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LAW'S OPTIMISM

Murdoch University
Perth Convention & Exhibition Centre,
17 March 2009.

On conferral of Honorary Degree of Doctor of Laws

The Hon. Michael Kirby AC CMG

MURDOCH UNIVERSITY

PERTH CONVENTION AND EXHIBITION CENTRE

TUESDAY, 17 MARCH 2009

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THE HON MICHAEL KIRBY AC, CMG, HON LLD

Felicitations to University and Graduates

It is a great privilege to join my fellow graduates as a member of Murdoch University. I pay a heartfelt tribute to the university for its achievements and especially for preparing a new cohort of graduates to go forth and serve our country and the world.

I am proud of many links with this University, and especially its law school. I always liked its mixture of black-letter excellence and social engagement – especially its outreach to Australia's indigenous communities and to the wider world of law beyond our shores. In the past, lawyers were substantially confined to their own comfortable local jurisdictions. Business was never thus. Nor were engineers,

stockbrokers or scientists. Today, the world is everyone's oyster. I applaud Murdoch's international outlook and global engagement. I have been saying this to lawyers for two decades. Murdoch graduates put it into action. Thus, my associate from Murdoch Law School, Bruce Leishmann, is now working in international human rights in Kiev, Ukraine – and that after a stint in Moscow. This is typical of Murdoch graduates.

I honour the teachers and scholars of this university. It has been my privilege to work with three fine Deans who have led Murdoch law. I honour the parents, partners and supporters of the graduates, without whom none of us would be here at this occasion. Take lots of photographs. Years into the future, when these words of mine are completely forgotten, images will capture this exquisite moment in our lives, making time stand still as it should on such a day of achievement and reflection.

The other graduates have won their right to be here by very hard work. A thousand gallons of instant coffee; two thousand ballpoints and a few discarded laptops; hundreds of exams and countless hours of lectures and endless concentration. Mine is the last of the lectures for this degree. It is very hard to avoid the predictable.

So what can I say that is new and encouraging?

Reasons for optimism

The law, of course, is vital for lawyers, business and indeed all citizens. Without the rule of law we would be forced to survive in the rule of power, money, guns. Many of us know only too well the faults and weaknesses of the law: the costs and inaccessibility of justice to most ordinary folks. The occasional unfairness of our laws. The sad and recent history of injustice to minorities: to Aboriginals, Asian Australians, gays, to women, and other groups. The impenetrability of law and the occasional rudeness and insensitivity of lawyers, and, dare I say it, judges. The special difficulties of securing the right job at a time, like this, of economic downturn. The loss of idealism amongst some who should be the hope of the future.

But we do not want to hear those things now. We all know them. What we want is an affirmation about our society. Drawing on my experience, I can certainly give it. I suggest that there are 10 features of the law in Australia that deserve praise and give us cause for optimism. So here is the good news. You will not see it in the popular media. But I will tell it:

1. *Uncorrupted judges*: We live in a land of uncorrupted judges, jurors and officials.
2. *Apoliticism*: Our public officials, judges and others are non-political. Of course, they have their philosophies and their opinions. But law's service is there for everyone, including minorities and the unpopular. No exceptions.

3. *Independent lawyers*: Our courts could not perform their functions without independent lawyers. The miscarriage in the conviction of Andrew Mallard¹ was ultimately repaired by excellent lawyering that demonstrated that a miscarriage of justice had occurred. We must make the system work every time and not rely on exceptional efforts.

4. *Pro bono lawyering*: The representation of Andrew Mallard was also provided pro bono. The lawyers were not in it for big money. They were in it because they believed in justice under law. There are many cases of this kind. Another recent example was *Roach v Electoral Commission*². Pro bono lawyering in trial case assured that many prisoners throughout Australia secured the right to vote in the last federal election despite an attempted legislative exclusion. My life has taught me that the willingness to work for the love of justice has its own rewards.

5. *Fine law schools*: We live in a land of excellent education. One where university places are won on merit by students who are often the first members of their family to graduate, as many of

¹ *Mallard v The Queen* (2005) 224 CLR 125. Mr Mallard was represented in the High Court by Mr M.J. McCusker QC and Dr J.J. Edelman, instructed by Clayton Utz, Perth

² *Roach v . Electoral Commission* (2007) 233 CLR 162. Mr. Roach was represented by Mr. Ron Merkel QC, F.K. Forsyth and Prof. K.L. Walker, instructed by Allens, Arthur Robinson, Melbourne.

you will be. Our law schools inculcate the basic lesson of most graduate work – nine parts perspiration to one part inspiration.

6. *Institutional law reform*: Throughout this country we have state and federal law reform bodies. The work of law reform is no longer confined to tired committees of retired practitioners at the end of the week. It is part of the permanent institutional arrangements of a just and modern democracy as it should be.
7. *Court officials*: Our courts are staffed by dedicated and honest officials. In some countries, although the judges are honest, court officials sometimes accept reward for advancing cases or placing them before particular judges. This does not happen in Australia.
8. *Human rights*: In most countries a check is provided against injustice and unequal treatment by a bill or charter of rights. We do not have this at the national level in Australia. But the common law will sometimes protect and even advance human rights, as it did in the *Mabo Case*³. A consultation has now been launched to judge the effectiveness of Australia's current protection of human rights. We must all take part in it. And not just lawyers.

³ *Mabo v Queensland [No.2]* (1992) 174 CLR 1.

9. *New media*: The law today operates in a world of new media. Free and fair reporting of our courts and commentary and criticism on the law and judges are vital to make open justice a reality, not a myth.

10. *Our friends*: No list of the reasons for optimism about law would be complete without a reference to those we value and love. Our support staff. Our librarians who bring to us the wisdom of the past and the present. The court reporters. The courtroom officials. Our families and partners. John Mortimer had Rumpole describe Hilda, his wife, as “she who must be obeyed”. Every lawyer and every graduate needs a Hilda equivalent to tell things exactly as they are.

Talent, Optimism and Love

So why would we not feel upbeat on this special occasion? For me there is another and extra cause. Tomorrow is my 70th birthday. I expected a gasp of disbelief. At least from the law graduates. But gasp came there not. Had I been born today, St. Patrick’s Day, my parents would have named me Patrick, to the horror of my Ulster Protestant grandfather. Now my brother’s son is Patrick Kirby, teaching that all of us can overcome our demons, conquer prejudice, live and let live in this land of unequalled opportunity. We all can accept and celebrate Australia’s diversity.

I finish as I began with thanks to Murdoch University and praise of my fellow graduates and their families. No better words can be found than those used by past Chancellor of this University, Sir Ronald Wilson, quoting Cicero⁴, who said that love is the ‘foundation of all law’. Sir Ronald also said:⁵

“[B]e reckless and spendthrift, pouring out your talent to all to whom you can be of service. Throw it away, waste it, and in spending it it will be increased. Like love, talent is useful only in its expenditure and it is never exhausted.”

With education, talent, love and optimism how can we all not succeed to make the world of tomorrow a better place. We should all become Murdoch University discoverers. And by discovering the world we will also discover ourselves.

⁴ Cicero, cited by Sir Ronald Wilson, graduation ceremony Murdoch University, 22 March 1995. See Antonio Buti, *Sir Ronald Wilson – A Matter of Conscience* (Uni WA Press, 2007) 299 at 300.

⁵ *Ibid*, 300 citing Judge Learned Hand. See *loc cit*, 426 FN 72