

IN DEFENCE OF THE FAIR GO SOCIETY

An occasional address on being awarded the
degree of Doctor of Laws *honoris causa*

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Opening:

Vice-Chancellor, Members of the University, Graduates and Guests.

I am extremely pleased and honoured to have such an auspicious award bestowed on me, and doubly so as I am able to share this day with my family.

My association with this great University has been a long one. Presently, as well as delivering the occasional ethics lecture for my friend Professor Michael Jeffrey, I enjoy a fellowship in the Labour-Management Studies Foundation of the Graduate School of Management, where another friend and mentor, Professor Ed Davis presides.

In the mid-1980's I had the honour of lecturing for three years part-time in the Law Faculty.

This period overlapped two other areas of employment, being firstly a solicitor at Macquarie Legal Centre in Parramatta, and subsequently the senior legal officer with the Anti-Discrimination Board. So this era rather propitiously describes three elements from a rather varied and eclectic life which I would like to bring together today in this occasional address. These areas are, the law, the exploration of ideas and human rights.

I would like to do this for an analysis of what I call the attack on the "fair go society".

I left California, the state of my birth some thirty years ago. At that time, California was in turmoil. We had just been through the various revolutions of the 60's; sexual, political and social, and the American identity had been taking a bit of a battering as a result of our involvement in Vietnam as well as the somewhat uneasy position of being the "leader of the free world".

I arrived in Australia to find a country whose identity was far more difficult to pin down. People did not put their hands over their heart when the national anthem was sung. People generally did not pledge allegiance to the flag at the beginning of each school day. Nor did I see the bumper sticker equivalent of “America, Love It or Leave It” as I had found all too common in the United States. This is not to say, however, that the fervour of the anti-war movement in Australia, or the anti-Springbok or uranium demonstrations were any less loud or virulent.

But, the phrase most commonly mentioned when I asked people here to sum up Australian culture or identity was the “egalitarian fair go society”. Now to a young radical from Berkeley, this sounded suspiciously like socialism.

At any rate, since my arrival, I have experienced many changes in Australian society.

Thirty years ago Australians were not known as complainers. “She’ll be right mate” was the go. Research now shows that we have become the greatest complainers in just about every field on the face of the earth. Robert Hughes, an Australian who wrote “The Culture of Complaint” about America could perhaps now rethink. Is this because society has become more complex, or are we less sure of who we are?

We have also seen what might be called the third wave of migrant diaspora to Australia which has made us one of the most multi-cultural nations on the face of the earth.

The absence of a easily definable identity that I experienced of Australians on arrival initially caused me some disquiet, coming as I did from such an overtly patriotic nation. Notwithstanding my era of radical politics and tear gas during the 60’s, such indoctrination runs deep.

However, my time at the Anti-Discrimination Board led me to believe that this lack of a rigid and easily definable identity was probably the greatest savour of Australian culture. It allowed us to be flexible and to accept, if not always totally embrace, the level of multiculturalism that we now have.

We have also seen the intensification of the “Aboriginal issue”. I arrived not long after the referendum which recognised Aboriginal humanity and allowed for the first time these original inhabitants of Australia to vote. More recently, the high court decision in Mabo, over half a million people walking across Sydney Harbour Bridge in celebration of reconciliation and the proud presence of indigenous Australians in the Olympics have perhaps marked a turnaround in race relations. However, this must be viewed in the context of the rise of One Nation and a trend away from meeting our obligations under international treaties.

We in Australia have also suffered, along with the rest of the industrialised world, a shrinking of the middle class and an increasing gap between rich and poor.

We have seen a diminution of the social safety nets that previously formed a major plank in the Australian psyche. Universal health care is now far from universal. Financial support for those presently not working continues to diminish in real terms while more stringent requirements such as work for the dole are being applied.

We no longer can look to the government to fund our retirement through the aged pension. We are now being encouraged, if not forced, to fund our own retirement through superannuation contributions and private investment.

Besides possibly exacerbating the poverty gap, this has shifted Australia from being one of the lowest per capita share investment societies in the developed world to being number one up there with America, and this in the last ten years or so.

We see mums and dads joining the institutional investors in buying shares in companies like Telstra and the GIO that we had previously thought we owned as taxpayers. We have also seen a vast move to demutualise those institutions that have had such a long and rich history in Australia as mutuals, and turn them into companies that we can invest in rather than be a part of.

During the recent lengthy battle over the demutualisation of the NRMA I was intensely disappointed that no-one in the financial or popular press, in all the thousands of articles written, explored the question of what a mutual was, or why we had one in the first place. All we were exposed to was the bitter struggle over the economics of demutualisation and the question of profitability for shareholders and directors.

So what we have experienced is a major change in focus for many Australians who now have to be fundamentally concerned with the profits of companies they own shares in for their own economic survival as retirees. This focus on profit is very new to many Australians, and when taken with the demutualisation of Australian institutions, must have a profound effect on the way we see ourselves in this new globalised age.

We have also recently lost a great opportunity to better define the Australian identity in the failed referendum on the republic.

The major question that emerges is, what is the effect of all of this on an “egalitarian fair go” society?

Many of the complaints I receive against lawyers in my present position of legal services commissioner, are sourced in the conundrum that those who seek help or assistance from a legal practitioner are almost always seeking justice, yet what they receive is law. For the initiated, this is not a difficult dichotomy to unravel, but to those who have never experienced it, it can be incomprehensible and impenetrable. Most in our community think of justice in terms of outcome and those outcomes in terms of what they believe they deserve.

In other words, most people have not turned their mind to the concept of justice to realise that it is largely subjective and thereby unique to every individual. Yet we live in a society where justice is perceived as a universal concept and part of what makes us Australians.

Lawyers have their own problems understanding the consumer, particularly in terms of understanding the need for clear communication. Not only do clients misperceive and misunderstand the role of a lawyer but clients come to a lawyer at a time of the greatest stress in their lives and where they feel the need to present their best possible case, and often not the most truthful one. This presents an immense communication challenge for the lawyer.

It is perhaps stating the obvious that good communication requires not only articulation, but also the ability to listen, to have empathy, to be able to see yourself in the other's shoes.

One of the main barriers we face in achieving good communication is that we all tend to see ourselves as frauds. By this I mean that in today's complex world, with floods of information besetting us from all sides, it has become impossible for us to keep up, to know all there is to know on any subject. This is particularly true for the professions, including law.

We study interpretive law, learning to second guess decisionmakers such as judges, legislators and public servants. Yet when we go into practise and are confronted with clients who have problems and are seeking solutions, we are often ill-prepared to assist them. This is because their problems may involve moral, philosophical, social and political elements, which may not have a technical solution from a learned law tome.

The only way through this dilemma is to have a high degree of self-knowledge and identity. We need to be aware of our own strengths and weaknesses and comfortable enough about who we are to be able to discern what help we can offer to another. We also need to have extremely finely honed communication skills to enable us to communicate with others who are often in a very distressed state.

This means that we have to look deep into ourselves, not in fear of finding a fraud, but in the hope of finding ourselves.

I recently gave a speech at a Catholic secondary school here in Sydney where one of our foremost jurists, Michael Kirby, also a previous Chancellor of this University, had given a speech which mentioned his homosexuality.

Prior to being introduced, the headmaster of the school, a Jesuit, referred to Justice Kirby's remarks and noted with sadness that a number of parents of the school had subsequently contacted him and decried the fact that a Catholic institution had condoned homosexuality and they therefore were considering removing their children from the school. The headmaster in his address informed the students that his reply to these parents was that by all

means they should do so because as a school which values difference and extols the virtues of debate and the exploration of the values inherent in all human beings, it would be wise if people that held such concerns were to leave.

I then gave my speech, which was on human rights and the workings of the International Commission of Jurists in East Timor. I was able to refer both to what Justice Kirby and the headmaster had embraced in the positions they took, which was that human rights is not just about people of different colour existing in far away countries, but rests in the hearts of each one of us, and forms the basis of our spiritual, moral and social identities.

This brings me full circle to the issue of identity both national and individual. The point that I wish to make concerns the need for all of us to explore our own identity and to dedicate our lives to achieving self-knowledge. This is particularly important in the face of all the changes we have experienced, and will experience. In addition, we as a community, either of this University or the wider communities of Australia or the world need to understand that cooperation and mutuality are fundamental to humanity. While individually we may be competitive, and may be driven by what Dawkins has referred to as the selfish gene, collectively we are greater.

As Matt Ridley in his recent book, "The Origins of Virtue" states "our minds have been built by selfish genes but they have been built to be social, trustworthy and cooperative ... human beings have social instincts. They come into the world equipped with predispositions to learn how to cooperate, to discriminate the trustworthy from the treacherous, to commit themselves to be trustworthy, to earn good reputations, to exchange goods and information, and to divide labour. In this we are on our own. No other species has been so far down this evolutionary path before us, for no species has built a truly integrated society... ". And, "trust is as vital a form of social capital as money is a form of actual capital".

So as we wake up to the new globalised age where as Thomas Friedman has written, market capitalism is the only game in town and the electronic herd of hedgemarkets control the economies of the world, it is imperative that we also create a much stronger and vibrant localised social fabric where social capital is the most valued currency.

Humans appear to be the only life form which act collectively for altruistic purposes. Let's ensure the focus of those altruistic purposes remain on the development and strengthening of the social fabric in which we live. This can only be achieved through each one of us as individuals being dedicated to increasing our self-knowledge and with us as communities of individuals establishing our collective identity around strong values such as the "egalitarian fair go society" that I was so fortunate to experience when I came here thirty years ago and within which I am now so incredibly proud to reside.

I would like to congratulate all you graduates who now depart the nest and embrace your future with hope, passion and excitement.

Thank you Vice-Chancellor for your kind words and for the great honour you have today bestowed upon me.