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AUSTRALIAN NATIONAL UNIVERSITY

GRADUATION CEREMONY

FRIDAY 17 DECEMBER 2004

OCCASIONAL ADDRESS ON THE CONFERRAL OF THE HONORARY
DEGREE OF DOCTOR OF LAWS

THE LONG JOURNEY TO JUSTICE FOR ALL

The Hon Justice Michael Kirby AC CMG Hon LL.D (A.N.U)

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THE PHYSICAL JOURNEY

I began my journey to this ceremony in Paris, two days ago. It sounds exotic and even romantic. Eiffel Tower. Champs Elysées. Notre Dame. But actually, I was working in the dungeon of UNESCO Headquarters chairing a group of lawyers, scientists and others preparing the first *International Declaration on Universal Principles in Bioethics*. As the graduates in diplomacy well know, these are the real places where the building blocks of the contemporary international order are made.

What the dungeon lacked on romance, it made up with intellectual riches. We live in a world of many pressing bioethical problems:

* Justice of the High Court of Australia. Delivered on the occasion of the conferral of the Honorary Degree of Doctor of Laws.

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- Should sequences of the human genome be patented?
- Should scientists be allowed to experiment with embryonic stem cells?
- Should we permit genetic manipulation to select this or that feature of humanity that is deemed desirable - and to eliminate elements regarded as less so?
- Should the whole world ban reproductive cloning of the human species?
- Where, if ever, do we draw the line on scientific experimentation?

Some lawyers find these problems boring - perhaps because they seem insoluble and unlikely to give rise to a steady flow of income. Yet *not* to have principles (and perhaps laws) to respond to such problems is effectively to make a decision. It is to abandon regulation to the individual initiatives of scientists everywhere and anywhere. Some ethicists are concerned that it is this *laissez faire* attitude that has produced the apparently transgenic, conditions that now confront our world: Ebola, AIDS, SARS. So if you think about it, I was fortunate to have the chance to take part in such a meeting - and to influence (even in a small way) the response of our species to such important global dilemmas.

Today I am fortunate to be here - graduating in this ceremony and receiving a degree from this splendid University. So are you, my fellow graduates, although in your case the degree was earned by study, essays and exams. All of us are fortunate to become life-long members of this

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University, twice honoured in recent weeks as amongst the greatest universities in the world. Great in research. Great in social engagement. Great in teaching. Inevitably, in a time of political ascendencies in Australia - federal and State - the role of independent universities, like that of the independent courts, independent professions and independent media becomes even more vital for the checks and balances of our democracy.

As I hurtled through space towards this convocation, crossing the oceans and the lands between Paris and Canberra, I kept thinking of the journey of another man on his way to receive an honorary degree. In Ingmar Bergman's classic Swedish film *Wild Strawberries*, the hero travels from Stockholm to the university city of Lund. On the way, scenes that remind him of his life go flashing by. Some of his memories are happy ones. In his mind's eye he remembers his parents and his childhood, his loves and his hard times.

My partner Johan is here with me today. Although we have been together for 35 years, in which time I have received several degrees, this is the first time he has ever attended a graduation with me. In the old days, he was in the shadows. So the most important thing I can say to my fellow graduates today is that they should tell those who share this day with them how much they love them and honour them for their part in their success. None of us would be anything without our families, our partners, our teachers and our companions on life's journey.

THE METAPHYSICAL JOURNEY

The journey of Bergman's hero involved a metaphysical passage, not just a car ride. So it has been with all of us. On our way to this moment, we have seen good times, and not so good. Inevitably, we think of such times on a day like this. Years and decades hence, this day will be frozen in the photographs that record this day.

Getting here depends on many chances. In my case they include meeting Miss Pontifex, my first teacher in the local infants' school. And all the wonderful teachers who prepared me for life. Their spirits are with me on this occasion. Honour your teachers.

My family had no connections with the law. I applied to all the prestigious law firms; but I was knocked back. I have forgiven them (I think). In those days, even more than today, one had to rely on the old boys' network - and I mean *boys*. As Mary Gaudron was to learn, *girls* had an ever harder road. Perhaps that is why we have none of them on the High Court of Australia just now.

Eventually, through luck, I found my first job in the law and completed my articles in a small firm. There is a lot of truth in the lesson taught in Peter Weir's film *Dead Poet's Society*. Each one of us must seize the day: *Carpe diem!* Each of us must do what we can to make the world a better, kinder, safer place.

As a young lawyer, I did the hard yards in *pro bono* appearances as the honorary solicitor for the Sydney University SRC and for the Council for Civil Liberties. So should you. I did not always appear in prestigious cases. Much of my early work was in workers' compensation where I met people, most of whom were like my family. Not rich. Salt of the earth. So will you. I do not feel different today, in my values, than I did then, when I was nobody. I know that I now hold an important post in the law. But it is a temporary thing. And whilst I hold it, I must be true to my understanding of the law and to the values that Australian law should uphold. So should you.

Most people who have been appointed to the High Court of Australia in the past have come from more privileged backgrounds than mine, in terms of economics and social standing. But I have been privileged to grow up in a loving family, with a fine education in public schools, with a loyal partner and opportunities that I have seized. The higher one climbs in worldly attainments, the clearer become the *really* important things. On days like this, we should think about our true priorities, for this is a special moment for all our lives.

RENEWING OUR COMMITMENT

Some people ask me: why are you always going on about human rights? Why this bee in your bonnet? Well, the answer is that I know, from reading, but also from personal experience, that the law is not always just. It is not always kind. It does not always deliver right

answers. This year, we have witnessed many developments in the law in Australia that may strike us as unjust.

To me it seemed unjust to deny prisoners equal rights in special leave applications before the High Court. This is similar to depriving them the vote¹. They have lost their liberty for a time; but they have not lost their dignity and basic human rights as citizens². However, Parliament can make such laws. There is nothing, it seems, that the courts can do about it.

In the past year more than half a million British assisted migrants (who enjoyed common nationality when they came to Australia in the 1960s and 1970s) were revealed as vulnerable to ministerial deportation³. If such laws are valid, the courts must uphold them. Earlier, the High Court unanimously upheld a law providing for detention of children behind razor wire in remote parts of this continent⁴. That law is unchanged

¹ *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* (Cth); cf G Orr, "Ballotless and Behind Bars: The Denial of the Franchise to Prisoners" (1998) 26 *Federal Law Review* 55.

² cf *Muir v The Queen* (2004) 78 ALJR 780. See also *Milat v The Queen* (2004) 78 ALJR 672.

³ *Shaw v Minister for Immigration and Multicultural Affairs* (2003) 78 ALJR 203.

⁴ *Minister for Immigration and Multicultural and Indigenous Affairs v B* (2004) 78 ALJR 737; *Re Woolley; Ex parte Applicants M276/2003* (2004) 210 ALR 369.

although Parliament was thrice told that it is contrary to the international law of human rights.

There were many other decisions of the High Court during the past year in which the Court was divided on matters of deep principle:

- The right of a State Parliament to entrench a large bias in its electoral system⁵;
- The right under federal law to hold a stateless person in detention indefinitely, despite the lack of any court order to punish him for any offence;
- The right of federal authorities to expand the exceptional jurisdiction of military tribunals established outside the ordinary Australian courts of law⁶; and
- The involvement of State judges in extending the punishment of prisoners who have served their sentences: keeping them locked up not for what they have *done* but for who they are and what they *might do* in the future⁷.

⁵ *Attorney-General (WA) v Marquet* (2003) 78 ALJR 320.

⁶ *Re Colonel Aird; Ex parte Alpert* (2004) 78 ALJR 1451.

⁷ *Fardon v Attorney-General (Q)* (2004) 78 ALJR 1519; *Baker v The Queen* (2004) 78 ALJR 1483.

RENDERING THANKS FOR OUR BLESSINGS

The list goes on. Of course many Australians, perhaps most, do not care. But for me, I confess that it makes depressing reading. Most judges of our tradition - perhaps most lawyers - like to think that in Australia we are always working towards just laws and court decisions that uphold fundamental human rights. Alas, in many things in the law, we seem to fall short. And there is not much that the courts can do about it.

When we feel discouraged by what we see as injustice and inequality in this much blessed country, this ceremony occurs to lift our spirits. To give us new energy. To inspire us to re-dedicate ourselves to more justice at home and abroad. For most of the graduates this day, who stand on the threshold of life, this is an occasion to look forward with optimism and confidence. And even for an ancient warrior like me, I can share some of this enthusiasm. I can imbibe the optimism.

By this degree, with all of you lawyers and citizens, I renew my dedication to law with justice. Law alone is not enough. Justice is the precious alchemy of Australian law. Our education commits us to a lifelong struggle to bring greater justice to the world and to our country. If the law means anything, that means more justice for minorities - not simply for the popular, the numerous, the rich and the powerful.

I thank the Chancellor, the Vice-Chancellor and the Council of this outstanding University for the high honour they have conferred on me. I

could not have received the honour from an Australian hero I hold in higher regard than the Chancellor, Peter Baume. And to be presented by Vice-Chancellor Ian Chubb, who has done so much to strengthen and consolidate this University in the first rank. And in the presence of Pro-Chancellor Justice Annabelle Bennett and Dean Michael Coper, friends of long standing.

The words of occasional speakers on occasions such as this disappear into the ether and are quickly forgotten. But one, I recall, a Scottish theologian, finished his remarks at a like ceremony with the words I now say for all the graduates:

For what we have received from this great University - for what we have all received from our families and our educators - and what we will receive from these manifest blessings - may all of us be rendered truly thankful.