

250

THE AUSTRALIAN ADMINISTRATIVE STAFF COLLEGE ASSOCIATION

ANNUAL DINNER, MELBOURNE

FRIDAY, 5 JUNE 1981

IMPROVING EXECUTIVES AND IMPROVING THE LAW

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

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I am delighted to have the opportunity to address this association of the alumni of the Australian Administrative Staff College. As it nears its first quarter century, it is appropriate and just that those who have had the 'Mt Eliza experience' should look back and reflect upon the achievement and problems of the Staff College. It is the oldest and best known of the post-experience training institutions for senior management in Australia. Each year about 480 participants pass through its courses, covering a wide spectrum of leaders of the Australian community. They come overwhelmingly from the private sector. But there are also representatives from the public sector, from the churches, the universities, from Parliament, from the trade union movement and from other organisations. Since 1957 more than 5,500 participants have been put through the rigours of the courses offered by the College. Famous and distinguished have been its sons and daughters. It is invidious to name names. But many of the names that could be mentioned are now household words in Australia: Sir Talbot Duckmanton, Mr. Alan Coates, Mr. Cliff Dolan, Sir Ronald Elliott, Sir Arvi Parbo, Admiral Synnot, Mr. Ken Steel and so on. My colleague in the Arbitration Commission, Commissioner Ken Turbet has complimented me by attending tonight. There are very many more who could be listed and acknowledged.

I suppose the special feature of the College has been its origin in the inspiration of a group of concerned executives in Sydney and its continuance without government funding since its establishment in 1957. Overwhelmingly, the College has been financed by private enterprise in Australia. Though scholarships and other support have been offered by the public sector, the College has continued as it began in the public spirit which led to the initial meeting at Sydney Rotary, where the idea of the College was launched.

Of course, like any other human institution, it has problems and weaknesses. The present Principal, Professor Bill Walker, has identified as 'gaping holes' the want of adequate, representative participation from women executives and from the trade union movement. The numbers of women participating in the courses are increasing steadily. But they are still under-represented in the College as they are in executive positions in the community. Trade unions face special difficulties in offering places for their executives, even where scholarships and other assistance are available. The trade union executive must constantly keep his eye over the shoulder for the rigours of democracy. In practice, executives in the private sector do not generally face this additional impediment to absence from the job.

THE SPECIAL FEATURES OF THE COLLEGE

If I can say so, as an outside observer who has attended and lectured at the College but never had the benefit of participating otherwise in its life, there are six features of its operation which I most admire.

The first is the interdisciplinary nature of its organisation. It brings together, for a short time, people from different disciplines who might otherwise never escape from the comfortable and reassuring seclusion of their own field of operation. People with different life experiences are thrown together for a short time in a situation that is not social and in which a sustained communication between them is possible. Whether they are from the medical profession, transport economics, political life, industrial relations, the churches or orthodox management, participants are encouraged to escape the familiar 'pigeon-hole' into which so many of us are forced by the age of specialisation.

Secondly, the intersectoral nature of the College commands my approbation. The College brings together people from public and private sectors, permitting by a brief interchange, the destruction of stereotypes. All too frequently people in the private sector see their colleagues in the public sector as 'fat cats' spreading their time evenly between cups of tea and political intrigue. I confess to having such stereotypes when I was first exposed to members of public administration in Australia. How wrong I was. Particularly at the top level (but not only there) administrators in the public service of Australia are people of the highest dedication, great intelligence, superior education, intrepid workers, sensitive and loyal for the great part and faced with enormous responsibilities that frequently transcend any that will be borne in the private sector. The meeting of private enterprise and government will reinforce the respect each has for the other. It will permit learning one from the other, including the learning of respect for the special qualities of service that exist in the public sector, and imagination and enthusiasm, the special features of the private sector executive.

Thirdly, the interstate connections which are achieved in the College are lasting and valuable. I have been told that it is always possible for alumni of the College to travel interstate and find, somewhere in the remote parts of this continent, colleagues who have previously passed through the College, usually in their own course or syndicate. All too frequently in Australia, particularly in my own discipline (the law), people are confined to their own States, indeed their own cities. Even the ease of modern transport has not substantially diminished this. Officers of the Federal administration and large corporations may be an exception. But by-and-large, we still tend to live as we did in colonial days, in the small isolated communities that grew up around the coastline of this large country.

Fourthly, the international character of the College is most admirable. Not only does it draw participants from overseas (especially South East Asia) but it has from the start encouraged its staff to travel overseas to familiarise themselves at first hand with developments in management training. Visits from overseas participants have been encouraged. It is easy in a lucky, remote and fairly prosperous country to sink into the sloth of myopic self-contentment : untroubled by the great developments that are occurring in our region or in the centres of the Western economies. It is vital in the field of endeavour adopted by the College that it should keep close contact with overseas ideas. It is equally vital that it should reciprocate by encouraging the participation of overseas people, particularly from the near North where so much of our future lies.

Fifthly, I admire the interpersonal communication which is possible in the way in which the College courses are organised. The syndicate method which stresses not teaching but learning encourages those who might otherwise be silent to relate to their colleagues and to communicate, in a small group, in a way that might not occur in the sometimes daunting format of the large classroom.

Sixthly, the interaction which is possible amongst people of different disciplines, different sectors of the economy, different States and different countries, communicating together is the vital element of the life of the College. From the interactions between participants will frequently come a testing of assumptions long held unquestioned, a testing of the objectives of the individual and of his organisation and a scrutiny of the philosophy which has hitherto been accepted and may never previously have been specifically identified.

All of these are tremendously valuable contributions to the life and work of senior management in Australia. As the College nears its 25th year, it is to be congratulated for encouraging the symbiosis between so many differing and disparate courses, producing a valuable catalytic action that cannot but have a profound effect on its participants, their organisations and our country.

THE LAW REFORM COMMISSION

I now turn to a brief description and comparison of the Law Reform Commission. It is a small body with 11 commissioners, 4 of them full-time. Some of the commissioners have been amongst the most distinguished lawyers of our country. Sir Zelman Cowen was a commissioner, part-time, until his appointment as Governor-General. Sir Gerard Brennan, the latest to be appointed as a Justice of the High Court of Australia, was one of the first part-time commissioners. The commissioners comprise members of the judiciary, of the Bar, solicitors and law teachers. One Commissioner is not specifically a lawyer (Professor Gordon Hawkins, a criminologist). The Commission has a staff of 20 located in Sydney. Of the 20, eight only are research officers. At any given time there are eight major projects of law reform before the Commission. It is a small investment in the nature of an efficiency audit for the law. The Commission does not initiate its own programme. It works on projects given to it by the Federal Attorney-General. A number of the reports of the Commission have been adopted by governments, both at a Federal and State level in Australia.

I suppose that the tasks given to the Commission of special relevance to business are those which require us to re-examine the laws of debt recovery in the new credit society of bankcard, credit cards and the credit reference system. It should be scarcely surprising that the law should be adjusted to the implications of the new regime for the extension of credit.

Our task on insurance law reform recently led to a report on the law governing insurance intermediaries (insurance agents and brokers). That task required us to consider closely the implications for law reform of the costs and benefits of various alternatives open to the Commission for the reform of the law.

Our project on class actions requires us to examine the means by which the legal process can be adapted to suit the mass production society. If a car or refrigerator or other goods and services are mass-produced with a defect giving rise to a legal cause of action, inevitably demands will be raised to provide legal machinery that will 'mass produce' the access to justice.

The Law Reform Commission is a small institution. There are equivalent State bodies in every jurisdiction of Australia. All of them are working busily upon the review, modernisation and simplification of the laws of Australia.

THE SAME METHODOLOGY

One interesting feature of the Law Reform Commission, to which I would call your attention, is that, by-and-large, it has adopted much the same methodology as the Australian Administrative Staff College. Of course, it is operating in a different field of endeavour and to different ends. But it is useful to highlight some of the points which exist in common between the approach adopted by the College and the approach that has been taken by the Law Reform Commission.

Take, first, interdisciplinary contact. In every one of the tasks of the Law Reform Commission, to overcome the bias of an overwhelmingly legal institution, the Commission seeks the appointment of a team of consultants from differing disciplines. These consultants sit down with the law commissioners to work towards proposals that will be sensitive not only to the concerns of lawyers but to the interests of other groups that will be affected by any change in the law. Thus, in the project on human tissue transplantation laws, we gathered together some of the top medical expertise of the country : experts in kidney transplantation, cornea grafts, general surgery, anaesthetics, hospital administration and so on. But we also had at our table moral theologians from a Catholic and Protestant point of view and a professor of moral philosophy. On one celebrated occasion a major seminar was held at Mt. Eliza with specialists in renal surgery.

In our current inquiry on the laws to protect privacy, we have gathered together top experts from the computing profession and from those organisations, public and private, which collect personal information. Wherever our inquiries may touch the police, we have representatives from Federal and State police forces sitting with us. In our project on the recognition of Aboriginal customary laws, we have experts from different fields of anthropology and from all branches of the Aboriginal community of Australia. In our inquiry into debt laws, we bring together experts from the Australian Finance Conference, the credit industry and consumer groups, including the Australian Council of Social Service. In a sense, this is Plato's idea of bringing together the top relevant talent of the country in the design of the law. Laws are not thrown together in a hurry by busy distracted administrators. Law reform if to last must be planned in close consultation with the various disciplines and interests concerned in the operation and administration of the new laws.

Secondly, intersectoral contact is assured by bringing together people from the public and private sector in a way that is not always done when new laws are designed. In some projects, of course, the interested bodies are overwhelmingly those from Crown service. Thus in the inquiry into police powers, various agencies of police, customs and the

like must be given the ear of the Commission. Similarly, the inquiry into child welfare laws involves consultation with health, welfare, police and judicial agencies. In an inquiry into compulsory acquisition of property, valuers, surveyors and departmental officers must be closely consulted. But in all of these tasks, too, people from outside government must have their say. In police powers, the practising legal profession, law teachers, representatives of civil liberties organisations and so on must be heard. In child welfare law reform, it is vital to go to the private organisations that are involved in help to children in trouble, to private day care organisations and so on. In compulsory acquisition law, environmental groups and individual citizens who have been the subject of acquisition must be heard.

So far as interstate contacts are concerned, although the Law Reform Commission is a Federal body, care has been taken in the appointments to the Commission to ensure a balance of representation from different parts of the country. Thus, at present, our number includes a judge from Tasmania, a barrister and solicitor from Perth, professors of law from Adelaide, a criminologist from Sydney, a Melbourne QC and so on. In all of our tasks, we conduct public hearings in each State and Territory of Australia before we finally report with our recommendations to the Attorney-General. We closely consult colleagues in State administration, where these are affected. We make contact with State organisations and branches of organisations where our proposals may concern them. We work closely and co-operatively with State law reform agencies.

Nor have we ignored the international stage. Quite apart from contacts with colleagues overseas, we are increasingly looking to the law beyond Australia for inspiration in the directions that reformed law should take. Accordingly, in our report on defamation law reform, we looked to the remedy that has been developed in Europe. In the place of a concentration on money damages, the European legal systems provide remedies that are more apt for the complaint of defamation, namely powers of the court to order correction of facts found to be false and rights of reply to those who claim they have been misrepresented. Our report, Unfair Publication, suggested the incorporation into Australian law of these beneficial European procedures. Similarly, in privacy protection, we are looking to the data protection and data security laws of Europe. European lawmakers, having gone through the damage that can be done by personal information systems, are more alert than most Australians to the dangers that can be caused and to the need for laws to protect the individuals against those dangers. Our relationship with overseas lawmakers has not been one of borrowing only. The report on human tissue transplants law has been translated into Spanish for use by governments throughout South America. It is some time since Australia exported legal ideas, particularly to that part of the world. We will surely see more of this. Our country should be known for its intellectual as well as its primary product exports.

Reverting to interpersonal communication, the Law Reform Commission has set about the task of demystifying the law. It conducts public hearings with a deliberately low-key style. The commissioners never sit on the Bench. They sit at the Bar table and talk across the table in a relaxed and informal way to those members of the public, lobby groups and powerful interests who come forward to criticise the tentative proposals of the Commission and to suggest improvements in the ideas for reform. Likewise, the Commissioners and I have not hesitated to participate in talkback radio and other like programmes to bring the work of the Commission to a broader community than has hitherto been possible. We will see more of this relationship between the law and the community. The new means of communication will assist. I hope that in due course of time the Australian Administrative Staff College will give thought to the ways in which it could broaden its influence by the use of the electronic media. It is inevitable that some members of senior management simply cannot take part in a residential course. It would be my hope that thought will be given to spreading the good influence of the College by the new means of communication. Furthermore, follow-up or continuing courses could be developed in this way.

Finally, so far as interacting is concerned, the Law Reform Commission has stressed the importance of interaction between lawyer, expert and layman. Great forces for change are at work in our society and in its laws. They include the growth of the size and role of government, the changing face and methods of operation of business, the changing moral and social values of Australia and, above all, the dynamic of science and technology. The microchip, the test-tube baby, nuclear physics, space-age travel : all of these pose problems for morality and society. But all of them equally pose challenges for the law, its personnel, its rules and its institutions.

The challenge before the Australian Administrative Staff College is the challenge before the Law Reform Commission. It is the challenge of change. Just as it is important for management and executives to respond to this challenge, so it is vital that the law and its personnel should do so. As the College moves to the close of its first quarter century, I congratulate it upon its achievements. But the challenges before the College in the next quarter century will be greater. It will be vital that the alumni and indeed all Australians in positions of responsibility should support the Australian Administrative Staff College and like institutions in the vital work being done to ensure that our country is equal to the challenge of change.