

CANBERRA AUSTRALIA DAY COUNCIL

NATIONAL PRESS CLUB, CANBERRA

FRIDAY 25 JANUARY 1980 1 P.M.

AUSTRALIA INTO THE EIGHTIES : THE CHALLENGE OF CHANGE

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

January 1980

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"THE FUTURE IS NOT WHAT IT USED TO BE"

My only claim to address you today is one of historical title. In a sense, I am the descendant of a singular group of elderly gentlemen who played a vital part in populating Australia in its earliest years. I refer to the Judges of England.

It is fashionable on an occasion such as this to speak in glowing terms of the achievements of the past and to look with optimism at the challenges of the future. At the risk of being unfashionable (something of a professional hazard with judges), I do not propose to do this. This is not to deny that we should draw a certain satisfaction from what we have achieved in Australia. It is rather that we should not be deceived into thinking that, having managed to survive almost two centuries, we will continue to manage, equally well, in the years ahead. Nor should our reflections on past achievements be allowed to pull us into a sense of false security or smugness: comfortably assuming that valued institutions, which have served us well in the past, will be able to respond to today's needs and to those of the future.

The French poet Paul Valery says that the future is not what it used to be. I wonder if it ever was? Throughout the ages, man has attempted to look into the future. This interest is reflected today in what has almost become a growth industry: "futurology". The reason for the popularity of

futurology may be that it is a commodity that can be easily exploited and popularised without any immediate prospect of the vendor being denounced as a charlatan. I believe we are all becoming thoroughly bored by futurology. Moreover, there are certain dangers in it. I cannot help feeling that our preoccupation with the past and with the future, is an escape from the present. Our endeavours should be directed to the challenges that are with us here and now. This is what will shape our future.

PERILS FROM WITHOUT; PERILS WITHIN

The problems facing us today, both at home and internationally, are formidable. When the First Fleet sailed into Sydney Harbour two centuries ago, an officer of the Fleet contemplated the "prospect before us" with "sanguine expectation". This prognostication has been overtaken by harsh realities. I imagine that there are few Australians today who are not concerned about the events in Iran, Afghanistan and Indo China and their implications for us as a country and as individuals. But these should not be our only concerns.

When the First Fleet entered Botany Bay, they were there not two days before the first perceived overseas threat to the infant colony arose. It did so in the form of French vessels under the command of Captain de la Perouse. The new settlers were thrown into panic and consternation. They immediately feared that the vessels were Dutch men o'war sent to dispossess the English from their newfound possession. Their fear proved groundless. The real challenge soon proved to be from within: from a hostile continent and the need to develop it.

The social forces at work for change in Australian society today are at least as powerful as those which galvanised England, two hundred years ago, to launch the Australian enterprise. They will be overshadowed in the weeks to come by our concerns about events occurring overseas, over which we have little or no control. But the forces at work for change within our society today will prove to be the more enduring and possibly the more intractable ones. The two great

today are the impact of changing moral and social values and the impact of science and technology on our world. They may be less visible than external threats. But they are nonetheless just as real.

THE BICENTENNIAL: CAUSE FOR PESSIMISM?

There are some who confront the prospect of our bicentennial with a distinct note of pessimism. Quite apart from international lawlessness, they point to the rising figures of perceived crime and the special threats to law and order which face us today. They point to terrorism and to the capacity of science and technology to render modern societies more vulnerable to the publicised activities of a few violent people. They also point to inflation and unemployment, particularly of the young, and to the fact that the new information technology of computers and telecommunications is not providing as many jobs as it displaces. Such jobs as it does provide are all too often in different places and suitable only for very few of the workers rendered unemployed by the onward advance of technology. The risk of alienation from orderly society and from commitment to our form of tolerant, parliamentary democracy is increased by these serious social and economic problems. It is a concern which is preoccupying many Western nations, not just our own.

A feature of the post-industrial society which has not so far attracted much attention in Australia is the vulnerability of computerised society to crime, accident, sabotage and terrorism. In France in 1978 an accident deprived a great portion of the country of electricity for 24 hours. In Italy in 1979 terrorists destroyed the national computer of motor vehicle registrations. The enormous potential for vulnerability which the new technology brings will undoubtedly give rise to calls for additional coercive powers to protect society against the widespread damage which accident, crime and terrorism can bring in the computer-fusion age. The special balance which we have struck in Australia between law enforcement and individual liberty will undoubtedly come under challenge in the name of protecting society from these risks.

At a time when we are faced with difficult economic and social problems, we are increasingly confronted by the realisation that the solutions which may have helped us to solve these problems in the past may not be satisfactory today. Furthermore, today we often have less time to find solutions and to respond to change. We are increasingly becoming aware of the fragility of our environment. Looking back into the past, we see the damage that has been done to the natural balance of this continent. The impact of European settlement has been an almost unrelieved catastrophe for Australia's Aborigines. The introduction of exotic species and diseases have spelt disaster for many of Australia's native plants and animals.

THE CHALLENGE OF CHANGE

Realism and healthy introspection requires, even on a national day of celebration, that we should confront these problems and consider their implications for the "prospect before us". There is surely cause for optimism. Already there is a growing realisation of the need to repair some of the damage that was done in the past, wittingly or unwittingly. There is a growing realisation of the need to come to grips, not only with the problems we have inherited, but also with those we have made for ourselves. Provided we display a willingness to face these challenges honestly, not to put short term expediency before long term interests and to give real expression to our oft proclaimed concept of democracy, we will be able to live the present and face the future with confidence.

My field of operations is a small part only of the life of Australia. But from the beginnings of our country to the time of its bicentennial, the law has had a special role here. Lord Hailsham has said that the banner of Western communities is the rule of law. We should be proud, as we celebrate Australia Day 1980 and as we contemplate our bicentenary that, for all the imperfections of our institutions and laws, we enjoy a system of government which has many distinctive and admirable features. These include general respect for the rule of law, a basically impartial administration of justice, an independent judiciary and

institutions which are established to scrutinise critically our laws and procedures: constantly seeking to improve them in an orderly way. Some of our laws were developed in an earlier time which was less responsive to the poor, the deprived the inarticulate and underprivileged. However, we in Australia are now committed, above Party, to a principle of reforming and modernising our laws to make them more just for all our people. These are precious features of our country.

We should dwell reflectively on our hard achievements, on the mistakes that have been made, and on the good fortune that has befallen us. We should not be prepared to live with injustice, in whatever form, whether it arises from indifference, intellectual dishonesty or prejudice. My hope for Australia as it enters its third century is for a nation willing to face squarely the challenge of today: the challenge of change.