

THE UNIVERSITY OF SYDNEY

CENTENARY OF THE FACULTY OF LAW

LAW GRADUATION CEREMONY

SATURDAY, 19 MAY 1990

FOR THE IDEALISTS IN THE "GREEDIEST PROFESSION"

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The Hon Justice Michael Kirby CMG Hon D Litt
President of the Court of Appeal of New South Wales
Chancellor of Macquarie University

HAIL AND FAREWELL

"nos habebit humus"

Not six months ago I stood in this famous Hall to applaud another graduation. Sir Hermann Black, doyen of Chancellors, received the Honorary Degree of Doctor of the University. He was presented to the assembly by the Vice-Chancellor, Professor John Ward, who stood where I now stand. On the stage was the Registrar, Mr Keith Jennings. In the body of the Hall were their celebrating families. Not six months ago. The happiness of this festive day must not be marred by a prolonged reflection on the terrible losses recently suffered by the company of this University. But I speak for every graduate, I know, in lamenting these losses.

To the young graduates, on the brink of professional life, these tragedies serve to illuminate the fragility of our existence. Let the ambitions that kindle in the breasts of the incipient judges, politicians and lawyers of the future be muted by a reflection on the transiency of all human achievement. All power crumbles away. The famous judges of today are mostly soon forgotten. Although it is hard to think of it on a happy occasion such as this, it is healthy to tame our aspirations by remembering that:

"Golden lads and lasses must
Like chimney sweepers come to dust"

The realisation of our mortality (something which not a few lawyers of my recollection have sincerely doubted) should affect the goals we set ourselves in life. An occasion such as this - and the circumstances in which we meet - are such as to encourage thoughts for the future. The mind flies away searching for it. Twenty-five years ago I was sitting in this Hall. I was then about the age of today's graduates. I would have regarded the dampening reminder of my mortality by a speaker as inappropriate - even slightly absurd. I sat on this stage then as a Fellow of the Senate. I had recently replaced Mr Roderick Meagher there as representative of the Undergraduates.

How the cycle of life moves around. Now we sit together in the Court of Appeal. Now a member of his family, my Associate, graduates this day. A hundred times I sat here listening to visiting speakers deliver the Occasional

Address. It is a sobering thought, as I stand before you today, that I cannot call to mind a single utterance of any of those hundred speakers. The graduation speech tends to be a rude interruption to an otherwise happy occasion. Solemn, serious words. As unwelcome as the banging on the gate in Macbeth.

Yet there are some happy things to be said. Thanks to the family and friends who helped to bring the graduates to this day. To the parade of teachers, stretching back to that hot February morning in the faraway first classroom. Do you remember the playmates of yesteryear? Do you recall the smell of chalk? Can you call to mind the earnest teachers to whom you owe such a debt? Think, at this precious moment, of the hours of lectures, the gallons of ballpoint oil and the mountain of coffee beans that combine to bring you to this day. It is a moment of pride, true. But the sensitive amongst you will observe the obligations that go with the achievement. In no profession are those obligations heavier than in the law. For the law, as a discipline, has an exceptional influence upon the lives of every citizen.

LAW SCHOOL CENTENARY

Whilst we are in a mood to remember, let us think too on the centenary of the Law School which has brought you to this ceremony. It is not the oldest. Melbourne and Adelaide preceded it.¹ But it is the cradle of legal teaching in the busiest legal centre of our country. It has had, I venture to suggest, the greatest influence in fashioning what

it is to be an Australian lawyer. From its earliest days it produced outstanding scholars. Among them, Evatt, Jordan, Spender and Barwick stood out. It attracted fine teachers who were influential far beyond their classrooms. Indeed the impact of Julius Stone is only now being felt fully. The generations of lawyers brought up in his realist school of jurisprudence now hold the highest offices of law and government.

Mind you, the School has not been an unqualified success. There have been mediocrities amongst the staff and plodders amongst the students. There have been bitter personal conflicts. Rote learning of cyclostyled notes, rather than a grasp of basic principles, lasted right up to my day. Many were the students who passed through its portals grasping their law like fast food in a crowded, impersonal cafeteria. In this respect the School, like Australian law, had not yet thrown off the inheritance of reading law at the Inns in London.

Even in my day, perhaps in yours, the Sydney Law School fell a long way short of the noble and idealistic conception which Joseph Story had when he accepted appointment to the Harvard Law School in 1829. Story was one of the most distinguished judges of the Supreme Court of the United States. He raised the status of the Harvard School merely by accepting a Chair in it whilst still a Judge of that Court. His vision established the model of systematic university teaching of the law in the United States. And this is what,

in a letter to his son, he said a lawyer should seek to get out of university education in law:

"A lawyer, above all ... should seek to have various knowledge, for there is no department of human learning or human art which will not aid his powers of illustration and reasoning, and be useful in the discharge of his professional duties. It has been the reproach of our profession in former ages, and is, perhaps, true to a great extent in our own time, that lawyers know little or nothing but the law, and that, not in its philosophy, but merely and exclusively in its details. There have been striking exceptions, such as ... Lord Mansfield and Mr Justice Blackstone. But these are rare examples; and too few to do more than establish the general reproach."²

Are we today immune from that reproach? In the history of law schools everywhere in the common law world there is a tension between those who insist that law schools must teach practical subjects (just as plumbers learn them)³ and those who see law as a true subject of university learning - a technique - the study of law "as a liberal art".⁴ Often the tension is fuelled by bitter conflicts between the insistent profession and determined academics.⁵

These are not good times for the intellectual in Australia. Universities are constantly told by governments that they must be more practical. But a mind crammed with rules does not make a good lawyer. The law graduate who has not paused to look behind the words of a judgment has not perceived the dynamics of our law. To deny the ambiguity of statutory language and to think of the legal art as purely mechanical is to miss its creative opportunities. Creativity

will be debased if those entrusted with the task do not even realise the privilege that is theirs. I say no more about the past. We dwell too much in that empire. This is a day for the future. It is my hope, as a graduate of this School, that its impending departure from its city fortress will symbolise a brilliant new era. Perhaps the best years of the School lie ahead and not behind it.

RECRUITS TO GREED?

So here we sit, festooned with colour. Music at our coming in and going out. And on the stage the embroidered cloths of Chancellors whose robes, suitably enough for this ceremony, derive from those of the Lord Chancellor of England. What should I say to these new recruits for my profession? With Yeats I say:

"Had I the heavens' embroidered cloths,
Enwrought with golden and silver light,
The blue and the dim and the dark cloths
Of night and light and the half-light,
I would spread the cloths under your feet:
But I, being poor, have only my dreams;
I have spread my dreams under your feet;
Tread softly because you tread on my dreams."

What then is my dream for the next generation of lawyers? It is an unashamedly idealistic one. It is a call to idealism and the service of the community. In that service, the law offers rare opportunities and glittering prizes greater by far than wealth in money and worldly assets.

A while back a splendid television documentary showed

lawyers at their best. Keep Your Eye on the Prize was the story of the civil rights movement in the United States in the 1960s. The indignities heaped upon Black Americans were justified by the "separate but equal" doctrine of the Supreme Court of that country, fashioned by lawyers.⁶ But it was never unanimous. There were always dissenting judges beckoning the Union to a juster, freer compact.⁷ Eventually the Supreme Court and the Congress acted.⁸ Theirs were grand symbolic moves. But it took humble practitioners in the North and the South to bring legal proceedings to enforce the law. It took judges of courage and determination to uphold the law. It took busloads of citizens to insist on and to proclaim equality under the law. It was a mighty time to be a lawyer, for the cause was righteous. There are similar lawyers - black and white - in South Africa today. Today, we look back at the terrible inequalities in the United States with astonishment and shame. But some United States lawyers can look with pride on the part they played in the civil rights movement. In that over-lawyered country, it was a triumph for the law. Especially for idealistic lawyers.

If you believe the popular press today you would think that none of that spirit survives amongst Australian lawyers of the 1990s. A recent leader in the Sydney Morning Herald declared that ours was "the greediest profession".⁹ Are you, the new graduates, mere recruits to greed? To be sure, there are many aspects of legal practice that still call out

for reform. The delays and costs in getting to the courts effectively exclude many of our fellow citizens from legal protections. It will be a great misfortune if the general practitioner available to ordinary citizens is swallowed up in megafirms in city offices, with time charging and a bias towards profitable tax and commercial work. In an age of megafirms and megabytes let us not forget that ours was once designated the century of the common man. The Federal Parliamentary Inquiry under Senator Chris Schacht is asking fundamental questions about us. I for one welcome its inquisition as most timely.

Some observers say that it is the very nature of our profession that lawyers will become greedy and amoral. To immunize themselves from the stress of the dramas lawyers must daily play out, they will retreat into a soulless world of dispassion. To advance the cause of the client who pays their fees they need a malleable conscience - one not too tender lest they prove unable to find an ardent advocacy for a dubious cause.¹⁰

DREAMS FOR THE GRADUATES

I recognise this criticism. Yet I have to tell you that there are many fine people in the law in Australia dedicated to the rule of law, a just legal system, legal reform and care for the disadvantaged. And there is still plenty for the Antipodean followers of the dreams of Martin Luther King to do in the law in our country:

- * To fight discrimination exhibited against a Vietnamese migrant;
- * To help a young person with HIV to make a will;
- * To defend the rights of the mentally ill;
- * To act skilfully for an Aboriginal community seeking to recover dignity in its own land;
- * To deal sensitively with an accusation of child abuse;
- * To understand the dire predicament of an injured worker denied compensation;
- * To uphold the ordinary citizen against the mighty bureaucracy;
- * To participate in the work of a community legal centre, law reform agency or legal aid body;
- * To lead the way, in gender-neutral language so that the symbols of the stereotyping of women are eradicated at last.¹¹
- * To protect our fragile environment in the face of the demands of "progress"; and
- * To take an interest in the state of human rights in the whole world around us.

It will be the privilege of the lawyers who graduate today to carry our old profession into a new millennium. Theirs will be an age of technology and internationalism. But the enduring obligation to stand up with courage, skill and idealism for the disadvantaged remains exactly the same.

To some this call to idealism will seem naive. They

will reject it. To them I say: Forgive this interruption to monetarist reveries. For you the dollar beckons. Good fortune in your chase.

But I believe that the majority enter the law with a passion for justice and in the hope of righting wrongs. For them, this is a word of encouragement. There are many wrongs to be righted. There are people and good causes to be served. The effort will sometimes seem forlorn. Many will be the discouragements. But keep of good heart. And refine your lawyerly skills so that a precise mind as well as a generous heart are lent to the service of justice. It is the genius of the common law that every one of us contributes to its mosaic. Individually, idealistic lawyers may lack power. But in concert we are a force to be reckoned with.

So at this precious moment, as we reflect upon the past and contemplate the unknown future, let us say with the Grace. For what we have received; and for what we are about to receive, and to give, may we be made truly thankful.

FOOTNOTES

1. A C Castles, "Law Schools Old and New and Their Impact on Australian Law" (1990) 64 ALJ 147.
2. Letter by Joseph Story to William Story, 27 January 1839, in W W Story, Life and Letters of Joseph Story, vol 2, 1851, 311.
3. See W Twining, "Pericles and the Plumber" (1967) 83 LQR 396. See also the comments of Gummow J in "Legal

- Education" (1988) 11 Sydney L Rev 439 at 441.
4. K. Llewellyn, "The Study of Law as a Liberal Art" (1960) reprinted in Jurisprudence: Realism in Theory and Practice, 1962, 376.
 5. See C Ian Kyer and J E Bickenbach, The Fiercest Debate: Cecil A Wright, The Benchers, and Legal Education in Ontario, 1923-1957, Uni of Toronto Press, 1987 and G Zellick, "The future of law schools?" (1990) 48 Law Society's Gazette, 2.
 6. Plessy v Ferguson, 163 US 537 (1896).
 7. Harlan J, ibid. On dissenting judgments see discussion in J L Campbell, "The Spirit of Dissent" 66 Judicature 305 (1983).
 8. Brown v Board of Education, 347 US 483 (1954).
 9. 21 April 1990.
 10. See R Jack and D Crowley-Jack, Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers, Cambridge Uni, 1989, Reviewed in C Goodrich, "A Problematic Profession" in The Nation, 12 February 1990, 205.
 11. See Madame Justice Bertha Wilson, "Will Women Judges Really Make a Difference?", Fourth Annual Barbara Betcherman Memorial Lecture, 8 February 1990, mimeo.