

Occasional Address

Wilson Hall, University of Melbourne, Monday 4 December 2017, 11.00am

The Honourable Justice Susan Kenny
Judge, Federal Court of Australia

Chancellor, Presiding Vice-Chancellor, graduands, ladies and gentlemen:

My warmest congratulations to the graduands this morning! I also salute family members and others who have played a significant part in supporting your academic endeavour. It is a very great pleasure to share this celebratory moment with you all.

What should I say on this occasion? I searched the web for an answer, of course. I found to my dismay that there is a view to be found on the internet that a graduation ceremony calls for a guest speaker, commonly of advanced years, to reflect on her own life experience. I dismissed this as a bad idea.

In the end, I have decided to focus on three questions.

First, how did you arrive at this happy morning? If I had been asked this question on my graduation from this University in 1978, I would have said that my good fortune was principally due to my parents and teachers. They had imbued in me a desire to learn, and a steady belief that the pursuit of knowledge is essential to the possibility of a better world.

Much has changed since 1978, but it seems to me that you have probably arrived at this moment much as I did. Each of us owes a debt to previous generations, to teachers and supporters. For those receiving the JD or Masters degree, the Melbourne University Law School has given you a tremendous legal education. I see this in its students of recent years; and it is confirmed, if confirmation is needed, by the Law School's place in *The Times Higher Education* recent subject rankings.

The recipients of doctoral degrees are in a league of their own. Behind each doctorate lies a history, which includes the generosity of supervisors and many others besides. In the 1980s I had the privilege to be supervised by an exceptional legal philosopher and scholar, Emeritus Professor John Finnis. Over three years, he asked me, in effect, to consider how ideas at the heart of things might be best explored. This meant considering matters as a whole, directly and independently, on the basis of a stated and defended principle. As it happened, I cannot think of any better training for an active life, whether as legal practitioner or scholar or judge. To have come so far, you must have taken a similar journey. My particular felicitations today to those who have been awarded doctoral degrees!

My second question is, what, if anything, can be said about your future path? Your demonstrated capacity for study, your perseverance and intelligence, and your acquired knowledge and skill will stand you in good stead along this path, but these alone will not determine its direction.

How would I have answered this question in 1978? My path lay, as will many of yours, principally in Australia. It is sobering to recall that human history began here, the oldest continent on earth, some 40,000 to 60,000 years ago, and this history continues to find expression in art, stories, dance and song, and in the very land itself. We are a part of the human history of this country, although we walk through it so very briefly. What mark will we leave upon its landscape?

There was in 1978 some promise of a path of opportunity. My generation grew up in Australia in a time of economic prosperity. The war in Vietnam had ended three years before. Almost a decade earlier, in 1967, a referendum had resulted in the deletion of s 127 of the *Constitution*, pursuant to which Aboriginal people were not included in the national census, and an alteration to s 51(xxvi) (the race power) that made it possible for the Commonwealth Parliament to make laws with respect to ‘the people of any race’ including Aboriginal people (previously excluded from the scope of the power). The popularly-understood objective of the referendum was expressed in the campaign slogan ‘Vote yes for Aborigines’.

There were, however, signs that the graduands of 1978 would also travel through difficulty territory. Despite the overwhelming popular support for improving the position of Indigenous people, the practical outcome was by 1978 very limited. We knew this then. Women law graduands faced a most uncertain professional future. By 1976, only 7.5 per cent of 12, 909 law professionals in Australia were women, and they were mostly clustered at the bottom of the profession.ⁱ In consequence, at the time of my graduation, I had little confidence about my future path. When a path opened up, it was only because of the generosity of some remarkable people who took time to signal what direction I might take.

At the end of 2017, you have some reason to be optimistic about your future path. The ‘Uluru Statement from the Heart’ of May this year is encouraging in its generosity to all, including non-Indigenous Australians. It remains to be seen whether, despite the odds, it can be productive of change for the better. The opportunities for women law graduates (and others from less traditional lawyerly backgrounds) are much improved since 1978, although the position is still not ideal.ⁱⁱ

If you intend to practice or study law in Australia, you are fortunate. This is a land to which the late eighteenth century British colonists brought the laws and the legal institutions of their home country. With this British inheritance, Australia has emerged as a representative democracy built on one of the most enduring written constitutions in the world. Australian courts are known to be independent and impartial, and the rule of law is today observed and protected by them.

Yet not all is well. For example, the Australian Council of Social Service has reported that more than 730,000 children live in poverty in Australia.ⁱⁱⁱ Disparities in wealth are apparently increasing^{iv}, and environmental concerns appear even more pressing than in 1978.

As graduates of this University, with the advantage of attending its Law School, you are equipped to make a difference in Australian society and perhaps in others beyond its shores. If your path lies here, you are called on to ensure that the law continues to be applied competently, effectively, impartially and fairly. This is no small demand. Because of the advantages your legal education confers on you, you are obliged to give effect to the law's solicitude for those in particular need of its protection, such as children in poverty, the intellectually disabled, the sick or impoverished elderly, and the mentally ill. The categories are not closed.

What might be your final destination? None can say precisely. In 1953 Sir Owen Dixon said that "[t]o be a good lawyer is difficult. To master the law is impossible".^v You have been given the opportunity to study law at this University on trust that you will be a good lawyer; and that you will contribute to resolving the issues of your time, whether as a lawyer in public or private practice, in the universities, or elsewhere. Your contribution will depend on your ability to make informed, reasoned and fair judgments. This is the gift of your legal education. To adopt a Buddhist saying, "[w]e think, we become." I wish you all the best, particularly in your thinking.

ⁱ Report by the Senate Standing Committee on Legal and Constitutional Affairs, *Gender Bias and the Judiciary*, May 1994, Senate Printing Unit, Parliament House, Canberra, par 5.55 (from statistics compiled by Sharyn L Roach Anleu).

ⁱⁱ See, for example, Susan Kenny, "Women at the IP Bar: A case for unpacking the "merit ideal"" *Intellectual Property Forum Journal of the Intellectual and Industrial Property Law Society of Australia and New Zealand*, No 103, Dec 2015, 19.

ⁱⁱⁱ Australian Council of Social Service, *Poverty in Australia 2016*, <http://www.acoss.org.au/wp-content/uploads/2016/10/Poverty-in-Australia-2016.pdf>, accessed 1 December 2017, p 23.

^{iv} Jennifer Chesters, 'Egalitarian or Edwardian? The rising wealth inequality in Australia', *The Conversation*, <https://theconversation.com/egalitarian-or-edwardian-the-rising-wealth-inequality-in-australia-81832>, accessed 1 December 2017.

^v 'Professional Conduct' in Sir Owen Dixon, *Jesting Pilate and Other Papers and Addresses* (William S Hein & Co, 2nd ed, 1997), p 131.

Vice-Chancellor's Introduction

Justice Susan Kenny is a Judge of the Federal Court of Australia, appointed in 1998.

She graduated Bachelor of Arts (with Honours) and Bachelor of Laws (with Honours) from the University of Melbourne, and later studied comparative constitutional law at Magdalen College, Oxford, under the supervision of Professor John Finnis.

Justice Kenny was Associate to High Court Justice Sir Ninian Stephen, and practised as a barrister specialising in constitutional and public law. She became Queen's Counsel in 1996, and was appointed to the Court of Appeal of the Supreme Court of Victoria in 1997.

Justice Kenny has been a part-time Commissioner of the Human Rights and Equal Opportunity Commission, and of the Australian Law Reform Commission.

She maintains a strong interest in the development of the law. Among her publications are "Maintaining Public Confidence in the Judiciary: A Precarious Equilibrium" (1999, in the Monash University Law Review) and "The children of Mae La: reflections on regional refugee co-operation", with Joyce Chia, in the Melbourne Journal of International Law in 2012.

It is an honour to call on her to speak today. Please welcome Justice Susan Kenny.