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AUSTRALIAN CAPITAL TERRITORY

HOUSE OF ASSEMBLY, CANBERRA

FRIDAY, 12 MARCH 1982

CANBERRA DAY ORATION

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

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ORATIONS ARE OUT OF FASHION

The giving of orations has gone out of fashion in Australia. You would all know that the greatest reputed orator in history was Demosthenes. In 330 BC, in a splendid speech, he rallied the citizens of Athens to oppose the military power of Philip of Macedon. The only trouble is that reputable historians estimate that his skilful rhetoric somehow managed to capture the attention of his audience for four hours. I have been allotted ten minutes. Not even Demosthenes could stir your hearts in so short a time. I doubt that I can attribute to you the patience of the citizens of old Athens.

In ancient Greece, oratory was one of the sports of the Olympic Games. The famed public speaker Lucian entered in the Games of 157 AD as a public speaker. As we look at the recent history of Olympic and Commonwealth Games, perhaps we are seeing a revival of the phenomenon of public speaking as an Olympic sport. Organisers might do well to reinstitute oratory in the official programme, in order to bring the otherwise frustrated speakers in from the cold. I suggest that a special prize should be given to orators who can keep their flights of fancy to ten minutes. No lawyer — and certainly no judge — would ever win that prize.

Like the Governor-General, I have spent some part of my time in universities. At Graduation Days, I have seen at least a hundred orators come forward to deliver the Occasional Address. A hundred speeches of distilled wisdom have been offered to the assembled throng. It is a sobering thought, as I deliver this address, that I cannot call to mind a single one of those speeches: no brilliant thought, no jest, no learned wit. The modern Australian Demosthenes does well to reflect upon the transiency of oratory in the age of electronic communications.

CA. BERRA DAY

The day we celebrate is the day on which, 69 years ago, Lady Denman named this city. To the stirring hymn 'All People That on Earth Do Dwell' she opened a gold case which contained the word 'Canberra'. The ceremony over, the telegram cable sent to the King, the toasts drunk and the oratory finished, most of the officials departed. Not a great deal happened for a further 14 years. We have Sir Robert Garran's assurance that this was because of 'the parsimony of the early Federal Treasurers and the reluctance of the comfortably housed Ministers and administrators in Melbourne to go pioneering'.¹ The intervention of the First World War and the First World Depression slowed progress. But despite the bickering and trickery that had led to the choice of this district for the national capital, the beauty and the suitability of the place was soon recognised. Garran again:

It is one of the justifications of the faith of the Founding Fathers, expressed in the preamble to the Constitutional Act, in Divine guidance. I doubt whether a better choice could have been made by a committee of disinterested Arcangels...²

You who live here know intimately the beauties and advantages of the place. Itinerant, metropolitan visitors like me are captured from their bustling streets for a few hours and confronted here, about them, with the authentic face of rural Australia.

OUT OF THE HOTOUSE

There was a time, not so long ago, when it was fashionable to talk of this Territory, in its beautiful natural setting, as a sort of hothouse of social experimentation. The urban, youthful, educated, mobile population was thought to be particularly suitable for legislative experimentation. Test it first in Canberra, it was said, and set the example for the rest of Australia. In the age of staff ceilings, budget cuts, razor gangs, monetarist policies and new federalism, such talk is now regarded as distinctly out of date. But it is important, as we abandon the hothouse, that we do not ignore the needs, including the legal needs, of Canberra and this Territory.

The Australian Law Reform Commission, though a national body, has devoted a good proportion of its small resources to the law reform needs of this Territory:

- . Our report on improving machinery for handling complaints against police through the independent Ombudsman has recently come into operation in respect of the Australian Federal Police here.

- . Our report on improvements in criminal investigation by police has led to a Bill currently before Parliament which will reform and modernise police practices in Canberra.
- . Our report on alcohol, drugs and driving has led to the reformed Motor Vehicles Ordinance of this Territory.
- . Our report on human tissue transplants, first adopted in the Territory, has now been adopted in a number of other jurisdictions and paves the way for other urgent efforts in the sphere of bio-technology.
- . Our report on reformed defamation laws, which would affect the local laws of defamation, is progressing actively through the Standing Committee of Attorneys-General.
- . Our report on the reform of the law governing sentencing of Federal offenders has resulted in a Bill and other proposals designed to improve the evenness of criminal punishment for Federal and Territory crime.
- . Our latest report on child welfare proposes significant changes in the child welfare law of this Territory, which is described in the report by various epithets, the kindest of which is 'antiquated'.
- . The Commission hopes this year to propose Territory laws for the better protection of privacy, especially of computerised personal information systems.
- . Other major projects on which we are working, relevant to this Territory, include reform of debt recovery laws, reform of the laws of evidence in Territory courts and the provision of fairer laws on insurance contracts.

YEARS THE LOCUSTS HAVE EATEN

In addition to these efforts, I have convened, with the approval of the Minister for the Capital Territory and the Attorney-General, a Criminal Law Consultative Committee for the ACT to propose reform and consolidation of the criminal laws governing Canberra. These laws are in a shocking state — the product of long neglect. Two earlier major efforts to reform them in the 60s and 70s came to nothing. It is hard to credit the fact that this Territory still operates on a criminal law borrowed largely from 1901 New South Wales, amended in a hotchpotch of scattered legislation — largely inaccessible, neglected, a source of uncertainty and confusion to police, citizens and the judiciary. The first batch of recommendations for modernisation, emanating from the new Criminal Law Committee, has been approved and will, I understand, shortly be presented to the House of Assembly. But progress is slow. As in all law reform, much depends on the resources devoted to the task. These resources simply reflect the priorities we give, as a society, to removing absurdities, antiquities and injustices from our legal system. It must be frankly said that in pecking order of national priorities, law reform, including for this Territory, comes rather low.

If more resources could be devoted to the improvement of the civil as well as the criminal law of this Territory, thought might be given to the appointment of a resident full-time law reform commissioner, specifically appointed to give attention to the law reform needs of Canberra and this Territory in addition to the Commissioners already appointed. Provision for such a Territory Commissioner is envisaged by sub-section 12(a) of the Law Reform Commission Act. Though a number of distinguished members of the Commission have come from Canberra, and though Dr. John Seymour, who led the child welfare reference, was resident in Canberra, the Australian Law Reform Commission has never had an office or staff here. The special needs of law reform for this Territory abound. There is plenty to do. Especially because of the governmental situation here, it is vital, as it seems to me, that law reform should be done in close and constant touch with the Canberra community : responding to its needs. A modest increase in the investment in community law reform for Canberra deserves the attention of Government. We should not be content with a city of splendid public buildings set in beautiful natural surroundings but governed by laws that are all too often the product of the years the locusts have eaten. We should all be concerned to ensure that our institutions for law improvement are efficient and well funded. Injustice to a fellow citizen is the responsibility of everyone.

SIR ZELMAN COWEN

It was suggested by the organisers that I should use this occasion to speak about our recent child welfare report. But if I were to start on that topic now, Demosthenes-like hours would have to be set aside. I shall find another occasion and, possibly, a more patient audience. Before resuming my place, I want to pay my own tribute to Their Excellencies. It was my good fortune, before Sir Zelman was appointed as Governor-General, to have his participation as a part-time Commissioner of the Law Reform Commission. It was then that I met Her Excellency and I enjoyed the wise counsel and friendly companionship of them both. Since becoming Governor-General, Sir Zelman has continued his keen interest in the reform of the law, which is essential for the good health of the Rule of Law itself. For their contribution to our national life, including in this city and for their tireless devotion to the cause of the ultimate unity of the Australian people under a government of laws not of men, I express heartfelt gratitude.

Well, there it is. Another oration. A classical allusion or two. A glance at ancient and modern history. A reference to contemporary society. A proposal about future needs. A personal remembrance. Above all, a tribute to our national capital and its sterling people.

FOOTNOTES

1. R.R. Garran, Prosper the Commonwealth, Angus & Robertson, Sydney, 1958, 282.
2. *ibid*, 283.