

AUSTRALIAN CONFERENCE OF PRINCIPALS OF COLLEGES OF

ADVANCED EDUCATION

ANNUAL DINNER, CANBERRA C.A.E.

15 JULY 1980. 8 P.M.

LAW, LAW REFORM AND COLLEGES OF ADVANCED EDUCATION

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

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COMMUNITY LEGAL EDUCATION

Until quite recently our society has done precious little to inform the average citizen about the laws by which he will be governed. John Citizen's exposure to the letter of the law was generally limited to a detailed examination of the motor traffic code and, if he was specially enthusiastic, the reading of an occasional notice received under the Hire Purchase Act or the equivalent legislation. From time to time, the citizen would read in the paper of the change in a controversial law. Knowledge about the detail of legal rights and responsibilities was very largely left to the lawyer, the expert and the unfortunate miscreant who, after things went wrong, found himself struggling to understand the laws' precepts and procedures, as they applied to him.

Recently, things have begun to change. If you think about it, it is a fantastic notion that everyone in society is deemed to know the law and yet no systematic attempt is made to translate this legal fiction into even partial reality.

In days gone by, when things were simpler, the gulf between fiction and practicalities may have mattered less. Society was more stratified and courts and tribunals (other than the criminal courts) were not really for ordinary citizens. The rules

of law themselves were very largely developed for the problems of the propertied class. They concerned themselves with property, its acquisition, transfer, devolution. People were less conscious of rights. In fact, they had fewer enforceable rights. Times change. Parliaments today, throughout Australia, enact each year burgeoning statute books containing highly detailed provisions with specific rules affecting all of us. Three years ago, we passed the thousand mark. One thousand Acts of Parliament were enacted by the Parliaments of the Commonwealth and the States. Things have not gone back since then. More and more law is produced. In addition to the Act there are the Ordinances, By-laws, Regulations: the whole penumbra of subordinate legislation with their rights and duties. And whether we are plumbers or architects, dentists or teachers, bakers or lawyers, we have one thing in common. We are all submitted to the discipline of law. And we are all deemed to know the law. Each and every ordinance, every regulation, every statute as it may affect us. Ignorantia iurii non excusat. Ignorance of the law is no excuse.

At last, there is a reaction to burgeoning law making. In part, the reaction is technological. Within the legal profession, the computerization of legal data is coming just in time to rescue the lawyer from the chronic inability to keep up to date with the law and even to find the latest amendment or judicial pronouncement that changes things, sometimes long established. Although computerization of legal data has advanced far in the United States and is now being done in earnest in Britain and in Europe, we in Australia trail seriously behind, with the trail end of the flock. True it is, the Commonwealth Statutes are now 'on line'. In the Law Reform Commission, we have used the computer to 'search' the Federal statutes and to establish the inconsistencies (to say nothing of the antiquities) which often exist. The start has been made to put the Commonwealth Law Reports on the computer, working backwards. These are the reports of the decisions of the High Court of Australia: our Federal Supreme Court now safe in its fortress not far from here. The computer is not up to date with the statutes. It has only just begun with the case law. It does not include State Supreme Court decisions. It does not include State Statutes. It does not include any subordinate legislation. It is not generally available to access outside the Commonwealth Service.

Outside the legal profession, exciting developments have begun in our schools. In every State of Australia, a beginning has been made to the teaching of law and law related subjects in the schools. The mode varies. In Victoria, legal studies is proving the third most popular optional matriculation subject. It involves the rigorous study of commercial and related law subjects, in some detail. In other States, and in the Capital Territory an alternative course has been adopted. Law related topics are being introduced into other studies. Students are at last learning about the legal institution of Australia, some of the most important of the rules that they will come upon in life and the machinery which exists for the reform and improvement of the law.

The Governor-General, who opened your Conference is, as you would know, both a distinguished educationalist and a distinguished lawyer. He was for a time a part-time Commissioner of the Australian Law Reform Commission. He has endorsed the teaching of law to non-lawyers in emphatic terms:

Taught imaginatively, it seems to me that [a knowledge of selected areas of the law of direct concern to ordinary members of society] can be a most valuable contribution to the understanding of social institutions. The task of teaching it well and perceptively and within appropriate limits is a very difficult one and the education of teachers themselves is very important.

The call for greater community instruction in the law is not a local aberration. Nobody wants to turn everyone in society into half informed lawyers, misguiding themselves on complex, specific laws. But in Canada, New Zealand, Britain and in our own country the obvious is at last being realized. It is unjust to submit citizens to a legal regime, of increasing complexity and detail without doing something to introduce them to the law. It is cynical to enact laws conferring rights and then to do nothing to inform people affected of those rights. It is oppressive to enact laws imposing duties, which go beyond simple matters of obvious right and wrong, whilst doing nothing to tell people about their duties, or at least where (if they are in doubt) they may ascertain them.

Every time you cross the road, every time you buy a bus ticket, every time you purchase a sandwich, drive your car, buy a home, fall at work, chastise a student or purchase shares, you are engaging in conduct about which the law has things to say. Despite popular misconceptions, the law is not simply the criminal law and the motor traffic law. The community which does not interest itself in the one social discipline which affects its every member, slides all too easily into the mischievous belief that responsibility for the state of the law is somebody else's concern. Lord Hailsham, the Lord Chancellor of England, has said that the banner of Western communities is respect for the Rule of Law. That respect is endangered unless it is based upon at least general familiarity with the main laws affecting citizens and how to go about securing access to the administration of justice. Lawyers all too frequently underestimate the impediments which stand in the way of ordinary citizens even going to a lawyer to take the first step in the long and often traumatic path of asserting and upholding legal rights. Removal of the mysteries of the law and of its machinery should be a high priority of a modern, educated, democratic society. That removal will not come about so long as ordinary people, including highly educated people, are, at the end of their education profounding ignorant of the rules by which they will be governed.

LEGAL STUDIES AND THE COLLEGES OF ADVANCED EDUCATION

Where do the Colleges of Advanced Education fit into my thesis of a community better educated in its legal rights and responsibilities? I am, of course, aware that some of the colleges have a direct and immediate present role in the preparation of qualified members of the legal profession. The New South Wales Institute of Technology has its own Law Faculty. We in the Law Reform Commission have had a close association with it. One of the members of the Law Faculty, Mr Godfrey Smith devoted his overseas study program to an examination of class actions in the United States and Canada. Class actions and whether they should be introduced in Federal courts in Australia, is a subject referred to the Law Reform Commission by the Commonwealth Attorney-General. The New South Wales Institute is fortunate in many ways. Not only is its Chancellor, Mr Justice Wotten, a distinguished Judge and Chairman of the New South Wales Law Reform Commission. The siting of the Law Faculty in an educational institution with the concentration on technology has led to interdisciplinary contacts which simply do not occur in the orthodox law school. Because I believe that many of the forces for change in the law today arise out of science and technology, I regard this development as a singularly happy one. The Law Faculty has, for example, launched an Australian first: The Journal of Law and Information Science. This Journal will examine the many aspects of the impact of computerisation on the law and I am pleased to be associated with the Editorial Board.

I know that the State College of Victoria has a residual role in legal education in Victoria and that the Queensland Institute of Technology offers full and part-time training in law and legal practice. The Capricornia College and the South Australian Institute of Technology also offer instruction in law-related disciplines. The Kuring-gai College of Advanced Education is now directly concerned in the legal practice courses offered by the College of Law in Sydney. I was delighted to read that Mr Justice Sheppard, Chairman of the Council of that College will be addressing this Conference tomorrow. As a barrister, I appeared before His Honour many times and I can only say that the Kuring-gai College is fortunate to have him at the helm. Having said this, I feel bound to add that the present position is limited and that the future of the Colleges of Advanced Education in the direct preparation of the professional lawyer for his discipline looks bleak. Despite the acceptance by the Tertiary Education Commission of the establishment of a School of Law at Flinders University, the proposal cannot be implemented. In the University of Newcastle, which has an extremely strong case for a law school to cater for the true growth region of the Hunter Valley, prospects of a law school growing out the Department of Legal Studies in the near future seem unhappily to be postponed. The Tertiary Education Commission seems to have accepted that no further schools of law as such should be established for the time being. It must be acknowledged that there are many young, qualified lawyers unable to find work of their first choice in the legal profession. Young solicitors today take on average several years to

catch up to the salary paid to a stenographer or word processing operator. So the future of Colleges of Advanced Education in the teaching of law related subjects does not lie in the direction of providing qualifications for the legal profession. But it does lie elsewhere.

The Canberra College, in which we meet, is an illustration of the way of the future. Law studies here began as a 'service' function. Units were designed to provide required knowledge for students taking courses in accounting and secretarial studies. Later law units became available to other students: those in administration, professional writing and so on. With the development of degree courses in social sciences, new units were developed so that the student could learn about the operation of the law, and the legal system in various areas of society. By 1979, 16 law units were offered in areas of commercial law, public law and law as it operates in society. These units could be taken by students in a wide range of courses. Law units became compulsory for students enrolled in courses in accounting, professional writing, secretarial studies, social sciences and court and parliamentary reporting. By 1978 seven members of the academic staff were employed full-time to teach law and a significant number of part-time teachers were also employed.

The development of the new administrative law in the Commonwealth's sphere by the establishment of the Ombudsman's Office, the creation of the Administrative Appeals Tribunal, the inauguration of the Administrative Review Council and the enactment of various new disciplines affecting the Public Service gave rise, in Canberra, to a specific need for training in this new growth area of the law. Indeed in this new area of law, trained non-lawyers may have a greater future role than practising members of the legal profession. Even those who had academic training in other disciplines face an urgent need for graduate training in legal studies. A graduate Diploma in Legal Studies was offered for the first time in 1980. Approximately fifty students enrolled. I believe these fifty are simply the pathfinders of those in many areas of the Public Service and private business concerns, who will find a need for instruction in legal institutions and specific areas of law.

But just as government employees must master the law so too must increasing numbers of executives in the private sector. The business community of Australia is today faced by a sometimes confusing and fast changing plethora of benevolent laws, often supported by sanctions which 'bite'. The Trade Practices Act and State consumer protection laws have revolutionized business in the course of the last decade. Legislation on door to door sales, pyramid selling, industrial conciliation and arbitration, contract law reform and so on confront the businessman. Often there is simply no time to refer matters to lawyers. The man on the spot must know how the new laws operate and what they say. This is a further growth area of law reform and several of the tasks before the Law Reform Commission illustrate the projects still in store.

But government and business executives are only a small part of the potential group for whom legal studies may be appropriate and even necessary. If I am right in my prognostications of greater teaching of the law in schools, and if pupils continue to vote with their enrolments in optional school subjects with a legal content, teachers of the future will certainly need specific instruction in the law. Paralegals generally will probably be required in greater numbers as demands are raised for readier access by ordinary people to courts, tribunals and legal rights.

One has only to look at the other occupations which are being confronted by rapid legal change to see other areas in which legal instruction will be required. In the paramedical disciplines, for example, it is scarcely likely that the age of organ transplants, test tube babies, large scale artificial insemination, human cloning genetic engineering and so on will go far without the need for specific legal regulation that will have to be learned and applied by those involved. The development of these laws has already begun. Based on a report of the Law Reform Commission, legislation has been enacted on human tissue transplant in three jurisdictions of Australia and is under consideration in the rest. The Standing Committee of Attorneys-General last week announced the adoption of a uniform regime for artificial insemination by a husband donor. Many legal and moral issues remain to be solved as biology presses forward with developments which confront mankind with new dilemmas. People in the healing sciences and people studying biology in the future will have a duty and the responsibility to make themselves aware of society's ground rules, expressed through the law.

As I look through the disciplines which are taught in the Australian Colleges of Advanced Education, there is scarcely one of them upon which the law does not impinge, I was almost prepared to concede Music. But even here the law of copyright and trade marks can be relevant to some. Whether it is accountancy or architecture and engineering, computing science or librarianship, psychology or social studies, the fast developing laws of our country are relevant and should enrich the education of those going into their special fields. Furthermore, the law as an intellectual discipline, worthy of study in itself and exciting and stimulating is not to be underestimated. It is not, as any lawyer knows, a dull, dusty, musty thing. It is about the conflicts and tension society and the way in which we adjust our relationships to live together in reasonable harmony, safety and tranquility.

I realize that before your Conference are many pressing issues, not the least of which is the issue you share in common with the Universities: a concern during this recession to ensure that graduates who have devoted themselves to disciplined study will find worthwhile, fulfilling, vocations. I was specially glad to be told by Professor Don George of the joint exercise you have with the Australian Vice Chancellors' Committee in the Graduate Careers Council of Australia. How fortunate is that Council in acquiring, as its chairman, Mr J D Norgard. I believe the future holds in store more

co-operation than has previously existed between all those engaged in tertiary education in this country. It is plain that by comparison to our neighbours and competitors, we are simply not keeping enough people in tertiary education. At seventeen years Japan can boast 88.1% in education. The United States can boast 84.6%. We in Australia trail along with 39.9% and the numbers are actually going down. These figures cannot be called to public notice too often.

I know that this Conference will not regard these figures and the immediate prospects of tertiary education in a spirit of unrelieved pessimism. We must show more innovative. We must shape tertiary education for the very different world of the future. That world will be made up of citizens with a greater interest to know their rights and duties. Colleges of Advanced Education of the future will have a role to play in fostering a community in which respect for the law is based on understanding and familiarity, not grounded in fear and ignorance.