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THE UNIVERSITY OF NEW SOUTH WALES

COLLEGE OF FINE ARTS

IVAN DOUGHERTY GALLERY

THE PHALLUS AND ITS FUNCTIONS

Speech at the Opening of an Exhibition

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The Hon Justice Michael Kirby *

EXPENSE OF SPIRIT - WASTE OF SHAME

The conflict which is symbolised by the phallus is captured in Shakespeare's 129th Sonnet. I shall begin with it. Those who get nothing else out of this contribution will at least go away with the riches of the words of the Bard:

*"The expense of spirit in a waste of shame
Is lust in action: and till action, lust
Is purjur'd, murderous, bloody, full of blame,
Savage, extreme, rude, cruel, not to trust;
Enjoy'd no sooner, but despised straight;
Past reason hunted; and no sooner had,
Past reason hated, as a swallow'd bait,
On purpose laid to make the taker mad;
Mad in pursuit, and in possession so;
Had, having, and in quest to have, extreme;
A bliss in proof, - and prov'd, a very woe;
Before, a joy propos'd; behind, a dream.
All this the world well knows; yet none knows well
To shun the heaven that leads men to this hell.*

It is all said there. Heaven and hell. Spirit and shame.

Enjoyment and despising. Joy and cruel madness. It is the enduring function of the phallus to symbolise for humanity the conflict between selfish lust and tender passion.

I am aware that the symbolism of the phallus goes far beyond this. Jacques Lacan suggested that the phallus does not refer to the biological organ alone but also to an imaginary organ. This is the detachable penis that the child believes its mother to possess. In this extra sense, the phallus is actually represented by the mother. But in another sense it is a signifier of the law of the father. Insofar as he has the phallus. It is the object of desire.

In this exhibition we see illustrations of the phallus more as an imaginary than an actual organ: symbolising the relationship of men and women and indeed of all humanity. But we also see the phallus presented plainly as the signifier of maleness - the point of distinction of male from non-male.

There are great riches in this exhibition with a variety of works of art in different forms, exhibiting different aspects of the central theme.

Janet Burchill's sculptures stand erect in the centre of the rooms of the exhibition. They are large, straight-forward, strident. They stand bravely presenting an immediate challenge to the eye.

Merton Chambers' drawings of nature present the rampant sexuality of nature. Is it not strange how nature replicates, down to the tiny cell, the force of life? In so many forms, the penis and the phallus represent themselves, sometimes in nature's forms, sometimes in the imaginative conceptions of Merton Chambers.

Domenico de Clario was born in Italy. But he came to Australia as a boy. His wall of visual narrative was composed from bric-a-brac he picked up in the streets of New York where he recently

spent a time. From the point of view of the theme of this exhibition, de Clario's work is perhaps the most unapproachable. Not the slightest eroticism here: certainly no rampant sexuality. Perhaps it is merely an indication of how, in the ordinary objects of life, we see the symbols of romanticism and hardness. These are the symbols for which the phallus stands supreme.

Nan Hoover is an Australian artist who now teaches in Dusseldorf, Germany. Her expertise lies in the use of light in photographic and video imagery. Hers is a moving art-form, captured in video. She lets nature demonstrate its own eroticism. The curves of light and shade of nature replicate, in bodily form, the symbols for which the phallus conventionally depicts mankind's sensuality.

Maria Kozic has presented four items which symbolise male domination: the hammer; the bottle; the gun and the phallic symbol of the hand. These strong forceful works of art fit comfortably into the exhibition's theme. But why no actual phallus there? Would it be too direct? Would it insult the audience with its unadorned confrontation? Perhaps there was a need for the fifth image. Too often real art has avoided its actuality, despite its central place in life.

David McDiarmid's erotic posters show no such restraint. They serve a very practical purpose. They use the phallus for at least two purposes. The first is to bring messages of safe sex to a specifically homosexual audience. In the age of HIV/AIDS there are so many negative messages. But the safe use of the phallus has become an imperative in the preservation of life. Simple, direct, erotic messages are more likely to enter the mind and affect the behaviour of the viewer than reams of newsprint and earnest scientific papers. We in the law have been struggling for centuries to affect the behaviour of human beings at moments of pleasure,

particularly in sex and drug taking. We have enjoyed little success. David McDiarmid's posters may have a greater chance to burrow away in the minds of the viewer, stimulating the biochemistry of the brain to say no to unsafe sex and yes to condoms. And that is their second purpose. It is to present a sex-positive image. With so many funerals and so much suffering a message of the positive side of sex is timely. That is why the body on the poster is covered with the word "Yes". But let us be yes to safety as well as sex.

This then is our exhibition. A varied collection. To some it will not seem as confronting as the vivid title assigned to it would have suggested. Those who came here in the hope of an erotic experience will be bitterly disappointed. There is, of course, relief nearby. Within a kilometre are the bookshops and cinemas, the playhouses and other venues of direct phallic presentation. Here the images are more gently presented. Some of them may be more enduring. The glossy coloured books and the neatly packaged video-cassette bombard the eye with the actuality of the phallus. The purpose of this exhibition is to promote reflection upon the symbols of the phallus.

WE HAVE MADE PROGRESS

As I came here my car seemed to be surrounded by police-wagons travelling up Oxford Street with us. Could it be, I asked myself? Could it really be a raid? Perhaps the police intend to raid the Dougherty Gallery and confiscate the phallic symbols collected in this exhibition. We should not laugh. It has happened. And in the lifetime of most of us here.

The police cars tonight sped off in another direction - doubtless in pursuit of offences perceived as more pressing. Had a host of police officers stumbled into this exhibition they would, I fear, have been bitterly disappointed. What, for example, would they

have made of de Clario? There is rather more eroticism on late-night television than in Nan Hoover's images. Janet Burchill is wholly symbolic. You have to look twice to see a phallus. Maria Kozic's "hand" seems a long way from the phallus in the mind of the public official. Merton Chambers, with his banana tree, presses his fortune a little. Perhaps in David McDiarmid's posters - or at least some of them - there would have been the real live phallic symbols which so excited the law in days gone by. I fear only David would have been arrested, along with this presenter. The other entries would have been left in bemusement and betrayed disappointment or confusion. Needless to say, the exhibition would have become an outstanding success. Every item would have been sold at record prices to celebrate the notorious exhibition raided by the police. It was not to be so. These were merely my fantasies born of experiences nearly thirty years ago.

X It has always seemed to me surprising that there is so little representation of the phallus in art - at least in direct form. Indeed it surprises me not that there is so much here tonight. Of course phallic forms appear on the pottery of ancient Greece and in the Hindu temples where the lingnam is still bathed in milk and flowers as an ever-present symbol of fertility and sexual promise.

We are the inheritors of the Judeo/Christian tradition. If you want to know why Rembrandt and Turner presented not a single direct phallus in their paintings, the answer is clear. They were the product of the mores and of the religious beliefs in which they grew up. There is precious little to disdain sexuality in the Gospel of Jesus Christ. But St Paul, with the zealotry of the convert, soon began his extraordinary evangelical mission with its messages of sexual repression. Bishop Spong from the United States recently suggested in Australia that Paul's suppression may have stemmed from

latent homosexuality. However that may be, the message of a church of celibate priests nurtured in the Pauline epistles was one of extreme sexual modesty. Fundamentalism in all religions - whether Jewish, Christian or Islamic - has tended to be fundamentally anti-sexual. This is why we see such little evidence of the phallus in the paintings and drawings of the greatest artists of past times. One Pope permitted Michaelangelo to present his nudes with penis uncovered. But a successor took pains to provide fig-leaves and vines to cover the offending member. So it was also with the beautiful statues of ancient times. Raw sexuality - and even a hint of it - was suppressed. Pirate editions and covert drawings existed, to be sure. But, by and large, artists conformed to the public morality of the communities in which they lived. But they complied, doubtless, with their own sincere religious beliefs. But they also complied with the law.

LAW AS SUPPRESSOR OF ARTISTIC EXPRESSION

Be in no doubt that the law has played an important part in suppressing the representation of the phallus in art and in literature. When I saw the police cars apparently following me to this gallery my mind raced back to the case in which I was involved soon after my admission to the Bar. It is a reported decision so all who want to can see how far we have travelled in the past twenty-five years. They can read *Crowe v Graham*.¹ Our client had published two magazines with the provocative titles *Censor* and *Obscenity*. The titles they chose did not make it easier for their lawyers to assert that censorship had no place in their sights and that obscenity was the furthest thing from the minds of the publishers. A sensitive policeman purchased these two journals from a news vendor in King Cross. He was a Detective Sergeant of Police and was doubtless deeply offended by what he read. He could not get

to the magistrate quickly enough to charge our clients with publishing obscene and indecent material.

We won in the Court of Appeal - ever a liberal guardian of civic rights under the law. But our victory was short lived. It was overturned in the High Court of Australia. In that Court, Justice Windeyer, a soldier, lawyer and historian, traced the history of obscenity in the common law of England. He referred to the old form of indictment for an obscene libel:

"This commenced by referring to the accused in opprobrious and pejorative terms as, for example - 'a person of most wicked, lewd, lascivious, depraved and abandoned mind and disposition and wholly lost to all sense of decency, chastity, morality and religion'.

It then went on to allege, in language of which the following is an illustration, that he wickedly, devising, contriving and intending to vitiate and corrupt the morals as well of youth as of divers other liege subjects of our lord the King and to stir up and excite in their minds filthy, lewd and unchaste desires and inclinations did publish obscene, filthy and indecent prints."

The adjectives were taken to be synonymous. Other epithets such as "bawdy", were sometimes used to accompany "obscene".² Doubtless each new epithet was designed to work the judicial recipient into a higher state of anger and outrage.

At about the same time as the *Graham* case, in the United States of America, the opponents of the use of law to suppress art in the name of obscenity were gathering strength for the assault which, in that country, was to prove largely successful. In the way stood, of all people, the Chief Justice of the United States who was eventually to become a symbol of the liberalism of that Court - the "Super Chief", Earl Warren. According to a recent analysis:

"Warren's biographers are agreed that from the day he joined the Court to the day he stepped down, the 'Super Chief' could not shed his conventional middle-American attitudes or his puritanism. 'If anyone showed that [dirty] book to my daughters, I'd have strangled him with my own hands', he reputedly told a fellow-justice. The otherwise humanistic Chief's defensiveness about sexual expression made rational decision-making and opinion-writing in this area of the Court's work difficult. Warren could not reconcile the disgust he felt for sexually oriented materials with the respect he professed for 'arts and sciences and freedom of communication generally'. He was puzzled by his inability to get anything out of 'modern' literature and art. To him 'smut peddlers' had no rights under the First Amendment, for what they peddled had nothing to do with literature and art, or even communication. Not only was their conduct an affront to Warren's personal sensibility, it also presented in his view, a peril to America's moral fiber."³

The beginning of the end of this approach occurred under the leadership of Justice William J Brennan Jr. He has said:

"Warren was a terrible prude, like my father was. If Warren was revolted by something, it was obscene. He would not read any of the books. Or watch the movies. I'd read the book or see the movie and he'd go along with my views."⁴

However, Warren did not, at least at first, surrender his conventional views or go along with Brennan on things sexual. The test came in the late 1960s and early 1970s with landmark cases involving Henry Miller's novel *Tropic of Cancer* and Louis Malle's film *The Lovers*. At last, the Supreme Court of the United States, using the First Amendment with its guarantee of freedom of speech, struck down State obscenity laws. It removed for nearly two decades the threat of such laws to literature, film and art.⁵

We, in Australia, followed suit. We did so not because of any First Amendment or Bill of Rights here - nor even because of the liberalism of the common law or the dedication of judges and magistrates to art in all its forms. A far greater influence was the sheer volume of material from the United States - in film, print,

picture and artform. This material began to flood the English-speaking world. In that sense, we were all the children of the United States constitution. We all became the beneficiaries of the First Amendment. And it should not be forgotten that that amendment was adopted in an age where the perceived threat was not simply to printed newspapers:

"The framers of the First Amendment ... must have had literature and art in mind, because our first national statement on the subject of 'freedom of the press', the 1774 address of the Continental Congress to the inhabitants of Quebec, declared: 'The importance of this [freedom of the press] consists, beside the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiments on the administration of government."

A hundred and sixty five years later, President F D Roosevelt said:

"The arts cannot thrive except where men are free to be themselves and to be in charge of the discipline of their own energies and orders. The conditions for democracy and art are one and same. What we call liberty in politics results in freedom of the arts."⁶

I suppose the symbols of the change could be seen most vividly in Australia as the 1960s turned to the 1970s. On 5 June 1969 at the Metro Theatre, Kings Cross, Sydney, the musical *Hair* first came to Australia. More than a million theatre-goers saw that production. It shocked the country at a time basking in the after-glo of indolent imperialism and dutiful subservience to powerful allies. *Hair* shook the conservative complacency of Australia. It heralded an era of freedom and protest which was to change the face of this country. The famous nude scene at the end of *Hair* confronted the old-fashioned ideas of obscenity and indecency. No prosecution was launched. Yet the censor was still about. In 1973 a poster of Michaelangelo's *David* was actually confiscated from the Myer store in Melbourne on the ground that it

was obscene! An increasing number of bathers at the proliferating nude beaches of Australia provoked the occasional arrest. But then general acceptance. In the field of art censorship, confiscation, police raids and the like became much more infrequent. The advent of AIDS consolidated these changes. Now there is direct talk, even to the young children in school, of the dangers of unprotected sex, the use of condoms, specifics of anal intercourse and things which once would never had been talked of in puritanical Australia.

THE BLUE PENCIL LIVES

Yet we should not think that the age of censorship is dead. By no means. The censor's the blue pencil is ever-ready to do its work of controlling freedoms. It is as if nothing is learned from the changes of the past few decades.

In the United States, the famous photographer Robert Mapplethorpe worked with art curators to put together a 175 photo retrospective to commemorate Mapplethorpe's art. Mapplethorpe died of AIDS shortly before the retrospective could be shown. The exhibition was originally to be displayed in the Corcoran Gallery in Washington, DC. However, under pressure of the United States House of Representatives and Senate, the exhibition was cancelled during a strident debate over Federal funding of the National Endowment for the Arts. The exhibition was then moved to the Contemporary Arts Center in Cincinnati, Ohio. It was called "Robert Mapplethorpe: The Perfect Moment". A number of the photographs depicted homo-erotic/sadomasochistic images from Mr Mapplethorpe's work. Although, later, the exhibition went on to Boston from Cincinnati and there passed without fuss, the municipal officials in Cincinnati charged the Center and its curator with pandering to obscenity. Eventually the prosecution failed. But it demonstrated the extent to

which, even in the United States of America, art necessarily works within the confines laid down by the law.⁷

And if we in Australia think we are immune from pressures of a similar kind, we should look about us to what is happening in our own country. We have no First Amendment to protect us here. There are indications that those who would censor and restrict freedom of communication are busily at work again after a period of relative quiescence.

The movie *Henry, Portrait of a Serial Killer* was banned after it first arrived in Australia. When certain portions of the film deemed unacceptable were removed it was reclassified and released in its expurgated form.

Derryn Hinch, hot from coverage of the 1991 "Strathfield Massacre", called for the banning of Brett Easton Ellis' book *American Psycho*.

Calls were vigorously made by some churchmen for banning the movies *Hail Mary* and *The Last Temptation of Christ*.

The Office of Film and Literature Classification has prohibited the distribution of a book on suicide techniques called *Final Exit*.

In Western Australia, the Minister for Health rejected the candid coverage of safe sex, declaring that it was part of the "condom culture". Instead, apparently motivated by his own moral beliefs (informed doubtless by St Paul), he promoted the campaign "It's All Right to Say No". Whilst chastity is certainly one option in the face of AIDS, available empirical data suggests that it is an option lacking universal acceptance. It only takes one act of unsafe intercourse to transmit the HIV virus. The need for alternative messages is therefore plain. This is universally accepted, including by the World Health Organisation. But not by the Minister of Health

of Western Australia. Politicians have great responsibilities. But when they descend into moral censorship in a field of public health as vital as HIV/AIDS, they may have the death of the infected upon their consciences. Censorship in the face of AIDS may have truly deadly results. A needless death from AIDS occasioned by ignorance or embarrassed fear to procure or use a condom in sex, is a truly awful obscenity.

Western Australia seems to be in the vanguard of Australia's censorship revival. It has been announced that laws there will ban the display and advertising of two of Australia's biggest selling magazines *People* and *Picture*. The Western Australian Minister for the Arts, Mrs K Hallahan, explaining the new restrictions, said that her office had found that people were much less offended by nudity in *Penthouse* and *Playboy* than in the "degrading and offensive" depiction of women in *People* and *Picture*. The criterion for public access now seems to be the moral sensibilities of the people in the office of the Minister for the Arts. How ironic that Ministries established for this purpose become the censors: determining what "arts" people may, and may not, receive. It is as if we have learned nothing from the history of legal regulation of literature and art this century. If we impose the opinion of the censor about art, it soon takes on its own dynamic. Some of the most vigorous proponents of the obscenity laws of the United States were the postal and customs officials who policed such laws with heavy handed efficiency and fearsome moral zeal.

We should learn from the oppression of the past. We should certainly keep the hands of the law off literature and art in all of its forms. It is important, not least at this time, for people to speak up for freedom of expression. Human rights for the popular

majority can generally look after themselves. Human rights matter most when minorities and their beliefs, opinions and expression are at risk.

That is why I was glad to be associated with this exhibition. Here we are, free citizens in a generally free country. We are celebrating our freedoms by being here. We must ensure that these freedoms endure.

ENDNOTES

- * AC CMG. President of the New South Wales Court of Appeal. Chairman of the Executive Committee of the International Commission of Jurists. Personal views.
- 1. (1968) 121 *Commonwealth Law Reports* 376.
- 2. *ibid*, 391.
- 3. B de Grazia "I'm Just Going to Feed Adolphe" in 3 *Cardozo Studies in Law and Literature*, 127 (1991). See by the same author *Girls Lean Back Everywhere: The Law of Obscenity and the Assault on Genius*, 1991, Random House, NY.
- 4. W J Brennan Jr cited de Grazia, above, 128.
- 5. See *ibid*, 128; cf *Miller v California* 413 US 15 (1990).
- 6. Cited *ibid*, 147. See also R A Posner *Law and Literature: A Misunderstood Relation*, Harvard Uni Press, 1989, Cambridge, 329.
- 7. See *National Law Journal* (US), 30 April 1990, 7; 15 October 1990, 8.