

THE UNIVERSITY OF ADELAIDE

GRADUATION CEREMONY

ADELAIDE, SOUTH AUSTRALIA

13 SEPTEMBER 2017

OF EXISTENTIAL THINGS ON GRADUATION
DAY

The Hon. Michael Kirby AC CMG Hon D.Univ (Adelaide)

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WITH PRAISE AND GRATITUDE

It is a great privilege to receive a doctoral degree from the University of Adelaide. A special privilege to become a Doctor of the whole University.

Here I am draped in mediaeval robes. Unlike every other person who receives a degree today, I have sat no exams of the University. I have undergone no lectures or courses. I have performed no experiments. From me no price has been exacted measured in money, HECS fees or the 9,000 cups of coffee that are normally required. All I have to do is to deliver this lecture. But I must not take long about that task because family, friends and colleagues beckon us into the sunshine.

On this day there are certain objective facts to be remembered. The antiquity of the indigenous people who lived here in harmony with nature long before our forebears arrived. The breathtaking confidence of the colonists who established their communities here: with no shackled slaves or convicts. This beautiful hall is a symbol of the strength and industry of those people. When they created this University, it was the third to be established on this continent. It would have been the fourth oldest if it had then been set up in England. In the years since its foundation, it has graduated lawyers and philosophers of the greatest distinction. And also scientists of world renown.

My first contact with the University of Adelaide occurred in 1954. At my high school in Sydney (Fort Street High) I wrote to the great scientist and explorer, Sir Douglas Mawson. He was an alumnus of my school in Sydney and a professor of this University. I begged an article from him for our school journal. I received letters from him, post marked Adelaide. They were signed with the neat handwriting of that age. I treasure those letters.

This University became a focus of my earliest journeys after I was initially appointed to judicial office in 1975. My secondment to be the

first chairman of the Law Reform Commission allowed me to work with many famous professors: Alex Castles, Horst Lücke, David St L. Kelly, John Keeler, and not long afterwards the young James Crawford, now a judge of the World Court, Ivan Shearer and many others.

Adelaide law school is one of great repute. But today is not just a day for lawyers. Sharing this ceremony are scientists of every variety: molecular, marine, biomedical, plant, chemical, nano and astro. Bachelors, Masters and Doctors, we all share this wonderful moment. As we become alumni of the famous and distinguished University, we must support it henceforth, all our lives.

After praise comes gratitude. Gratitude to our teachers, including at the local kindergarten or infants' school. Gratitude for our primary schools where we learn to read, write, to add up and to sing together. To the secondary schools, where our minds expanded. And then to the university where hopefully, we occasionally escaped the silos of our own disciplines and gained insights into the new worlds seen by other disciplines.

It was possible, years ago, to get by as a lawyer without knowing much about science. Those days have long since passed. We live today in a world of science and technology. The law must ultimately adapt to that world. It must try to serve it, with rules that are both wise and well informed.

OF EXISTENTIAL THINGS

What other thoughts are worthy of an occasion like? Truly existential thoughts are often hard to express. Sometimes they are painful. But a university education directs our minds towards them. One such existential thought must be at the back of every thinking person's mind today. It concerns a particular and recent product of science.

I refer to the science of nuclear fission and fusion upon which a great alumnus of this University, Sir Mark Oliphant, laboured in the Manhattan Project in the 1940s. The bomb that terminated the Second World War, with its characteristic mushroom cloud, haunted the minds of every school child of my age. We were taught that it would destroy all living matter in this world unless we, human beings, could bring it under the strictest of legal controls. So here was a challenge that suddenly made lawyers and scientists partners. For a time (in retrospect it seemed a long time) the existence of such enormous destructive power in a few hands appeared to afford a certain protection. But it caused President Ronald Reagan to say, at the end of his presidency: 'A nuclear war cannot be won and must never be fought'.

The *Non-Proliferation and Test Ban Treaties* and the World Court's demand that humanity move swiftly to the termination of the huge stockpiles of such weapons, have lately begun to unravel. New nations are acquiring these fearsome means of death. Others threaten to do so. Just this month North Korea conducted its sixth nuclear weapons' test. This coincided with evidence of astonishing progress in its missile technology. The President of the United States tweeted a threat of "fire

and fury". The Supreme Leader of North Korea promised to put a "ring of fire" around the American territory of Guam.

At this moment of joy, on our graduation day, we therefore have to face existential dangers. Little wonder that other nations of the world are losing confidence in the capacity and inclination of the nuclear powers to save the planet. Little wonder that, in large numbers, they have propounded a completely new treaty to ban the possession, use and threat of use of nuclear weapons, which the present nuclear states, and Australia, refuse to support.

More than at any time in the past 50 years an urgent existential danger therefore faces all humanity. My recent work chairing the United Nations Commission of Inquiry on Human Rights Violations in North Korea, which unveiled the crimes against humanity of North Korea against its own people, impels me to lift my voice about the gravity of the dangers we face.¹ The people of Japan and South Korea especially are hostages to those dangers. The people of Japan have particular reason to know the character of the peril, for they saw it first. The people of Australia are also at risk. So we must think on it. We should not banish it from our minds, even on this day.

TO THINE OWN SELF BE TRUE

There are other existential challenges that we must face today as a nation and as individuals at the same time as we struggle to attain global peace and security.

¹ <http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>.

In Australia and other countries, in the decades since Hiroshima, we have been struggling to improve our human rights record. Our record towards our Aboriginal and other indigenous peoples. Towards women. Towards non-Caucasian people with the total demise of “White Australia”. Towards the disabled and towards members of sexual minorities, like me.

Just before I came to this University for the first time in 1975, a newly arrived lecturer in law, Dr George Ian Duncan, was drowned in 1972. He had been thrown in the Torrens River. That happened, it seems, for no reason other than a suspicion that he was gay. No one has ever been found guilty of that crime. Still, an immediate consequence was the move, for the first time in Australia, to repeal the criminal laws in South Australia that tried to stamp out the existence of sexual minorities and the “love that dared not speak its name.”

Last year, this University decided to place a photograph of Dr Duncan at the entrance to its Law School, 45 years after his death. It also established a scholarship for young LGBT students. This was done so that all should reflect on the irrational hatreds that our country’s people and their laws imposed on Dr Duncan. And on others. And on me. So that we would resolve to avoid all such inequality and discrimination in the future: whether against gays or against other minorities.

Sadly, many of those who in 1975 opposed the change in the criminal laws now have their modern counter-parts. They are opposed to contemporary moves to remove other inequalities, specifically in our laws on civil marriage. Last week the High Court of Australia upheld the

legality of a postal survey about the enlargement of the availability of marriage to sexual minorities. It held that the survey was legal. But that does not make it any the less painful.

To submit the rights of a minority of citizens of this country to the voting decision of a majority of others – as a precondition to the mere possibility of having the issue considered in the *normal* way in Parliament, as our Constitution envisages, is very hurtful. It is hurtful to me. It is hurtful to my partner of 48 years, Johan. It shows once again that gay Australians are singled out for discrimination and unequal treatment. Even today. But it also shows the primitive nature of our constitutional protections for equal treatment under the law. And that there is nothing apparently in the Constitution or the laws of Australia or the vigilance of judges that can protect us from having to jump extra hurdles and face outright hostility. Now all we can do is proceed to vote Yes and hope that our fellow citizens of goodwill do likewise. So that by a resounding vote for equality, Parliament can no longer neglect and delay a decision on this matter. As it has shamefully done throughout this year and may continue to do hereafter, whatever the vote in the survey.

These, then, are some of the lessons that graduates must learn at a moment like this. Truly they are existential lessons. To be engaged with the mighty world. But to be true to our individual selves. To embrace the discoveries of science. But to accept the role of laws, including laws that uphold human rights and universal values. To be truthful about science. But also to be truthful about ourselves. To recognise that science and law can present dangers. And to play our part by acknowledging that

law and science should work together for the benefit of our species and our planet, and of equal justice for all.

To the University of Adelaide we the graduates owe thanks and praise. We must prove ourselves equal to the challenge of this day. We have secured a glimpse of the dangers, injustices and beauties of the world. So we have inescapable duties to try to control the dangers, to cure the injustices and to advance the beauties. Including the greatest beauties of them all – love of truth and love for one another.