

**THE UNIVERSITY OF NEW SOUTH WALES**

**GRADUATION CEREMONY**

**TUESDAY, 9 SEPTEMBER 2008**

**ON THE OCCASION OF THE CONFERRAL OF THE HONORARY  
DEGREE OF DOCTOR OF LAWS OF THE UNIVERSITY**

**AT OUR GOING OUT AND OUR COMING IN**

**The Hon Justice Michael Kirby AC CMG**  
Justice of the High Court of Australia

Into thirteen minutes of time I must now pour my feelings upon receiving the Honorary Degree of Doctor of Laws of this University.

This honour makes me, and all of us, the graduates, members of this great Institution. Until now, we have been outsiders, knocking on the door. At last, we have been accepted into the company of the University. Coming here for this ceremony, we feel a new and different relationship with the place.

The new graduates, my companions on this journey, deserve special honour. I praise their families, teachers, friends and supporters who have helped to bring them to this moment. I thank my own partner and my father, here with me tonight to share the moment. My father, aged 92, not only drove himself across Sydney to this occasion. He also

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negotiated a precious car parking place and that shows real talent, as we know.

I think of my teachers, back at the local public school in Sydney that I attended as the Second World War was drawing to its dramatic close.

At the end of 1945 every Australian schoolchild received a Victory in the Pacific ("VP") medal. Three years later, along with every Australian schoolchild, I received a second gift: a copy of the *Universal Declaration of Human Rights*. It had just been concluded by a committee chaired by Mrs Eleanor Roosevelt. It was adopted by the General Assembly of the United Nations over which presided an Australian, Dr Herbert Evatt, third President of the Assembly and past Justice of the High Court of Australia. With the passing years, the *Universal Declaration* has come to loom larger in my imagination than the Victory Medal. It beckons us forward - to the future; to our better selves.

Memories come flooding back of my early connections with this University. In 1962, as President of the Students' Council of "another place" (as they say in parliamentary language) I came here to Kensington – to a much smaller campus. I made life-long friends with John Niland, who was later to become Vice-Chancellor, with Jessica Milner, Alf Van der Porten, Helen Duff, Ian Ernst, Dennis Baxter and many others.

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At that time too, I came to know the first Vice-Chancellor of UNSW, Sir Phillip Baxter, and his successor, Sir Rupert Myers. Baxter had an extraordinary impact on the imagination of everyone who met him. Like Sir Garfield Barwick and a few others that I have known in life, he displayed an unyielding willpower and a certain ruthlessness. He threw himself into the enterprise of making this University one of the great universities of the world. Baxter's dream has become real. The achievement has been stunning. It is ongoing. We are lucky to be part of it. We are proud to be graduates. We *can* be proud because this University combines the continuity of a tradition of a thousand years with great innovative features of its own, here in the perhaps unlikely environs of suburban Kensington.

If the University under Baxter won its first laurels by world-class research in science and technology, it was what followed that made the place truly astonishing. Departments of the humanities were established. Integrated research initiatives between science and the humanities jumped into life - including the world famous medical and social science research into HIV/AIDS, by which we will ultimately conquer that disease.

And, in the law, we have had great achievements. A marvellous Law School was established from scratch by one of the most inspired teams of lawyers ever to combine on this continent, led by a practical idealist, Professor Hal Wootten. I pay tribute to that inaugural team and

its leader. Back in the 1970s, I tried to steal many of them, as volunteers (or at slave labour rates) to work with the Australian Law Reform Commission. They came and they offered their amazing talents. They became my friends and a constant professional inspiration to me: Julian Disney. Susan Armstrong. Mark Aronson. Don Harding. Garth Nettheim. And also John Basten, Margaret Stone and Terry Buddin before they went on to their still unfolding careers amongst the top judges of this nation.

So what makes us specially proud to be members of the UNSW law community?

- The publications of its scholars, viewing law in social context, are legion and second to none;
- Its Jessup Mooting team triumphed over every team in the world only to be cruelly defeated in the Grand Final in Washington last year;
- After decades in "temporary quarters", the new building is the ultimate symbol of acceptance in the midst of this campus;
- Brilliant lawyers have served as Chancellor of this place. Sir John Clancy, there by Baxter's side when I met them in the 1960s. The Honourable Gordon Samuels, my civilised and liberal colleague in the Court of Appeal of New South Wales. Sir Anthony Mason, a great Chief Justice of Australia. And you, Mr Chancellor, are an example of what the modern lawyer should be - engaged with society; involved at once with culture and the arts; precisely the

combination of black letter and social involvement that has marked out the UNSW Law School from the beginning.

When I received word of the high honour to be bestowed upon me, my mind travelled back to the many enthusiastic student functions of this University over almost fifty years. The sharp-eyed questions. The moots. The parade of talent to the profession and the world.

Yet in the recesses of my mind I kept hearing the words "At thy going out and thy coming in". I knew that I would be seeing before me today those who were coming in, those with shining eyes and high ideals and great expectations. But I will shortly be going out from my post in the High Court. "Where did those words come from?" I asked myself. Perhaps they were from the *Prayer Book* on which I was raised? Those of the present generation would simply 'google' the words and track them down to their source in an instant. I, instead, allowed them to play on my mind as a kind of puzzle.

So what is there to say by one who is "going out" to those who are "coming in" to the law in Australia?

- There is much that is good about the law; about the judiciary; about our institutions and the legal profession. As I approach the end of my judicial service, I can honestly say that I have never been offered a bribe or an inducement or advantage to decide a case or to do some official act in a way contrary to law and justice.

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That is still true in Australia. It is not true in most countries. An independent judiciary, vigilant for its independence, is the surest mark of a society governed by laws, not by brute power. Those that are going out, hand this high tradition on to you. At your coming in, you must scrupulously maintain that tradition. You must strengthen it and safeguard it, for without law there is tyranny. There must be rules. But in Australia the rules should be just;

- There is also much that is wrong about the law. More than most, this University has been vigorous in identifying the law's faults and ways to improve them. As our law books witness, judges sometimes re-express and straighten out the law. The *Mabo* case. The *Wik* case. The *Dietrich* case. The recent *Roach* case on prisoners' voting rights. You know all these cases. You know that sometimes, with the aid of good lawyering, judges can strengthen the law with justice. But you also know many cases where this has proved impossible. And some where the outcomes sometimes seemed unnecessarily unjust. You know that access to justice is too expensive. Despite law reform reports, parliaments often neglect the demonstrated need for reform. We cannot afford to be starry-eyed about our profession. At our going out, we who did our best to reform the law must hand it on to you who are coming in. Never be content with injustice. Question old rules. Adapt to changing times;
- The changing times include the advances in international law - trade law, economic law and human rights law. Never accept that

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these are developments irrelevant to our Australian domestic law. The big challenge and opportunity of this generation of lawyers lies in its demand that lawyers should think globally. We need to change mental gears. Others on this campus are thinking globally all their lives. A Law School cannot be a little enclave of nationalism and parochialism. Nor can the legal profession or the judiciary. At your coming in, you must change the focus of the law. This is your special challenge and chance.

Finally, at our going out, in the matter of Australian human rights and respect for minorities, we hand on an enterprise that is no more than work in progress. Thanks to the leadership of Hal Wooten, Garth Nettheim, David Brown and many others in this University, Australians are gradually improving the lot of Aboriginals in the legal system. Yet there is still a long journey to go. The position of women has also improved, as have many of the laws affecting them. But there is still far to go. The slights to Asian Australians have diminished and White Australia is gone. But there is still far to go. Islamic Australians sometimes feel the same. The position of gays has got better in my lifetime. But the oppression and ignorance are not yet over. Inequality and discrimination have not yet stopped. Wrongs and injustices still occur in the law to this day, including even for me, an office-holder under the nation's Constitution. So it is work in progress. It is as if we have not yet realised that, in our vast land, there is room for all of us – in all of our diversity – to share in full equality.

So you who are coming in, we hand on these tasks. At your coming in, reaffirm silently to yourselves in this ceremony that you will meet the test. That you will rise to answer the challenge. That you, in turn, will hand the law on at your going out as a better, kinder, more just discipline than it is today.

But where did this expression "going out" and "coming in" come from? That question continued to recur to my subconscious mind. And then, as these things happen, six weeks ago, I was attending a Service in St Paul's Cathedral in London. It was a grand scale occasion. Trumpets. Uniforms. Ceremony. The Queen was present, white-haired, a little stooped, serious, dutiful, regal. In a quiet interlude, the presiding Bishop rose to read a passage from the Psalms of David. It was Psalm No 121:

I will lift up mine eyes unto the hills:  
from whence cometh my help.

...

The sun shall not smite thee by day:  
nor the moon by night.

...

The Lord shall preserve thy going out, and thy coming  
in:

From this time forth, and even for evermore".

This passage, conceived by a human mind thousands of years ago, captures a text apt for us on this special day. The one certainty - the unchanging element that human beings must accept and adjust to is their mortality. We come in. And we go out. If, during the passage, we can do some good, our lives are blessed.

In the law, we have particular opportunities to choose to do good. To protect the vulnerable and defend the unpopular. To be of help. To stand for justice. To reject inequality, complacent indifference and formalism in our noble discipline of law. Armed as we are now with our degrees, we should strive to make a difference in our country and in the wider world. That is what we have been prepared to do. We should do it at our coming in and at our going out. And in all the years between.

To this University, our grateful thanks and praise. To fellow graduates, good fortune. Make a difference. When you can, right wrongs, as the Psalmist says: going out; coming in. Lift up your eyes and see: from this time forth and even for evermore.

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