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HUMAN RIGHTS IN AUSTRALIA: ON DESERVING TOP PLACE IN NATIONAL PRIDE

Bond University

Saturday 10 October 2009.

Graduation Ceremony

Faculties of Business, Health Sciences & Medicine and Humanities
& Social Sciences and Law.

Occasional Address

On the conferral of the Honorary Degree of Doctor of Laws

The Hon. Michael Kirby AC CMG

BOND UNIVERSITY

SATURDAY 10 OCTOBER 2009.

GRADUATION CEREMONY

**FACULTIES OF BUSINESS, HEALTH SCIENCES & MEDICINE AND
HUMANITIES & SOCIAL SCIENCES AND LAW**

OCCASIONAL ADDRESS

On the conferral of the Honorary Degree of Doctor of Laws

HUMAN RIGHTS IN AUSTRALIA: ON DESERVING TOP PLACE IN NATIONAL PRIDE

The Hon. Michael Kirby AC CMG, Hon. LLD (Bond)*

FELICITATIONS ON GRADUATION

It is a joy for me to return to this beautiful campus and to join the new graduates by becoming a full member of Bond University.

I have been coming here since 1990 in the earliest days of the the University since the creation of its outstanding Law School. My mind goes back to meetings on the campus with Chancellor Harry Messel, a brilliant scientist and silver-tongued science communicator who served as Chancellor in the 1990s. The decision to create a private university in Australia was a brave one. But the vision has been vindicated. Most especially in the excellence of the teaching staff, in the originality of the scholarship and in the aspirations of the graduates, including those of the graduands who will today with me, receive their degrees.

* Former Justice of the High Court of Australia (1996-2009). President of the Institute of Arbitrators & Mediators Australia (2009-).

Over the years, I have come to know many of the fine scholars who have helped established the credentials of Bond, in Australia and the world. I have done so:

- * By attending the marvellous conferences that are hosted here. I recall at once a brilliant symposium on the life and work of the famous Australian judge and world humanitarian, Herbert Vere Evatt;
- * By witnessing the outstanding work in the High Court of Professors Gerard Carney and Patrick Keyzer, both of whom served as Special Assistants to Chief Justice Brennan in halcyon days;
- * By contributing to the *Law Journal*, with its excellent essays on all varieties of subjects in the legal discipline. The latest issue contains, by coincidence, an excellent piece on the role of H.V. Evatt in the establishment of the United Nations Organisation and in the adoption of the *Universal Declaration of Human Rights* following the Second World War¹;
- * By delivering here annual lectures that have become a hallmark for community outreach and engagement of the Bond Law School with the general public: especially the lecture named for Sir Gerard Brennan, past Chief Justice of the High Court of Australia, and, like me, a frequent visitor to Bond. But also the lecture series that honours his predecessor as Chief Justice, Sir Owen Dixon, one of the greatest of Australia's jurists;
- * My being involved in moots at the University. From the start, Bond has always been a leader in this special training of lawyers in the delicate art of oral persuasion that is so important for those who

¹ Scott Guy, "Herbert Vere Evatt: Jurist, Politician, Person – The Paradox", (2009) 21 *Bond Law Review* 65.

have chosen the perilous challenge of a life in advocacy. The Bond team has repeatedly won a reputation as an accomplished performer in the international mooted world. In 2009, a Bond team beat competitors from fourteen countries to claim first place in the International Criminal Court Trial Competition held at The Hague in The Netherlands². It defeated competitors, including from Yale and Utrecht Universities in the grand final last February. I praise all members of the team, and especially Kate Mitchell who won the award for best oralist and Kristen Zornada who was judged best victim's counsel. These fine graduates of Bond continue an illustrious tradition;

- * By serving, as I have done in recent times, as patron of the Centre for Forensic Excellence at this University and participating in the launch of this enterprise designed to assure the highest quality and integrity of DNA and other evidence in the trial process throughout Australia³; and
- * By learning from the trail-blazing work of the former Acting Dean of Law, Laurence Boule, who has taught the potential of mediation as an alternative to litigation, applying fresh thinking addressed to established ways of doing things. Truly, this is the Bond University way. Originality and challenging old ways. Seeking to empower the disempowered. Reaching out to groups and individuals long neglected⁴.

² See "Bond Law Students Top World at Trial", *Proctor*, (Queensland Law Society), April 2009, 12. The members of the Bond winning team were Julien du Vergier, Lauren Ferguson, Kristen Zornada, Heidi Rulfs and Kate Mitchell.

³ M.D. Kirby, "The Urgent Need for Forensic Excellence", (address at the launch of the Centre for Forensic Excellence at Bond University, 11 April 2008) (2008) 32 *Criminal Law Journal* 205.

⁴ Laurence Boule, *Mediation: Principles, Process, Practice* (2nd ed, 2005). Professor Boule has taken up the Directorship of the Mandela Institute for Global Economic Law at the University of the Witwatersrand, Johannesburg, South Africa.

BOND'S OUTSTANDING ALUMNI

One of the privileges of my former life as a Justice of the High Court of Australia was to choose each year two young graduates to serve as my law clerks, called “associates”. I was the only Justice of the Court who advertised. In consequence, I received hundreds of applications. I never confined my selection to the sandstone universities – although Bond might, by its fabric, qualify as such. I looked for special qualities and fresh minds. In my last year as a judge, two candidates stood out: Leonie Young from University of Western Sydney and Edward Brockhoff from Bond University. Each candidate was the first to be so selected from their respective universities. Both of them added lustre to the reputation of their schools, their teachers and their colleagues.

I received an email from Edward Brockhoff this week from Arusha in Tanzania. He is working there in the International Criminal Court for Rwanda. It is a task that calls on his legal skills but also upon a deep reservoir of commitment to fundamental and universal human rights.

Edward Brockhoff won a scholarship to this University. He came here from Adelaide. He imbibed the rich experience of life at this campus. Like me in my university days, he engaged with undergraduate student activities. He rose to be president of the students’ association. Like many of the Bond graduates I have known, he would always go the extra mile. He would always give of his best. He always exhibited a strong element of idealism whilst keeping his feet firmly planted on the ground in the realities of the law as it had been taught to him.

Sometimes I would ask Edward about the special features of the Bond experience. He pointed out that, in his time, the student split was

roughly fifty percent Australian students and fifty percent internationals. Although this may have changed a little, Bond has always flourished with a large contingent of international students and students from other parts of Australia, like Edward.

He would explain to me that Bond is “a unique type of place, with students generally graduating with a very close connection to the institution, to the staff and to their fellow students”⁵. For many of them, residing on the campus or in the local area, this was their first time they had lived away from home. Bond therefore involved a very big change in their life. In the result, they tended to throw themselves into the activities of the University. The sporting, cultural clubs and societies, social events and representative organisations are strong and vibrant at Bond where, in other Australian universities, they have recently been sapped by an assortment of political ideology and mean-spiritedness. Small classes at Bond have meant that students tend to get to know their lecturers and tutors very well. These are not remote figures as they usually were for me in my law school days. Moreover, three semesters each year means that the majority of the year is spent at the University compared with longer holiday periods in other places. All of which makes the Bond experience special. And bonding with the University and with each other therefore comes naturally in this place.

Edward Brockhoff told me: “I loved the place”. And he asserted that the presence of so many colleagues, staff and students from overseas opened his mind in a way that a more insulated experience might not have done.

⁵ Edward Brockhoff, “Bond Graduation Speech Thoughts”, email of 26 August 2009, in the possession of the author.

When, therefore, I was offered the honour of this degree, from this University, I was very proud to accept. Its conferral makes me, in a full sense, a member of this place: no longer a stranger making occasional visits. I plan to make the most of my new status. I will take part in the Judge in Residence programme. I hope to be engaged in future teaching and mentoring. When today's graduates return to the campus, if they see an ancient warrior in the library or the cafeteria or just ambling about, it will probably be me. I am sure that, like Edward Brockhoff, I too will come to love the place. And to learn from it. Learning new ideas is a lifelong love affair to which a university, like this, makes a precious and invaluable contribution.

I praise the graduands who have won their degrees by hard work and devotion. I praise their parents, families and supporters who helped to get them to this watershed moment in their lives. I praise the teachers who rejoice in our accomplishments today. But with this praise goes a reminder that the privilege of such an education comes with a price tag. It is the responsibility that each one of us bears to pay back and to make a positive contribution to the world and to the lives of others. This is what Edward Brockhoff is doing now, in Africa: working to render accountable those accused of genocide in Rwanda. It is what all of us must do as we make our journey through life.

THE HUMAN RIGHTS JOURNEY

Of course, this ceremony is not confined to graduates in law. It brings together a collection of all the disciplines that make up Bond. The Faculty of Business. And includes graduates in Health, Sciences & Medicine. And in Humanities & Social Sciences. For such a diverse

group, a solemn lecture by me on law and its mysterious ways would simply not be fitting. So what is the common link, apart from gratitude to Bond University, that joins us together on such a day as this? It is a realisation that, in our shared humanity, we have a responsibility to put our skills and talents to good use and to leave the world a better place than we found it.

When I came up to Sydney University in 1956, it was not long after the Australian government had attempted to ban the Communist Party and to deprive Australia's communists of their civil liberties. Fortunately, the High Court of Australia disallowed the legislation⁶. More fortunately still, the people of Australia rejected a referendum that attempted to overturn the decision of the High Court. It was a vital lesson to me, at a young age, of the precious quality of liberty in this country: diversity and respect for difference. I have never forgotten that lesson.

At university, like Edward Brockhoff, I became accidentally involved in student affairs. And what were the issues back in those dreamy days of the 1950s and 1960s? What could possibly have agitated university students in dreamy days of post-imperial self-satisfaction?

Well I can tell you, the issues in which the students of those days were involved, involved our attempt to shake Australia out of its lethargy and to make this nation address the injustices and inequalities we could see with our sharp but immature eyes:

- * We demanded equality and greater respect for Aboriginals and the provision of scholarships for Aboriginal Australians. At that time

⁶ *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1.

there had never been an Aboriginal graduate in this nation. To this day, all too few;

- * We insisted on greater outreach to the countries of our region and an end to the White Australia policy that rested on deep notions of racial superiority and inferiority;
- * We asserted the need to provide greater equality for women, including in universities but in the wider society as well. And an end to the discriminatory laws and practices that cut most women off from attaining their full potential in life;
- * We projected the involvement of students in worldwide issues far from Australia. Edward Brockhoff is now in Tanzania. I led the first Australian students' delegation to Nigeria and Ghana; but
- * Nobody in those days raised their voices for the rights of sexual minorities. I felt this silence keenly because of my own sexuality. Only later did this issue move onto the radar.

The incurable lesson is that there are issues and themes that even the brightest of the bright in this graduating class do not see today but which future generations will see. Those generations will ask: How could you have been so blind as to miss and neglect such issues in your time?

- * They may include the human rights of climate change and water resources;
- * They may include economic and social rights;
- * They may include the human rights involved in poverty: a terrible blight that burdens billions in our world that the world just accepts;
- * They may include the human rights deprivations of modern forms of slavery, including people trafficking; and

- * They may include the human rights of people living with HIV/AIDS or of drug dependent people, or of other minorities hated and stigmatised by society.

The agenda of human rights is unfinished in Australia and the world. Its biggest challenges lie ahead.

BEING AND STAYING A JOINER

On a day such as this – even such a day – we must challenge ourselves and recommit ourselves to engagement with issues of legal and social justice in Australia and far away. This week I took part in Madrid, Spain in my first meeting as a member of the Human Rights Initiative of the International Bar Association. Around our table we confronted the global human rights dimension of world poverty and the challenge presented by the failure of many countries to remove their criminal laws against sexual minorities. Not everyone can participate in such meetings. Not every graduate of Bond can work on genocide in Rwanda. But we can all play a part in the world that exists beyond our own individual lives. If we do this, we make the most of our university experience. If we do not, we retreat into arid selfishness.

So what is the key to ensuring such engagement? The key I found in my university days was to be a joiner. To join the activities of civil society organisations that constitute a precious attribute of freedom. At university, this meant joining clubs and societies. And beyond, it meant joining the Council for Civil Liberties, Amnesty International, the International Commission of Jurists, the Bar Association, university committees, Rotary, charitable bodies, and countless community groups.

It is by being a joiner that we come face to face with the world in need. It is by being a joiner that we learn ways to maximise our university skills. It is by being a joiner that we contribute to energising society to right wrongs long neglected and to shake off ignorance and prejudice. It is by being a joiner that we help make our country and the world a better place. This week, it was reported that Australians had the highest pride in their nation in the world. A great pride in one's country is only warranted if those with the pride struggle constantly to ensure that it is fully deserved⁷.

So I congratulate my fellow graduates. I invite them to learn this great lesson of life. Those who give also receive. Those who contribute to society, who stir and shake it up and make it aware of unspoken injustices are the true builders of the future. It is because I am sure that Bond University is a university of "joiners" and of stirrers and shakers, that I am proud to graduate with you on this happy day. Down with complacency and selfishness. And down with uncritical national pride. Go from this day and make a difference in your nation and the world today and every day!

⁷ Andrew Main, "Aussies top world list of national pride", *The Australian*, October 2, 2009, p.8.