

MURDOCH UNIVERSITY
PERTH, WESTERN AUSTRALIA
GRADUATION CEREMONY
LAW, VETERINARY SCIENCE AND BIOMEDICAL SCIENCE
WEDNESDAY 15 MARCH 2000

THE STRENGTH TO GO AGAINST THE GRAIN

The Hon Justice Michael Kirby AC CMG
BA, LL.M, BEc, Hon LL.D (Sydney Uni), Hon D Litt (Newcastle & Ulster),
Hon LL.D (Macquarie, Ntl LSU India & Buckingham)

MURDOCH UNIVERSITY
PERTH, WESTERN AUSTRALIA
GRADUATION CEREMONY
LAW, VETERINARY SCIENCE AND BIOMEDICAL SCIENCE
WEDNESDAY 15 MARCH 2000

THE STRENGTH TO GO AGAINST THE GRAIN

The Hon Justice Michael Kirby AC CMG
BA, LL.M, BEc, Hon LLD (Syd Uni), Hon D Litt (Newcastle & Ulster),
Hon LLD (Macquarie, Ntl LSU India & Buckingham)

THE IDES OF MARCH

We come together for this graduation ceremony on the Ides of March. This auspicious day provides a metaphor for an occasion important in the lives of everyone here. This is the day when Julius Caesar was struck down at the Capitol in Rome. A soothsayer had warned him to "beware the Ides of March". Caesar had declared "He is a dreamer, let us leave him, pass". When they met on the Ides, Caesar again saw the soothsayer:

"Caesar: The Ides of March are come.
Soothsayer: Aye Caesar; but not gone."¹

¹ W Shakespeare, *Julius Caesar*, Act III, Sc 1.

Within minutes Brutus and the other struck their blows.

That is a very dramatic, but I concede, a rather miserable moment to remember as we embark upon this ceremony. Yet it carries lessons for this day. Of how important it is to be alert to the signs of change. A failure to do so can sometimes prove very, very serious. At the height of your glory, remember humility. None of us is above Olympus. Even on graduation day, you should not get too big for your boots. And people like me should remember that rulers and lawmakers are the servants, not the masters, of the people.

THE MESSAGE OF LOVE

Having got you in the right frame of mind, there are three things that a speaker like me, on an occasion such as this, is expected to do. First, I must congratulate you, the graduates and your families.

You showed the wisdom of choosing this University. Since its inception in 1974 Murdoch University has been outstanding in many key performance indicators.² It has been highly successful in attracting research funds. It has always been insistent on the interdisciplinary character of a true university. It has been attentive to issues of equity

² Murdoch University, *Annual Report* 1998, 33.

and accessibility. Worthy of special mention has been the remarkable increase in the number of indigenous students enrolled at this University in the last decade. Special programmes for professional education for Aboriginal and Torres Strait Islanders in veterinary studies have been established. This is to the great credit of the University. Our society should be doing more practical things like this. Murdoch University also has an international outlook. It is playing an active part in the outreach of education services to our neighbours. This University gives attention to the quality of teaching, to concern about the environment and to the promotion of activities relevant to the communities in which it operates.

In the Law Faculty, which I know best, there are many novel courses. Research is often at the cutting edge, with a happy mixture of black letter technique and creative questioning about the operation and purposes of law. This is the tenth year of law at Murdoch. I want especially to congratulate the Faculty and the students for not sinking back into the safe and respectable backwaters of the law. For being in the forefront of concern about contemporary issues: international developments and the challenges of equal opportunity and justice for all people in our Commonwealth³.

³ Murdoch University, School of Law *Newsletter* (December 1999)
2.

Every new graduate is proud of his or her University. But you can be specially proud of Murdoch. In a quarter of a century, it has really made a mark.

The contribution of loved ones to days such as this incalculable. Photographs will be taken which freeze in time a moment that remains precious for the rest of your lives. I look at my early graduation pictures and see the faces of my parents, my grandmother, my much loved aunt and others no longer alive. I probably did not say to them, as on days like this I should have, how much I loved them. How grateful I was to them for all their sacrifices for me. Say that today. Do not let Australian reserve get in the way. Those who truly love you are comparatively few. The odds are that they are with you on a day like this. So dare to say those most difficult words: "I love you".

Think also of that first teacher you had in primary school. I can remember mine quite clearly. She was Miss Pontifex, well named for the Ides of March. It was just after the War. She gave us books to teach us the alphabet. I remember those books for the smell of shiny paper that had been out of production for the duration of the War. If, during my speech, your thoughts wander to all the teachers who brought you to this moment, at school and university, I will not reproach you. Think also of the boy and girl to left and right of you in your first primary class who did not make it to a day like this. They are your fellow citizens. Your education imposes on you duties to respect and serve others. These are homilies. They are commonly said. But they are true nonetheless.

THE UNIVERSAL INTELLIGENCE

The second obligation of an occasional speaker is to say something of relevance to the graduating class. I know this because I sat through hundreds of graduations at the universities on which I have served. Hundreds of times the graduation speaker mounted the rostrum. It is a sobering thought as I stand before you that I cannot remember a single utterance of any of those speakers. No doubt an hour after this ceremony it will be the same with my words. Perhaps that is how it ought to be with the last of the university lectures.

It is a special challenge to find a common theme for a ceremony which includes graduands in the three disciplines of law, veterinary science and biomedical science. If it is a graduating class of lawyers, it is easy to find the comfortable familiar things to say - the great traditions; the blessings of the Constitution; the great legal figures of the past; the hopes for the profession in the future. But to such a diverse group, from such disparate backgrounds, those words would fall on deaf ears. A graduand in veterinary science cannot even dream of the huge fees that leading counsel earn. A researcher in biomedical science may be lucky, in today's competitive world, to find a creative position worthy of the intellect and training that has produced this moment.

Yet there is a common message. The law of the future will increasingly have to address the issues presented to society by the

world of science and technology, so familiar to the other disciplines represented here. Today's media tell us that the scientists who cloned the sheep Dolly have now produced a litter of pigs by the same technique. Will reproductive cloning of human beings be next? Tomorrow's media will record how Prime Minister Blair and President Clinton have promised cooperation to make the human genome data available to all humanity. But will these newsworthy promises be translated into laws when national legislators are asked to give away or share the profits which science and technology can secure to particular nations and their ambitious investors?

How many of you witnessed the remarkable documentary television series *The Universe*? When it was running, I refused all engagements on Wednesday evenings. By computer simulation and actual satellite photography the programme portrayed the wonders of Space. It brought home the miracle of our existence. But for the pull of the gravity of Jupiter, our tiny planet Earth would have been bombarded by meteorites and other debris from Space. They would have made impossible the evolution and survival of the human species. If we did not exist, the planets would still be there. The sun and the stars would still exist. Galaxies would still be forming and ending. Yet it is human intelligence that has made it possible to know and to record these things. Human beings are, in that sense, a kind of intelligence of the Universe. Our ever-questioning curiosity takes the human imagination out into Space and down into the tiniest building blocks of life, the DNA. From the Black Holes, down, down to the

chromosomes, the toti-potent cells and the genes that express the tiniest sparks of living matter.

None of these advances would have been possible without universities, without pure research, without investment and applied technology. It is our privilege to be living in a moment of history when extraordinary advances of science and technology expand enormously our human knowledge and capabilities.

LAW AND SCIENCE INTERSECT

Through a series of chances I, an Australian lawyer, have become acquainted with some of these developments in ways that most lawyers have not. Twenty years ago, in an OECD committee, I was required to consider the potentiality of computers and interactive information systems to revolutionise society. I learned the importance of informatics. I also learned how, bridging entirely different legal systems, the common technology would present common problems that would require global solutions. Biomedical scientists and veterinary scientists have always lived within a global discipline. However, it is only in this generation that lawyers are being rescued from their jurisdictional confines and made to face the practical challenges of international law. Science and technology have done this.

Little could I imagined in that OECD committee in 1978 how information technology would explode⁴. How it would create the Internet and beckon us to Cyberspace. How it would permeate every intellectual discipline, including the law. How substantive law - of defamation, of consumer protection, of intellectual property - would be radically altered by the new technology. Without informatics humanity could never have travelled to the edges of our solar system. Without super computers, we could likewise never have mapped the genome.

Within a year or so, all of the genes of our species will be recorded. Within ten years there will be genetic tests to predict a propensity to diabetes, heart disease, asthma, mental illness and common cancers. Within forty years gene-based drug treatments will be available for most diseases. Average human life expectancy will reach ninety years. These are the predictions of the head of the National Human Genome Research Institute in the United States⁵. And what is possible for humans will be possible for other forms of animal life. What veterinarians and lawyers witness will be created by the best research of biomedical scientists.

⁴ A Fitzgerald & Ors, *Going Digital 2000* (2nd ed), Prospect (2000).

⁵ F S Collins, Head of the National Human Genome Research Institute at the National Institutes of Health (US) in A Trafford, "Guinea Pigs in the Genetics Revolution", *Washington Post Health Report*, 4 January 2000.

My work in the OECD later led to my involvement in the Ethics Committee of the Human Genome Organisation and the International Bioethics Committee of UNESCO. These are the bodies that bring scientists, lawyers, philosophers and others together to chart the rules that should govern technological applications of biomedical science and the limits that should be placed upon the outer boundaries of their work.

- Should reproductive cloning of the human species be permitted to overcome the burden of infertility?⁶
- Even if it should not, should the cloning of human cells and tissues be permitted for the long term prospect of developing compatible organs for transplantation or experiments for gene therapy?
- Should genetic manipulation of animals and plants be permitted or do they present the risk of taking our species down a perilous path that may lead metaphorically to a new thalidomide⁷ or an unpredicted equivalent to mad cow disease?

⁶ See Australian Health Ethics Committee, *Scientific, Ethical and Regulatory Considerations Relevant to Cloning of Human Beings* (1998).

⁷ J Talan, "Thalidomide's Legacy", *Washington Post Health Report* 4 January 2000.

- Can the law ever keep pace with the radical developments that are occurring in information technology and biomedical science? Do law's cumbersome mechanisms and lay decision-making lend themselves to making the choices that respond in an informed way, to the rapid changes that are occurring in the laboratories of the world?
- Is all of this too difficult, so that we should just give up and leave it to the scientists and technologists to take us where their imaginations will? Or are there some experiments that are so intuitively objectionable that the law should impose an enforceable ban?

I bring you no answers to these questions. But they are certainly questions proper to scientists, veterinarians, lawyers and indeed all citizens. The lesson of the intellectual ferment of my lifetime is that the future is going to present more such quandaries, not fewer. And more quickly. And with greater puzzles than we can even begin to imagine.

THE ULTIMATE LESSON

So what is the ultimate lesson that you should take with you from the precious gift of university education? This brings me to my third and final point.

Some of you may think that it is the lesson of how to cram an awful lot of information into those brain cells so that you can perform

successfully as a professional person. This is true in part. Some of you may think that it is to continue the process of learning, which never really ceases until that final moment when the spark of life is extinguished. In part, that is also true. Some may suggest that it is the duty to give back to knowledge, remembering Newton's simile that every scientist (now every citizen) stands on the shoulders of the scientists who went before. Again, partly true. But not enough.

The most important lesson you must take from this University is of your duty to keep alive the inquisitive curiosity that university education is designed to instill in you. You will never be quite the same after the years that you spent here. Resist the temptation to embrace unquestioning orthodoxy. Fight against the stagnant pool of indifferent social complacency. It has a force almost as powerful as the gravity of Jupiter to suck you in.

Remain throughout your lives questioners of received orthodoxy, challengers of the status quo. Be concerned for progress for the poor and disadvantaged, for Aborigines and other indigenous peoples. For true equality for women and for those who suffer unjustly because of age, race, sexuality or handicap. Standing up often involves going against the grain.

Not one of the leaps of scientific creativity that I have mentioned today and none of the reforms of unjust laws ever occurred by the acts of the self-satisfied; the advocates of the status quo. They all happened because of the searching questions asked by curious

human beings. Garth Brooks celebrated this most peculiar feature of our species in these poetic words:

"Folks call me a maverick.
Guess I ain't too diplomatic ...
Well, I have been accused
Of makin' my own rules.

...
Old Noah took much ridicule
For building his great ark.
But after forty days and forty nights
He was lookin' pretty smart.

Sometimes it's best to brave the wind and rain
By havin' strength to go against the grain."

So go from here and have the strength to go against the grain.
For you, in the words of the Bard, the Ides of March have come. "Aye,
Caesar; but not gone".