

MACQUARIE UNIVERSITY

GRADUATION CEREMONY

23 MAY 1980, 2 P.M.

UNDEREDUCATED AUSTRALIA

THE NEW HELOTS?

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

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INTRODUCTION AND CONGRATULATIONS TO GRADUATES

On an occasion such as this, a speaker in my position is obliged by tradition and common courtesy to do certain things. You will understand that, as a judge, following tradition is doing what comes naturally.

The first thing I have to do is to express a proper sense of the honour which it undoubtedly is to be invited by this University to take part in such a happy occasion. There are few obligations of public life more pleasurable than to stand with new graduates at the threshold of their careers.

The second thing to be done is to remind ourselves of the significance of this occasion. We gather here today in a ceremony at least as old as the Christian era to place before the international community of scholars, in a solemn ceremony, new recruits who have earned their laurels by a period of dedicated application to the study of knowledge. Inescapably in that study, the graduates have acquired discipline and a measure of wisdom. They are sent forth by the University to the

community, with the commendation of their degrees. They join the international society of tested scholars. The precise form of the ceremony traces its origins to the medieval church and the laying on of hands : by which authority was transmitted from one generation to the next. On an occasion such as this, it is important to pause and reflect upon the seamless continuity of scholarship.

Thirdly, it falls to me to congratulate the new graduates. It does not seem so very long ago that I was sitting in the same position, listening to an Occasional Address and wondering what the future held in store for me. There is no escaping this. It is a watershed in the life of the new members of the University. It is a time when at least one period of concentrated study is over. It is therefore a time when the scholar is permitted a fleeting moment of self-congratulation.

I am not so far removed from your position to have forgotten the rigours that are imposed upon those who pursue tertiary education today. When nostalgia sets in, it all seems an idyllic time. But in many ways life has become much more difficult today, not least in the Universities. There are quotas to be met. There are restrictions to be overcome. There are rules against failure to be circumvented. There are special burdens on those who study part-time. Always, there is competition to be faced. These factors have doubtless taken their toll, in one way or another, upon the young men and women who sit in this hall today.

In most cases, the burden has not been borne singly. The family, parents, friends, husbands and wives, children and colleagues have all played their part. They have helped to share the burden. The reward is here today. It is an occasion for proper, shared pride. That is why we involve the families and friends of the graduates in this ceremony of the community of scholars. It is a recognition of the contributions they have made to the achievement that is signalled by this occasion here today.

On behalf of the community and on my own behalf, I extend congratulations to the graduates. I also express thanks to those who helped them on the path to this culmination of their study. The formal, structured education which began at the local kindergarten ends, for most of the graduates, here today. The education in the school of hard knocks lies ahead. The community is proud of the graduates. It anticipates their service. It is grateful to those who supported them on the way to this occasion.

THE NEW HELOTS?

Having discharged my primary tasks, it is now my function to say something of general significance. The only requirement is that I must be brief in doing so. For five years I sat on the platform of the Sydney Great Hall as a Fellow of the Senate of that University. In that time, I attended at least 30 ceremonies such as this. 30 times an Occasional Speaker rose in his place to address the assembled throng. It is a sobering thought as I stand here before you today that I cannot call to mind a single utterance : not one item of distilled wisdom, no aphorisms, not a single jest or pearl of any of the 30 Occasional Speakers. People in my position do well to bear in mind the transiency of Occasional Addresses.

The first thing I want to say is aimed specifically at the new graduates. You are the lucky ones. You are the beneficiaries of an elite and specialist education system, which is enjoyed by few only of our fellow citizens. At our moment of self-congratulations, we should pause and ask : will the luck hold?

Can I now be permitted a classical allusion? As you will remember, in ancient Sparta (following the Dorian invasion of the Peloponnese,) the tiny, educated Spartan population held in awe a very large class of slaves of mixed racial origins known as the Helots. These slaves were bound to the soil and in most cases, put under the power of the small educated Spartan population. The Helots did the farming, dug the minerals and went to war in the service of the Spartans. Overwhelmingly, the

slaves outnumbered the Spartan citizens who were in constant fear of a Helot revolt. Each year on entering office, the judges of the Spartans (the Ephors) declared war on the Helots in order to justify beforehand the punitive state action that was frequently necessary to assert the power of the elite and to subject the Helots to that power.

Now come forward to modern Australia. We live in an age of remarkable technological and social change. It can be demonstrated (if it is not immediately apparent) in each of the disciplines graduating today. Above all, this is the age of new information technology : computers linked to each other by telecommunications, revolutionising the spread of knowledge and the distribution of power that attends knowledge.

How are we, in Australia, coping with this revolutionary age? I fear that the answer is not entirely reassuring. At a time of unprecedented demands upon knowledge and the intellect, I suspect that we in Australia may be falling behind in the world olympics of education.

The figures speak for themselves. The Organisation for Economic Co-operation and Development (O.E.C.D.) is an international body with headquarters in Paris. It comprises the countries of the Western community : Western Europe, United States and Canada, Australia, New Zealand and Japan. These 24 countries are those with which we in Australia have most in common. The similarity of our economies, our political systems and the stage reached in technological development mean that we can test our successes and failures very much according to how we are doing in the O.E.C.D. league. One frequently reads reports of where we stand in the O.E.C.D. inflation table. I want to call your attention to how we are doing in the O.E.C.D. education table.

In a document which will be included in the next Year Book of the O.E.C.D., figures are gathered on the education retention rates of O.E.C.D. member countries. They make sobering reading.

One table compares the numbers of 17-year-olds who are in full-time education in a secondary school. The figures are for 1976, the last year of available comparative statistics. In that year in Japan 88.1% of the population aged 17 was in full-time secondary education. In the United States the figure was 78.2%. In Australia the figure was 31.2%. In other words, only a third of our 17-year-olds were still at school compared to almost three times that number in Japan and more than twice that number in the United States.

Figures supplied to me by the Bureau of Statistics suggest that since 1976 our figures have risen a little. Listen to them :

1976	31.2%	
1977	32.0%	
1978	32.1%	
but 1979	31.7%	Back almost to where we started.

Of course, some Australians are already in tertiary education at the age of 17 years. But we can take no comfort from comparing the figures of 17-year-olds in secondary and tertiary education. They are :

Japan	88.1%
United States	84.6%
Australia	39.9%

In comparison to the United States and Japan, we are simply not holding people in further education. Some say we should not be concerned about this. Thinking citizens will be concerned. At a time of a technological revolution, which is affecting all countries of the world, the proportion of Australians pursuing tertiary education is less than a quarter of the equivalent numbers in the United States and Japan.

In these circumstances, as we celebrate this University Day, we should reflect on the Spartans and the Helots. Knowledge and education mean power. It has never been so necessary as it is today. University entrance figures are actually falling. I hope, both for our domestic social tranquility and for our safe place in the world, that we, in Australia, are not to be reduced in the world league to a country where a few receive

exquisite education at a high level while the overwhelming majority abandon education at an early age, effectively joining the ranks of the new Helots.

THE LAW AND CHANGE

I am sure the other graduates will permit me to say that this ceremony is special because it is the first at which candidates, who have completed the five year full-time Arts-Law programme, have had degrees conferred upon them by this University. It will be especially necessary for the new graduates in law to be alive to the challenges of change. Graduates in the School of Earth Sciences and in the School of Biological Sciences will be daily reminded of the new technology. Lawyers, if they are myopic, will have more difficulty in seeing the forces for change and perceiving their implications for the law and for its institutions.

One of the tasks which the Law Reform Commission has completed required an examination of the implications for the law of the development of human tissue transplantation. In the course of that study, it was necessary to propose a new legal definition of "death" in terms of irreversible loss of the functions of the brain. That new definition has now been accepted in two Australian jurisdictions and is under consideration in the rest. But this project only scratches the surface of the problems of a medico-legal nature which the law will have to face before this Century is out. Amongst others are :

- * The law on artificial insemination
- * The use of tissue from aborted foetuses to combat mental retardation
- * The use of cadaver pituitaries to combat dwarfism
- * Test-tube fertilisation of the human ovum
- * The patient's rights in clinical trials for testing new drugs and new cancer treatment
- * The patient's right to die.

Some of the greatest legal and moral issues of our time pose enormous challenges for the law and its institutions. Unless lawyers are alive to the forces for change, those institutions will not cope.

Other challenges are before the law. The development of computers presents problems for individual liberty and privacy which are now being addressed in most Western countries. Next month the Law Reform Commission will be proposing new laws for Australia on privacy protection. But privacy is one aspect only of the impact of computers. They raise problems for the criminal law (computer fraud and theft of information), the law of patents and copyright and evidence law : for who can cross-examine the computer?

Recent decisions of the High Court of Australia present a court generally disinclined to develop and stretch the laws we have inherited to the new moral, social and technological circumstances of today's Australia. Within the last year it has been held :

- * that prisoners convicted of a capital offence cannot sue in the courts, for they are 'corrupted of the blood';
- * that owners of sheep and cattle adjoining busy motorways have no duty to fence them in;
- * that conservation groups have no 'standing' to challenge breaches of the law in development applications; and
- * that Australians charged, even with serious criminal offences carrying a life sentence, are not entitled, as of right, to legal assistance to put their defence.

In the coalescence of three great forces, there are dangers for our country. If we cling lovingly to old rules, no longer apt for our time, our institutions and our laws will fail us. If we fail to adapt our society and its laws to the challenges of fast-moving technology, our institutions will fail us. If our citizenry are under-educated, when compared to the citizens of competing nations, how will we cope?

The gift of education which the new graduates have received at the hands of this University requires them to spare a thought, even on this happy occasion, for these questions. May you be worthy of the privilege of education which you have

received here and conscious of the responsibility it imposes upon you to give the lead, beyond your immediate professional pursuits, in renewing our society and making it sensitive to the needs of the poor, the inarticulate and the under-educated.