

UNIVERSITY OF TECHNOLOGY, SYDNEY

CEREMONY FOR THE CONFERRAL OF DEGREES IN THE  
FACULTIES OF LAW, ENGINEERING, MATHEMATICAL &  
COMPUTING SCIENCES

THURSDAY 2 MAY 1996

**TOMORROW'S LAWYERS**

OCCASIONAL ADDRESS BY  
THE HONOURABLE JUSTICE MICHAEL KIRBY AC CMG  
JUSTICE OF THE HIGH COURT OF AUSTRALIA

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CONGRATULATIONS TO GRADUATES

It is a great pleasure for me to participate in this ceremony. Over the years, I have taken part in many ceremonies of this University. Indeed, I spoke at a graduation ceremony a decade ago. After ten years, it appears that the University has forgiven (or forgotten) my last occasional address. Such addresses at

these ceremonies represent a settled tradition. But, I regret to say that they are rarely memorable. As Chancellor of Macquarie University, Deputy-Chancellor of the University of Newcastle and Fellow of the Senate of the University of Sydney, I sat through what seem to have been a thousand addresses of this kind. I will try to resist the mischievous temptation to make this event my retaliation for all of the suffering I went through, heaping it up and casting it upon undeserving you.

I would like to begin by reflecting for a moment on the terrible events this week in Port Arthur, Tasmania: ironically built as a place of law and order.

In the midst of our own celebrations we should recall to our minds all of the victims and their families. Especially in a law graduation we should remember:

- Jim Pollard, 72, retired University administrator. Last year, he was the oldest law graduate of the Southern Cross University, Lismore;
- Glen Roy Pears, 35, who graduated in law in the University of Tasmania two years ago and last year came to Sydney to work in the legal firm Minter Ellison; and
- Zoe Hall, 28, another Sydney lawyer whom Mr Pears met at that firm. She took the fateful journey with him to Tasmania.

We cannot relieve the pain of their deaths. But we can, as the Queen said, share a little of it. Even on a day such as this.

Certain things have to be done. First, the graduates must be congratulated. The families must be thanked. The lecturers must be given due praise. Our good fortune as Australians must be the subject of mention. The debt to society must be acknowledged. Such are the standard utterances on these occasions. I make them all, with a full heart, remembering the importance of this occasion to each new graduate, individually. It seems only yesterday (to coin a phrase) that I was in your position. But it is, in fact, thirty-two years ago. They have been years of bustling activity and endless challenge. So it will be with your lives in the law. As the busy days merge one into the other, the years slip away rapidly. Especially if you have to listen to a thousand graduation addresses.

I know that those with post-graduate awards in the Faculties of Engineering and of Mathematical and Computing Sciences will forgive me if I address my remarks principally to the graduates in the undergraduate course in law. But what I have to say concerns them too, as citizens and educated people.

I came to this ceremony today for the same reason that I accepted an invitation last year to address the first alumni dinner of your Faculty of Law. There are many things that I like about

this University and specifically its Law Faculty. Naturally, law is the one I know best. I am therefore proud to be associated with the University, and with you all, on this special day.

I like the fact that your Law Faculty has emphasised the provision of opportunities for late entry into the study of law. It has given chances to mature students who missed the usual entry route. It has also laid emphasis upon two considerations which are vital for the future of Australia and its laws. I refer to the outreach to the Asia and Pacific region where Australia's future will be written. I also refer to its emphasis upon the impact of technology on the law, leading to the study of subjects with a strong technological bias.

I count members of the Law Faculty of this University as my friends. At the alumni dinner I sat with many people who are now leading members of the legal profession and who graduated from this Faculty. A University must be more than a technical school. A Law Faculty in a University must specially encourage its students to ask searching questions concerning the purposes of law and its functions in Australian society. But it must also teach the skills of good lawyering. Only by coordinating a concern for justice with the legal skills to promote law's noble cause, can lawyers really contribute to building a better society where equal justice under law is not an empty boast.

### ACCESS TO LEGAL EDUCATION

Recently I was sent a study concluded by Mr David Barker of this University's Law Faculty. It was written in collaboration with Anna Maloney. My task was to write a foreword to the study. Having moved out of the graduation business, I appear to have found a boutique operation in foreword writing. The study was supported by the Law Foundation of New South Wales. It arose out of an earlier report to the Law Council of Australia by Professor David Weisbrot concerning trends in Australian legal education. The focus of the study was Professor Weisbrot's assertion:

"The Australian legal profession does not reflect the socio-economic, class, ethnicity or gender composition of the society at large ... The social backgrounds of young lawyers is, if anything, more elite than in previous generations."

A similar conclusion had been reached in 1984 in England, seven years before Professor Weisbrot's report. Mr Barker began his work on this subject when he was Dean of Law at the Polytechnic of Central London, which is now the University of Westminster. He has continued this study in Australia. Remarkably enough, in our egalitarian country, he has found the disproportions to be just as acute as in hierarchal England.

Why does this matter? Some would say it does not. But in my view it matters because there are few, if any, occupational

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choices that can give the successful entrant a greater certainty of a share of power in society, than entry into the profession of law. It is lawyers who make and develop the common law that is the deep underlying system of law that permeates the regulation of our society. It is lawyers who enter the public service, devise and apply regulations. They suggest and draft legislation. They have particular access to the levers of power. At every level of legal practice it is so, to a greater or lesser extent. Advocates in court, by the imagination and persuasion of their arguments, can help push the development of legal principle this way or that. As we now increasingly acknowledge, judges too have choices. They enjoy a limited, but real, law-making function. All of this makes the composition of the profession of law extremely important for the way power is exercised in Australian society.

If such a dominant and highly influential employment group - lawyers - were to remain a reflection of an elite section of society, unrepresentative of the diversity of modern Australia, it would not only be bad for the legal profession. It would not be good for the content of the law or for the general Australian community ruled by law. Instead of the law, and its profession, moving with fast-changing times, lawyers would become a kind of time capsule of an earlier social period: ill-suited to the mental adjustments which are necessary to fashion and practise law in a new and changing society, in a renewed and vital region of the world, in a new and challenging millennium.

and in responding to its findings. I realise that reality and appearance are often quite different. The graduate parents of budding lawyers may both be unemployed. Private school education may have been bought at enormous family sacrifice. Graduates from disadvantaged origins may "spurn the base degrees by which [they] did ascend." No-one should be stereotyped, least of all a group of lawyers.

Yet unless the pool from which Australia draws its legal profession is rapidly broadened and deepened, the gulf will probably widen between the attitudes of the legal profession (and hence of the judiciary drawn from it) and the attitudes of the society which the legal profession serves. In the case of other service professions this would be a great misfortune. But in the case of a profession of such power and influence as the law, it is a disaster. Indifference or unresponsiveness to the legal problems of poorer citizens (who are not just rich people without money) will pose real challenges to the rule of law itself. So will indifference or unresponsiveness to the peculiar legal needs of other minorities not reflected, or under-represented in the law. At stake are the attitudes of a most powerful group in society. Those attitudes are fashioned long before a student arrives at Law School. Society must ensure that this group remains generally reflective of its own diversity. Society can only do this by making a special effort. Left to its own devices, Goldring, Weisbrot and Barker show what will happen to the composition of the legal profession in Australia.



If any Law Faculty in Australia is going to contribute substantially to the solution to this problem, it will probably be the Law Faculty of this University. If any company of graduates is going to contribute to remedying this cause of professional myopia, it will probably be you.

That is why I was honoured to accept the invitation to join you on this notable occasion in your lives. May the banner in life of each one of you be service to the rule of law in Australia and in the world. Remember those who are less fortunate than you. Ensure that they have a voice in the legal profession of our country and that the profession responds to their needs. Be bold and confident in pursuing the cause of justice under the law. Resist the mercantile cynicism of this age. Law can be a noble vocation. But it is more likely to be, and to remain so, if its professional members are alert to legal problems of society and struggle against all the odds to offer solutions to those problems justly and economically - to all people, not just the wealthy or those who are legally aided. That is what equal justice under the law means.

On behalf of the community, of the great company of graduates who have preceded you on a day such as this - and on my own behalf - I offer you all congratulations and good wishes.