliament attend to that obligation. It has always struck me as a trifle unrealistic, even absurd, to insist that everyone is deemed to know the vast body of the law when (until now) our community has done precious little to bring its basic rules to the attention of its citizens. It has also seemed a trifle unconvincing to boast of the rule of law, and of a government under law, without paying attention to the justice of the law which is thereby enforced.

This is why, for philosophical and practical reasons, the introduction of legal studies into the New South Wales educational syllabus is to be welcomed. Of course, one could have particular criticisms of aspects of the syllabus as

finally settled. Perhaps it panders to another stereotype by the very great emphasis which it places upon criminal law. True, this is exciting and interesting; but the first thing students will learn is that criminal law is only a small part of the law's operation. The large slabs of legislation relevant to consumers' rights may get down to a level of detail that even experienced judges and lawyers find it difficult to remember. The need to express the law in plain English is a new theme which should nowadays be given emphasis. The training of teachers who have a realistic knowledge of the operation of the legal system will be important.

And I hope that a regular feature of the legal studies course of every school will be visits to the Local Court, to see a jury trial and even perhaps to view the Court of Appeal or the High Court of Australia in operation. Our system of justice has faults. But its strengths include the continuing use of the jury to reflect community values and the fact that the courts are always open to any member of the public so that judges, whilst judging, can also be judged.

It took a long while to get the legal studies course in New South Wales adopted. This text is an important contribution to the success of the course. Never for a moment think that its pages contain mere words and dry-as-dust legal prose. They contain the rules by which we live together. The cases of conflict and violence, of business disputes and personal crises are frequently brought

for resolution according to legal rules. Far from being boring, the law is the very stuff of life. No doubt that is why legal studies have proved so popular in other States. I am confident that the same will prove true in New South Wales.

M D KIRBY

Court of Appeal  
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