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THE 2002 ROSS PARSONS LECTURE IN TAXATION, CORPORATE & COMMERCIAL LAW

On 11 July 2002, the Faculty held the annual Ross Parsons Lecture with Professor Geoffrey P. Miller of New York University delivering his paper entitled, "The Global Regulation of Banking & Insurance: From IHHH to Enron."

Held in the Banco Court of the Supreme Court of NSW, Professor Miller's lecture sought to pinpoint the significant developments in international corporate regulation and assess their relationship to spectacular collapses of financial firms across the globe, including IHHH, Enron and WorldCom.

"Each of these events was a complex phenomenon in its own right, with its own etiology, development, and resolution," Professor Miller said.

"Professor Parsons, I believe, would have had much to say about the topic of this lecture – a topic which in broad measure is a matter of concern to all of us in our professional as well, to some extent, in our daily lives."

Professor Miller presented six cases of corporate collapse and examined the "common threads running through them." They were WorldCom, Enron and Lincoln Savings & Loan from the USA; EIE International from Japan; the Bank for continued over...

SYDNEY LAW SCHOOL HAS A NEW DEAN

On 1 July this year, I succeeded Professor Jeremy Webber as the Dean of the Faculty of Law of the University of Sydney. So it's farewell to Jeremy Webber and hello to Ron McCallum.

Farewell to Professor Jeremy Webber

After four and a half years of dedicated service to the Faculty of Law, Professor Jeremy Webber has left the Law School to take up the Canada Research Chair in Law and Society at the Faculty of Law of the University of Victoria in British Columbia, Canada. These research chairs are funded by the government of Canada and they are keenly sought after by Canadians throughout the world. It is indeed a prestigious honour for our former Dean to have been awarded this marvellous chair in his home country of Canada. The staff, students, former students and I wish Professor Webber well in his new venture.

Hello to Ron McCallum

As the new Dean of the Law School it is appropriate for me to write a few words introducing myself. I have been totally blind since shortly after my birth and I use computer-based adaptive technology to research and read material. Briefly put, my special computer programs use synthetic speech to read out to me the material which appears on my computer screen. I am able to download cases from the Internet, and through the use of special software, I am able to scan printed material into my computer which can also be read out to me via synthetic speech. I came to Sydney at the close of 1992 when I took up the Foundation Blake Dawson Waldron
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PROFESSOR RON McCALLUM

SYDNEY UNIVERSITY CONFERRING OF HONORARY DEGREE OF DOCTOR OF LAWS (LLD)

The Honourable Justice D.G. Hill, 24 May 2002

Chancellor, Dean Webber, Professorial and other staff of the University, my family and friends, and most importantly, fellow graduates, their family and friends.

I should like to commence by congratulating all of you who have graduated this morning. I remember that when I graduated in this Great Hall in Law almost exactly forty years ago, I felt that it was somewhat of an anti climax, for such a long time had elapsed between the publication of the final results and the ceremony. But this is an important day in your life as it is in mine. For it marks the culmination of the course of study you have embarked upon and completed. For those graduating with a first degree in law, it marks the beginning of your careers and the attaining of the degree which will qualify you to practice in a great career. For those graduating with a Masters Degree it marks an important stage in a process of learning which, I hope will continue throughout your life. And for those family and friends who have given support during your studies I add also my congratulations in seeing you through.

Some years ago at a function where Judges mingle with students I remember a student asking me whether I had had when I was at law school the ambition to be a Judge. I thought the question was rather amusing, probably because at the time I was a student the possibility would have seemed unattainable. But I am proud that this is where I have ended up. I have always enjoyed my life in the law, whether as a solicitor, as a junior barrister, Queens Counsel, Judge or as a lecturer, even if part time, at the Law School. Indeed, I have been very fortunate. As a postgraduate student in London I visited the Soviet Union and met Russian students in the then Leningrad. They refused to believe that a student from Australia whose parents had not been rich and who had died long before I had graduated could have gone to University, and studied not only in my own country, but also in America (thanks to the Ford Foundation and Fullbright

scheme) and England, thanks to a scholarship from this University. It conflicted with the Communist propaganda they had been fed. I am really grateful for the many opportunities I have had.

That takes me to the theme of my address. Among the many gifts which being a student at this University have brought, three stand out. I want to say something about each of them, but about one in particular.

First I received the knowledge and the way of thinking which equipped me to be a very successful lawyer.

Secondly and very importantly, I learned



THE HONOURABLE JUSTICE D.G. HILL

something about the importance of justice and particularly the rule of law. It is this I want to say more about.

The rule of law is something that we, who live in a fairly laid back society rather take for granted. But we should not. Someone once said that the price of liberty is eternal vigilance. That has never been more true in Australia than right now. The idea of a free society is a very fragile one. It is always under attack, and often from people who are well meaning. That attack is incremental - it does not happen all at once. Rather it can happen over time. Legislation to take away rights in a time when there may be a fear of a terrorist attack, introduced with good

intentions (and Daryl Williams, the present Federal Attorney General who I count as a friend is undoubtedly well intentioned) which takes away the rights of persons who are arrested to consult a lawyer, initially for 48 hours but theoretically, with multiple applications, indefinitely, might later be used by a government not so well intentioned, to subvert freedom where no risk of a terrorist attack exists. The security legislation introduced by the British in the colonies pre-independence is used now in Malaysia and in other countries to detain without charge or trial political adversaries of the government.

There are other inroads on the rule of law which I find at least, equally disturbing. Perhaps the most significant is an increasing trend to seek to immunise administrative decisions from judicial scrutiny. Now as a Judge I can understand that some (not all) bureaucrats are unhappy when decisions that they have made become the subject of legal proceedings and are found, not to be in accordance with law and are set aside. Some, not all politicians are likewise angry, when a law or a regulation for which they are responsible is held to be unconstitutional or otherwise void as contrary to law.

But there is scarcely anything more important to a free society than that administrative decisions or legislation can be the subject of scrutiny by an independent judiciary. Indeed, the only protection of our freedom which exists in Australia is the rule of law.

And, as a Judge, I think there is nothing more significant in what I do than to stand between the government and the citizen to ensure that the law has been obeyed.

There is a growing tendency for politicians in particular, to attack the Courts, to attack the judges personally and to attack the foundations of our system of Justice. I do not suggest that our system of justice is perfect. I do not suggest that all Judges are perfect. Open debate on legal issues and reasoned criticism of judgments is an important part of a free society. As a lecturer at this University, I am often critical of the reasoning in many decisions and I defend the right of others

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NEWS UPDATE CONTINUED

was published in the 2001 edition of the respected journal. "This is a truly outstanding effort and an absolutely splendid achievement," said the Dean, Professor Ron McCallum. Ms. Weatherall joined the Faculty in 2001 and teaches Intellectual Property, Internet and the Law, Corporate Law and Litigation in the undergraduate program.

THE HIDDEN GENDER OF LAW

One of the seminal works on gender and the law received a new lease of life at a special launch at State Parliament in May. "The Hidden Gender of Law", co-authored by Professor Regina Graycar of the Law School and Associate Professor Jenny Morgan from Melbourne University, has been re-released in a modernised second edition that its authors believe will broaden its appeal. In launching the book, The Hon. Justice Elizabeth Evatt AC AO spoke of the path ahead for women and the law.

"The challenge presented by this book is to step beyond the goals of formal equality and affirmative action, and remake our political, legal and social institutions in a way that gives full human value to women," she said.

In one section of the book, Graycar and Morgan examine the history of legal custody and argue that gender neutrality has worked against women. They also assert that feminist analysis of custody law overlooks racial identity, focusing on intra-family issues rather than looking at the ways women lose custody.

PUBLICATIONS

Rosemary Lyster and Cora Hoexter *The New Constitutional and Administrative Law, Volume 2, Juta, Cape Town, 2002*

Senior Lecturer in Law at the University of Sydney, Rosemary Lyster, co-authored this monograph, which is volume 2 of a set, and examines the new South African Administrative Law, which has been greatly altered by the provisions of the South African Constitution granting justice and due process to all. It attempts to examine South African administrative law away from its Common Law origins into an era of modern constitutionalism. "I venture to think that if, or when, Australia passes some form of a bill of rights, this volume will be an invaluable source book for Australian administrative lawyers," Professor McCallum said.

Ross Anderson, Barbara McDonald, Jane Swanton, Stanley Yeo *Cases of Torts, 3rd Edition, The Federation Press, June 2002*

In this latest edition, the authors have not only provided a collection of basic cases illuminating the principles of Australia tort law, but highlighted recent and significant developments, particularly in the area of negligence. The publisher's website contains edited versions of new cases within the scope of the book (www.federationpress.com.au). Each of these authors has a distinct connection with the Law School, with Ross Anderson and Barbara McDonald current members of staff, Jane Swanton a recently retired staff member, and Stanley Yeo, a former staff member now residing at Southern Cross University.



(LEFT TO RIGHT) THE HON. JUSTICE SALLY BROWN, PROFESSOR REG GRAYCAR, ASSOCIATE PROFESSOR JENNY MORGAN, THE HON. JUSTICE MARY GAUDRON AND THE HON. DR. MEREDITH BURGMANN

JUSTICE D.G HILL HONORARY DOCTORATE ADDRESS continued from page 6

to be equally critical of my decisions. Judges, like politicians, must be prepared to be criticised. But one aspect of Australian society which worries me is that there is far too little open critical debate and far too much playing the man or woman.

I am prepared to accept that the judicial system can be abused. That is the view of the present government (it was also the view of the previous labor government) in the area of migration and refugee law. Yes, it is true that many people (it is actually a quite low percentage) who have applied to be considered as refugees will, if permitted to, seek judicial review of decisions refusing them permission to stay and appeal until their appeal rights are exhausted, notwithstanding that they have no case.

Wouldn't you, if you thought you had even a small chance, use the procedure of a court to permit you to stay in Australia, rather than be removed to Iraq, Iran or Afghanistan? I do not pretend that I can suggest what the solution is to the so-called refugee problem is. It is a very complicated question. But that is not the point. The fact that there have in the past been a relatively large number of applications to the Federal Court for judicial review of decisions of the Refugee Review Tribunal (and a small number of them have been successful because the Tribunal actually made legal mistakes in deciding what may be a life and death question) is not sufficient justification for our parliament to pass legislation to prevent persons seeking judicial review of decisions which they claim were made wrongly. It is a dangerous development.

It is only a few weeks ago that a politician (I shall not name him, but you will know who I mean) was reported in the SMH as having given an address in London in which he referred to the unelected and irresponsible (sic) officials of the Court who apparently were at the heart of the problems with refugees. The same politician had sometime earlier, singled me out for personal attack (oddly the newspaper report of that attack, suggested that the Minister had in support of his argument referred to a case where I found for the Minister, but I suppose he had not read it). When I became a Judge I took an oath that I would do justice. Yet the result of the

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any Court to have judicial review of decisions of the Minister or the Refugee or Migration Review Tribunals is that I can not do justice at all. In one case, for example, I had to listen to a barrister paid by the government say that the Tribunal has made a decision which is clearly wrong in law. The Tribunal member appeared not to have read the section under which he was supposed to be acting. He completely addressed the wrong question. The barrister then, no doubt instructed by the government, told me that this decision, wrong in law although it was, must stand and neither I, nor any other Judge in any other Court could do anything about it. That is not justice. And it is a dangerous precedent. This time it is refugee decisions that, while wrong cannot be challenged. Next time it might be some other decision that could personally affect you and your rights.

And it doesn't just stop with refugees. I read that the present Minister for Communications wants to pass legislation to ensure that a bureaucratic decision in an area within his portfolio can not be the subject of appeal to Courts, even if wrong and contrary to law

The rule of law and freedom are both too hard won to be allowed to be taken away by stealth. Although I do understand the arguments against a bill of rights, the time has come, I think, for one. But don't expect politicians to be enthusiastic. It can only happen if you, the intellectual leaders of the next generation, are prepared to fight for it. I don't want to sound melodramatic. But ultimately societies have to fight to maintain human rights and freedoms. And they are at risk.

Finally, I have learned from my experience at the University that I have much to gain from giving back to the University something in gratitude for the benefits I have received from studying here. I am sure that you too will benefit from doing the same. How that gratitude is expressed is a matter for you. Australia does not have the culture of university endowment that America has. Yet universities are more and more starved of government assistance and have more and more need to find money to survive and grow, especially if the students in the future are to have access to world standard teaching and research.

The Hon. Justice Graham Hill

LAW SCHOOL PRIZEGIVING CEREMONY

23 MAY 2002

*This is a complete version of the address delivered by 2002 University Medallist
Eloise Scotford.*

It is a great honour to have been asked to give the student address today. A great honour but also rather a daunting one. First let me give you a bit of my recent background. I have been overseas studying, travelling and working for the last year and a half, and have had a brilliant time. Returning home was always going to be a bit difficult, but getting off a long-haul flight one evening and giving a speech to my peers and teachers two days later has added somewhat to the challenge of readjustment. My parents were worried that I was cutting it all too fine. I had thought that it was a perfectly planned trip home. I could maximise my time indulging in escapist travelling (in the end, it wasn't so much travelling as working and living in a wonderful city with a wonderful boyfriend, but escapism nonetheless), and then I could arrive home just in time to graduate. This guaranteed that my close relatives would be happy to see me when I arrived home even though I had been away from them for the past 18 months. And then one day not so long ago, I was sitting at work in London when an email, and a few excited phone messages, came through from my Dad. My Dad had very kindly assumed all my responsibilities at home while I was away putting

off growing up. This was very useful when it came to unpaid video fines and telephone bills (which I still insist were due to unreliable friends and a very unreliable Telstra), but not so useful when it came to dealing with requests to give speeches to distinguished audiences. Having tentatively accepted the invitation to give this speech on my behalf, Dad was thrilled that I had been honoured in such a way (as was my Mum), and I was thrilled along with them, until I recalled the timing of my flight home. My perfect plan in coming home with so little time to spare had been premised on the assumption that it would not matter how tired or jet-lagged I was for this ceremony, or for my formal graduation tomorrow, because all I had to do was be here and smile. I had done the difficult bit getting through all my exams and now I could relax and enjoy it all for a couple of days. That premise did not allow for the possibility of giving a speech, an indication of how little I expected to find myself in this position.

There is another reason for me being a little overwhelmed. I had survived five years of studying law and had managed to suffer only one terrifying ordeal of public speaking - doing my second year Constitutional Law moot. Unlike many of my

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THE UNIVERSITY MEDALLISTS FOR 2002: DAVID THOMAS, ELOISE SCOTFORD AND YANE SVETIEV